

39679  
DO

SERVICE DATE – FEBRUARY 25, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 13X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MUSKEGON  
COUNTY, MI

Decided: February 24, 2009

Mid-Michigan Railroad, Inc. (MMRR), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the line, in Muskegon County, MI. Notice of the exemption was served and published in the Federal Register on December 10, 2007 (72 FR 69728-29) (December 2007 notice). The exemption became effective on January 9, 2008.

By decision served on January 8, 2008 (January 2008 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the condition requiring MMRR to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the area of potential effect) that were eligible for listing or were listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, had been completed, to report back to SEA regarding any consultations with the Michigan Department of History, Arts, and Libraries (MI State Historic Preservation Officer or MI SHPO) and the public, and to refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until completion of the section 106 process and removal of this condition. In a decision served on September 12, 2008 (September 2008 decision), the historic preservation condition imposed in the January 2008 decision was removed. In the same decision, the exemption was made subject to a new condition requiring MMRR, in the event that any unanticipated archaeological sites, human remains, or funerary items or associated artifacts were discovered during salvage activities, to cease all work immediately and notify SEA, interested Federally recognized tribes, and the MI SHPO, pursuant to 36 CFR 800.13(b). SEA would then be required to consult with the MI SHPO, interested Federally recognized tribes, MMRR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

By letter filed on September 15, 2008, MMRR states that, as of September 15, 2008, MMRR had discontinued service over the 3.35-mile rail line. In the letter, MMRR indicated that it was not consummating the abandonment of the line at that time because of issues to be resolved with the Michigan Department of Transportation (MI DOT) and adjacent property owners, and that it would notify the Board when it consummated the abandonment.

By letter filed on January 7, 2009, MMRR states that it has consummated the abandonment of a 2.81-mile portion of the rail line between milepost 191.94 and milepost 194.75, the end of the line (Segment 1). In a separate letter filed on the same day, MMRR states that it is negotiating the sale of the 0.04 miles of rail line between milepost 191.90 and milepost 191.94 (Segment 2) with MI DOT and requests a 1-year extension of time to consummate the abandonment of Segment 2.

In another letter filed on January 7, 2009, MMRR states that it is willing to negotiate interim trail use/rail banking with the Michigan Department of Natural Resources (MI DNR) for a 0.5-mile portion of the rail line between milepost 191.40 and milepost 191.90 (Segment 3). On January 14, 2009, MI DNR filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, to enable it to negotiate with MMRR for trail use for Segment 3, along with a statement of willingness to assume full legal and financial responsibility for the right-of-way, as required at 49 CFR 1152.29.

The Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment. In the December 2007 notice, the Board stated that, if consummation had not been effected by MMRR's filing of a notice of consummation by December 10, 2008, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. While the historic preservation condition imposed in the January 2008 decision was such a barrier to consummation, it was removed in the September 2008 decision. The condition imposed in the September 2008 decision did not constitute a barrier to consummation. See Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, STB Ex Parte No. 678 (STB served Apr. 23, 2008). Therefore, MMRR's authority to abandon the 3.35-mile rail line expired on December 10, 2008. See 49 CFR 1152.29(e)(2). As a result, the letter filed on January 7, 2009, in which MMRR states that it has consummated the abandonment of Segment 1 will be rejected, MMRR's requests for extensions of time to consummate the abandonment of Segments 2 and 3 will be denied, and MI DNR's request for issuance of a NITU will be denied as moot. Should MMRR wish to abandon the 3.35-mile line of railroad, it must seek appropriate Board authority with a new filing, accompanied by the appropriate filing fee.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. MMRR's notice of consummation filed on January 7, 2009, for Segment 1 is rejected.
2. MMRR's requests for extensions of time to consummate the abandonment of Segments 2 and 3 are denied.

3. MI DNR's request for issuance of a NITU is denied as moot.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary