

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-364 (Sub-No. 16X)

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

Decided: May 19, 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.¹ On April 29, 2009, the Michigan Department of Natural Resources (MI DNR) filed a request for issuance of a notice of interim trail use (NITU). Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 FR 18020-21). The exemption is scheduled to become effective on May 20, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 24, 2009. In the EA, SEA recommends two conditions. First, SEA indicates that the City of Muskegon (the City) commented that it has no interest in purchasing the segment of rail line proposed for abandonment. However, the City did request that, at the time of salvage, the 15 public road crossings and all related infrastructure, including streets, sidewalks, curbs, pavement, and terraces, be restored in accordance with the City's specifications. Accordingly, to ensure that the proposed abandonment does not adversely impact the City, SEA recommends that MMRR be required to consult with the City prior to salvage operations and to comply with the reasonable requirements of the City.

Second, SEA indicates that the MI SHPO had commented in the STB Docket No. AB-364 (Sub-No. 13X) proceeding and had requested that it be notified immediately if the scope of

¹ The Board previously exempted the abandonment of this 3.35-mile line of railroad in Mid-Michigan Railroad, Inc.—Abandonment Exemption—in Muskegon County, MI, STB Docket No. AB-364 (Sub-No. 13X) (STB served Dec. 10, 2007). MMRR did not file its notice of consummation by the required deadline and its authority to abandon the line expired. By decision served on February 25, 2009 (February 2009 decision), MMRR's late-filed notice of consummation for a 2.81-mile portion of the rail line was rejected, MMRR's requests for extensions of time to consummate the abandonment of the other two line segments were denied, and MMRR was advised that, should it wish to abandon the line, it must seek appropriate Board authority with a new filing.

work changes in any way or if unanticipated archaeological sites, human remains, or funerary items or associated artifacts are discovered during salvage activities. The condition was in effect at the time of the February 2009 decision that discontinued the proceeding. The right-of-way at issue in STB Docket No. AB 364 (Sub-No. 13X) is the same as the right-of-way at issue here and the concerns remain the same. Therefore, with respect to this proceeding in STB Docket No. AB 364 (Sub-No. 16X), SEA recommends that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, MMRR be required to cease all work immediately and notify SEA, interested Federally recognized tribes, and the MI SHPO, pursuant to 36 CFR 800.13(b). SEA shall then consult with the MI SHPO, interested Federally recognized tribes, MMRR, and any other consulting parties to determine whether appropriate mitigation measures are necessary.

SEA states that, pursuant to 36 CFR 800.2, it conducted a search of the Native American Consultation Database (database) at <http://home.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area. According to SEA, the database indicated that the following four tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the Area of Potential Effect) of the proposed abandonment: Bay Mills Indian Community; the Grand Traverse Band of Ottawa and Chippewa Indians; the Little Traverse Bay Bands of Odawa; the Sault Ste. Marie Tribe of Chippewa Indians; and the Red Lake National Library and Archives, Tribal Information Center. SEA indicates that it is sending a copy of the EA to the tribes and information center for review and comment.

Comments to the EA were due by May 12, 2009. SEA received a comment from the National Geodetic Survey stating that it has no comments on the proposed abandonment. Therefore, SEA is not recommending any additional conditions. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

MI DNR filed a request for issuance of a NITU under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29 for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90. MI DNR has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on May 1, 2009, MMRR states that it is willing to negotiate with MI DNR for interim trail use for the 0.5-mile portion of the right-of-way.

Because MI DNR's request complies with the requirements of 49 CFR 1152.29 and MMRR is willing to negotiate for trail use, a NITU will be issued for the portion of the right-

of-way between milepost 191.40 and milepost 191.90. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, MMRR may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on April 20, 2009, exempting the abandonment of the line described above is subject to the conditions that, prior to commencement of salvage activities, MMRR shall: (1) contact the City regarding restoration of the 15 public road crossings and all related infrastructure, including streets, sidewalks, curbs, pavement, and terraces, and comply with the reasonable requirements of the City in restoring the 15 public road crossings that may be impacted as a result of rail line salvage; and (2) in the event that any unanticipated archaeological sites, human remains, or funerary items or associated artifacts are discovered during salvage activities, MMRR shall immediately cease all work and notify SEA, interested Federally recognized tribes, and the MI SHPO pursuant to 36 CFR 800.13(b). SEA shall then consult with the MI SHPO, interested Federally recognized tribes, MMRR, and any other consulting parties to determine whether appropriate mitigation measures are necessary. The exemption is also modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit MI DNR to negotiate with MMRR for trail use for the portion of the right-of-way between milepost 191.40 and milepost 191.90, for a period of 180 days from the service date of this decision and notice of interim trail use or abandonment until November 15, 2009.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking for the portion of the right-of-way between milepost 191.40 and milepost 191.90 is reached by November 15, 2009, interim trail use may be implemented. If no agreement is reached by that time, MMRR may fully abandon that portion provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary