

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 4X)

MID-MICHIGAN RAILROAD, INC.--ABANDONMENT
EXEMPTION--IN KENT AND IONIA COUNTIES, MI

Decided: June 15, 2000

Mid-Michigan Railroad, Inc. (MMRR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 5-mile line of its railroad between milepost 105.5, near Lowell, and milepost 110.5, at Elmdale, in Kent and Ionia Counties, MI. Notice of the exemption was served and published in the Federal Register on May 26, 1999 (64 FR 28559-10). The exemption became effective on June 25, 1999. On June 24, 1999, the Board served a decision that imposed a 180-day public use condition.¹ The June 24 decision also imposed environmental conditions prohibiting MMRR from conducting any salvage operations until the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531, and until the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineer District (Corps) determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344. On May 22, 2000, MMRR filed a letter stating that it had consummated the abandonment of the 5-mile line on May 22, 2000. While the section 7 condition is being removed in this decision at the recommendation of the Board's Section of Environmental Analysis (SEA), as discussed later in this decision, the section 404 condition remains as a regulatory barrier to consummation (see 49 CFR 1152.29(e)(2)). Thus, MMRR's letter cannot provide valid notice that this line has been fully abandoned. Accordingly, the letter submitted as a notice of consummation will be rejected.

The Board's regulations adopted in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), include a notice of consummation requirement at 49 CFR 1152.29(e)(2), which is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.29(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully

¹ The public use condition expired on December 22, 1999.

abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions . . .).

In a letter filed June 7, 2000, MMRR attached a letter dated May 31, 2000, from the U.S. Fish and Wildlife Service (FWS), in which FWS states that there are no endangered, threatened, proposed or candidate species, or critical habitat in the proposed abandonment area. Therefore, SEA recommends that the section 7 condition be removed. Accordingly, the previously imposed section 7 condition will be removed. As indicated above, however, the section 404 condition imposed in the June 24, 1999 decision remains in effect and thus is a barrier to consummation.

This decision 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. The condition imposed in the June 24, 1999 decision to implement the section 7 process of the Endangered Species Act is removed.
3. The notice of consummation filed on May 22, 2000, is rejected.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary