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SERVICE DATE – LATE RELEASE JUNE 6, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1107X

WEST MICHIGAN RAILROAD CO.—ABANDONMENT  
EXEMPTION—IN VAN BUREN COUNTY, MICH.

Decided: June 6, 2014

On May 2, 2014, the Michigan Department of Natural Resources (MDNR), together with the Friends of the Kal-Haven Trail and the Van Buren County Board of Park Trustees (herein, proponents) filed a joint petition requesting that MDNR be substituted for the proponents as interim trail sponsor with respect to certain portions of a rail line which West Michigan Railroad Company (WMI) received permission to abandon in January 2013. This decision grants that request.

WMI filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line's crossing of 56th Street near Lawrence) and milepost 30.55 (east of Kalamazoo Street in Paw Paw), in Van Buren County, Mich. Notice of the exemption was served and published in the Federal Register on January 28, 2013 (78 Fed. Reg. 5,867). The exemption was scheduled to become effective on February 27, 2013, but under 49 C.F.R. § 1152.27(c)(2)(i) a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line was filed on February 6, 2013, by Great Lakes Locomotive, LLC. The filing stayed the effective date of the exemption.

On February 11, 2013, the proponents filed requests for the issuance of a notice of interim trail use and rail banking (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, and for the issuance of a public use condition under 49 U.S.C. § 10905 for the entire line. These requests were held in abeyance pending completion of the OFA process by decision served on March 8, 2013. In a Decision and Notice of Interim Trail Use or Abandonment served on June 7, 2013, the OFA process was terminated and trail use and public use conditions were imposed for 180 days (until December 5, 2013).

On February 3, 2014, proponents filed a request to extend the NITU and public use negotiating periods for the entire line for 180 days.

By letters filed on January 31 and February 4, 2014, WMI notified the Board that it had consummated the abandonment of two portions of the line: (1) between mileposts 30.2 and 30.55; and (2) between mileposts 25.1 and 26.5.

WMI subsequently notified the Board by letter filed on February 21, 2014, that it was willing to continue trail use negotiations and to extend the negotiating period with proponents for the portions of the line that had not been abandoned: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2. WMI added that it had sold the portion of the Line between mileposts 25.1 and 26.5, but that in recognition of the rail restoration provision in trail use agreements, the sale agreement covering that portion of the line included a provision for the re-acquisition of the property by WMI, which would allow for restored rail service for the portion of the Line east of milepost 26.5. In response, the NITU negotiating period was extended for 180 days, until June 3, 2014, by decision served on April 15, 2014.<sup>1</sup> That NITU has now expired.

MDNR has submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 C.F.R. § 1152.29. MDNR also acknowledges that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Accordingly, MDNR's request to be substituted as interim trail sponsor will be granted, and the authorization of a new 180-day negotiating period will extend the deadline for filing a notice of consummation until February 2, 2015.

This action 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. A replacement NITU applicable to MDNR as interim trail sponsor is issued and will extend to December 3, 2014.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

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<sup>1</sup> The public use condition imposed in this proceeding was for the maximum 180-day period, which expired on December 5, 2013, and could not be extended. Consequently, proponents' request for an extension of that period was denied.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. This decision and notice is effective on its service date.

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