

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: July 12, 2010

Mid-Michigan Railroad, Inc. (MMRR), filed a notice of exemption under 49 C.F.R. pt. 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, Mich. Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 Fed. Reg. 18,020-21). The exemption became effective on May 20, 2009.

By decision and notice of interim trail use or abandonment (NITU) served on May 19, 2009 (May 2009 decision), the proceeding was reopened and a 180-day period was authorized for the Michigan Department of Natural Resources (MI DNR) to negotiate an interim trail use/rail banking agreement with MMRR for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90 (0.5-mile segment) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).¹ By decision served on November 25, 2009, the NITU negotiating period was extended to May 14, 2010, and an extension of time to consummate the abandonment also was granted until July 13, 2010.

On May 13, 2010, and supplemented on June 23, 2010, MI DNR filed a request to extend the NITU negotiating period for the 0.5-mile segment. MI DNR states that MI DNR and MMRR are continuing negotiations towards an agreement. In letters filed on May 20, 2010, and on June 23, 2010 (MMRR's replies), MMRR concurs in the extension for the 0.5-mile segment of the right-of-way.²

¹ In the May 2009 decision, the exemption was made subject to 2 consultation conditions regarding the salvage of the line. In a letter filed on July 23, 2009, MMRR advised the Board that it has complied with 1 of the conditions.

² MMRR did not request an extension of time to exercise abandonment authority but notes that, pursuant to 49 C.F.R. § 1152.29(e)(2), a NITU is a regulatory barrier to consummation of the abandonment and that the period for consummation of the abandonment is automatically extended until 60 days after the satisfaction, expiration, or removal of the regulatory requirements.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ An extension of the NITU negotiating period for the 0.5-mile segment will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. Surface Transp. Bd., 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., Gateway Trailnet, Inc., Grant's Farm Manor, Inc., Union Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days from May 14, 2010, until November 10, 2010.

MI DNR also requests issuance of a NITU under section 8(d) of the Trails Act for the remaining 2.85-mile portion of the right-of-way between milepost 191.90 and milepost 194.75 (2.85-mile segment). 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 by 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In MMRR's replies, MMRR states that it has not consummated the abandonment of the 2.85-mile segment and is willing to negotiate with MI DNR for interim trail use for this segment.

Because MI DNR's request complies with the requirements of 49 C.F.R. § 1152.29 and MMRR is willing to negotiate for trail use, a NITU will be issued for the 2.85-mile segment. The parties may negotiate an agreement during the negotiating period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within the negotiating period, MMRR may fully abandon this segment subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

MI DNR requests that the NITU negotiating periods for both NITUs have the same expiration date. MMRR concurs in MI DNR's request. Accordingly, the NITU negotiating periods for MI DNR to negotiate trail use with MMRR for both segments of the right-of-way will expire on November 10, 2010.

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

³ See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. This proceeding is reopened.
2. MI DNR's request to extend the NITU negotiating period for the 0.5-mile segment is granted.
3. The NITU negotiating period for the 0.5-mile segment is extended to November 10, 2010.
4. Upon reconsideration, the notice served and published in the Federal Register on April 20, 2009, exempting the abandonment of the line described above is 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 2.85-mile segment until November 10, 2010.
5. 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.
6. Interim trail use/rail banking is subject to any future use of the property for restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
7. 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.
8. If an agreement for interim trail use/rail banking for the 2.85-mile segment is reached by November 10, 2010, interim trail use may be implemented. If no agreement is reached for that segment or the 0.5-mile segment by November 10, 2010, MMRR may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).
9. This decision is effective on its service date.

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