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SERVICE DATE – DECEMBER 23, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-364 (Sub-No. 14X)

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

Decided: December 22, 2008

By decision and notice of interim trail use or abandonment (NITU) served on June 9, 2008, Mid-Michigan Railroad, Inc. (MMRR) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 24.70-mile rail line between milepost 103.20 at Lowell, MI, and milepost 78.50, at Greenville, MI, at the end of the line in Kent, Ionia, and Montcalm Counties, MI.¹ Also, a 180-day period was authorized for West Michigan Trails and Greenways Coalition (WMTGC) to negotiate an interim trail use/rail banking agreement with MMRR for a portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville, a distance of 21.88 miles. That negotiating period expired on December 8, 2008. In this decision, the Board is vacating the prior NITU and designating a new trail proponent.

On December 8, 2008, a new entity, the Friends of the Fred Meijer Heartland Trail (FFMHT) filed a request for issuance of a NITU for the 21.88-mile portion of the right-of-way between mileposts 103.20 and 81.32. FFMHT states that WMTGC has been unable to reach a final agreement with MMRR and FFMHT would like to continue to negotiate in WMTGC's place. FFMHT further states that the railroad has not consummated the abandonment.² FFMHT 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 be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29. In a letter filed on December 9, 2008, MMRR states that it agrees to negotiate for trail use with FFMHT.

¹ The exemption was also subject to historic preservation and standard employee protective conditions. The historic preservation condition was removed by decision served on September 22, 2008.

² FFMHT also requests an extension of time for MMRR to consummate the abandonment. That request cannot be granted based on a request from FFMHT. If MMRR wants an extension of the time to consummate the abandonment and to file its notice of consummation, it must file such a request with the Board.

Because FFMHT's request complies with the requirements of 49 CFR 1152.29 and MMRR is willing to negotiate for trail use, a new NITU will be issued for that portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville. 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 compliance with the previously imposed employee protective conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future restoration for railroad purposes.

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. The NITU served on June 9, 2008, is vacated and a new NITU designating FFMHT as the trail proponent is issued, effective on the service date of this decision and notice.
3. The negotiating period under the NITU will run for a period of 180 days commencing from the service date of this decision and notice (until June 21, 2009).
4. 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.
5. 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 of the right-of-way.
6. 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.
7. If an agreement for interim trail use/rail banking is reached by June 21, 2009, interim trail use may be implemented. If no agreement is reached by that time, MMRR may fully abandon the line, subject to the previously imposed employee protective conditions.

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

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

Anne K. Quinlan
Acting Secretary