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SERVICE DATE - JUNE 24, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: June 23, 1999

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. The notice was served and published in the Federal Register on May 26, 1999 (64 FR 28559-10). The exemption is scheduled to become effective on June 25, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 28, 1999. In the EA, SEA indicates that the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWL), the U.S. Army Engineer District (Corps), and the Bureau of History have not completed their evaluation of the potential impact of this project on environmental and historic resources, including endangered species and water resources. Therefore, SEA recommends that no salvage operations take effect until the requirements under section 7 of the Endangered Species Act, 16 U.S.C. 1531 have been completed and that no salvage operations be conducted until the EPA and the Corps determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344. Also, SEA initially recommended that MMRR be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. By letter dated June 15, 1999, however, MMRR submitted a letter from the State Historic Preservation Officer stating that based on the information provided, it is of the opinion that no historic properties exist within the abandonment area. Therefore, the section 106 process is unnecessary and the historic preservation condition need not be imposed..

SEA indicates that the right-of-way may be suitable for other public use following abandonment. On May 25, 1999, the North Country Trail Association (NCTA) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails

System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it can negotiate with MMRR for acquisition of the right-of-way for use as a recreational trail. NCTA's request indicated that it was being served on MMRR on May 4, 1999. When the railroad did not respond to NCTA's request as required under 49 CFR 1152.29(b)(5), the Board staff contacted the railroad's representative and was advised that MMRR had not received a copy of the NITU request. The abandoning railroad is normally required to respond to a request for interim trail use within 10 days after it is filed. Under the circumstances presented here, the railroad will be given 10 days from the date of service of this decision to respond. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot impose a NITU without a statement from the railroad indicating that it is willing to negotiate.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609.¹ To justify a public use condition a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). NCTA has satisfied these requirements and, therefore a 180-day public use condition will be imposed commencing with the effective date of the exemption. NCTA states that it needs the full 180-day period in order to commence negotiations with MMRR. MMRR may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found appropriate for public purposes.

As conditioned, 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. MMRR is directed to inform the Board within 10 days of the service date of this decision whether it is willing to negotiate for trail use. The request for a NITU will be addressed in a separate decision.
3. Upon reconsideration, the notice of exemption served and published in the Federal Register on May 26, 1999, exempting the abandonment of the line described above is subject to the conditions that MMRR shall: (a) not conduct salvage operations until the requirements under

¹ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed for abandonment and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

section 7 of the Endangered Species Act 16 U.S.C. 1531 have been completed and until the EPA and the Corps determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344.

4. The request for imposition of a public use condition is granted and MMRR shall leave intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the June 25, 1999 effective date (until December 22, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary