

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: November 23, 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). 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, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).<sup>1</sup> By decision served on November 25, 2009, the NITU negotiating period was extended to May 14, 2010.<sup>2</sup>

By decision and notice served on July 12, 2010, the proceeding was reopened to implement interim trail use/rail banking for the remaining 2.85-mile segment of the right-of-way between milepost 191.90 and milepost 194.75. At the request of the parties, the negotiating periods for both segments were extended until November 10, 2010.

On November 9, 2010, MI DNR filed a request to extend the NITU negotiating periods for both segments for an additional 180 days. MI DNR states that MI DNR and MMRR are continuing negotiations toward an agreement and expect to complete an agreement within 180 days. On the same date, MMRR filed a response, concurring with the extension for an additional 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the

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<sup>1</sup> 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.

<sup>2</sup> An extension of time to consummate the abandonment also was granted until July 13, 2010.

Board retains jurisdiction, and the NITU negotiating periods may be extended.<sup>3</sup> An extension of the NITU negotiating periods will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating periods is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating periods will be extended for an additional 180 days from November 10, 2010, until May 9, 2011.<sup>4</sup>

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

It is ordered:

1. MI DNR's request to extend the NITU negotiating periods is granted.
2. The NITU negotiating periods are extended to May 9, 2011.
3. This decision is effective on its service date.

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

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

<sup>4</sup> MMRR notes that, pursuant to 49 C.F.R. § 1152.29(e)(2), a NITU is a regulatory barrier to consummation of the abandonment. Because an impediment to consummation exists, such as a trail use condition, MMRR does not need a separate extension of the deadline for filing a notice of consummation. MMRR's notice of consummation will be due 60 days after the satisfaction, expiration, or removal of the regulatory barrier.