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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-534 (Sub-No. 1X)

LAKE STATE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN ALPENA COUNTY, MI

Decided: November 5, 1999

On November 18, 1997, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement with Lake State Railway Company (Lake State) for an 8-mile line of railroad between milepost 0.0 near Alpena, and milepost 8.0 near Hillman, in Alpena County, MI.[1] Subsequently, by decisions served May 15, 1998, November 19, 1998, and May 13, 1999, the negotiation period was extended through November 6, 1999.

On October 28, 1999, Michael C. Griffith, a private land owner, filed a letter-protest requesting that the Board find the rail corridor not suitable for public use or interim trail use/rail banking. Mr. Griffith is concerned about plans to use the right-of-way for a snowmobile trail. Mr. Griffith also states that important wildlife habitat and green space will be under constant threat from overuse and abuse.[2] Stating that the rail corridor adjoins a new junior high school. Mr. Griffith also expresses concern for the safety of children, that might use the trail.

However, the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and the Board's implementing rules, give the agency "little if any discretion to forestall a voluntary agreement to effect a conversion to trail use." Goos v. ICC 911 F. 2d 1283, 1295 (8th Cir. 1990). See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 628-30 (1986).

Moreover, Mr. Griffith also raises concerns governed by the laws and police power of the state and local government in which the trail is located. See Ex Parte No. 274 (Sub-No. 13), Rail Abandonment--Use of Rights-of-Way as Trails--Supplemental Trails Act Procedures (ICC served May 26, 1989). Property owners concerned about improperly maintained trails or how trails are

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[1] Notice of the exemption was served and published in the Federal Register on October 17, 1997 (62 FR 54155-56).

[2] Neither MDNR nor Lake State responded to Mr. Griffith's letter protest that did not include a certificate of service, and thus there is no indication that it was served on MDNR and Lake State. Under 49 CFR 1104.12, every document filed with the Board should include a certificate of service showing simultaneous service upon all parties to the proceeding.

developed may address their concerns to appropriate local enforcement officials. The Boards role under the Trails Act is largely ministerial. The Board plays no part in the negotiations between the parties. Goos, 911 F.2d at 1295. Nor does it analyze, approve, or set the terms of rail banking/interim trail use agreements. If at anytime an interested party calls into serious question the trail sponsor's ability to meet the statutory requirements for interim trail use (i.e., the sponsor's ability to assume financial liability for the trail and pay taxes and it's agreement to rail bank) the Board will reopen the proceeding for further examination, and may involuntary revoke the trail condition. Mr. Griffith, however, does not raise concerns such as this. Therefore, he has shown no basis for the Board to revoke the NITU in this case.

By facsimile received on November 1, 1999, and letter-request filed on November 4, 1999, MDNR has requested an additional 180-day extension of the negotiation period to May 4, 2000. MDNR states that the parties are continuing to negotiate towards an agreement and expect to complete an agreement within 180 days. Also on November 4, 1999, Lake State advised the Board that it is agreeable to the extension request.

Because Lake State is willing to continue trail use negotiations with MDNR and an extension of the negotiation period will promote the establishment of trail use and rail banking consistent with the Trails Act, the requested extension of the negotiation period under the NITU will be granted.

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

It is ordered:

1. Mr. Griffith's letter will be treated as correspondence and placed in the public docket.

2. The negotiating period under the NITU is extended to May 4, 2000.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary