



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
LANSING



KEITH CREAGH  
DIRECTOR

April 17, 2014

235985

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
May 2, 2014  
Part of  
Public Record



Dear Ms. Brown:

**SUBJECT: Joint Petition For Substitution Of Interim Trail Manager – West Michigan Railroad Company – Abandonment Exemption – In Van Buren County, Michigan, STB Docket No. AB-1107X**

Pursuant to 49 C.F.R. § 1152.29(f), the Michigan Department of Natural Resources (MDNR), which is a government agency interested in recreation and natural resources, and the Friends of the Kal-Haven Trail and Van Buren County Board of Park Trustees (Friends & Van Buren County), submit this joint petition requesting that the MDNR, hereinafter referred to as "proponent," be substituted for the Friends & Van Buren County as the interim trail manager for the unconsummated portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2. The proponent requests permission to finalize the negotiations as a participant in the proceedings. A letter from General Counsel for the West Michigan Railroad Company (WMRC), indicating the willingness of WMRC to negotiate with the proponent, is attached.

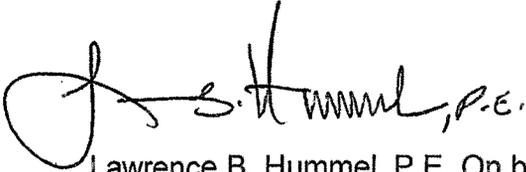
The Surface Transportation Board (Board), by decision served June 7, 2013, granted a public use condition and notice of interim trail use (NITU) to the Friends & Van Buren County, which, the Board, on April 15, 2014, extended the NITU until June 3, 2014, for the portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2.

**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY**

The railroad right-of-way in this proceeding continues to be suitable for railbanking and interim trail use. In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(c), and 49 CFR §1152.29, the proponent is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by WMRC.

Proponent acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Respectfully submitted,



Lawrence B. Hummel, P.E. On behalf  
of the Friends of the Kal-Haven Trail,  
and Van Buren County Board of Park  
Trustees  
269-674-8011



James Radabaugh, State Trails Coordinator  
MDNR Parks and Recreation Division  
517-284-6124

Certificate of Service

By my signature below, I certify service upon West Michigan Railroad Company, c/o Daniel A. LaKemper, General Counsel, 1318 South Johanson Road, Peoria, IL 61607, by U.S. Mail, postage pre-paid, first class, this 17th day of April, 2014.

Enclosure

cc: Mr. Daniel A. LaKemper, West Michigan Railroad Co.  
Mr. Ron Olson, DNR  
Mr. Roger Storm, DNR



**WEST MICHIGAN RAILROAD CO.**

1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

March 25, 2014

Roger Storm, Trailway Acquisition Specialist  
Michigan Dept. of Natural Resources  
Constitution Hall  
P.O. Box 30448  
Lansing, Michigan 48909-1880

RE: West Michigan Railroad Co. – Abandonment Exemption – Van Buren County, Michigan –  
STB Docket No. AB-11070X

Dear Mr. Storm:

Pursuant to our telephone conversation this afternoon, this will confirm that West Michigan Railroad Co. (“WMI”) has no objection to the Michigan Department of Natural Resources (“DNR”) being substituted as the trail proponent in this matter, in place of the Friends of the Kal-Haven Trail, and is willing to continue negotiations with DNR as to the unconsummated portions of the Line, between Mile Post 19.88 and Mile Post 25.1, and between Mile Post 26.5 and Mile Post 30.2. You are authorized to attach this letter to your filing with the Board.

Please call me if you have any further questions.

Sincerely yours,



Daniel A. LaKemper,  
General Counsel.

cc: Lawrence B. Hummel, Friends of the Kal-Haven Trail.  
Alex Snyder.  
William Mullins.



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DO

SERVICE DATE – LATE RELEASE APRIL 15, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1107X

WEST MICHIGAN RAILROAD CO.—ABANDONMENT  
EXEMPTION—IN VAN BUREN COUNTY, MICH.

Decided: April 15, 2014

West Michigan Railroad Co. (WMI) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line's crossing of 56th Street near Lawrence) and milepost 30.55 (east of Kalamazoo Street in Paw Paw), in Van Buren County, Mich. Notice of the exemption was served and published in the Federal Register on January 28, 2013 (78 Fed. Reg. 5,867). The exemption was scheduled to become effective on February 27, 2013, but a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line was filed on February 6, 2013, by Great Lakes Locomotive, LLC, which had the effect of staying the effective date of the exemption.

On February 11, 2013, a request for the issuance of a notice of interim trail use and rail banking (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, was filed by Friends of the Kal-Haven Trail and Van Buren County Board of Park Trustees (proponents), in order to negotiate with WMI for acquisition of the right-of-way for use as a trail. By decision served on March 8, 2013,<sup>1</sup> the NITU and public use requests were held in abeyance pending completion of the OFA process. In a Decision and Notice of Interim Trail Use or Abandonment served on June 7, 2013, the OFA process was terminated and trail use and public use conditions were imposed for 180 days (until December 5, 2013).

On February 3, 2014, proponent filed a request to extend the NITU and public use negotiating periods for the entire line for 180 days.<sup>2</sup> By letters filed, respectively, on January 31, 2014 and February 4, 2014, WMI notified the Board that it had consummated the abandonment

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<sup>1</sup> The March 8 decision also imposed three environmental conditions: an historic preservation condition (which was removed in a decision served March 27, 2013) and two consultation conditions (which remain in effect).

<sup>2</sup> The public use condition imposed in this proceeding was for the maximum 180-day period, which expired on December 5, 2013, and may not be extended. Consequently, proponent's request for an extension of that period will be denied.



of two portions of the line: first, between mileposts 30.2 and 30.55, and second, between mileposts 25.1 and 26.5. By letter filed on February 21, 2014, WMI notified the Board that it is continuing trail use negotiations, and is willing to extend the negotiating period with proponent for the remaining unconsummated portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2. WMI adds that, although it has sold the segment between mileposts 25.1 and 26.5, in recognition of the rail restoration provision in trail use agreements, the sale agreement covering that portion of the line included a provision for the re-acquisition of the property by WMI, which would allow for restored rail service for the portion east of milepost 26.5.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for portions of the line and is willing to continue trail use negotiations for those portions of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>3</sup> Under the circumstances, further extension of the negotiating period 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU extension request will be granted for a period of 180 days from the December 5, 2013 expiration date for the portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2.

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

It is ordered:

1. The request to extend the public use condition is denied.
2. The request to extend the NITU negotiating period is granted to the extent discussed above, and the NITU negotiating period is extended for 180 days, until June 3, 2014, for the following portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2.
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 Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).