

National Association of Reversionary Property Owners (NARPO)

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Surface Transportation Board, Cynthia Brown, Administrator

RE: AB 1107X West Michigan Railroad Co. (WMI) Abandonment Exemption in Van Buren County, Michigan

NARPO's Rebuttal to the Petition for Reconsideration of AB 1107X

NARPO is not sure whether NARPO is allowed a rebuttal to WMI and MDNR's Joint Reply, but NARPO asks the STB to allow this rebuttal for good cause as WMI and MDNR have accused NARPO of some issues, and WMI really do not answer the questions NARPO raised in its original Petition for Reconsideration.

On June 11, 2019, West Michigan Railroad Co. (WMI) and the Michigan Department of Natural Resources (MDNR) responded to NARPO's June 9, 2019, Petition for Reconsideration with their usual nonsensical ideas trying to mask over their lapses in judgement in abandonment, rails to trails regulations and Michigan property law.

New Evidence

In late 2018, NARPO made a comment to the STB suggesting the STB not extend parts of the NITU due to the consummation letter WMI sent in 2014. In early 2019 property owners along the Cora Lake segment of this abandonment found NARPO's web page and contacted NARPO to ascertain their rights to the right of way (ROW). After the property owner contact, NARPO discovered some of the Sales Agreements WMI wrote in 2015 to some of the property owners. After some title searches and valuation map discovery at the National Archives in College Park, Maryland, NARPO filed its Petition for Reconsideration. It is new evidence because WMI never disclosed the Sales Agreements or the fact that the Sales Agreements were written after the consummation letter to the STB.

Because WMI was greedy and wanted to exact money from abutting property owners who actually owned the fee title to the underlying (ROW), they consummated abandonment on two small portions of the (ROW) of AB 1107X. Thinking they covered their bases with Sales Agreements with a 22 year limit on reactivation of rail service, WMI forgot that Michigan property law allows immediate reversion of easements when the use the easement was written for is

abandoned or extinguished. Abandonment of the two portions of the ROW happened on the day AB 1107X was consummated in 2014. WMI did not get the above mentioned sales agreements until months after the consummation of the abandonment so the reversion of the ROW happened on the day the consummation letter was accepted by the STB; see **Department of Natural Resources v. Carmody-Lahti Real Estate, Inc.**, Supreme Court of Michigan May 27, 2005, 472 Mich. 359, 362, 2005 or 699 N.W.2d 272.

Obviously WMI negotiated these after the fact sales agreements with many property owners along the MP 25.1 to MP 26.5 (the Cora Segment) so as to add more money to their coffers; mind you, for land WMI didn't own in fee title-- some might even call this fraud. If WMI was all so altruistic about rails to trails, why did they try and break up a section of a proposed trail? Why because they were greedy and wanted more money.

WMI never did say why they inserted the 22 year proviso in the above mentioned sales agreements. One would think the STB would be interested in this 22 year obfuscation and expect WMI to explain it away. Also WMI never explained or proffered the complete list of these sales agreements. WMI also never offered any proof of fee title to these properties; why, because they have no fee title to these properties. WMI has or should have all the valuation maps for this rail line that were filed with the ICC in 1915. If NARPO can find them, then one would think the railroad would have them. Of course WMI has them, but didn't want to show them as the world would see WMI as greedy and maybe perpetrating a fraud.

Material Error

WMI and MDNR also accuse NARPO of not showing material error in NARPO's Petition for Reconsideration. What more material error is there then the STB allowing the NITU to continue when a 1.4 mile of the ROW was consummated and the land reverted to many property owners immediately according to Michigan state laws. The above mentioned sales agreement with some of these reverted property owners were written months after the consummation. How can the STB not say that this consummation cut the eastern portion of the ROW from MP 25.1 to the eastern end from the National Rail System; thus making a NITU not viable from MP 25.1 to MP 30.2 and the end.

Also WMI has not shown any of the above mentioned sales agreements. If WMI had sales agreements with all the many property owners along the ROW from MP 25.1 to MP 26.5, one would think that WMI would at least try and salvage their mistakes by showing these sales agreements as they are all in the Van Buren County Recorder's office and open for public review.

WMI in their Joint Reply say "NARPO's argument about the scope of WMI's possessory interest in the Cora Segment right of way is irrelevant to the issuance of the Board's NITU for the Paw Paw segment." I beg to differ with the great minds of WMI's attorneys because if WMI did not have fee title to the Cora Segment, and then they consummated the abandonment for that segment, then the ROW reverted to the abutting property owner on the day of consummation

without any restrictions for rails to trails or reinstitution of rail service, see **Department of Natural Resources v. Carmody-Lahti Real Estate, Inc.**, Supreme Court of Michigan May 27, 2005, 472 Mich. 359, 362, 2005 or 699 N.W.2d 272. Especially see the bottom of page 382 and page 383 for where the Michigan Supreme Court mentioned the RLTD Railroad v. STB case which NARPO cited in its Petition for Reconsideration. The **Department of Natural Resources v. Carmody-Lahti Real Estate, Inc.**, case involved an easement for a railroad ROW and the railroad abandoning the ROW and its immediate reversion to the abutting property owners. While the STB has jurisdiction over when a railroad can be abandoned, once an abandonment has been approved by the STB and part or all the ROW is consummated by the abandoning railroad, then the STB jurisdiction ends on the consummated portions. The STB was specific on the consummation issue when they promulgated the consummation rules in 1997 and again in 2008.

But the STB kept issuing extensions for the NITU even though the ROW was now split by the consummation. WMI is not arguing the consummation letter did not happen; instead WMI is trying to cover up their mistakes for their greediness. But their coverup does not do the job.

WMI's Joint Response took 31 days to accomplish and email off to the STB and parties of record, but it added absolutely nothing of substance to NARPO's original Petition for Reconsideration except to inject innuendos about NARPO. Hopefully the STB will put a stop to all the games and machinations of STB rules the railroads and trails groups are playing to continue on some of these rails to trails projects.

Unless the STB wants to manipulate their own eleven year old rules on abandonment consummation in order to come to terms with WMI's mistakes, then the STB will have to declare the NITU null and void and vacated between MP 25.1 and MP 30.2 as it is not connected to the National Rail System because of the Michigan state law on reversion and the decades old 49 USC 10101.

NARPO verifies that James Radabaugh, radabaughj@michigan.gov, Paul York, yorkp@michigan.gov, Audrey L Brodrick abrodrick@fletcher-sippel.com, Matt Lincoln, lincolnm@michigan.gov, were served as parties of record via email on June 12, 2019
Richard Welsh--Executive Director NARPO