

SERVICE DATE – APRIL 26, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 364 (Sub-No. 14X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN KENT, IONIA,
AND MONTCALM COUNTIES, MICH.

Decided: April 23, 2010

By decision and notice of interim trail use or abandonment (NITU) served on June 9, 2008, Mid-Michigan Railroad, Inc. (MMRR) was granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 24.70-mile rail line between milepost 103.20 at Lowell, Mich., and milepost 78.50, at Greenville, Mich., at the end of the line in Kent, Ionia, and Montcalm Counties, Mich.¹ Also, a 180-day period was authorized for West Michigan Trails and Greenways Coalition (WMTGC) to negotiate an interim trail use/rail banking agreement with MMRR for a portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville, a distance of 21.88 miles. That negotiating period expired on December 8, 2008.

On December 23, 2008, a NITU was served reopening the proceeding and establishing a 180-day period for a new entity, the Fred Meijer Heartland Trail (FFMHT), to negotiate an interim trail use/rail banking agreement with MMRR for the 21.88-mile portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville. By decision served on June 18, 2009, the negotiation period for the 21.88-mile segment was extended until March 31, 2010, and the time to consummate the abandonment and file a notice of consummation was extended until May 30, 2010.

On April 28, 2009, a NITU was served reopening the proceeding and establishing a 180-day period for FFMHT to negotiate an interim trail use/rail banking agreement with MMRR for the remaining 2.82 miles of the right-of-way between milepost 81.32 at Washington Street (M-57) in Greenville and milepost 78.50 near Greenville at the end of the line (Peck Road). By decision served on November 9, 2009, the negotiating period for the 2.82-mile segment was also extended to March 31, 2010, and the time to consummate the abandonment and file a notice of consummation was extended until May 30, 2010.

¹ The exemption was also subject to historic preservation and standard employee protective conditions. The historic preservation condition was removed by decision served on September 22, 2008.

By letter filed on March 29, 2010, FFMHT requests a further extension of the negotiating period for the entire 24.70-mile right-of-way until September 27, 2010. FFMHT states that it is working to finalize funding for acquisition of the right-of-way, but does expect to have all of the funding available to close the transaction until June 30, 2010. In a response filed on March 30, 2010, MMRR states that it has not consummated the abandonment, that it continues to negotiate with FFMHT for an interim trail use agreement, and that it agrees to the extension request. Additionally, MMRR requests an extension of the consummation notice filing deadline until 60 days after the expiration of the extended NITU negotiating period (until November 26, 2010).²

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. § 1247(d).³

Accordingly, the NITU negotiating period will be extended until September 27, 2010. Pursuant to 49 C.F.R. § 1152.29(e)(2), the time to consummate the abandonment and to file a notice of consummation will be extended until November 26, 2010.

This action 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 interim trail use negotiating period is granted.
2. The request to extend the time to consummate the abandonment and file a notice of consummation is granted.
3. The negotiating period under the NITU is extended to September 27, 2010.

² Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. Because the same provision permits the railroad to file a notice of consummation within 60 days after expiration of a legal or regulatory barrier, such as a trail use condition, it is not clear that MMRR needs a separate extension of the deadline for filing a notice of consummation in this situation. MMRR's request for that extension will nonetheless be granted.

³ See Rail Aban.—Use of Rights-of-Way As Trails—Supp. Trails Act Proc., 4 I.C.C.2d 152, 157-58 (1987).

4. The authority to abandon must be exercised, and the notice of consummation must be filed on or before November 26, 2010.

5. This decision is effective on its service date.

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