

 GRANTED Office of Proceedings	DECISION ID NO. 47146
	DECIDED DATE 8-13-19
	SERVED DATE 08/14/2019
	APPROVED:  Acting Director
☒ Extended to 12/31/2019	

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ENTERED
Office of Proceedings
July 29, 2019
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Docket No. AB-1068 (Sub-No. 3X)**

**MISSOURI CENTRAL RAILROAD COMPANY
- ABANDONMENT EXEMPTION -
IN CASS, PETTIS, BENTON, MORGAN, MILLER, COLE, OSAGE, MARIES,
GASCONADE, AND FRANKLIN COUNTIES, MISSOURI**

**MOTION TO EXTEND TIME TO NEGOTIATE INTERIM TRAIL USE
AND FEE WAIVER REQUEST**

The Missouri Department of Natural Resources ("MDNR") hereby requests, and the Missouri Central Railroad Company ("MCRR") hereby agrees to, a 133-day extension of time for the Notice of Interim Trail Use ("NITU"), or **until December 31, 2019**, applicable to the rail line in the above-referenced abandonment proceeding.¹ Under the decision served by the Surface Transportation Board ("Board") on February 7, 2019, the current period for negotiation of interim trail use/rail banking is set to expire on August 20, 2019.

MDNR and MCRR have previously requested NITU extensions including the most recent extension of 180 days informing the Board that "[a]lthough MDNR and MCRR have made substantial progress in negotiating the terms of trail use and are meeting weekly, they have not yet executed an [Interim Trail Use Agreement]."²

MCRR and MDNR have continued to meet almost every week during this extension period. The parties are very close to reaching an agreement on all the terms for the Interim Trail

¹ See, e.g., West Michigan Railroad Company – Abandonment Exemption – In Van Buren County, Mich., STB Docket No. AB-1107X, slip op. at 2 (served April 15, 2014) ("Where...the carrier has not consummated the abandonment at the end of the previously imposed negotiating period...and is willing to continue trail use negotiations...the Board retains jurisdiction, and the NITU negotiating period may be extended.") (citation omitted).

² See Motion to Extend Time (filed January 28, 2019).

Use Agreement (“ITUA”). While much progress has been made towards the signing of an ITUA, the parties recognize that the conversion of the approximately 144-mile rail line into a recreational trail stands to be a significant undertaking that will require substantial financial resources. MDNR takes seriously the financial commitments required of a trail sponsor when signing an ITUA and seeks to ensure it has the capacity to make those commitments prior to signing the ITUA. On July 10, 2019, the Governor of Missouri signed a bill creating a new dedicated “Rock Island Trail State Park Endowment Fund” in the Missouri state treasury, in which all donations, grants, and other support funding for the trail will be deposited for MDNR’s use. The Missouri State Park Foundation, a nonprofit organization established for the purpose of supporting the Missouri state park system, is developing a fundraising strategy for the project, but requires more time to finalize those plans. Therefore, MDNR and MCRR hereby request an 133-day extension of the negotiating period with this filing.

MDNR and MCRR recognize that the Board recently issued a Supplemental Notice of Proposed Rulemaking (“SNPRM”) in Ex Parte No. 749 (Sub-No. 1), Limiting Extensions of Trail Use Negotiating Periods, and EP 753, Rails-to-Trails Conservancy – Petition for Rulemaking proposing to adopt a new rule “to establish a new one-year period for any initial interim trail use negotiating period, instead of the existing 180-day initial negotiating period; to permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and to permit additional one-year extensions if the trail sponsor and the railroad agree and good cause is shown.”³

³ See Limiting Extensions of Trail Use Negotiating Periods, STB Docket No. EP 749 (Sub-No. 1) and Rails-to-Trails Conservancy – Petition for Rulemaking, STB Docket No. EP 753 (served June 6, 2019) at 1.

MCRR has filed comments in the SNPRM and will not repeat those comments here. Those proposed rules are not in effect at this time. Moreover, an extension of time in this proceeding is more than justified by good cause. This exciting project could be part three of the conversion of the former Rock Island into a trail across Missouri. This project is large and complex with this portion alone consisting of an approximately 144-mile rail corridor. Along with the existing 240-mile Katy Trail also in Missouri, and other portions of the former Rock Island line corridor, development of this portion into a trail could ultimately lead to the creation of a 400-mile rail-to-trail loop in the state of Missouri.

Furthermore, the extension requested herein comports with the “national policy to preserve established railroad rights-of-way for future reactivation of rail service.”⁴ The importance of preserving existing rights-of-way is more important with each passing day as the U.S. population continues to grow, thereby creating land development pressures yet also indicating that future rail use may be needed. The importance of this corridor, that crosses the state of Missouri, cannot be understated.

MCRR has not consummated the abandonment of the right-of-way covered by this proceeding, and the right-of-way remains subject to STB jurisdiction. MCRR remains committed to transferring the property to MDNR under the National Trails System Act, 16 USC § 1247(d).⁵ MDNR and MCRR intend to continue working towards the goal of signing an ITUA in the near future. Such an agreement would likely entail closing and transfer of the property once certain conditions precedent have been fulfilled. MDNR and MCRR would notify the

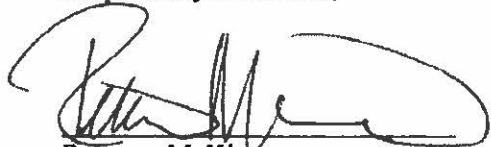
⁴ 16 USC § 1247(d).

⁵ If for some reason, MDNR and MCRR do not reach an agreement, MCRR is willing to enter an ITUA agreement with another trail sponsor pursuant to the National Trails System Act.

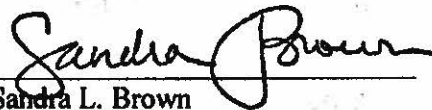
Board both upon execution of the ITUA and also upon transfer of the property. This sort of two-stage process has been previously utilized for rail-banking.⁶

Pursuant to 49 CFR § 1002.2(e)(1) and MDNR's status as a state agency, it is requesting waiver of the \$500.00 filing fee for extension of the period of time to negotiate a trail use agreement.

Respectfully submitted,



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⁶ See, e.g., Sunflower Rails-Trails Conservancy, Inc. – Petition for Declaratory Order – Sale of Railbanked Right-of-Way, STB Docket No. 36034, slip op. at 2 (served Feb. 23, 2017).

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July 2019, I caused a copy of the Missouri Department of Natural Resources and Missouri Central Railroad Company's Motion to Extend Time to Negotiate Interim Trail Use and Fee Waiver Request to be served upon all parties of record below, by first-class mail:

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