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SERVICE DATE – LATE RELEASE NOVEMBER 25, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 364 (Sub-No. 16X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MUSKEGON
COUNTY, MICH.

Decided: November 25, 2011

This decision grants an extension of time to negotiate a trail use/rail banking agreement.

Mid-Michigan Railroad, Inc. (MMRR) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the line, in Muskegon County, Mich. Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 Fed. Reg. 18,020-21).

By decision and notice of interim trail use or abandonment (NITU) served on May 19, 2009, a 180-day period was authorized for the Michigan Department of Natural Resources (MI DNR) to negotiate an interim trail use/rail banking agreement with MMRR for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). A second NITU, also on behalf of MI DNR, was issued by decision served on July 12, 2010, for the remaining 2.85-mile segment of the right-of-way between milepost 191.90 and milepost 194.75. The NITU negotiating periods were extended several times, with the latest decision (served on July 19, 2011) extending them until November 5, 2011.

By letter filed on November 14, 2011, MI DNR requests an extension of the NITU negotiating periods for an additional 180 days. MI DNR states that MI DNR and MMRR are continuing negotiations toward an agreement and expect to complete an agreement within 180 days. In a response filed on November 16, 2011, MMRR states that it has not consummated the abandonment and concurs with the extension for an additional 180 days.

Where, as here, 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. An extension of the NITU negotiating periods for both segments will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating periods 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). Accordingly, the NITU

negotiating periods will be extended for an additional 180 days from November 5, 2011, until May 3, 2012.¹

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

It is ordered:

1. MI DNR's request to extend the NITU negotiating periods is granted.
2. The NITU negotiating periods are extended to May 3, 2012.
3. This decision is effective on its service date.

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

¹ If a legal or regulatory barrier to consummation exists at the end of time period for consummation, the railroad is required to file its notice of consummation within 60 days after removal or expiration of that legal or regulatory barrier. 49 C.F.R. § 1152.29(e)(2). Because extension of the NITU negotiating period is such a barrier, MMRR's deadline for filing its notice of consummation will be July 2, 2012, if trail use negotiations are unsuccessful.