

SERVICE DATE – OCTOBER 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-364 (Sub-No. 12X)

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

Decided: October 28, 2008

By decision and notice of interim trail use or abandonment (NITU) served on April 4, 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 15.83-mile rail line between milepost 137.83, southeast of Lowell, and milepost 122.00, east of Prairie Center, the end of the line, in Kent and Ionia Counties, MI. 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 the right-of-way.¹ That negotiating period expired on October 1, 2008.

On October 8, 2008, a new entity, the Friends of the Fred Meijer Heartland Trail (FFMT) filed a request for issuance of a NITU for the line.² FFMT states that WMTGC has been unable to reach a final agreement with MMRR and FFMT would like to continue to negotiate in WMTGC's place. FFMT further states that the railroad has not consummated the abandonment. FFMT has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29. In a letter filed on October 15, 2008, MMRR states that it agrees to negotiate for trail use with FFMT.

¹ The exemption was also subject to an employee protective condition and to an environmental condition requiring MMRR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Those conditions remain in effect.

² FFMT also requests an extension of time for MMRR to consummate the abandonment. That request cannot be granted based on a request from FFMT. If MMRR wants an extension of the time to consummate the abandonment and to file its notice of consummation, it must file such a request with the Board.

Because FFMT's request complies with the requirements of 49 CFR 1152.29 and MMRR is willing to negotiate for trail use, a new NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, MMRR may fully abandon the line subject to compliance with the previously imposed conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future restoration for railroad purposes.

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

It is ordered:

1. This proceeding is reopened.
2. The NITU served on April 4, 2008 is vacated and a new NITU designating FFMT as the trail proponent is issued, effective on the service date of this decision and notice.
3. The negotiating period under the NITU will run for a period of 180 days commencing from the service date of this decision and notice (until April 27, 2009).
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by April 27, 2009, interim trail use may be implemented. If no agreement is reached by that time, MMRR may fully abandon the line, provided that the previously imposed environmental and employee protective conditions have been satisfied.

8. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary