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SERVICE DATE – APRIL 28, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: April 27, 2009

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, MI, and milepost 78.50, at Greenville, MI, at the end of the line in Kent, Ionia, and Montcalm Counties, MI.<sup>1</sup> 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. That negotiating period is scheduled to expire on June 21, 2009.

On April 9, 2009, FFMHT filed a request for issuance of a NITU for the remaining 2.82 miles of 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). FFMHT states that the railroad has not consummated the abandonment and FFMHT 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 April 10, 2009, MMRR states that it agrees to negotiate for trail use with FFMHT.

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<sup>1</sup> 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.

Because FFMHT's request complies with the requirements of 49 CFR 1152.29 and MMRR is willing to negotiate for trail use, a NITU will be issued for that portion of the right-of-way between mileposts 81.32 and 78.50. 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 employee protective 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. Upon reconsideration, the decision and notice served on December 23, 2008, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit FFMHT to negotiate with MMRR for trail use of that portion of the subject line between mileposts 81.32 and 78.50 for a period of 180 days commencing from the service date of this decision and notice (until October 25, 2009) and subject to the employee protective conditions imposed in the December 23 decision.
3. 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.
4. 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.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by October 25, 2009, interim trail use may be implemented. If no agreement is reached by that time, MMRR may fully abandon the line, subject to the previously imposed employee protective conditions.

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

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

Anne K. Quinlan  
Acting Secretary