

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 36X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—  
IN BROWN COUNTY, WIS.

Decided: December 9, 2010

Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 1.92-mile railroad line starting at milepost 3.88, in the Village of Howard, Wis., and ending at milepost 5.8, on the Oneida Tribe of Indians of Wisconsin Reservation, in Brown County, Wis. Notice of the exemption was served and published in the Federal Register on November 10, 2010 (75 Fed. Reg. 69,152). The exemption is scheduled to become effective on December 10, 2010.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on November 15, 2010. In the EA, OEA states that the Wisconsin Department of Transportation (WisDOT) submitted comments indicating that it sent a letter to WCL concerning its coordination with WisDOT on the US 41/WIS 29 interchange project.<sup>1</sup> Specifically, WisDOT requested that WCL adhere to the following procedures when conducting salvage activities on highway rights-of-way (ROWs) within WisDOT's jurisdiction: (1) obtain the appropriate permits from WisDOT to work on highway ROWs; (2) coordinate with WisDOT when removing roadway crossings; (3) remove all rail, ties, and ballast at any state highway crossings on the line; (4) manage traffic during salvage operations at highway crossings; and (5) restore any salvaged roads in kind. Accordingly, OEA recommends a condition that, prior to commencement of any salvage activities, WCL shall consult with WisDOT concerning the use of appropriate procedures when performing abandonment activities, including the removal of any highway ROWs within WisDOT's jurisdiction.

OEA states in the EA that comments were also received from the Wisconsin Department of Natural Resources (DNR). In its comments, DNR provided a letter to WCL discussing the potential impact of any planned salvage activities on water quality, designated wetlands, 100-year floodplains, endangered or threatened species and critical habitats, wildlife sanctuaries or refuges, national or state parks, coastal zones, soils and natural resources, agricultural land, land use, sections 402 and 404 permits, and waste and demolition disposal. To protect against the impacts from any salvage activities, DNR suggested that WCL ensure that proper erosion control

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<sup>1</sup> Information regarding the US 41/WIS 29 interchange project is available at <http://www.us41wisconsin.gov/overview/special-project-features/improved-interchanges#Wis29> (last visited December 2, 2010).

measures are implemented to minimize impacts to native plants. DNR recommended that WCL complete an erosion control plan and ensure its implementation during the removal of track, ties, bridges or culverts during salvage operations. DNR further requested that, following salvage, WCL replant all disturbed areas with native flora. Based on DNR's comments, OEA recommends a condition that WCL consult with DNR prior to the initiation of salvage activities to address DNR's concerns.

OEA also states in the EA that the National Geodetic Survey (NGS) has identified 1 geodetic station marker in the area of the proposed abandonment. Accordingly, OEA recommends a condition that WCL be required to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

Additionally, OEA states in the EA that WCL has submitted its historic report to the Wisconsin State Historic Preservation Office (SHPO) as required by 49 C.F.R. § 1105.8. Because part of the line is located on Oneida tribal reservation lands, WCL also provided a copy of the historic report to the Oneida Tribal Historic Preservation Officer (THPO). OEA notes that the SHPO submitted comments stating that the Board would need to consult with the THPO before the SHPO could provide comment on the proposed action. In a response sent to OEA, the THPO indicated that it would provide its opinion regarding the proposed action following receipt of the EA. Accordingly, OEA recommends a condition that WCL be required 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 ROW (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, has been completed. WCL shall report back to OEA regarding any consultations with the SHPO and the public.<sup>2</sup> Further, WCL may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Pursuant to 36 C.F.R. § 800.2, OEA notes that it conducted a search of the Native American Consultation Database (database) at <http://home.nps.gov/nacd/> to identify Federally recognized tribes, which may have ancestral connections to the project area. According to OEA, the database indicated that there are 11 tribes that may have an interest in the proposed abandonment. The tribes are: the Citizen Potawatomi Nation, Oklahoma; the Flandreau Santee Sioux Tribe of South Dakota; the Forest County Potawatomi Community of Wisconsin; the Hannahville Indian Community of Michigan; the Lower Sioux Indian Community of Minnesota; the Prairie Band of Potawatomi Nation of Kansas; the Sac and Fox of Missouri in Kansas and Nebraska; the Santee Sioux Nation of Nebraska; the Sisseton-Wahpeton Oyate of South Dakota;

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<sup>2</sup> OEA states in the EA that it has contacted the THPO to initiate government-to-government consultation with the tribe and that it will continue to consult directly with the THPO to ensure that the Board's government-to-government responsibilities are fulfilled.

the Spirit Lake Tribe of North Dakota; and the Upper Sioux Community in Minnesota. Accordingly, OEA states in the EA that it was sending a copy of the EA to these tribes for review and comment.

OEA notes in the EA that no comments have been received from the Natural Resource Conservation Service, the U.S. Environmental Protection Agency, or the Brown County Board of Supervisors. However, OEA states in the EA that it was providing a copy of the EA to the aforementioned entities for review and comment.

Comments to the EA were due by November 30, 2010. No comments were received. Accordingly, the conditions recommended by OEA in the EA will be imposed.

In the EA, OEA states that the ROW might be suitable for other public use following abandonment and salvage of the line. No one has sought a public use condition, however, and none will be imposed.<sup>3</sup>

On November 17, 2010, WisDOT, on behalf of DNR, filed a request for the issuance of a notice of interim trail use (NITU) for a 0.92-mile segment of the line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The 0.92-mile segment extends from milepost 3.88, in the Village of Howard, Wis., and ends at milepost 4.80, at the border of the Oneida Tribe of Indians of Wisconsin Reservation. DNR has submitted a statement of willingness to assume full 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 ROW, as required under 49 C.F.R. § 1152.29; DNR has also acknowledged that the use of the ROW for trail purposes is subject to the user's continuing to meet its responsibilities, as described above, and subject to possible future reconstruction and reactivation for rail service. In a response filed on December 7, 2010, WCL states that it intends to negotiate with DNR for interim trail use.

Because DNR's request complies with the requirements of 49 C.F.R. § 1152.29, and WCL is willing to negotiate with DNR for trail use, a NITU will be issued for the portion of the ROW between milepost 3.88 and milepost 4.80. 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 from the effective date of the exemption, WCL may fully abandon the line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

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<sup>3</sup> Public use requests were due no later than 20 days after publication of the notice of exemption in the Federal Register, or by November 30, 2010.

As conditioned, this decision and notice 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 notice served and published in the Federal Register on November 10, 2010, exempting the abandonment of the line described above, is subject to the conditions that WCL shall: (1) prior to commencement of any salvage activities, consult with WisDOT regarding the use of appropriate procedures when performing abandonment activities, including the removal of any highway ROWs within WisDOT's jurisdiction; (2) prior to commencement of any salvage activities, consult with DNR regarding potential impacts on water quality, wetlands, 100-year floodplains, endangered or threatened species and critical habitats, wildlife sanctuaries or refuges, national or state parks, soil and water conservation, land use, and environmental cleanup/waste management; (3) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; and (4)(a) 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 ROW (the Area of Potential Effect) that are eligible for listing or are listed in the National Register of Historic Places until the Section 106 process of the NHPA has been completed; (4)(b) report back to OEA regarding any consultations with the SHPO and the public; and (4)(c) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
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 owner against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
4. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.
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 June 7, 2011, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, after the conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

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

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