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SERVICE DATE – LATE RELEASE DECEMBER 19, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 31X)

WISCONSIN CENTRAL LTD—ABANDONMENT EXEMPTION—IN SAWYER
COUNTY, WI

Decided: December 19, 2007

Wisconsin Central Ltd (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.80-mile line of railroad between milepost 100.80 and milepost 102.60, in Hayward, Sawyer County, WI. Notice of the exemption was served and published in the Federal Register on November 21, 2007 (72 FR 65645-46). The exemption is scheduled to become effective on December 21, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 27, 2007. In the EA, SEA recommends five conditions. First SEA notes that the United States Army Corps of Engineers (Corps) has not responded to WCL's request for comment. SEA states, however, that, based on the potential for impacts to waterways or wetlands that cross or run adjacent to the line, consultation with the Corps is warranted. Accordingly, SEA recommends that a condition be imposed requiring that WCL contact the Corps prior to beginning salvage activities.

Second, SEA states that the United States Fish and Wildlife Service (USFWS) has not responded to WCL's request for comment on the presence of Federally listed endangered or threatened species, wildlife sanctuaries, or critical habit that may be located near the proposed abandonment. Because the Wisconsin Department of Natural Resources (WDNR) has identified state protected species that may be located in the project area, SEA believes that consultation with USFWS is warranted to determine if any Federally listed threatened or endangered species may exist in the area of the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring WCL to contact USFWS prior to beginning salvage activities to discuss potential impacts to any Federally listed endangered or threatened species.

Third, SEA notes that the Wisconsin Department of Transportation (WDOT) has stated that WCL must comply with the WDOT Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures if it salvages the line. Accordingly, SEA recommends that a condition be imposed requiring WCL to contact WDOT prior to beginning salvage activities to discuss clean-up activities related to salvaging the line.

Fourth, to ensure that the 100-year floodplain is not adversely affected, SEA recommends that WCL consult with WDNR prior to commencement of any salvage activities regarding

potential impacts to the floodplain and to comply with the reasonable requirements of WDNR to protect the floodplain.

Finally, SEA notes that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring WCL to consult with NGS and to notify NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station marker.

Comments to the EA were due by December 12, 2007. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On December 3, 2007, WDOT, on behalf of the County of Sawyer Wisconsin (CSW), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, to enable CSW to negotiate with WCL for the use of the line for interim trail use.¹ CSW also has submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, 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, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on December 13, 2007, WCL indicates a willingness to negotiate with CSW for interim trail use and rail banking.

Because this request complies with the requirements of 49 CFR 1152.29 and WCL is willing to negotiate for trail use, a 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, WCL may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

As conditioned, this decision 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 exemption of the abandonment of the rail line described above, and covered by the notice served and published in the Federal Register on November 21, 2007, is subject to the conditions that WCL shall: (1) prior to commencement of any salvage activities, consult with the Corps regarding potential impacts on wetlands and comply with the reasonable requirements of the Corps, if applicable; (2) contact USFWS prior to beginning

¹ WDOT states that it and CSW have agreed to work cooperatively to acquire and use the right-of-way.

salvage activities to discuss potential impacts to any Federally listed endangered or threatened species, report the results of this consultation to SEA in writing, and, should any potential impacts be identified, consult with SEA and USFWS to develop appropriate mitigation measures; (3) contact WDOT prior to beginning salvage activities to discuss clean-up activities related to salvaging the line; (4) consult with WDNR prior to commencement of any salvage activities regarding potential impacts to the floodplain and comply with the reasonable requirements of WDNR to protect the floodplain; consult with WDNR and comply with the reasonable requirements of WDNR to avoid or reduce potential impacts to state protected species; and consult with WDNR regarding the disposal of rails and ties following salvage activities; and (5) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers. Moreover, the exemption is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit CSW to negotiate with WCL for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until June 16, 2008).

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 for 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 June 16, 2008, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary