

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 47X)

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

Decided: November 25, 2015

This decision reopens the proceeding to issue a notice of interim trail use and makes, pursuant to 49 C.F.R. § 1011.7(a)(2)(ix), a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g).

Wisconsin Central Ltd. (WCL), a wholly owned subsidiary of Canadian National Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.49 miles of railroad line extending between mileposts 132.89 and 133.38 (the Line), in Tomahawk, Lincoln County, Wis. Notice of the exemption was served and published in the Federal Register on October 27, 2015 (80 Fed. Reg. 65,850). The exemption is scheduled to become effective on November 26, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on October 30, 2015, solicited comments, and issued a Final EA on November 19, 2015. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, a Finding of No Significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On November 6, 2015, the Wisconsin Department of Transportation filed a request on behalf of the City of Tomahawk (CTW), a municipality of the State of Wisconsin, for the issuance of a notice of interim trail use (NITU) for a 180-day period to negotiate with WCL for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29.¹ CTW has submitted a statement of willingness to assume full responsibility for managing the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way (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 C.F.R. § 1152.29. CTW also acknowledges that the use of the right-of-way for trail purposes is subject to the user's continuing to meet the responsibilities

¹ CTW originally filed its NITU request on November 3, 2015. On November 6, 2015, CTW amended its filing.

described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on November 9, 2015, WCL states that it agrees to negotiate for interim trail use/rail banking.

Because WCL agrees to CTW's request for a NITU and CTW's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, WCL may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment or the conservation of energy resources or on historic resources.
3. Upon reconsideration, the October 27, 2015 notice 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 CTW to negotiate with WCL for trail use for a period of 180 days from the service date of this decision and notice (until May 23, 2016).
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use

agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 23, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, WCL may fully abandon the Line.

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

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.