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SERVICE DATE - NOVEMBER 17, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 20X)

WISCONSIN CENTRAL LTD.--ABANDONMENT  
EXEMPTION--IN BROWN COUNTY, WI

Decided: November 12, 1999

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 1.63-mile line of its railroad between milepost 198.37 and milepost 200 in Green Bay, Brown County, WI. Notice of the exemption was served and published in the Federal Register on October 19, 1999 (64 FR 56384-85). The exemption is scheduled to become effective on November 18, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 22, 1999. In the EA, SEA stated that the Wisconsin Department of Transportation (WisDOT) had expressed concern regarding cleanup of debris during salvage operations. In the EA, SEA recommended that WCL consult with WisDOT to obtain any permit from the District Maintenance section to work on the highway right-of-way, and comply with the WisDOT Abandoned Railroad Line Salvage and Cleanup Policy/Standards/Procedures to ensure cleanup of salvage debris.

On November 3, 1999, WCL filed a letter/comment stating that it is not aware that permits were required to be on the highway right-of-way when track removal and salvage operations are being conducted. WCL also states that it appears that there is no regulation in place in Wisconsin regarding salvage and cleanup of rail right-of-way. After receipt of comments, SEA now recommends that WCL: (1) consult with the WisDOT to obtain any permit that may be required from the District Maintenance section for salvage activities that may affect the highway right-of-way; and (2) consult with the WisDOT to determine if any compliance with WisDOT's Policy/Standards/Procedures that governs the cleanup of salvage debris along the right-of-way is required.

By petition filed October 28, 1999, WisDOT, working cooperatively with the State of Wisconsin Department of Natural Resources (WisDNR) for potential acquisition and use of the right-of-way, requested issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with WCL for acquisition of the right-of-way for use as a trail. WisDNR submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 acknowledged

that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile received on November 2, 1999, and reply filed November 5, 1999, WCL indicated its willingness to negotiate with WisDNR for interim trail use.

WisDOT/WisDNR's request complies with the requirements of 49 CFR 1152.29 and WCL is willing to negotiate. Therefore, 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. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 notice of exemption served and published in the Federal Register on October 19, 1999, 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, for 180 days commencing November 18, 1999 (until May 16, 2000), and subject to the conditions that WCL shall: (a) consult with the WisDOT to obtain permits that may be required from the District Maintenance section for salvage activities that may affect the highway right-of-way; and (b) consult with the WisDOT to determine if any compliance with WisDOT's Policy/Standards/Procedures that governs the cleanup of salvage debris along the right-of-way is required.
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 obligation 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 May 16, 2000, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line.

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7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary