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SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 21X)

WISCONSIN CENTRAL LTD.--ABANDONMENT EXEMPTION--
IN MARQUETTE COUNTY, MI

Decided: November 13, 2000

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 8.84-mile line of its railroad between milepost 154 and milepost 162.84 in Marquette County, MI. Notice of the exemption was served and published in the Federal Register on October 13, 2000 (65 FR 61020-21). The exemption is scheduled to become effective on November 14, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 20, 2000. In the EA, SEA states that the National Geodetic Survey (NGS) has identified 15 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring WCL to consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

In the EA, to address concerns of the U.S. Environmental Protection Agency-Region 5 (EPA) regarding the possible impacts the proposed abandonment and salvage activity may have on the right-of-way, SEA initially recommended that, prior to abandonment and any salvage activities on the right-of-way, WCL prepare and submit to the EPA for EPA's review and approval, a detailed plan to address and/or mitigate the potential environmental impacts resulting from salvage activities on the right-of-way. SEA also recommended that WCL be required to confirm in writing that EPA's concerns have been addressed.

SEA now states that EPA, in its comments, expresses concerns indicating that WCL does not: (1) have a detailed plan for removing the railroad tracks; (2) have a plan to vegetate areas of disturbed soils, and to mitigate actual impacts caused by the dismantling operation; (3) have a detailed plan for disposal of rail ties and potentially contaminated soils and ballast, and to identify the intended disposal sites, nor does WCL describe the intended method for dismantling the intended waste; (4) have a plan to establish a staging area for construction equipment in a non-environmentally sensitive area; (5) have a plan to replace removed trees, wetlands, or vegetation, if they are affected during the dismantling operation; (6) have a plan to reduce noise, dust, or carbon monoxide emissions from construction activities; (7) indicate if the state of contamination at the site would be exacerbated if not remediated before the line is dismantled, and if WCL intends to remediate the sites before the dismantling operation begins; or (8) have a

list of alternatives for the intended final state of the path after the railroad line is dismantled. Accordingly, to address EPA's concerns, and to ensure that the potential environmental impacts associated with abandonment and salvage of the right-of-way are appropriately mitigated, SEA recommends that the EPA-related condition it had previously recommended be revised to require that, before beginning any salvage activities, WCL shall submit to SEA, for SEA's review and approval, a detailed track salvage work plan that describes WCL's proposed salvage of the right-of-way and addresses in detail EPA's concerns regarding salvage and clean-up of the right-of-way, and that, upon approval of WCL's track salvage work plan, SEA will notify the EPA. SEA's recommended condition will be imposed.

SEA also states that, because of possible unresolved concerns that the Michigan Department of Environmental Quality (DEQ) may have regarding the maintenance of culverts on the right-of-way, it recommends that, prior to any salvage activities, WCL consult with the DEQ, Land and Water Management Division.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment in this proceeding. By petition filed October 23, 2000, the Michigan Department of Natural Resources (MDNR) filed a request for the 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), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with WCL for acquisition of the right-of-way for use as a recreational trail.¹ MDNR requests that WCL be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment except for public use on reasonable terms. MDNR requests that WCL be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. MDNR 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 (if the user is immune from liability, 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 October 30, 2000, and letter filed November 3, 2000, WCL indicated that it is willing to negotiate with MDNR for interim trail use for the portion of the right-of-way between milepost 156.57 and milepost 162.84. WCL asserts that the City of Marquette has expressed a strong interest in acquiring the remaining portion of the right-of-way between milepost 154 and milepost 156.57 for development in accordance with its master plan. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU for the portion of the right-of-way between milepost 154 and milepost 156.57.

¹ On October 23, 2000, The County of Marquette Board of Commissioners filed a letter in support of trail use over the rail corridor.

Because MDNR's request complies with the requirements of 49 CFR 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued for the portion of the right-of-way between milepost 156.57 and milepost 162.84. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, WCL may fully abandon the line, provided that the environmental conditions 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. Because WCL is not willing to negotiate with MDNR with regard to the segment between milepost 154 and milepost 156.57, the request for a NITU for that portion will be denied.

WCL also opposes imposition of a public use condition for the portion of the right-of-way between milepost 154 and milepost 156.57. As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). MDNR has satisfied these requirements and, therefore, a 180-day public use condition will be imposed covering the entire line between milepost 154 and milepost 162.84, commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on the portion of the right-of-way between milepost 156.57 and milepost 162.84, WCL must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, WCL is not required to deal exclusively with MDNR, but may engage in negotiations with the City of Marquette or other interested persons.

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 for abandonment of the line described above is subject to the conditions that WCL shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (b) before beginning any salvage activities, submit to SEA for review and approval a detailed track salvage work plan that describes WCL's proposed salvage of the right-of-way and addresses in detail EPA's concerns regarding salvage and clean-up of the right-of-way (upon its approval of the track salvage work plan, SEA will notify EPA); and (c) consult with the DEQ, Land and Management Division, prior to conducting any salvage operations.

3. The request for interim trail use for portion of the right-of-way between milepost 154 and milepost 156.57 is denied.

4. The notice of exemption served and published in the Federal Register on October 13, 2000, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for the portion of the right-of-way extending between milepost 156.57 and milepost 162.84 and to permit public use negotiations as set forth below for the entire line between milepost 154 and milepost 162.84.

5. Subject to the environmental conditions and consistent with the public use and interim trail use/rail banking conditions imposed in this decision, WCL may discontinue service and salvage track and related materials. WCL shall otherwise keep intact the right-of-way underlying the tracks including bridges, trestles, culverts and tunnels (but not track or track material or signal equipment), for a period of 180 days from the November 14, 2000 effective date (until May 13, 2001), for the entire line between milepost 154 and milepost 162.84 to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line segment.

6. 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 (if the user is immune from liability, 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.

7. 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.

8. 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.

9. If an agreement for interim trail use/rail banking is reached by May 13, 2001, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line.

10. This decision is effective on its service date.

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

Vernon A. Williams
Secretary