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SERVICE DATE – MARCH 6, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 38X)

WISCONSIN CENTRAL, LTD.—ABANDONMENT  
EXEMPTION—IN FOND DU LAC COUNTY, WIS.

Decided: March 6, 2012

Wisconsin Central, Ltd. (WCL), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.60 miles of rail line between mileposts 175.40 and 176.00, in Fond Du Lac, Fond Du Lac County, Wis. Notice of the exemption was served on December 19, 2011, and published in the Federal Register on December 20, 2011 (76 Fed. Reg. 78,974-75). The exemption was scheduled to become effective on January 18, 2012.

By decision served on January 17, 2012, and corrected on January 19, 2012,<sup>1</sup> the Board reopened this proceeding and adopted the recommendation made by the Board's Office of Environmental Analysis (OEA) in the environmental assessment (EA) it served on December 23, 2011. There, OEA recommended that the Board impose an environmental condition requiring WCL to consult with the National Geodetic Survey, and notify it at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

In the EA, OEA also indicated that following abandonment the right-of-way may be suitable for other public purposes such as rail banking and interim trail use. In a petition filed on January 11, 2012, and clarified by letter on February 3, 2012, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources (WisDNR) late-filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, to enable it to negotiate with WCL for interim trail use of a 0.17-mile portion of the line between milepost 175.40, near U.S. Highway 41, and milepost 175.57 near W. Pioneer Road. WisDNR states that this portion of the right-of-way will connect the existing "Wild Goose Trail," which is to the south and is located at the north end of a pedestrian walkway over U.S. Highway 41, with a future trail, which will be to the north and will be within the right-of-way of County Highway VV/Pioneer Road.

WisDNR 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 (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential

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<sup>1</sup> The January 17 decision inadvertently was titled a decision and notice of interim trail use or abandonment. The January 19 decision corrected that error.

liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required under 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed January 12, 2012, WCL indicated that it is willing to enter into trail negotiations.

Because WisDNR's request complies with the requirements of 49 C.F.R. § 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the portion of the line between mileposts 175.40 and 175.57 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 that portion of the line, subject to the environmental condition imposed in the January 17, 2012, decision. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations. See 49 C.F.R. § 1152.29(d)(2).

As conditioned, this action 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 on December 19, 2011, and published in the Federal Register on December 20, 2011, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a 0.17-mile portion of the line, between milepost 175.40 near U.S. Highway 41, and milepost 175.57 near W. Pioneer Road, for a period of 180 days, commencing from the service date of this decision and notice (until August 31, 2012).
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 any future use of the property for restoration of railroad operations 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 for that portion of the line between mileposts 175.40 and 175.57 is reached by August 31, 2012, interim trail use may be

implemented. If no agreement is reached by that time, WCL may fully abandon that portion of the line, subject to the environmental condition imposed in the January 17, 2012 decision. See 49 C.F.R. § 1152.29(d)(1).

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

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