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SERVICE DATE - JULY 1, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 26X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN ASHLAND COUNTY, WI

Decided: June 29, 2004

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.48-mile line of railroad from milepost 435.35 on Ashland's lakefront and traveling 2,255 feet to a point where it connects to a private spur that used to served C. Reiss Coal Company in Ashland, Ashland County, WI. Notice of the exemption was served and published in the Federal Register on June 3, 2004 (69 FR 31453-54). The exemption is scheduled to become effective on July 3, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 8, 2004. In the EA, SEA states that WCL is aware that some of the coastal areas in Wisconsin, including waters of Lake Superior, are part of the Coastal Zone Management Program. WCL does not believe that the proposed abandonment will affect any land or water that would result in coastal impacts. WCL states that, in the event the rail line is converted into a trail, the current topography and its relationship to Lake Superior would remain unchanged. Nevertheless, SEA recommends a condition that, prior to beginning any salvage activities, WCL consult with the Wisconsin Coastal Zone Management Program to determine whether Wisconsin State Coastal Management consistency certification is required.

SEA also states that the U.S. Fish and Wildlife Service (FWS) regional office in New Franken, WI, has indicated to WCL the location of four federally listed endangered or threatened species and one critical habitat in Ashland County. Though FWS states that there are no listed species or critical habitats currently in the project area, the agency cautions WCL that the site could be utilized by listed species/critical habitats at some future time and notes that updates to their lists of threatened or endangered species are made every 6 months. The Wisconsin Department of Natural Resources (WisDNR) conducted a cursory review indicating the presence of state listed endangered or threatened species near the project area and recommends that WCL contact its Bureau of Endangered Species for a more complete threatened or endangered species review. As salvage operations will be handled generally within the right-of-way, WCL states that it does not believe that any listed species that might be present would be adversely affected by the proposed abandonment. However, SEA recommends a condition requiring that WCL consult with WisDNR's Bureau of Endangered Species in Madison and the New Franken regional office of FWS prior to commencement of any salvage activities on this project.

SEA states that WisDNR has expressed concerns regarding the proximity of the rail line to the Ashland/Northern States Power Lakefront Superfund site. Specifically, WisDNR indicates that the salvage activities would probably not result in contamination on the site if the trackage and ties were removed. However, it has indicated that site contamination could occur if ballast rock and culverts are removed. Because portions along the rail line exhibit high levels of contamination, WisDNR requests that no excavation of the rail line be conducted between Prentice Avenue and Ellis Avenue during salvage operations. In earlier correspondence to WCL, the WisDNR also suggested the potential need for salvage and cleanup of contaminants found within the railroad property boundaries, and indicated that state statutes would apply regarding such cleanup, including the potential need for a site investigation to determine the level of site contamination present. WisDNR has additionally indicated to both WCL and SEA that shoreline stabilization is likely needed at the western end of the line where the line grade drops as it approaches Lake Superior. To address these and any other concerns they may have, SEA recommends a condition that WCL consult with the WisDNR prior to commencement of any salvage activities for the proposed abandonment, and that WCL submit the results of these consultation efforts in writing to SEA prior to the onset of salvage operations.

SEA further states that the Environmental Protection Agency (EPA), Region 5, has raised concerns regarding culvert maintenance; revegetation with native flora; the disposal of any unrecycled ballast, rails and creosote containing wood; the location for storage and fueling of construction equipment; the prevention/control of toxic spills from any construction equipment; potential site contamination from the Ashland/Northern States Power Lakefront Superfund site; and shoreline stabilization in steep sections of the abandonment section immediately adjacent to Lake Superior. Regarding the Ashland/Northern States Power Lakefront Superfund site, EPA, Region 5, states that site contamination could become an issue if ballast or culverts are removed during salvage operations. They further note that if excavation of contaminated areas should occur, such activities should be coordinated with an appropriate on-site agency representative. Accordingly, SEA recommends a consultation condition requiring WCL to contact EPA, Region 5, prior to commencement of any salvage activities on this project.

Both EPA, Region 5, and WisDNR have expressed significant safety concerns about the Ashland/Northern States Power Lakefront Superfund site as detailed above. Both agencies agree that contamination from the site to surrounding areas, including Lake Superior, could result if excavation of the rail line is completed during salvage operations. To address this issue, SEA recommends a condition that WCL not conduct any excavation of the rail line during salvage operations and be prohibited from the removal of ballast or culverts along the entire length of the rail line. SEA also recommends that salvage operations be limited to the removal of railroad tracks and ties only.

The Wisconsin Department of Transportation (WisDOT) has contacted WCL about the potential for environmental damage following the proposed abandonment. It states that it is particularly concerned about the cleanup of debris left after the salvage operation. Consequently,

WisDOT requests that WCL comply with the WisDOT Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures following the abandonment and related activities, and asks that WCL protect any associated surveying benchmarks, monumentation and mapping information for the line. WisDOT further asks that WCL remove rail, ties, and ballast at state highway crossings and that, prior to such work, WCL obtain a permit from the District Maintenance section and contact the maintaining authority to coordinate these activities. Finally, WisDOT asks that WCL handle any traffic during the removal of any crossing and that it restore any such crossings in like kind. Accordingly, SEA recommends a consultation condition requiring WCL to contact WisDOT prior to the onset of salvage operations of the rail line to address these and any other concerns WisDOT may have regarding the proposed abandonment.

Comments to the EA were due by June 23, 2004. No comments were received by the due date. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On June 10, 2004, the City of Ashland, WI (the City), filed a request for issuance of a notice of interim trail use (NITU) for the subject line under the National Trails System Act, 16 U.S.C. 1247(d) (Trail Act), to negotiate with WCL for acquisition of the right-of-way for use as a trail. The City 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 (unless the 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 possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. By letter filed on June 21, 2004, WCL indicated its willingness to negotiate with the City for interim trail use.

Because the City'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. 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 of railroad purposes.

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 notice served and published in the Federal Register on June 3, 2004, exempting the abandonment of the line, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the July 3, 2004 effective date of the exemption (until December 30, 2004), and subject to the conditions that: (1)(a) WCL shall be prohibited from conducting any excavation activities during salvage operations including the removal of ballast or culverts along the entire length of the rail line proposed for abandonment; and (b) salvage operations will be limited to the removal of railroad tracks and ties only; (2)(a) WCL shall consult with WisDNR prior to the commencement of any salvage activities to address their concerns regarding the proposed abandonment; and (b) WCL shall summarize the results of its consultation efforts with WisDNR and provide these in writing to SEA prior to the onset of salvage operations; (3) WCL shall, prior to the commencement of any salvage activities on the project, consult with EPA, Region 5 (Kathleen Kowal, 312-353-5206), regarding the proposed abandonment; (4) WCL shall, prior to conducting any salvage activities, consult with WisDNR's Bureau of Environmental Management in Madison (Lisie Kitchel, 608-266-5248) and the FWS regional office in New Franken, WI, regarding their concerns; (5) prior to beginning any salvage activities, WCL shall consult with the Wisconsin Coastal Zone Management Program to determine whether Wisconsin State Coastal Management consistency certification is required; if consistency certification is required, WCL shall be prohibited from performing any salvage activities until it obtains consistency certification and notifies SEA pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.; and (6) WCL shall consult with WisDOT prior to commencement of any salvage activities for the proposed abandonment.

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 December 30, 2004, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, provided the 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. William
Secretary