

SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS

EO-1619

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 303 (Sub-No. 36X)

March 21, 2011

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

(X) NEW COMMENTS WERE RECEIVED

OEA served an Environmental Assessment (EA) for this proceeding on November 26, 2010 for public review and comment. In the EA, OEA recommended 4 environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment. No comments were received during the comment period, and OEA issued a Final EA on December 2, 2010 in which it recommended that the same 4 conditions previously recommended in the EA be imposed by the Board in any decision granting abandonment authority:

1. Wisconsin Central Ltd. shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy and geodetic station markers.
2. Prior to the commencement of any salvage activities, Wisconsin Central Ltd. shall consult with the Wisconsin Department of Transportation regarding the use of appropriate procedures when performing abandonment activities including the removal of highway rights-of-way under its jurisdiction.
3. Prior to the commencement of any salvage activities, Wisconsin Central Ltd. shall consult with the Wisconsin Department of Natural Resources regarding potential impacts on water quality, wetlands, 100-year floodplains, endangered or threatened species and critical habitats, wildlife sanctuaries or refuges, national or state parks, soil and water conservation, land use, and environmental cleanup/waste management.
4. Wisconsin Central Ltd. shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed on the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. Wisconsin Central Ltd. shall report back to the Office of Environmental Analysis regarding any consultations with the State Historic Preservation Office, other section 106 consulting parties, and the public. Wisconsin Central Ltd. may not file its consummation notice or initiate salvage activities related to abandonment (including the removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

By Board decision served on December 9, 2010, the Board explained that the exemption would become effective on December 10, 2010 and imposed upon the railroad the 4 conditions listed above. The Board also issued a Notice of Interim Trails Use (NITU) for a portion of the rail right-of-way between milepost 3.88 and milepost 4.80 (from the Village of Howard to the border of the reservation of the Oneida Tribes of Indians of Wisconsin Reservation), providing 180 days for the parties interested in trails use (the railroad and Wisconsin Department of Natural Resources) to negotiate a mutually acceptable trails use agreement. The Board noted that if no agreement is reached within 180 days of the effective date of the exemption, the railroad may fully abandon the line, subject to any outstanding conditions.

OEA has engaged in government-to-government consultations with the Oneida Tribe's Tribal Historic Preservation Officer (THPO) as approximately 1 mile of the rail line, from milepost 4.8 to milepost 5.8, extends onto the Oneida Tribe of Indians of Wisconsin Reservation, thus requiring consultation with the Tribe's THPO. In cases where a Federal action is located on tribal lands, the THPO acts in lieu of the State Historic Preservation Officer (SHPO). In this case, a section of the line is also located on state land. Therefore the Board must consult with the THPO and SHPO to comply with Section 106 of the National Historic Preservation Act. As a result of consultations with the THPO, the Board served a decision on March 1 imposing a fifth condition requiring:

WCL to comply with the reasonable requirements of the Oneida Tribe with respect to any salvage activities conducted within the Oneida Reservation on the portion of Line between milepost 4.8 and milepost 5.8.

Since the 5 conditions were imposed, the Board received a March 10, 2011 letter from the Wisconsin Department of Transportation (WisDOT) indicating that it must remove track on the Line located at its intersection with Parkland Avenue as part of its planned WisDOT US 41/WIS 29 reconstruction project. It stated that the impediment to this action appears to be the Board's imposition of the Section 106 condition which requires that WCL may not remove track until the Section 106 process has been completed. In follow-up conversations with WisDOT, OEA has learned that the Section 106 condition must be removed on or before April 18, 2011 in order for the WisDOT to award a contract to build the project (see attached email from James Becker of WisDOT).

Recommend Removal of Section 106 Condition

OEA has since received a formal opinion from both the THPO and SHPO regarding potential effects from the proposed abandonment to historic properties on the Line (see attached EI-18497 and EI-18498). Both offices have confirmed that pursuant to 36 CFR 800.4(d)(1), the proposed abandonment would result in no historic properties affected. Consequently, OEA proposes a finding of "no historic properties affected" for the abandonment action. OEA requests that the Section 106 condition be removed on or before April 18, 2011 to ensure that the WisDOT project is able to move forward unhindered. The remaining 3 conditions originally imposed in the December 2010 Decision and the tribal condition imposed in the March 2011 Decision should remain in effect.

Conclusion

OEA believes that the proposed action will not significantly affect the quality of the human environment as long as the 4 conditions noted above are imposed.

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