

Wisconsin Department of Transportation

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March 10, 2023

306297

VIA E-File

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
March 10, 2023
Part of
Public Record

Re: FD 31340; Wisconsin and Calumet Railroad Company, Inc. – Notice of Modified
Certificate of Public Convenience and Necessity – Rail Line between Mazomanie to
Prairie du Sac, WI

Dear Ms. Brown,

Please find as filed a Petition for Notice of Interim Trail Use by the Wisconsin Department of Transportation (WisDOT) in regards to the above referenced matter. WisDOT respectfully requests a waiver of any applicable filing fees in this instance pursuant to 49 C.F.R. § 1002.2(e)(1). Please feel free to contact me should there be any questions in relation to this filing. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vincent R. Bauer", written over a horizontal line.

Vincent R. Bauer
Assistant General Counsel
Direct Line (608) 266-8807
Vincent.bauer@dot.wi.gov

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 31340

WISCONSIN & SOUTHERN RAILROAD, L.L.C
-- MODIFIED CERTIFICATE --
MAZOMANIE, WISCONSIN TO PRAIRIE DU SAC, WISCONSIN

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WDNR)
PETITION FOR NOTICE OF INTERIM TRAIL USE**

BACKGROUND

The State of Wisconsin, through its Department of Transportation (WisDOT), petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian, and other trail purposes and railbanking pursuant to 16 U.S.C. §1247(d) and 49 C.F.R. § 1152.29 for the Wisconsin Department of Natural Resources (WDNR) for a segment of rail line extending approximately 3.24 miles, beginning near milepost 4.72, near the Town of Mazomanie in Dane County, Wisconsin, to milepost 7.96, near the Village of Sauk City in Sauk County, Wisconsin, through Zip Codes 53560 in Dane County and 53583 in Sauk County (“the instant rail line”).

On service date October 28, 1988, in this same docket, the Interstate Commerce Commission (ICC) issued a modified certificate of public convenience and necessity under 49 C.F.R. § 1150.23 to the Wisconsin and Calumet Railroad Company, Inc. (WICT), to operate a rail line, of which the instant rail line is a segment, between Mazomanie, Wisconsin (milepost 0.07) and Prairie du Sac, Wisconsin (milepost 13.07), a distance of approximately 13 miles. This longer rail line, including the instant rail line, was acquired by WisDOT from the previous operator, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), after it became bankrupt and discontinued service, and I.C.C. authorized its abandonment.¹ In 1992, WICT was purchased by the Wisconsin & Southern Railroad Co., which is succeeded by the current operator, the Wisconsin and Southern Railroad L.L.C. (WSOR).

¹ Chicago, M. St. P., & Pac. R. Co. – Aband. – Middleton, Richland Center, WI, Docket No. AB-7(Sub-No. 99) (I.C.C. served May 6, 2982)

Concurrently with this petition, and pursuant to 49 C.F.R. § 1150.24, WSOR is providing notice to the Surface Transportation Board (the Board) and the State of Wisconsin, through WisDOT, of its intent to terminate service under the modified certificate of public convenience and necessity on the instant rail line. No shippers have used the instant line for more than six months.

On February 28th, 2023, WDNR signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29 for the instant rail line owned by WisDOT. This Petition for Notice of Interim Trail Use directly relates to a Notice of Interim Trail Use issued on April 12th, 2017 by the Board under the above captioned Finance Docket concerning a Petition for Notice of Interim Trail Use filed by WisDOT on March 2nd, 2017 for a 5.11 mile segment of line beginning near milepost 7.963 near the Village of Sauk City and ending at milepost 13.074 near the City of Prairie du Sac, in Sauk County, Wisconsin. A Joint Notice of Interim Trail Use/Rail Banking Agreement between WisDOT and WDNR concerning the 5.11 mile segment of line was filed with the Board on May 8th, 2017. The petition at hand essentially seeks to extend the current trail that ends at milepost 7.963 south to milepost 4.72 as explained above.

PURPOSE

WisDOT petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for WDNR for the instant rail line. WDNR will use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. WisDOT, WDNR, and WSOR have agreed to work cooperatively for WDNR to use the right of way.

STATE RESPONSIBILITIES

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 CFR §1152.2(g), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in

Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats. WisDOT has statutory authority to incorporate trails into the highway right-of-way through § 84.06(11), Wis. Stats. Pursuant to their respective duties and powers, WisDOT and WDNR are working collaboratively to use the corridor for recreational trail use.

NOTICE OF INTERIM TRAIL USE

WisDOT respectfully requests that the Board provide WDNR a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having WDNR acquire the right to use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking.

Included in this petition is a Statement of Willingness to Assume Financial Responsibility, executed by WDNR which includes Attachment 1, a map of the location of all needed property in Dane County and Sauk County for this proposed trail.

WDNR use of the corridor for present and future transportation purposes as stated above is consistent with all Congressional purposes and neither abandonment nor discontinuance permitted by the Board conditioned as requested by WDNR would be inconsistent with or disruptive of potential future rail use.

CONCLUSION

WisDOT respectfully requests the Board to issue a Notice of Interim Trail Use to WDNR for the land corridor and related real property for the instant rail line owned by WisDOT extending approximately 3.24 miles, beginning near milepost 4.72, near the Town of Mazomanie in Dane County, Wisconsin, to milepost 7.96, near the Village of Sauk City in Sauk County, Wisconsin, through Zip Codes 53560 in Dane County and 53583 in Sauk County. This will allow all forms of

transportation to be provided in a unified, interconnected, economically-efficient, and environmentally sound manner.

Respectfully Submitted,



Vincent R. Bauer
WI State Bar No. 1084702
Office of General Counsel
Wisconsin Department of Transportation
4822 Madison Yards Way, Room 922 S
P.O. Box 7910
Madison, WI 53707
(608) 266-8807

March 10th, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition to be served in regards to **FD31340** by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 10th day of March, 2023, on all parties of record on the service list.



Vincent R. Bauer
WI State Bar No. 1084702
Wisconsin Department of Transportation
Office of General Counsel

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD-31340

WISCONSIN & SOUTHERN RAILROAD LLC
-- ABANDONMENT EXEMPTION --
SAUK AND DANE COUNTY, WISCONSIN

**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
PURSUANT TO 49 CFR 1152.29**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR § 1152.29, with respect to the right-of-way owned by the Wisconsin Department of Transportation (WisDOT) and operated by the Wisconsin & Southern Railroad LLC (WSOR), the State of Wisconsin Department of Natural Resources (WDNR) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way to the extent allowed by law (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The property, known as part of the Sauk Subdivision, extends from railroad milepost 4.72 in the Town of Mazomanie in Dane County to railroad milepost 7.96 in the Village of Sauk City, Sauk County, a distance of approximately 3.24 miles of the line known as the Sauk Subdivision. The right-of-way is part of a line of railroad proposed for abandonment in Finance Docket No. 31340.

A map depicting the property is attached as **Attachment 1**.

WDNR acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, Wisconsin & Southern Railroad LLC (WSOR), on the same date it is being served on the Board.

DocuSigned by:

A7D70DC3770842F...

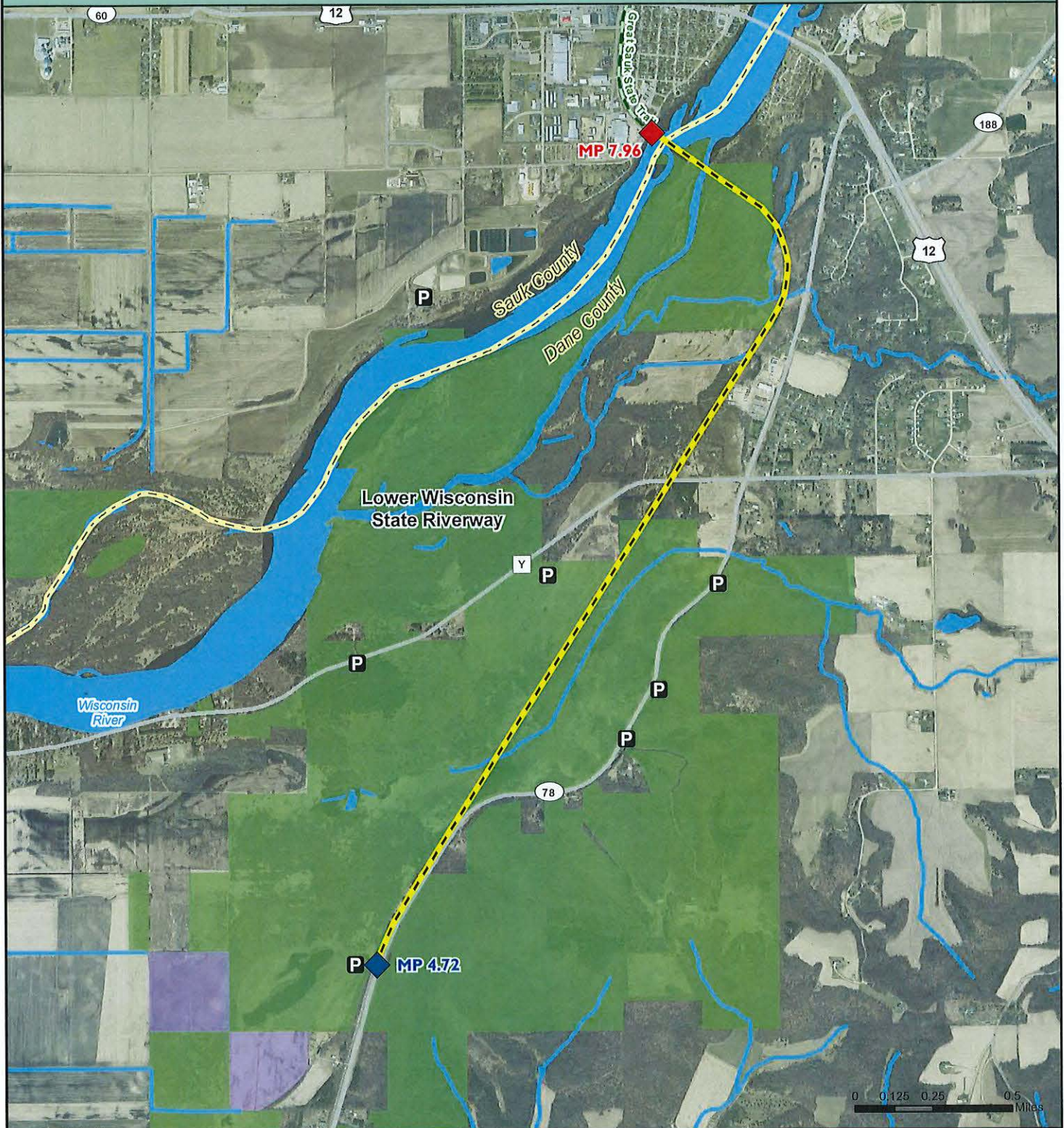
2/28/2023 | 8:57 AM CST

Wisconsin Department of Natural Resources
By: Sarah Barry
Office of the Secretary
101 S Webster Street, Madison, WI 53703

Date

WDNR contact:
Brigit Brown
101 S Webster Street, Madison, WI 53703
608-219-1295
brigit.brown@wisconsin.gov

ATTACHMENT 1



Milepost 7.96



Further described as 89.727558 W lat., 43.265416 N long., or the eastern extent of Water Street.

Milepost 4.72



Further described as 89.745469 W lat., 43.227135 N long., or railroad crossing 392015V (Public).

--- Subject Area

■ DNR Fee Title

■ DNR Easement

WISCONSIN DEPARTMENT
OF NATURAL RESOURCES



Bureau of
Parks and Recreation
March 3, 2023

Attachment 1 - Sauk/Dane Counties - jow

The data shown on this map have been obtained from various sources, and are of varying age, reliability and resolution. This map is not intended to be used for navigation, nor is this map an authoritative source of information about legal land ownership or public access. Users of this map should confirm the ownership of land through other means in order to avoid trespassing. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map.