

EI-20288

303-39X

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June 5, 2012

VIA FEDERAL EXPRESS

Ms. Victoria J. Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: **Docket No. AB-303 (Sub-No. 39X)**
Wisconsin Central Ltd. -- Abandonment
Exemption -- In Manitowoc County, WI

Dear Ms. Rutson:

Enclosed please find a letter received by Wisconsin Central Ltd. ("WCL") from the Army Corps of Engineers (the "Corps"), dated May 25, 2012, in response to WCL's request for environmental comments on the above-captioned abandonment. In the letter, the Corps expresses two potential concerns regarding the abandonment: (1) whether the abandonment involves activities in navigable waters, invoking the Corps' jurisdiction under Section 10 of the Rivers and Harbors Act of 1899; and (2) whether the abandonment involves discharge of dredged or fill material into waters of the United States, invoking the Corps' jurisdiction under Section 404 of the Clean Water Act.

After consulting relevant Corps publications, WCL has determined that the line to be abandoned does not cross any navigable waters. The line extends from Cleveland, Wisconsin north to Newton, Wisconsin in Manitowoc County. The only navigable waters in Manitowoc County are the Manitowoc River, Manitowoc Harbor, the Twin Rivers and Twin River Harbor. All of these waters are located north of the line and do not cross the line. The nearest navigable water to the line is the Manitowoc River which is approximately seven miles from the line at its closest point.

As shown in the Environmental Report and appendices thereto, the line crosses several small creeks and creek beds which may be deemed waters of the United States under the Clean Water Act. The abandonment will not result in any dredged or fill being deposited into any of these waters. As WCL stated in its Notice of Exemption and Environmental Report, following the abandonment WCL intends to salvage rail, ties and other track material while leaving the

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ballast in place. WCL has no plans to remove any of the bridges on the line. Therefore, WCL does not believe a Section 404 permit is necessary.

Please feel free to contact me if any further information regarding this matter is needed.

Very truly yours,



Jeremy M. Berman

Attorney for Wisconsin Central Ltd.

JMB:jb

Enclosure

cc: Joey Shoemaker, Army Corps of Engineers



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MINNESOTA 55101-1678

May 25, 2012

REPLY TO
ATTENTION

Operations
Regulatory (2012-01968-JRS)

Mr. Jeremy Berman
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606

Dear Mr. Berman:

We have received the document requesting comment on the Wisconsin Central Ltd. Abandonment project. Sufficient information was not submitted to determine if the proposed project would require any Department of the Army authorizations. In lieu of a specific response, please consider the following general information concerning our regulatory program that may apply to the proposed project.

If the proposal involves activity in navigable waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Section 10 prohibits the construction, excavation, or deposition of materials in, over, or under navigable waters of the United States, or any work that would affect the course, location, condition, or capacity of those waters, unless the work has been authorized by a Department of the Army permit.

If the proposal involves discharge of dredged or fill material into waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 404 of the Clean Water Act (CWA Section 404). Waters of the United States include navigable waters, their tributaries, and adjacent wetlands (33 CFR § 328.3). CWA Section 301(a) prohibits discharges of dredged or fill material into waters of the United States, unless the work has been authorized by a Department of the Army permit under Section 404. Information about the Corps permitting process can be obtained online at <http://www.mvp.usace.army.mil/regulatory>.

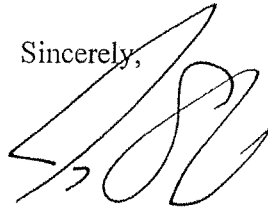
The Corps' evaluation of a Section 10 and/or a Section 404 permit application involves multiple analyses, including (1) evaluating the proposal's impacts in accordance with the National Environmental Policy Act (NEPA) (33 CFR part 325), (2) determining whether the proposal is contrary to the public interest (33 CFR § 320.4), and (3) in the case of a Section 404 permit, determining whether the proposal complies with the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230).

If the proposal requires a Section 404 permit application, the Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR § 230.10(a)). Time and money spent on the proposal prior to applying for a Section 404 permit cannot be factored into the Corps' decision whether there is a less damaging practicable alternative to the proposal.

If an application for a Corps permit has not yet been submitted, the project proposer may request a pre-application consultation meeting with the Corps to obtain information regarding the data, studies or other information that will be necessary for the permit evaluation process. A pre-application consultation meeting is strongly recommended if the proposal has substantial impacts to waters of the United States, or if it is a large or controversial project.

For further information or to request a pre-application consultation meeting, please contact Joey Shoemaker at (920) 448-2824, the Corps' project manager for Manitowoc County, in which this proposal is located.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Cameron', with a stylized flourish at the end.

F- Tamara E. Cameron
Chief, Regulatory Branch