Wisconsin Central Group
An ad hoc Rail Freight Stakeholders Coalition
www.centralcorridors.com/wcg/

Lake States Shippers Association
A Classic Co-op Shippers Association
www.centralcorridors.com/lssa/

John Duncan Varda, Counsel
DeWitt Ross & Stevens s.c.
2 E. Mifflin Street, Suite 600
Madison, WI 53703
608-212-1103
jdvarda@dewittross.com

Challenges and Opportunities, Northwoods Railroading & Jobs

We're Not Fly-Over Country, and We're Not Going to Take It Anymore!
Price County EDC, Park Falls, WI – September 19, 2018

What is the Great Lakes Forests Region ("GLFR")? See Map, p. 3. It's many different types of forests, *e.g.*: private, school, town, county, tribal, state, national – Upper Michigan, Northern Minnesota and Wisconsin. Forests are critical in supporting the Region's communities, jobs, industry, recreation, and prosperity. In turn, the health of the Region's forests is dependent on sustainable harvesting of its Forests, a protection from disease and fire, supporting wildlife, providing access for hunting, fishing and other recreation.

Why is rail access important? What makes the Region's forests, communities and jobs relatively interdependent? For forest owners and loggers, the capacity for each bolt and each cord to reach a destination for its highest and best use returns the highest price. For that to occur many logs must have the capacity for moving "rail" distances, beyond truck distances, north and south, east and west, across the entire Region. Limited access to rail shrinks markets for GLFR logs, balkanizing the markets for log sales. Access to competitive rail strengthens markets for all products moving to, from and within the GLFR, its communities and jobs.

Why is public investment in log cars appropriate and likely essential? At mid-range and shorter distances (market share necessary for rail line density), rail logs compete with over-the-road ("OTR") trucked logs. Since the early 1980s, the period of the last significant investment in GLFR log cars, non-railroad owned cars, particularly special car types such as those used for logs, has been a railroad industry-wide trend. Since the early 1980s, few replacements have been added to the aging CN/WC railroad-owned log car fleet. Each $1 of public investment in log cars returns direct public benefits of at least $4 (counting only the first 20 years of the log cars 50-year plus useful lives). Using direct public benefits to account for return on investment ("ROI") for a publicly-owned log car fleet makes rail logs more competitive, taking OTR log trucks off the road. Most log trucks are designed to bring logs out of the woods. They are less fuel efficient than typical OTR trucks. In addition to direct public benefits, reducing OTR log trucking to the mills permits loggers more time to devote to their highest value skills, harvesting and bringing logs out of the woods, increasing their profit - more cords, fewer truck miles.

Why were grant applications for public funding for new log cars not successful? Public matching funds (WI, $4 million; MI, $3 million) were debated but not approved by the time USDOT ruled on the Northwoods Rail Transit Commission ("NRTC") 2014 and 2015 TIGER grant applications (made possible by shipper group assistance and contributions from CN).

Both MI and WI invest in fixed rail facilities (*e.g.*, track and ties) but are reticent about investing in rail cars, despite their longer useful lives and flexibility to respond to market change. TIGER ($550 million available in 2019) and other federal grant funds have been awarded for rail cars elsewhere. NRTC's 2015 TIGER application was for the first 150 log cars with the expectation of adding 150 log cars per year over the following 10 years, all built in the GLFR, providing a foundation expanding the Region's rail car parts vendor and building and repair industries.

What's the matter with CN? Not much at all. Except CN is a Class I railroad. Class Is today are almost exclusively dedicated to running long trains (2 miles or so) for long distances on their systems. That's why for many places in rural America it is said: "The train does not stop here anymore" – *i.e.*, the Class Is' version of "fly over country". That's pretty much how CN treats freight originating and/or terminating on its CN/WC Region lines, which are essentially, geographically co-extensive with the GLFR. Another characteristic of today's Class Is, particularly CN with its industry leading operating ratio ("OR"), is aggressively minimizing operating expenses, running "lean". In late 2017, CN was running so lean an uptick in traffic combined with to-be-expected winter weather collapsed CN's system. The Edmonton-Chicago mainline was hard hit by major congestion that reportedly will not be fully alleviated in the CN/WC GLFR until 2019Q2, assuming winter 2018-19 does not deliver another crippling blow.

Are there alternatives to CN's failure to compete for market share in the CN/WC GLFR? Almost certainly. The Surface Transportation Board ("STB") order granting CN's control of WC is conditioned on CN's maintaining WC's "local characteristics" – of which the most outstanding was WC's aggressively and successfully competing for non-captive, truck competitive freight abundant in the CN/WC GLFR. There is a case to be made for STB's clarifying and enforcing those conditions on CN's control of WC. Culture and operations of shortline and regional railroad differ markedly from today's Class Is. WC, before control by CN, was the Nation's largest regional railroad and regarded as one of the most successful and competitive non-Class I railroad. Alternative operators for some or all CN/WC GLFR lines (see Map, p. 4) are available. Shippers and railroads, however, generally regard multiple line hauls as adding cost, delay and other service problems. GLFR shippers have demanded conditions on CN/WC's substituting any alternative operators to assure competitive service.

Why will logs alone not sustain the Region's rail system? Is there enough other freight? Even with increasing harvests, rail log revenues will not be sufficient to bear the fixed costs of a competitive system of GLFR rail lines. WisDOT's 2014 market study and June 2018 update demonstrate availability of many times more truckload ("TL") freight, originating and/or terminating in the GLFR, to support such a GLFR rail system. The challenge is to identify which GLFR TL freight is most susceptible to conversion to rail carload, transload and/or intermodal.

What can local officials and stakeholders do to make a difference? **First**, help identify contacts at facilities in the Region shipping/receiving 10 or more TLs per week. Coordinate with the LSSA Data Co-op Project. **Second**, form NRTC "Branch Line Committees" for, *inter alia.*, local action, shipper networking – *e.g.*, "Central WI Branch" (including "White Pine Branch"). See Map, p. 4. **Third**, push for legislation budgeting funding (matching funding) for investment in rail and rail-related facilities, including rolling stock.

What's needed from the States – MI, MN and WI? More funding, matching funds to leverage federal grants. More flexibility (*e.g.*, funding local roads and bridges providing direct routes to rail connections, WI 2013 Senate Bill 31). An appreciation of how shifting OTR TLs from highway to rail can reduce demand for highway infrastructure spending and provide other public benefits. In the WI State Rail Plan, identification of the Hwy-8 Rail Corridor as critical for the Great Lakes Forests Region – MI, MN, WI – rail system.*

Is regulatory intervention an option? As noted, above, there is a case to be made for STB action. STB is the watchdog (largely a substitute for antitrust law) for railroad competitiveness. The GLFR deserves and can sustain competitive rail service. Our preference is working collaboratively with the railroads to overcome challenges for GLFR shipper's access to rail.

A success story – Keeping rail in the private sector through State action? In 2014, creative, determined action by South Dakota's Governor assured survival of a faltering rail line, reborn as Rapid City, Pierre & Eastern Railroad, including multiple, competitive connections with other railroads. Why not in UP-MI, WI? A Northwoods solution, alternative to and/or modifying CN/WC's monopolistic single-served location dominance? See Map, p. 4.

Map courtesy of Wisconsin Department of Transportation 2015

* Joint action by NRTC and shippers before the STB in late-2017 clarified that, although parts of the Hwy-8 Rail Corridor are currently out-of-service, the track infrastructure shall remain in place for potential return to service.

The “Branch Lines” could be divided among one or more alternative operators through lease or sale. Our preference is a single operator. If sold, shippers demand the purchaser have trackage rights and/or pricing authority to/from CN lines and all connections of the former WC, a means of assuring virtual single-line service and, effectively, restoring and sustaining competitive rail service throughout the Region.