
From: Shively, Matthew S CIV USARMY CENWK (USA) <Matthew.S.Shively@usace.army.mil>

Sent: Friday, May 14, 2021 9:33 AM

To: Assenza, Adam <Adam.Assenza@stb.gov>

Cc: Bartlett, Alex <Alex.Bartlett@icf.com>

Subject: Missouri River Terminal Rail Line Docket No. FD 36406

Mr. Assenza,

Thank you for contacting the U.S. Army Corps of Engineers, Kansas City District regarding the Port Authority of Kansas City's proposed 1.7-mile rail line (STB Docket No. FD 36406). Please find our attached response to your request for preliminary environmental consultation. If you have any questions, please feel free to respond or call me at the number below. The USACE file number assigned to this project is NWK-2021-401.

Respectfully,

Matt Shively
USACE Kansas City District
Regulatory Branch
816-389-3309



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT
601 E. 12TH STREET, 635 FEDERAL BUILDING
KANSAS CITY, MO 64106-2824

May 14, 2021

Regulatory Branch
NWK-2021-00401

Mr. Adam Assenza
Surface Transportation Board
Office of Environmental Analysis
395 E Street, Southwest
Washington, DC 20423-0001

Dear Mr. Assenza:

This is in reply to your request for comment on the 1.7-mile rail line proposed by the Port Authority of Kansas City (Port KC) as part of the future Missouri River Terminal (MRT) intermodal shipping facility (STB Docket No. FD 36406). The proposed rail line would occur in Jackson and Clay Counties, Missouri. The geographic coordinates of the approximate eastern and western extents of the proposed rail line are (respectively) 39.1228°, -94.4564° and 39.1119°, -94.4940°.

Section 404 of the Clean Water Act/Section 10 of the Rivers and Harbors Act

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (Title 33 United States Code Section 1344). The implementing regulation for this Act is found at Title 33 Code of Federal Regulations Parts 320-332.

Should the proposed rail line require the discharge of dredged or fill material in any waters of the United States, including wetlands, a Department of the Army (DA) permit may be required. However, if the proposed rail line does not require the discharge of dredged or fill material in any waters of the United States, including wetlands, a DA permit will not be required.

Federal regulations require that a DA permit be issued by the Corps of Engineers prior to the initiation of any construction on the portion of a proposed activity which is within the Corps' regulatory jurisdiction. The MRT site is bounded by the Missouri River, the Blue River, and Rock Creek. The site additionally contains the Old Missouri River Channel, which the proposed railway alignment would cross. A review of the National Wetlands Inventory map indicates the potential presence of wetlands in the railway alignment, and portions of the site are mapped as having hydric (wetland) soils. This information does not serve as a jurisdictional determination; rather, we are providing you this information to illustrate that the site has the potential to include jurisdictional waters of the United States. We would require a wetland and waterbody delineation in order to prepare a jurisdictional determination. The project proponent may be required to submit a wetland and waterbody determination as part of the Section 404 permitting process.

Within the project vicinity, the Missouri River and the Blue River are classified as navigable waters of the United States. Navigable waters are subject to regulation by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403). The proposed railway alignment does not appear to impact the Missouri River or the Blue River. However, should the plans include work within these rivers, the project proponent must obtain a Section 10 permit from this office.

Section 14 of the Rivers and Harbors Act

The conceptual plans included with your request for comment letter illustrate the proposed railway exiting the MRT site and continuing westwardly along an existing rail line. The western extent of the illustrated project area ends approximately 2,000 feet east of the existing rail bridge over the Blue River. The East Bottoms federal levee also occurs near this location and abuts the existing rail line. The proposed project as illustrated within your concept plan does not appear to impact the Blue River or the federal levee. However, should the project plans require work within the vicinity of these features, review and authorization pursuant to 33 United States Code Section 408 may be required. The point of contact for Section 408 reviews in the Kansas City District is Mr. Derek Petre, who may be reached at 816-389-2238 or by email at Derek.J.Petre@usace.army.mil. Please also be aware that if authorization is required pursuant to Section 408, this authorization must be granted before a decision could be completed for a Section 404 Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 permit can be made.

Permit Scope and Lead Federal Agency

Your letter indicates that Surface Transportation Board will conduct reviews specific to the proposed rail line for compliance with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act. The Section 404/10 regulatory evaluation also requires these reviews. In cases where two federal agencies have separate regulatory authorities, a single agency should be designated as the lead federal agencies for these reviews.

The purpose of the proposed rail line will be to serve the future MRT. The Corps of Engineers has not received a permit application for this facility. Our regulatory process may require us to determine whether the rail line project has independent utility, and can be issued any required DA permits as a single and complete project; or whether the permit scope necessarily includes both the rail line and the development of the Missouri River Terminal. We encourage continued communication from you and/or Port KC regarding these related projects, so that the regulatory processes can be coordinated.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at: <https://regulatory.ops.usace.army.mil/customer-service-survey/>. You may also call and request a paper copy of the survey which you may complete and return to us by mail.

Mr. Matthew Shively, Project Manager, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. Shively at 816-389-3309 or by email at matthew.s.shively@usace.army.mil. Please reference Permit No. NWK-2021-00401 in all comments and/or inquiries relating to this project. This letter is only being provided to you electronically at: adam.assenza@stb.gov.