

#EO-2141

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 1068 (SUB-NO. 1X) AND
DOCKET NO. AB 1070 (SUB-NO. 1X)

July 16, 2013

TWO RECOMMENDATIONS: Remove Section 7 Condition and Add a New Condition

In this proceeding, the Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice with the Surface Transportation Board (Board) for MCRR to abandon and for MCRR and CMR to discontinue service over, an approximately 42-mile rail line in Cass, Henry, Johnson, and Pettis Counties, Missouri. By decision served on July 8, 2013 (2013 decision), the Board imposed three environmental conditions. Because the Section 7 process of the Endangered Species Act (16 U.S.C. §1535) had not been completed at the time of the 2013 decision, the Board imposed a condition (Condition 1) that precludes MCRR from initiating salvage activities (including removal of tracks and ties) and/or filing its notice of consummation until the Office of Environmental Analysis (OEA) and the United States Fish and Wildlife Service (USFWS) have completed the Section 7 consultation process.

New Comments on the Environmental Assessment

Remove Section 7 Condition

On July 12, 2013, OEA received the attached email from USFWS indicating that the proposed abandonment and discontinuance of service would have “no effect” on federally listed species. USFWS’s email explains that this finding is based on the attached July 11, 2013 letter from MCRR to USFWS, which indicates that although the right-of-way for the proposed abandonment contains habitat (four snag trees) for the Indiana bat (*Myotis sodalis*), a federally listed endangered species, no listed plant or animal species were found in the project area during a biological survey. This “no effect” determination concludes the consultation process, and OEA therefore recommends that the Section 7 consultation condition (Condition 1) be removed.

Add New Condition

OEA received two other comment letters following the close of the July 3, 2013 comment period. The attached July 9, 2013 letter from the Missouri Office of Administration states that the Missouri Federal Assistance Clearinghouse, in cooperation with state and local agencies, has

no comments to offer on the proposed abandonment and discontinuance of service. And the attached July 1, 2013 letter from the Missouri Department of Natural Resources (MDNR) lists a number of requirements that may be applicable to the railroad during the salvage process. Specifically, all rails, ties, and track material must be properly handled and disposed of during salvage operations; any planned burning of vegetation requires a permit; and any land disturbance of one acre or more requires a stormwater permit and possibly, the implementation of best management practices. Although MCRR has indicated that it would not be conducting any land disturbance activities that would require a stormwater permit during salvage operations, OEA is not certain if MDNR's two other concerns pertaining to waste handling/disposal and open air burning would apply. OEA is therefore recommending that the following condition be imposed on any granting authority:

The Missouri Central Railroad Company shall, prior to commencement of any salvage activities, consult with the Missouri Department of Natural Resources (MDNR) regarding the proper handling and disposal of all rails, ties, and track material; and the need to obtain a permit for open air burning, if applicable, and shall comply with MDNR's reasonable requirements.

OEA concludes that if the above condition is imposed along with the two remaining conditions (Conditions 2 and 3), the proposed action would not significantly affect the quality of the human environment.

OEA CONTACT: Diana Wood
 202-245-0302
 woodd@stb.dot.gov

Distribution: Office of Proceedings
 OEA Chron
 ECT



Fwd: STB Docket No. AB-1068 (Sub-No.1X)
Marquardt, Shauna
to:
diana.wood
07/12/2013 09:19 AM
Hide Details
From: "Marquardt, Shauna" <shauna_marquardt@fws.gov>

To: diana.wood <Diana.Wood@stb.dot.gov>

E1-20248

1 Attachment



AB-1068 (Sub-No.1X) Letter to US Fish and Wildlife Service.pdf

Hi Diana,

I had a conversation with Sandra Brown regarding the railroad abandonment project in Missouri. There will be no effect to federally listed species for the project. They submitted this letter to our office in that regard and I thought you might need a copy for your files.

Thanks for your coordination,
Shauna

Shauna Marquardt
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Missouri Ecological Services Field Office
101 Park De Ville Drive, Suite A
Columbia, MO 65203
573/234-2132 ext. 174 (office)
573/289-7610 (cell)
573/234-2181 (fax)

----- Forwarded message -----

From: **DePew, Aimee** <Aimee.DePew@thompsonhine.com>

Date: Thu, Jul 11, 2013 at 8:41 AM

Subject: STB Docket No. AB-1068 (Sub-No.1X)

To: "shauna_marquardt@fws.gov" <shauna_marquardt@fws.gov>

Cc: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>, "CHenderson@ameren.com" <CHenderson@ameren.com>

Per Sandy Brown's request, please find attached a letter regarding the above referenced matter.

Regards,

Aimee DePew | Thompson Hine LLP

1919 M Street, NW, Suite 700 | Washington, DC 20036

Office: 202.263.4130 | **Mobile:** 703.344.1298

Fax: 202.331.8330 | **Email:** Aimee.DePew@ThompsonHine.com

Web: <http://www.ThompsonHine.com>

Ranked a top-tier firm nationally for transportation law by *Chambers USA: America's Leading Lawyers for Business* and by U.S. News Media Group/*Best Lawyers*.

Atlanta | Cincinnati | Cleveland | Columbus | Dayton | New York | Washington, D.C.



July 11, 2013

VIA First Class Mail and E-Mail

Shauna Marquardt
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Missouri Ecological Services Field Office
101 Park De Ville Drive, Suite A
Columbia, MO 65203

shauna_marquardt@fws.gov

Re: Section 7 Endangered Species Act Consultation - STB Docket No. AB-1068 (Sub-No. 1X), Missouri Central Railroad Company – Abandonment Exemption – in Cass, Henry, Johnson, and Pettis Counties, Missouri

Dear Ms. Marquardt:

In follow-up to our recent phone call, this letter is to re-confirm with U.S. Fish and Wildlife Service ("Service") that the proposed abandonment will have "no effect" on listed species, their habitats, or proposed or designated critical habitat.

The Missouri Central Railroad Company ("MCRR") is seeking authorization from the Surface Transportation Board ("STB") in the above-captioned proceeding to abandon an approximately 42-mile segment of rail line in western Missouri. In accordance with the STB regulations, MCRR sent an initial consultation letter to the Service on February 15, 2013. On March 1, 2013, the Service responded to the initial consultation letter with a statement that "no federally listed species, candidate species, or designated critical habitat occurs within the project area."

Pursuant to STB regulations, MCRR sent the Combined Environmental and Historic Report ("CEHR") to the Service on March 21, 2013. MCRR then became aware that four snag trees are located within the right-of-way of the proposed abandonment. Snag trees can be used as roost for the Indiana bat, a federal-listed endangered species. However, no listed plant or animal species were found in the project area during a biological survey. This issue was raised by MCRR in consultation with the STB's environmental staff and the STB designated MCRR and its representatives as non-federal representatives for Section 7 consultation in a letter to the Service on May 2, 2013.

MCRR abandonment actions will include salvage (removal) of the ties, track, and related steel components¹ upon receiving authority from the STB to abandon the line.² MCRR will not be

¹ Related steel components are things such as tie plates, spikes, track joints, etc.

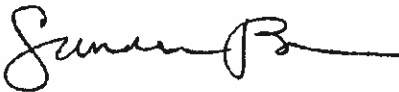
July 11, 2013

Page – 2 –

removing ballast or disturbing land and the four snag trees will not be disturbed or removed during the abandonment activities.

For these reasons and in consultation with the Service, MCRR has concluded that the abandonment project will have “no effect” on listed species, their habitats, or proposed or designated critical habitat. We deem this letter to close the loop on the Section 7 consultation for this project.

Respectfully submitted,



Sandra L. Brown

cc: Diana Wood, Surface Transportation Board
Charlie Henderson, MCRR/Ameren

² This project area is the same project area as the project area that the Missouri Department of Natural Resources (“MDNR”) is planning to build the trail if MCRR receives abandonment authority and the corridor is transferred to MDNR under the Rails-to-Trails Act. As you may be aware, trail construction will occur after the property has ceased to be an active rail line, and will be outside the environmental review of the abandonment process. The STB has stated its position that it “does not conduct an environmental review of a potential conversion to interim trail use/railbanking because it does not exercise sufficient federal control so as to qualify as a ‘major federal action’ under the National Environmental Policy Act (NEPA).” Environmental Assessment in Missouri Central Railroad Company – Abandonment and Discontinuance of Service Exemption – in Cass County, MO, STB Docket No. AB-1068X, slip op. at 6 (n. 8) (served Dec. 3, 2010).

#E1-20247



Jeremiah W. (Jay) Nixon
Governor

State of Missouri
OFFICE OF ADMINISTRATION
Post Office Box 809
Jefferson City, Missouri 65102
Phone: (573) 751-1851
Fax: (573) 751-1212

Doug E. Nelson
Commissioner

July 9, 2013

Ms. Diana Wood
Surface Transportation Board, Case Control Unit
Washington, DC 20423

Dear Ms. Wood:

Subject **SAI: 1312022**
 Legal Name: Surface Transportation Board, Case Control Unit
 Project Description: EA: Docket No. AB 1070 (Sub-No. 1X) / Central Midland
 Railway Company - Discontinuance of Service and Operating Rights Exemption - in
 Cass, Henry, Johnson and Pettis Counties, MO

The Missouri Federal Assistance Clearinghouse, in cooperation with state and local agencies interested or possibly affected, has completed the review on the above project application.

None of the agencies involved in the review had comments or recommendations to offer at this time. This concludes the Clearinghouse's review.

A copy of this letter is to be attached to the application as evidence of compliance with the State Clearinghouse requirements.

Please be advised that I am the contact for the Federal Funding Clearinghouse. You can send future requests to the following address: Sara VanderFeltz, Federal Funding Clearinghouse, 201 West Capitol, Room 125, and Jefferson City, Missouri 65101.

Sincerely,

A handwritten signature in cursive script that reads "Sara VanderFeltz".

Sara VanderFeltz
Administrative Assistant

cc:

#E1-20'46



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

July 1, 2013

Surface Transportation Board
Case Control Unit
Attention Diana Wood
Washington, DC 20423

RE: Docket no. AB 1068 (Sub-No. 1X) and AB 1070 (SUB-No.1X)

Dear Ms. Wood:

On June 21, 2013, the Missouri Department of Natural Resources' Kansas City Regional Office received a document from the Surface Transportation Board Environmental Assessment on the Missouri Central Railroad company - Abandonment and Discontinuance of Service Exemption - In Cass Henry, Johnson and Pettis Counties, MO Docket no. AB 1068 (Sub-No.1X) and Central Midland Railway Company - Discontinuance of Service and Operating Rights Exemption -- In Cass, Henry, Johnson, and Pettis Counties, MO Docket No. 1070 (Sub-NO. 1X) Environment Assessment.

The Department has the following comments:

1. In the report, it states that rails, ties and track material would be salvaged. These materials must be properly handled by reused or recycling. If disposal is proposed, then the materials cannot be burned nor buried. They must be properly disposed of at a permitted solid waste facility.
2. Only vegetation can be burned. You must obtain a burn permit if any vegetation is going to be burned.
3. Construction activities associated with the proposed project may require a land disturbance general permit. In accordance with 10 CSR 20-6.200 land disturbance activities of one acre or more are required to obtain a Missouri State Operating Permit to discharge storm water. The permit requires Best Management Practices sufficient to control runoff and sedimentation to protect waters of the state. Starting September 1, 2012, land disturbance permits will only be obtained by means of the Department's ePermitting system available online at www.dnr.mo.gov/env/wpp/epermit/help.htm. See www.dnr.mo.gov/env/wpp/stormwater/sw-land-disturb-permits.htm for more information.

If you have any questions, please contact me at (816) 251-0705 or the Kansas City Regional Office, 500 Northeast Colbern Road, Lee's Summit, Missouri 64086-4710. Thank you.

Sincerely,

KANSAS CITY REGIONAL OFFICE


James Helgason
Environmental Manager

JHH/bb

c: Ms. Jane Beetem, Director's Office Missouri Department of Natural Resources



M:\SWM\CASS\MISSOURICENTRALRAILWAY\MISSOURI CENTRAL RAILWAY COMMENT LETTER.DOC