

SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS

#EO-2645

**REVISED SUPPLEMENTAL FINAL
ENVIRONMENTAL ASSESSMENT**

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 1068 (SUB-NO. 3X) AND
DOCKET NO. AB 1070 (SUB-NO. 3X)

September 3, 2015

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

☒ Notice of Exemption ☐ Petition for Exemption ☐ Regulated Abandonment

☐ **NO NEW COMMENTS WERE RECEIVED**

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Recommendations: Amend U.S. Fish and Wildlife Service condition and remove U.S. Environmental Protection Agency/Missouri Department of Natural Resources condition

In this proceeding, the Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon and for CMR to discontinue service and operating rights over an approximately 144.3-mile rail line in two segments in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri.

By decision served on August 11, 2015, the Surface Transportation Board (Board) did the following: (1) removed conditions 1, 3 and 4; (2) added two new conditions that first, require MCRR to follow the U.S. Fish and Wildlife Service's (USFWS) requirement that no tree clearing or cutting occur for salvage operations between November 1 and March 31; and second, require that MCRR immediately cease all work and notify the Office of Environmental Analysis (OEA), interested federally recognized tribes, and the State Historic Preservation Office (SHPO) in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage activities, and for OEA to consult with the SHPO, interested federally recognized tribes, MCRR, and other consulting parties, to determine whether appropriate mitigation measures are necessary; and (3) retained condition 2, which requires MCRR to consult with the U.S. Environmental Protection Agency (EPA) or the Missouri Department of Natural Resources (MDNR) (whichever agency is authorized to administer the NPDES program) to ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements and compliance with the reasonable NPDES requirements.

Comments

On September 2, 2015, OEA was informed that the new USFWS condition, which was

carried forward, verbatim, from OEA's Supplemental Final EA issued on July 28, 2015, contained an error that needs to be corrected. Instead of indicating that no tree clearing or cutting occur for salvage operations between November 1 and March 31, the condition should indicate that tree clearing and salvage operations is only allowed to occur during this time frame, and that no other USFWS restrictions apply, as detailed below. In addition, OEA recommends that condition 2 be removed because MCRR has since obtained the attached NPDES permit.

The conditions that should remain, as amended, are:

The Missouri Central Railroad Company (MCRR) shall ensure protection of the Indiana bat (*Myotis sodalis*), a federally listed endangered species, and the northern long-eared bat (*Myotis septentrionalis*), a federally listed threatened species by following USFWS's requirement that tree clearing or cutting is only allowed to occur between November 1st and March 31st for salvage operations. This conservation measure is limited to those areas along the 144-mile right-of-way that require tree clearing or cutting in order to salvage the rail line. No other USFWS restrictions apply.

In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during MCRR's salvage activities, MCRR will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, interested federally recognized tribes, MCRR, and other consulting parties, to determine whether appropriate mitigation measures are necessary.

OEA has determined that if the above conditions, as amended, are retained, and if condition 2 is removed, that the proposed action would not significantly affect the quality of the human environment.

Attachment

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

Distribution: Office of Proceedings
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RE: Supplemental Final EA AB 1068 (Sub-No. 3X)

Brown, Sandra

to:

Diana.Wood@stb.dot.gov, Benz, David

09/02/2015 12:03 PM

Hide Details

From: "Brown, Sandra" <Sandra.Brown@thompsonhine.com>

To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>, "Benz, David"

<David.Benz@thompsonhine.com>

History: This message has been replied to.

Diana,

I left you a voice mail as well. It was brought to my attention today that the tree clearing window has been inverted in the Supp. EA and the STB's August 11 decision. These documents state that the "no tree clearing or cutting occur for salvage operations between November 1 and March 31."

However, the FWS emails are clear that the window that allows tree cutting is November 1 to March 31. The inversion was picked up from my email. The FWS emails clearly state the tree removal time is in "winter" (see FWS email to me 5/12/15 9:40 am) and "the conservation measure to clear suitable habitat from Nov 1 to March 31 (see FWS email to me 4/29/15 10:32 am).

The winter tree clearing is what we all had in mind in trying to get the FWS condition cleared quickly by the Board, but as you can see, the inversion was passed on and incorporated into the STB decision. Sorry I didn't catch this sooner.

Please call me to discuss the quickest way to address this.

Thank you.

Sandy

From: Diana.Wood@stb.dot.gov [<mailto:Diana.Wood@stb.dot.gov>]

Sent: Tuesday, July 28, 2015 10:46 AM

To: Brown, Sandra; Benz, David

Subject: Supplemental Final EA AB 1068 (Sub-No. 3X)

Sandy and David:

Here is the Supplemental Final EA in the above referenced proceeding. I've recommended that 3 of the 4 conditions be removed, and that 2 new conditions pertaining to salvage be added, per the agency comments received. Also, I have mentioned to Proceedings the need to issue the final decision as quickly as possible due to USFWS's restrictions on tree clearing.

I decided not to include the Osage Nation as a concurring party, but will make sure they receive copies of all the documents being prepared in connection with the Section 106 consultation process.

Let me know if you have any questions.

Regards,

Diana

Diana F. Wood
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Surface Transportation Board
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