



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

Sandra Brown
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington DC 20036-1600

January 17, 2012

**Re: STB Docket No. AB 1068X, Missouri Central Railroad
Company—Abandonment and Discontinuance of Service
Exemption—In Cass County, Mo.**

Dear Ms. Brown:

The Surface Transportation Board's Office of Environmental Analysis (OEA) has completed its review of Missouri Central Railroad Company's (MCRR) proposed abandonment of an approximately 5.6-mile rail line in Cass County, Missouri, pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.

As you know, the rail corridor and 4 bridges and 4 culverts on the line were found to be eligible for listing on the National Register of Historic Places, and following consultation with MCRR and the Missouri State Historic Preservation Office (SHPO), OEA determined that the proposed abandonment and discontinuance of service would likely have an adverse effect on these historic resources. As a result of the Section 106 consultation process, OEA developed a Memorandum of Agreement (MOA), which I have enclosed for Mr. Robert Neff's review and signature. In the interest of completing the Section 106 process in a timely manner, I would greatly appreciate a response within 20 days after receipt of this letter.

If MCRR agrees to the terms of the MOA, please have Mr. Robert Neff sign all eight copies and return all eight originals to:

Surface Transportation Board
Office of Environmental Analysis
395 E Street, S.W., Room 1108
Attn: Christa Stoebner
Washington D.C. 20423-0001

If you have questions regarding the MOA or require further information, please do not hesitate to contact me at (202) 245-0299. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Christa Stoebner". The signature is written in a cursive style with a large, stylized "C" and "S".

Christa Stoebner
Attorney Advisor
Office of Environmental Analysis

Enclosure

**MEMORANDUM OF AGREEMENT
BETWEEN
THE SURFACE TRANSPORTATION BOARD,
MISSOURI CENTRAL RAILROAD COMPANY,
MISSOURI STATE HISTORIC PRESERVATION OFFICE, and
MISSOURI DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF STATE PARKS
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**REGARDING STB DOCKET NO. AB 1068X
MISSOURI CENTRAL RAILROAD COMPANY—ABANDONMENT AND
DISCONTINUANCE OF SERVICE EXEMPTION—IN CASS COUNTY, MISSOURI**

Whereas, on November 8, 2010, Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon, and for MCRR and CMR to discontinue service over, an approximately 5.6-mile rail line, in Cass County, Missouri;¹ and

Whereas, the rail line abandonment and discontinuance of service constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and

Whereas, in a decision served on December 27, 2010, the Surface Transportation Board (Board) imposed a condition for the proposed abandonment and discontinuance of service that requires MCRR to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect)² that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) has been completed and the Board has removed this condition; and

Whereas, the rail corridor is part of the former Rock Island Line, which became the first rail line to connect Chicago with the Mississippi River in 1854, and it is significant in Missouri railroad history because, in 1901, the Rock Island acquired a local line—the St. Louis, Kansas City & Colorado RR line—as part of a plan to connect Kansas City with St. Louis. Accordingly, based on consultation with the Missouri State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. Part 800, the regulations implementing Section 106 of the NHPA, the Board's Office of Environmental Analysis (OEA) determined that the rail corridor and the 4 bridges and 4 culverts

¹ MCRR is planning to discontinue service over the portion of the line between milepost 262.8 and milepost 262.906, and CMR is planning to discontinue service and operating rights over the portion of the line between milepost 257.283 and milepost 262.8.

² For abandonments, the railroad right-of-way is the Area of Potential Effects or APE, defined at 36 C.F.R. § 800.16(d) as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.”

on the line are eligible for listing on the National Register under Criterion A, for their association with events that have made a significant contribution to the broad patterns of our history.³ In addition, the bridges and culverts are possibly eligible for listing on the National Register under Criterion C, for embodiment of the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;⁴ and

Whereas, based on consultation with the SHPO, OEA has determined that the proposed abandonment and discontinuance of service will have an adverse effect on the above mentioned historic resources; and

Whereas, in a letter dated June 15, 2011, the Board notified the Advisory Council on Historic Preservation (Advisory Council) of the adverse effect in accordance with 36 C.F.R. Part 800; and

Whereas, in a letter dated August 19, 2011, the Advisory Council declined to participate in the Section 106 process for this rail line abandonment, including the preparation of this MOA; and

Whereas, pursuant to 36 C.F.R. § 800.3, the Board sent letters on June 20, 2011 inviting the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Omaha Tribe of Nebraska; Osage Tribe, Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa, Indian Tribes to participate as consulting parties in the preparation of this Memorandum of Agreement (MOA);⁵ and as explained in more detail below, the Peoria Tribe of Indians of Oklahoma and Osage Nation responded prior to preparation of this MOA; and

Whereas, OEA has consulted with the Peoria Tribe of Indians of Oklahoma and Osage Nation and invited the Tribes to sign this MOA as concurring parties; and

Whereas, the Peoria Tribe of Indians of Oklahoma and the Osage Nation have accepted an invitation to be concurring parties to this MOA; and

Whereas, based on currently available information, the proposed abandonment and discontinuance of service will not affect any locations known to include Native American burial sites, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*); and

Whereas, MCRR owns the historic property that will be adversely affected by the proposed undertaking and has participated in the consultation process and, pursuant to 36 C.F.R. §

³ See 36 C.F.R. § 60.4.

⁴ See *Id.*

⁵ As of the date of this agreement, the Peoria Tribe of Indians of Oklahoma and the Osage Nation are the only tribes that have responded to this invitation.

800.6(c)(2)(iii), the Board has invited MCRR to be a signatory party in this MOA that will guide taking such effects into account; and

Whereas, Missouri Department of Natural Resources, Division of State Parks (DNR/DSP), is an interested party and has participated in the consultation process, and pursuant to 36 C.F.R. § 800.6(c)(2)(iii), the Board has invited DNR/DSP to be a signatory party in this MOA; and

Whereas, DNR/DSP has accepted the invitation to be a signatory party to this MOA; and

Whereas, the City of Pleasant Hill, Missouri, is located adjacent to a portion of the rail corridor, and the Board has consulted with the City of Pleasant Hill and invited it to sign this MOA as a concurring party; and

Whereas, the City of Pleasant Hill has accepted an invitation to be a concurring party to this MOA; and

Whereas, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO, MCRR, DNR/DSP, Peoria Tribe of Indians of Oklahoma, Osage Nation, and the City of Pleasant Hill regarding ways to avoid, minimize, or mitigate potential effects to the historic resources as a result of abandonment and the Board, SHPO, MCRR, DNR/DSP, Peoria Tribe of Indians of Oklahoma, Osage Nation, and the City of Pleasant Hill have all agreed upon the measures described below under “Stipulations;” and

Whereas, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

Now, therefore, the Board, SHPO, MCRR, and DNR/DSP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated. Additionally, the Board, SHPO, MCRR, and DNR/DSP agree that the execution of this MOA and its subsequent submission to the Advisory Council in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with the Advisory Council for purposes of the NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the Advisory Council an opportunity to comment on the proposed action relating to the line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board will ensure that the following stipulations are carried out prior to taking any action that could adversely affect a National Register eligible property:

I. STANDARDS

- A. **Professional Qualifications:** All historic preservation activities, research, evaluations, and reports implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* for Professional Qualifications Standards (48 Fed. Reg. 44738–44739) in the appropriate disciplines.

II. IDENTIFICATION

The Board and MCRR have consulted with the SHPO, Peoria Tribe of Indians of Oklahoma, Osage Nation, and the City of Pleasant Hill; reviewed existing information on cultural resources within the APE; and sought appropriate information from consulting parties and other interested parties, organizations, or federally-recognized Tribes likely to have knowledge of, or concerns regarding, cultural resources within the APE.

III. EVALUATION OF EFFECTS

- A. The Board and MCRR have consulted with the SHPO, Peoria Tribe of Indians of Oklahoma, Osage Nation, and the City of Pleasant Hill regarding the evaluation of the Undertaking's adverse effects on the following properties identified in the APE: the rail corridor, bridges and culverts, and the area of South Pleasant Hill located along the rail corridor.

IV. RECORDATION OF HISTORIC AND CULTURAL PROPERTIES

Prior to the alteration of any National Register-eligible properties, the following recordation measures will be carried out in consultation with SHPO.

A. Bridges and Culverts

- 1. MCRR will provide 5X7 and 8X10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of the bridges and culverts. Digital copies will also be provided.
 - a. The photographs should be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with National Register Bulletin #16A. A minimum number of photographs will be determined in consultation with the SHPO and will be provided for each resource.

2. If available, MCRR will prepare appropriate written documentation including but not limited to: bridge measurements, engineering, history, and biographical information on the fabricator.

B. Rail Corridor, Tracks, and Ties

1. MCRR will provide 5X7 and 8X10 inch black and white photographs digital printed on archival paper sufficient to document overall views and details of the 5.6-mile line, including representative photos of the rail corridor and associated properties. Digital copies will also be provided.
 - a. The photographs will be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with National Register Bulletin #16A. A minimum number of photographs will be determined in consultation with the SHPO and will be provided for each resource.
 - b. MCRR will submit a contextual history of the line and the area of South Pleasant Hill, Missouri, which is adjacent to a portion of the rail corridor.
 - c. If available, MCRR will submit copies of the original construction plans and historic photographs of associated historic properties (i.e.: depots, water towers, granaries, etc.).
 - d. Interpretive exhibits for the trail head locations at Missouri State Highway P and Pleasant Hill will be prepared by MCRR in conjunction with DNR/DSP. These interpretive exhibits will include a history of the line.

V. REPORTING REQUIREMENTS

A. Draft Report: MCRR shall complete historic research, photo documentation and written report within 3 months of the execution of this MOA.

1. **Comment Period.** Following receipt of the draft documentation, the SHPO, DNR/DSP, Peoria Tribe of Indians of Oklahoma, Osage Nation, and the City of Pleasant Hill will have 30 days to comment on the documentation. After considering all comments submitted during the 30-day comment period, OEA will determine whether any additional information or revisions are appropriate, and MCRR shall modify the documentation in accordance with OEA's determination. Failure of SHPO, DNR/DSP, Peoria Tribe of Indians of Oklahoma, Osage Nation, or the City of Pleasant Hill to comment within the specified period shall be deemed by the Board to constitute approval of the documentation.

B. Distribution of Final Report. A copy of the documentation identified in Section IV. will be sent by MCRR to: the Board, SHPO, DNR/DSP, Peoria Tribe of Indians of

Oklahoma, Osage Nation, and City of Pleasant Hill and to other appropriate archives or recipients designated by the Board and SHPO.

- C. Distribution of Prior Survey and Report.** A cultural resources survey was prepared on Sept. 9, 2011 and a Phase I Report was prepared on June 14, 2011. MCRR shall send copies of the survey and report (which include maps, photographs and satellite images of the line) to the Peoria Tribe of Indians of Oklahoma and the Osage Nation.

VI. UNANTICIPATED DISCOVERIES

A. Procedures for Unanticipated Discoveries of Cultural Resources and Historic Properties

1. There are no known archaeological sites or cultural resources located within the 5.6-mile right-of way. However, in the event that any unreported or unanticipated archaeological sites or cultural resources are discovered during salvage activities,⁶ MCRR shall:
 - a. Immediately cease all work;
 - b. Clearly mark the area of discovery;
 - c. Implement interim measures to protect the discovery from looting and vandalism; and
 - d. Notify OEA, the Peoria Tribe of Indians of Oklahoma, the Osage Nation, any other appropriate federally-recognized Tribes, DNR/DSP, and the SHPO pursuant to 36 C.F.R. § 800.13(b).
2. Upon notification of the discovery, OEA shall consult with the SHPO, DNR/DSP, the Peoria Tribe of Indians of Oklahoma, the Osage Nation, any other appropriate federally-recognized Tribes, MCRR, and other consulting parties, if any, to determine the National Register eligibility of the discovery and whether appropriate mitigation measures (such as Archaeological Data Recovery Plans) are necessary.
 - a. OEA, in consultation with the SHPO and appropriate federally-recognized Tribes, will have 30 calendar days following notification to determine the National Register eligibility. OEA

⁶ Salvage activities will not include any ground disturbing activities or the removal of ballast. MCRR plans to remove the rails, tie plates, signals, wires, joint bars, turnout materials, anchors, bolts, spikes, washers and other steel materials. In addition, salvage activities will be carried out using the right-of-way and existing roads, and no new access roads are contemplated.

may assume the newly discovered property to be eligible for the National Register.

- b. If the find is determined to be potentially significant, OEA will consult with the SHPO and appropriate federally-recognized Tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). Once presented, the SHPO and the Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:
 - a. Formal archaeological evaluation of the site;
 - b. Visits to the site by the SHPO and/or appropriate federally-recognized Tribes; and/or
 - c. Preparation and implementation of a mitigation plan by OEA in consultation with appropriate federally-recognized Tribes, for approval by the SHPO.

ADMINISTRATIVE PROVISIONS

The Board shall ensure that a determination, finding, or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis.

A. Dispute Resolution: Should any signatory party to this MOA object at any time to the manner in which the terms of the MOA are implemented, the Board shall consult with the objecting party to resolve the objection. If the Board determines, within 15 days after consultation begins, that such objection cannot be resolved, the Board will either:

1. Render a decision regarding the dispute within 30 days after it has determined that the dispute could not otherwise be resolved. The Board will notify all parties of its decision in writing within this time frame. In reaching its decision, the Board will take all comments from the objecting party regarding the dispute into account. The Board's decision will be final; or
2. Forward all documentation relevant to the dispute to the Advisory Council in accordance with 36 C.F.R. § 800.2(b)(2). Any Advisory Council comment, and all comments from either party to this MOA, will be taken into account by the Board in reaching a final decision regarding the dispute. The Board's decision will be final.

B. Amendments, Non-Compliance and Termination: If any signatory party believes that the terms of this MOA cannot be carried out or that an amendment to its terms should be made, that party shall immediately consult with the other parties to develop amendments to this MOA pursuant to 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). No amendments shall take effect without the unanimous consent of the signatory parties. If this MOA is not amended as provided for in

this stipulation, any signatory party may terminate it, whereupon the Board shall proceed in accordance with 36 C.F.R. § 800.6(c)(8).

C. Duration of the MOA: Unless terminated, this MOA will be in effect until the Board, in consultation with the other signatory parties, determines that all of its terms have been satisfactorily fulfilled. Upon a determination by the Board that all of the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. The Board will promptly provide the other signatory parties with written notice of its determination and of termination of the MOA.

D. Effective Date: This MOA will take effect on the date that it has been executed by the Board, SHPO, MCRR, and DNR/DSP.

E. Designated Point of Contact: OEA, MCRR, SHPO, DNR/DSP, Peoria Tribe of Indians of Oklahoma, Osage Nation, and City of Pleasant Hill shall each designate a contact person. The contact for the Tribes is the person to which all initial and formal correspondence goes. Each party is responsible for providing current phone numbers, email addresses, and mailing addresses for their designated point of contact. (Contact information is included in the Appendix).

Execution of this MOA by the Board, SHPO, MCRR, and DNR/DSP; its transmittal to the Advisory Council; and subsequent implementation of its terms, evidences that the Board has afforded the Advisory Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that the Board has taken into account the effects of the Undertaking on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Mark A. Miles, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____ Date: _____
Robert K. Neff, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By: _____ Date: _____
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

CONCURRING PARTIES

PEORIA TRIBE OF INDIANS OF OKLAHOMA

By: _____ Date: _____
John P. Froman, Chief
Peoria Tribe of Indians of Oklahoma

OSAGE NATION

By: _____ Date: _____
John D. Red Eagle, Principal Chief
Osage Nation

CITY OF PLEASANT HILL

By: _____ Date: _____
Mark Randall, City Administrator
City of Pleasant Hill

APPENDIX

SURFACE TRANSPORTATION BOARD

Christa Stoebner	Christa.stoebner@stb.dot.gov Phone: (202) 245-0299 Fax: (202) 245-0454 Surface Transportation Board Office of Environmental Analysis 395 E Street, S.W., Room 1108 Washington DC 20423
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MISSOURI STATE HISTORIC PRESERVATION OFFICE

Judith Deel	Judith.deel@dnr.mo.gov (573) 751-7862 P.O. Box 176 Jefferson City, Missouri 65102
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MISSOURI CENTRAL RAILROAD COMPANY

Sandra Brown	Sandra.Brown@thompsonhine.com (202) 263-4101 1920 N Street, N.W. Suite 800 Washington DC 20036-1600
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MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARK

Jane Lale Department of Natural Resources Missouri State Parks Planning and Development Program Director	Jane.lale@dnr.mo.gov Phone: (573) 751-5360 P.O. Box 176 Jefferson City, MO 65102
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PEORIA TRIBE OF INDIANS OF OKLAHOMA

Frank Hecksher	Fhecksher@peoriatribes.com (918) 540-2535 118 S. Eight Tribes Trail, P.O. Box 1527 Miami, Oklahoma 74355
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OSAGE NATION

Dr. Andrea A. Hunter Tribal Historic Preservation Officer	Ahunter@osage tribe.org (918) 287-5328 Osage Nation 627 Grandview Pawhuska, OK 74056
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CITY OF PLEASANT HILL

Mark Randall, City Administrator	admin@pleasanthill.com(816) 540-3135 203 Paul St, Pleasant Hill, MO 64080
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