

#EO-2668



**RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X)
Missouri Central Railroad Company**

Diana Wood to: Andrea Hunter

10/01/2015 12:05 PM

Dear Dr. Hunter:

MCRR plans to salvage the tracks and ties but intends to leave the railroad bed intact. MCRR also plans to use existing access roads, but will be cutting vegetation along the right-of-way where necessary to remove track structures. The rail line will be converted to a trail afterwards. Salvage is expected to take about two years.

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

Andrea Hunter

Ms. Wood, The Traditional Cultural Advisors C...

10/01/2015 10:25:44 AM

From: Andrea Hunter <ahunter@osagenation-nsn.gov>
To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>
Date: 10/01/2015 10:25 AM
Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Ms. Wood,

The Traditional Cultural Advisors Committee would like to know are any of the tracks or rails going to be removed or is the line just going to be abandoned and left in place?

Dr. Andrea A. Hunter
Director/THPO
Osage Nation Historic Preservation Office
627 Grandview Avenue
Pawhuska, OK 74056

Office Phone: (918) 287-5328
Office Fax: (918) 287-5376

From: Diana.Wood@stb.dot.gov [mailto:Diana.Wood@stb.dot.gov]
Sent: Thursday, October 01, 2015 9:10 AM
To: Andrea Hunter
Cc: Brown, Sandra; Judith Deel; Bryan, Mary; Stover City Hall; Najah Duvall-Gabriel
Subject: Fw: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Hunter:

Please refer to the explanation in the June 16, 2015 email below, as well as the preceding emails in the thread below, regarding your request to be included in the MOA process as an invited signatory party. As stated prior, the Osage Nation participated in the development of an MOA in AB 1068X as a concurring party and we welcome your participation in that capacity. We based this decision - now and in the past - on the understanding that the rail line is not located on tribal lands and that the Osage Nation would not be assuming review of other responsibilities under the MOA (per ACHP guidance). We believe the stipulations below from the executed MOA adequately address the inadvertent discovery of any cultural resources and historic properties. I've also retained the concurring party signature block and contact information from that email. If you concur with the MOA, please sign and return with any comments you may have on the Phase 1 Archaeological Draft Report by the deadline, per your request to extend, of October 5, 2015. Once I receive this information, I'll submit an amended executed MOA to ACHP indicating that we have added another consulting party.

I've also attached the information you requested in AB 1068 (Sub-No. 1X) and AB 1070 (Sub-No. 1X), which is available on the Board's web site at www.stb.dot.gov, then go to environmental, then click on environmental correspondence, and either incoming or outgoing. Information on the abandonment is contained in docket numbers AB 1068 (Sub-No. 1X) and AB 1070 (Sub-No. 1X).

In terms of ACHP's comment questionnaire that you included in your 9/29/15 email, and excerpted below, I can assure you that the STB regularly includes tribes in its Section 106 consultations. We typically include tribes as signatories to our agreement documents if the project is located on tribal lands, and concurring parties when the tribe has ancestral connections to the project area.

In addition, the STB provides tribes opportunities to comment on agreement documents regardless of a tribe's signatory status. Our inclusions of tribes is important, as tribes have special expertise that only they can provide the STB.

Excerpted from 9/29/15 email:

Greetings,

It has recently come to the attention of the ACHP that some Indian tribes are not being invited to sign memoranda of agreements or programmatic agreements either as concurring parties or invited signatories. This has led, in some cases, to tribes being excluded from post-agreement implementation. To help us understand the extent of the issue, we ask that you provide answers to the following questions:

1. Does your tribe seek to become either an invited signatory or concurring party?

2. Is your tribal routinely invited to sign agreements as an invited signatory or concurring party
3. If not, which agencies are not inviting your tribe to sign and what is their reasoning?
4. Has the lack of signatory or concurring party status resulted in your exclusion from participating in the work or review under the agreement?
5. If you have been invited to sign, which agencies are involved and are they inviting you to sign or concur?

Sincerely,

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

----- Forwarded by Diana Wood/STB on 09/29/2015 11:52 AM -----

From: Diana Wood/STB
To: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, Stover City Hall <cityofstover@windstream.net>, "Deel, Judith" <judith.deel@dnr.mo.gov>, "ngabriel@achp.gov" <ngabriel@achp.gov>, "Brown, Sandra" <Sandra.Brown@thompsonhine.com>, "woodd@stb.dot.gov" <woodd@stb.dot.gov>, "Bryan, Mary" <mary.bryan@dnr.mo.gov>
Date: 06/16/2015 11:20 AM
Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Chovanec:

The attached executed MOA from another line segment of the same railroad included the Osage Nation as a concurring party, and we welcome your participation in that capacity. We based this decision - now and in the past - on the understanding that the rail line is not located on tribal lands and that the Osage Nation would not be assuming review of other responsibilities under the MOA (per ACHP guidance). We believe the stipulations below from the executed MOA adequately address the inadvertent discovery of any cultural resources and historic properties.

Please understand that as a concurring party, you will continue to receive information regarding the project but that your concurrence will not change the stipulations of the MOA or its date of execution. I have included a pdf of the executed MOA and also a signature and contact information page for you to complete and return. I will send out the revised MOA to all parties and ACHP once I receive your concurrence and contact information. In the interest of time, please provide the requested information no later than July 6, 2015.

I. UNANTICIPATED DISCOVERIES

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

1. There are no known archaeological sites located within the 144.3-mile right-of-way. However, in the event that any unreported or unanticipated archaeological sites or cultural resources are discovered during salvage For abandonment proceedings, salvage activities may include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right-of-way, and regrading the right-of-way. Salvage may be performed within the right-of-way or, if necessary, via the construction of new access points to the right-of-way. activities, 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, federally-recognized Tribes, 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, federally-recognized Tribes, MCRR, and other consulting parties, if any, to determine the NRHP eligibility of the discovery and whether appropriate mitigation measures, such as protection in place or 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 NRHP eligibility. OEA may assume the newly discovered property to be eligible for the NRHP.

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 federally-recognized Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the SHPO and/or appropriate Tribes; and/or
- iii. preparation and implementation of a mitigation plan by OEA in consultation with federally-recognized Tribes for approval by the SHPO.

3. In the event that any human remains (other than from a crime scene) are discovered or excavated, they are subject to the immediate control, possession, custody, and jurisdiction of the SHPO, pursuant to the Missouri Unmarked Human Burials Sites Act (RSMo. 194.400-194.410). The excavation of human remains will follow guidance obtained through DNR/DSP, SHPO, and

federally-recognized Tribes. The excavation, handling, and processing of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony shall be in accordance with the SHPO instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found in the APE. This excludes any cemetery human remains that may be discovered or excavated in the APE. These finds would be regulated by local government and law enforcement agencies, pursuant to Chapter 214, Cemeteries.

B. In the event of any unanticipated discoveries, MCRR shall ensure that a report on the archaeological investigations conducted pursuant to this "Unanticipated Discoveries" section is provided to the SHPO and OEA, and upon request to other interested parties.

C. Any report on unanticipated discoveries shall follow (1) procedures for the processing, analysis, and curation of collected materials as described in the Advisory Council's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the Interior's Guidelines, and (2) currently accepted standards for the analysis and curation of archaeological remains. (DNR/DSP shall curate at Rock Bridge).

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

From: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, "woodd@stb.dot.gov" <woodd@stb.dot.gov>, "Deel, Judith" <judith.deel@dnr.mo.gov>, "Brown, Sandra" <Sandra.Brown@thompsonhine.com>, "ngabriel@achp.gov" <ngabriel@achp.gov>, Stover City Hall <cityofstover@windstream.net>
Date: 06/11/2015 10:06 AM
Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Ms. Wood,
Thank you for your email, for detailing the situation, and providing options for the Osage Nation's involvement. Our preferred path would be included as an invited signatory. Please let me know if this would be possible.

Kind regards,

Zuzana Chovanec, Ph.D.
Archaeologist
Osage Nation Historic Preservation Office

From: Diana.Wood@stb.dot.gov [Diana.Wood@stb.dot.gov]
Sent: Tuesday, June 09, 2015 10:19 AM
To: Zuzana Chovanec
Cc: Andrea Hunter; woodd@stb.dot.gov; Deel, Judith; Brown, Sandra; Diana.Wood@stb.dot.gov; ngabriel@achp.gov; Stover City Hall
Subject: Re: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Chovanec:

I am in receipt of your request below to participate in the Section 106 consulting process and development of an MOA in the above referenced proceeding. Unfortunately, the invitation letter (see attached) I sent to all potential Section 106 parties was dated March 27th and had a 30-day response time. Since I did not hear anything back within the time specified, the MOA was developed with only those parties who responded back. The MOA has since been executed and sent to the ACHP. I have, however, discussed this situation with Najah Duvall-Gabriel at the ACHP, and she said that it is up to the agency to decide if it wants to amend an MOA to allow for additional concurring parties. Najah suggested that I first contact you and ask if, in lieu of becoming an official concurring party, it would be acceptable to receive all the documents that will be prepared per the MOA stipulations, as if you were a concurring party, but not officially be part of the MOA. If this is acceptable, then I will include you in all future correspondence. If not, then I will have to begin the process of amending the MOA with the ACHP and other parties to include you in the process.

I've attached the MOA for your review. Please let me, and others cc'ed here, know which path you wish to take.

Thanks!

Regards,
Diana

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

From: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
To: "woodd@stb.dot.gov" <woodd@stb.dot.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
Date: 06/08/2015 11:46 AM

Subject: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Ms. Wood,

The Osage Nation Historic Preservation Office has received notification and accompanying information for the STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company - Abandonment and Discontinuance of Service Exception - In Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Mo.

The Osage Nation has a vital interest in protecting its historic and ancestral cultural resources. We appreciate and accept your invitation to participate as a consulting party in the Section 106 process and in the development of a Memorandum of Agreement.

Please feel free to contact us with any questions or further information. Thank you for consulting with the Osage Nation on this matter.

Zuzana Chovanec, Ph.D.
Archaeologist
Osage Nation Historic Preservation Office