

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1068 (Sub-No. 1X)

MISSOURI CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CASS, HENRY, JOHNSON, AND PETTIS COUNTIES, MO.

Decided: December 10, 2013

Missouri Central Railroad Company (MCRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 42 miles of rail line between milepost 257.283 near Wingate, in Cass County, Mo., and milepost 215.325 near Windsor, in Pettis County, Mo.¹ Notice of the exemption was served and published in the Federal Register on June 7, 2013 (78 Fed. Reg. 34,428). The exemption was scheduled to become effective on July 9, 2013.

By decision and notice served on July 8, 2013, the Board imposed public use and trail use conditions on MCRR's abandonment exemption and the exemption was made subject to the conditions that: (1)(a) pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. § 1535, MCRR shall consult with the Board's Office of Environmental Analysis (OEA) and the U.S. Fish and Wildlife Service (USFWS) to determine if the proposed abandonment would adversely impact the Indiana bat, a federally listed endangered species, or Indiana bat habitat, (b) if the Indiana bat or Indiana bat habitat is located within the right-of-way, USFWS may recommend avoidance and impact measures to develop appropriate mitigation measures, if necessary, and (c) MCRR shall not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation process has been completed and the Board has removed the condition;² (2) MCRR shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning any salvage

¹ Central Midland Railway Company joined in filing the notice of exemption to obtain Board authorization to discontinue service over the same line. Central Midland Ry., Co.—Discontinuance of Service Exemption—in Cass, Henry, Johnson, and Pettis Counties, Mo., AB 1070 (Sub-No. 1X).

² By decision served on August 12, 2013, the Section 7 consultation condition imposed in the July 8, 2013 decision and notice was removed. In the same decision, OEA recommended that an additional consultation condition be imposed requiring that MCRR, prior to commencing any salvage activities (1) 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 (2) comply with MDNR's reasonable requirements.

activities that could disturb or destroy any geodetic station markers; and (3)(a) MCRR shall 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 that are eligible for listing or listed in the National Register of Historic Places, until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed, (b) MCRR shall report to OEA regarding any consultations with the State Historic Preservation Office (SHPO) and the public, and (c) MCRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a supplemental final environmental assessment dated November 22, 2013, OEA now states that it has negotiated a Memorandum of Agreement (MOA) with the SHPO and MCRR to resolve any adverse effects to historic properties for the proposed undertaking, pursuant to 36 C.F.R. § 800.6(b)(i)(iv). OEA adds that MDNR's Division of State Parks also signed the MOA as an invited signatory, that the City of Windsor signed the MOA as a concurring party, and that on October 25, 2013, OEA submitted the signed MOA to the Advisory Council on Historic Preservation (ACHP). OEA states that the filing of the MOA with ACHP completes the Board's compliance responsibilities under Section 106 of the National Historic Preservation Act. Accordingly, OEA recommends that the Section 106 condition be removed.

Consistent with OEA's recommendation, the Section 106 historic preservation condition imposed in the July 8, 2013 decision and notice will be removed. The previously imposed NGS consultation condition and the previously imposed MDNR consultation condition will remain in effect.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the July 8, 2013 decision and notice is removed.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.