

March 23, 2015

VIA First Class Mail and E-Mail

Amy Salveter
Field Supervisor
U.S. Fish and Wildlife Service
Missouri Ecological Services Field Office
101 Park De Ville Drive, Suite A
Columbia, MO 65203

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**Re: Consultation Code: 03E14000-2015-SLI-0366
Section 7 Endangered Species Act Consultation - STB Docket No. AB-1068 (Sub-No. 3X), Missouri Central Railroad Company – Abandonment Exemption – in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri**

Dear Ms. Salveter:

This letter documents Missouri Central Railroad Company's ("MCRR") consultation under Section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service ("Service") for the above-captioned project.

As discussed below, MCRR believes that its project will have no effect on the natural resources listed in the species list provided through the Information, Planning, and Conservation ("IPaC") planning tool based on the proposed mitigation for the potential critical habitat for bats in the area. **See Attachment A** (Official Species List). Thus, MCRR requests that the Service confirm that consultation under Section 7 for this project is concluded.

MCRR filed for authorization from the Surface Transportation Board ("STB") in the above-captioned proceeding to abandon approximately 144 miles of rail line in central Missouri.¹ The project area is limited to the previously disturbed linear corridor of the railroad right-of-way ("ROW") that is approximately 100 feet wide, and it crosses through Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri. The rail line abandonment is in two segments: (1) between mileposts 263.5 and 262.906 (near Pleasant Hill) in Cass County, Missouri, and (2) between milepost 215.325 (near Windsor) in Pettis County, Missouri and milepost 71.6 (near Beaufort) in Franklin County, Missouri (the "Line"). **See Attachment B** (map).

¹ This abandonment has a linear connection to two prior abandonments in STB Docket Nos. AB-1068X and AB-1068 (Sub-No. 1X).

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In accordance with STB regulations, MCRR sent an initial consultation letter to the Service on October 2, 2014 and sent the Combined Environmental and Historic Report ("CEHR") to the Service on October 28, 2014. The STB served an Environmental Assessment ("EA") in the proceeding on December 12, 2014. No comment was received by MCRR or the STB from the Service on any of these documents. Nevertheless, the STB noted that the line travels through rural and undeveloped land with numerous streams and drainage features and, thus, the STB's environmental office was not certain whether the Line might contain species and/or habitats of concern. Therefore, the STB imposed as a condition that "MCRR shall contact [the Service] prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species." MCRR is then to report the results of the consultation to the STB's environmental staff.

As explained below, MCRR's abandonment activities will be limited to salvage of certain rail assets. Salvage (removal) will:

- be limited to the previously disturbed ROW
- only remove the ties, track, and related steel components from the roadbed²
- not include removal of ballast or changing the contour of the existing roadbed
- not include dismantling bridges or any structures on the Line as those structures will be used for future trail purposes
- not include in-stream work, dredging, and/or use of fill materials
- require, however, clearing vegetation and removal of some trees that have grown in the railroad right-of-way

MCRR has reviewed the species list provided through the IPaC system and reviewed the Missouri Department of Conservation's information concerning Missouri Plants and Animals of Conservation Concern.³ Based upon review of these materials, the referenced project area, and

² After salvage is complete, the railroad right-of-way will be transferred to the Missouri Department of Natural Resources ("MDNR") which has plans to build a trail 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 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).

³ Missouri has published two relevant booklets, the Missouri Plants of Conservation Concern found at http://mdc.mo.gov/sites/default/files/resources/2010/04/4069_1692.pdf and the Missouri

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anticipated activities, MCRR submits the following conclusions regarding the 15 threatened or endangered species on the list.

First, since MCRR activities will not include in-stream work or dredge and/or use of fill materials, there will be *no effect* (“NE”) on either the five listed species of clams or the three listed species of fish.

Second, for the flowering plants listed, MCRR submits that there will be no effect on these species for the following reasons based upon information in the Missouri Plants of Conservation Concern. The Decurrent False Aster does not occur in any of the 10 counties for the project area. In addition, the habitat for the Decurrent False Aster is low areas subject to flooding by the Mississippi River and the project area is not in close proximity to the Mississippi River. The Mead’s Milkweed has had limited sightings in only three counties of the 10 project area counties. Furthermore, the Mead’s Milkweed habitat usually occurs on pristine prairies and glades, but the project area encompasses previously disturbed railroad right-of-way so it is unlikely that Mead’s Milkweed occurs in the ROW. Finally, the Running Buffalo Clover has had only three sighted occurrences in Missouri and none of the occurrences are considered secure. The habitat is moist, partially shaded woodlands, sometimes along stream or river terraces. One reported site was discovered in 1998 in Maries County but the ROW only crosses a small portion on the northern part of Maries County near Belle, Missouri. In addition, the raised rail bed and ballast are unlikely to support germination of the Running Buffalo Clover.

The one insect species listed is the Hine’s Emerald Dragonfly. According to the Missouri Animals of Conservation Concern, the Hine’s Emerald Dragonfly has only been spotted in one location on land owned by a private conservation group in a county outside of the project area in south eastern Missouri.

Finally, the species list includes three bat species: the Gray Bat, the Indiana Bat, and Northern Long-Eared Bat. The Gray bat and the Indiana bat are endangered species while the Northern Long-Eared Bat is a proposed endangered species. The Gray Bat habitat is limited to caves and the project will have no effect on caves. The Indiana Bat and the Northern Long-Eared Bat both migrate during summer months to roost in wooded areas under loose tree bark on dead or dying trees (known as snag trees). According to the Indiana Bat summer survey guidelines, the summer period that bats may be present is from May 15 to August 15.⁴ MCRR will need to clear some trees from the right-of-way but this clearing will be limited to trees within the linear corridor and only those that are needed to be cleared to remove track materials. Based on the

Animals of Conservation Concern found at

http://mdc.mo.gov/sites/default/files/resources/2010/04/4068_1693.pdf.

⁴ See

<http://www.fws.gov/Midwest/Endangered/mammals/inba/surveys/pdf/2014IBatSummerSurveyGuidelines13Jan2014.pdf>.

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limited clearing of trees, the project is *not likely to adversely affect* (“NLTAA”) either the Indiana Bat or the Northern Long-Eared Bat. MCRR recognizes that the STB, after consultation with the Service, customarily imposes mitigation prohibiting clearing of trees during the summer roosting season to protect snag tree habitat of the Indiana Bat and/or Northern Long-Eared Bat when such bat habitat may be impacted. To ensure no effect on these two species, MCRR proposes similar mitigation consisting of a window from May 1 to August 30 during which trees will not be cut, thereby protecting any potential habitat in which bats of these two species may roost during the summer months. This window will provide a reasonable two-week cushion on both ends of the summer survey guideline period. With this proposed mitigation, the project will have no effect on the listed bat species.

A summary chart of the listed species, status, effect, and reasoning for the determining is as follows:

Clams	Status	Effect	Reason
Pink Mucket	Endangered	NE	No in-stream or river work
Scaleshell Mussel	Endangered	NE	No in-stream or river work
Sheepnose Mussel	Endangered	NE	No in-stream or river work
Spectaclecase (mussel)	Endangered	NE	No in-stream or river work
Winged Mapleleaf	Endangered	NE	No in-stream or river work
Fishes			
Niangua Darter	Threatened	NE	No in-stream or river work
Pallid Sturgeon	Endangered	NE	No in-stream or river work
Topeka Shiner	Endangered	NE	No in-stream or river work
Flowering Plants			
Decurrent False Aster	Threatened	NE	No occurrences in project area
Mead’s Milkweed	Threatened	NE	Habitat not in project area
Running Buffalo Clover	Endangered	NE	Unlikely to occur in project area
Insects			
Hine’s Emerald Dragonfly	Endangered	NE	No occurrences in project area
Mammals			
Gray Bat	Endangered	NE	No caves will be impacted
Indiana Bat	Endangered	NLTAA	NE with proposed mitigation
Northern Long-Eared Bat	Proposed	NLTAA	NE with proposed mitigation

In conclusion, MCRR submits that it should be able to report to the STB’s environmental staff that consultation with the Service has occurred and that the abandonment project will have no effect on federally listed endangered or threatened species. MCRR intends to ask the STB to close the Section 7 consultation for this project. MCRR will implement the proposed mitigation by not cutting trees during the window between May 1 to August 30 to protect any potential



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habitat in which bats may roost during the summer months. We respectfully request the Service to confirm that this correspondence concludes the consultation under Section 7 for this project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra Brown".

Sandra L. Brown

Counsel for Missouri Central Railroad Company

cc: Diana Wood, Surface Transportation Board
Glennon Hof, MCRR/Ameren