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SERVICE DATE – AUGUST 12, 2013

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: August 9, 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 served July 8, 2013, the proceeding was reopened at the request of the Board's Office of Environmental Analysis (OEA) 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 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) MCRR shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning any salvage 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 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.

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

In a supplement to the final EA, OEA states that it received an e-mail from USFWS indicating that the proposed abandonment would have no effect on any federally listed endangered species based on a July 11, 2013 letter it received from MCRR, stating that the right-of-way contains habitat (four snag trees) for the Indiana bat, but that no listed endangered plant or animal species were found in the project area during a biological survey. OEA states that this no effect determination concludes the consultation process and recommends that the Section 7 consultation condition be removed.

OEA states that it received a letter from the Missouri Office of Administration stating that the Missouri Federal Assistance Clearinghouse in cooperation with state and local agencies has no comments concerning the proposed abandonment. OEA further states that it received a letter from the Missouri Department of Natural Resources (MDNR) listing a number of requirements that may apply to MCRR during the salvage process. Specifically, MDNR requests that: (1) all rails, ties, and track material be properly handled and disposed of during salvage operations; (2) any planned burning of vegetation require a permit; and (3) any land disturbance of one acre or more require a stormwater permit and possibly the implementation of best management practices. OEA states that MCRR has indicated that it would not be conducting any land disturbance activities during salvage operations, but OEA is not certain whether MDNR's other two concerns pertaining to waste handling/disposal and open air burning would apply. Accordingly, OEA recommends that prior to commencing any salvage activities MCRR shall consult with 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 shall comply with MDNR's reasonable requirements.

Consistent with OEA's recommendations, the previously imposed Section 7 condition will be removed and the additional consultation condition will be imposed.² Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

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 notice served and published in the Federal Register on June 7, 2013, exempting the abandonment of the line described above is subject to the new condition that, prior to commencing any salvage activities, MCRR shall consult with 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 shall comply with MDNR's reasonable

² Conditions 2 and 3, imposed in the July 8, 2013 decision, remain in effect.

requirements; and environmental condition no. 1 imposing the Section 7 consultation process is removed.

3. This decision is effective on its service date.

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