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SERVICE DATE – DECEMBER 27, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1068X

MISSOURI CENTRAL RAILROAD COMPANY—ABANDONMENT AND  
DISCONTINUANCE OF SERVICE EXEMPTION—IN CASS COUNTY, MO.

Decided: December 23, 2010

Missouri Central Railroad Company (MCRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 5.6-mile railroad line extending between milepost 257.283 (near Wingate) and milepost 262.906 (near Pleasant Hill) in Cass County, Mo. Notice of the exemption was served and published in the Federal Register on November 26, 2010 (75 Fed. Reg. 72,861). The exemption is scheduled to become effective on December 28, 2010.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 3, 2010. In the EA, OEA states that the Missouri Department of Natural Resources (MDNR) provided a number of comments regarding the proposed abandonment project. More specifically, MDNR states that the line is located within the Central Plains/Osage/South Grand Ecological Drainage Unit and crosses 2 sub-watersheds,<sup>1</sup> Headwaters Big Creek and Duncan Branch-Big Creek, and that Harrisonville City Lake is located approximately 2.8 miles southwest of the line. To address MDNR's concerns regarding water resources and the potential for stormwater and sediment runoff, OEA recommends that, prior to commencement of any salvage activities, MCRR shall be required to contact MDNR regarding removal and salvage methods and stormwater and sediment runoff mitigation practices that should be utilized during salvage activities. MDNR states that, if salvage activities would disturb an area greater than one acre, a Land Disturbance Permit should be acquired prior to any earthwork. Accordingly, OEA recommends that, prior to commencement of any salvage activities, MCRR shall be required to consult with MDNR's Kansas City Regional Office regarding its Land Disturbance Permits and comply with its reasonable requirements.

MDNR points out that there are 2 wells located within 0.15 miles of the line and MDNR requests that MCRR contact its Public Drinking Water Branch if the proposed abandonment would impact those wells or if additional wells are discovered during salvage activities. OEA recommends that, in the event that any springs or streams are discovered, MDNR shall be required to immediately cease all work, notify OEA and MDNR's Public Drinking Water Branch

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<sup>1</sup> A sub-watershed is a smaller basin within a larger drainage area, where all of the surface water drains to a central point of the larger watershed.

of the discovery, and consult with OEA and MDNR to determine whether mitigation is necessary. MDNR also states that palustrine forested wetlands, palustrine emergent wetlands, and palustrine scrub-shrub wetlands potentially exist in the area of the proposed project, near and along Big Creek and its tributaries. MDNR states that any wetlands adjoining the right-of-way should not be disturbed, and if wetlands exist on the right-of-way, care should be taken to avoid or minimize any impacts through alternatives analyses before compensatory mitigation is considered. Therefore, OEA recommends that, prior to commencement of any salvage activities, MCRR shall be required to consult with the United States Army Corps of Engineers' Kansas City District (Corps) regarding potential impacts to waters of the United States, including wetlands, and, if applicable, shall comply with the reasonable requirements of the Corps.

Additionally, OEA states in the EA that MCRR has submitted its historic report to the State Historic Preservation Office (SHPO) as required by 49 C.F.R. § 1105.8. OEA states that the line is part of the former Rock Island Line and that there are 4 bridges and 4 culverts on the line that are 50 years old or older. Based on available information, the SHPO submitted comments stating that the rail corridor, bridges, and culverts are eligible for inclusion in the National Register of Historic Places (National Register). Accordingly, OEA has recommended a condition in the EA that MCRR be required 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) that are eligible for listing or are listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), has been completed; that MCRR be required to report back to OEA regarding any consultations with the SHPO, federally recognized tribes, or the public, and that MCRR not be allowed to 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 this condition.

Pursuant to 36 C.F.R. § 800.2, OEA notes that it conducted a search of the Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area. According to OEA, the database indicated that the following tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way for the proposed abandonment: 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. Accordingly, OEA states in the EA that it was sending a copy of the EA to these tribes for review and comment.

No comments were received by the December 20, 2010 due date. Accordingly, the conditions recommended by OEA in the EA will be imposed.

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On November 9, 2010, MDNR filed a request

for the issuance of a notice of interim trail use (NITU) for the entire 5.6-mile line of railroad to negotiate with MCRR for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. MDNR has also submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required under 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on December 17, 2010, MCRR confirms its willingness to negotiate with MDNR for interim trail use.

Because MDNR's request complies with the requirements of 49 C.F.R. § 1152.29, and MCRR is willing to negotiate with MDNR for trail use, a NITU will be issued to MDNR. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, MCRR may fully abandon the line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

MDNR also has requested the imposition of a public use condition under 49 U.S.C. § 10905 for the line. MDNR requests that MCRR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that MDNR be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. MDNR states that the 180-day period is needed to prepare a trails plan and to negotiate with MCRR on the terms and conditions of interim trail use.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because MDNR has satisfied these requirements, 180-day a public use condition will be imposed, requiring MCRR to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts and tunnels) and to refrain from disposing of

the corridor (other than tracks, ties, and signal equipment), commencing from the December 28, 2010 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use will expire on June 26, 2011, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until June 25, 2011). If a trail use agreement is reached on a portion of the right-of-way prior to June 26, 2011, MCRR must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, MCRR is not required to deal exclusively with MDNR, but may engage in negotiations with other interested persons.

As conditioned, this decision and notice 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 November 26, 2010, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit MDNR to negotiate with MCRR for trail use for a period of 180 days from the service date of this decision and notice (until June 25, 2011); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the December 28, 2010 effective date of the exemption (until June 26, 2011). It is also subject to the conditions that MCRR shall: (1) prior to commencement of any salvage activities, contact MDNR regarding removal and salvage methods and stormwater and sediment runoff mitigation practices to be utilized during salvage activities; (2) prior to commencement of any salvage activities, consult with MDNR's Kansas City Regional Office regarding its Land Disturbance Permits and comply with its reasonable requirements, if salvage activities would disturb an area greater than one acre; (3) in the event that any springs or streams are discovered, immediately cease all salvage activities, notify OEA and MDNR's Public Drinking Water Branch of the discovery, and consult with OEA and MDNR to determine whether mitigation is necessary; (4) prior to commencement of any salvage activities, consult with the United States Army Corps of Engineers' Kansas City District (Corps) regarding potential impacts to waters of the United States, including wetlands, and, if applicable, comply with the reasonable requirements of the Corps; and (5) 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) that are eligible for

listing or are listed in the National Register until the Section 106 process of the NHPA has been completed, report back to OEA regarding any consultations with the SHPO, federally recognized tribes, or the public, and 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 this condition.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, MCRR may discontinue service over the line. MCRR shall keep intact the right-of-way, including potential trail-related structures, such as bridges, trestles, culverts and tunnels, and shall refrain from disposing of the corridor (other than the tracks, ties, and signal equipment), for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the line.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the owner against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by June 25, 2011, interim trail use may be implemented. If no agreement is reached by that time, MCRR may fully abandon the line, after the conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

8. This decision and notice is effective on its date of service.

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