

SURFACE TRANSPORTATION BOARD

DECISION

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, MO.

Decided: February 19, 2016

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 144.3 miles of rail line in two segments: (1) between mileposts 263.5 and 262.906 near Pleasant Hill, in Cass County, Mo.; and (2) between milepost 215.325 near Windsor, in Pettis County, Mo., and milepost 71.6 near Beaufort, in Franklin County, Mo.¹ MCRR made the necessary certifications, including that no local traffic had moved over the line for at least two years, and notice of the exemption was served and published in the Federal Register on December 8, 2014 (79 Fed. Reg. 72,757). The exemption became effective on January 7, 2015.

On February 26, 2015, the Board issued a decision and notice of interim trail use (NITU), permitting the Missouri Department of Natural Resources (MDNR) to negotiate with BNSF for interim trail use and imposing a public use condition. The time to negotiate interim trail use was extended to February 21, 2016, in a decision served on August 10, 2015.

On January 27, 2016, MDNR and MCRR jointly filed a request to extend the NITU negotiating period until December 31, 2017. The parties state that they intend to wait until salvage is finished before completing the interim trail use agreement and executing the property transfer, due to MCRR's various salvage-related obligations under the environmental conditions and the Section 106 Memorandum of Agreement pursuant to the National Historic Preservation Act.² Salvage began in late 2015 and is tentatively expected to be completed in late 2017. The parties note that the request exceeds the traditional 180-day extension that the Board typically grants.

¹ The notice that was served and published embraced Central Midland Ry.—Discontinuance of Service Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, & Franklin Cty.s., Mo., Docket No. AB 1070 (Sub-No. 3X).

² In a series of decisions, the Board imposed and removed various environmental and historic conditions. Pursuant to the decision served September 23, 2015, the U.S. Fish and Wildlife Service's temporal restriction on tree clearing and cutting and the condition pertaining to cultural materials remain in effect.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the Board retains jurisdiction and may extend the NITU negotiating periods.³ Under the circumstances, further extension of the negotiating periods is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996).

The requested extension, however, will be granted only in part. The Board has granted requests for extensions of time longer than 180 days, at times as long as a year See, e.g., CSX Transp.—Aban. Exemption—in Jefferson Cty., Ala., AB 55 (Sub-No. 613X) (STB served March 5, 2015) (granting a one-year extension). Here, the Board will grant an extension exceeding the typical 180-day period but limited to one year. The Board recognizes that the parties currently anticipate that salvage will continue until the latter part of 2017 and that trail use negotiations will not conclude until that time. The parties, however, may file a request with the Board at the end of this one-year extension providing an update on the status of salvage and trail use negotiations and seeking a further extension of the negotiating period as necessary. Accordingly, the NITU negotiating period will be extended for one year, until February 21, 2017.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. MDNR's and MCRR's request to extend the NITU negotiating period is granted in part.
2. The negotiating period under the NITU is extended until February 21, 2017.
3. This decision is effective on its service date.

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

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).