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SERVICE DATE – FEBRUARY 26, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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.

Digest:<sup>1</sup> The Board denies requests for a stay and for public hearings, and imposes interim trail use and public use conditions because the statutory requirements to invoke the Trails Act and the public use provisions have been met.

Decided: February 25, 2015

BACKGROUND

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.<sup>2</sup> 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 Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 12, 2014, concluding, based on the information provided in the Environmental and Historic Reports required by the Board's environmental rules at 49 C.F.R. 1105.7 and 1105.8, and OEA's independent analysis, that the proposed abandonment would not significantly affect the quality of the human environment. In the EA, OEA recommended four environmental conditions. These conditions would require MCRR to:

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> 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 Cntys., Mo., Docket No. AB 1070 (Sub-No. 3X)

(1) consult with the U.S. Army Corps of Engineers (Corps) prior to initiating salvage, and comply with the reasonable requirements of the Corps; (2) consult with the U.S. Environmental Protection Agency (EPA) or the Missouri Department of Natural Resources, whichever has delegated authority to administer the federal National Pollution Discharge Elimination System (NPDES) Program, prior to initiating salvage, and comply with the reasonable NPDES requirements; (3) contact the U.S. Fish and Wildlife Service (USFWS) prior to beginning salvage, and consult with OEA and USFWS to develop appropriate mitigation measures if potential impacts are identified; and (4) retain its interest and take no steps to alter the historic integrity of all historic properties until completion of the Section 106 process of the National Historic Preservation Act. In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line segments.

On December 17, 2014, the Missouri Department of Natural Resources (MDNR) filed a request for the issuance of a notice of interim trail use (NITU) to provide time to negotiate with MCRR for acquisition of the right-of-way for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29(a), MDNR submitted a statement of its willingness to assume financial responsibility for the right-of-way, and acknowledged that the use of the right-of-way for trail purposes would be subject to possible future reconstruction and reactivation of the segments of the right-of-way for rail service. By response filed on the same date, MCRR indicated its willingness to negotiate with MDNR for interim trail use.

MDNR also requested imposition of a public use condition under 49 U.S.C. § 10905. In that request, MDNR asks that MCRR be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that MCRR 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 authorization. In support of this request, MDNR argues that these structures have considerable value for recreational trail purposes. MDNR also states that the 180-day period is needed to complete a trail plan and begin negotiations with MCRR.

Also on December 17, 2014, the Missouri Farm Bureau Federation (MFB), a farm membership organization, submitted comments in opposition to converting the right-of-way into a recreational trail.<sup>3</sup> MFB states that its preference would be to keep this right-of-way in active rail use. MFB contends that a recreational trail would be disruptive to adjoining farm operations and raises concerns that, if existing crossings and access points were closed or restricted, crop and livestock production on both sides of the corridor would be impeded. MFB also points to potential biosecurity risks that could result from public access to the right-of-way if there is interim trail use here. Additionally, MFB requested that the Board ensure that the matters identified in the EA, upon which the Corps, EPA, and the Fish and Wildlife Service had not yet commented, be addressed before the exemption became effective and before interim trail use is authorized. MFB requests that the Board conduct public hearings along the corridor in order to

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<sup>3</sup> MFB also asked for changes to the Trails Act itself, but only Congress, not the Board, could act on such a request.

allow affected parties an opportunity to have their views heard. MFB states that the need for the Board and local citizens to obtain additional information warrants a stay to allow time for further review and comments by all concerned parties. Further, if a stay is not granted, MFB requests that the Board not grant the public use and NITU requests until OEA has received all information requested in the EA. On December 17, 2014, the Board also received a letter regarding this proceeding from United States Representative Vicky Hartzler.

MCRR filed a letter in response to MFB on December 22, 2014, arguing that the State of Missouri's intent to convert these segments into a trail under the Trails Act would be the ideal way to preserve this corridor for potential future rail use that could support future growth in agriculture and the local economy.<sup>4</sup> MCRR maintains that MFB's environmental concerns have been appropriately addressed as part of OEA's environmental review and recommended conditions. MCRR further argues that there is no need or justification for public hearings or a stay. On January 9, 2015, the Missouri Bicycle and Pedestrian Federation and Missouri Rock Island Trail, Inc. filed statements of support for interim trail use under the Trails Act. Rails-to-Trails Conservancy filed a letter on January 12, 2015, in support of MDNR's request for a NITU and in opposition to MFB's request for a stay.<sup>5</sup>

On January 5, 2015, OEA issued a Final EA concluding that the proposed abandonment would have no potential for significant environmental impacts if the conditions recommended by OEA were imposed. On January 6, 2015, the Board, through the Director of the Office of Proceedings, issued a decision adopting all of OEA's analysis and conclusions and imposing the four environmental conditions recommended by OEA in the Final EA.<sup>6</sup> In that decision, the Board stated that, to the extent that MFB's stay request was directed at the exemption, the Board would permit the notice to become effective. The Board explained that, because a Section 106 condition would be imposed, MCRR would be prohibited from beginning any salvage activities (including removing any tracks or ties), or consummating the abandonment until the historic review process is complete and the Board has removed that condition. The decision also stated that the Board would address MFB's remaining requests, including its stay request, and the

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<sup>4</sup> OEA states that the trail would be an extension of a trail currently being developed on (1) a 5.6-mile portion of MCRR's right-of-way between mileposts 262.906 and 257.283, and (2) a 42-mile portion between mileposts 257.283 and 215.325. Both of these segments were previously authorized for abandonment and interim trail use by the Board. Mo. Cent. R.R.—Aban. Exemption—in Cass Cnty., Mo., AB 1068X (STB served Nov. 26, 2010); Mo. Cent. R.R.—Aban. Exemption in Cass, Henry, Johnson, & Pettis Cntys., Mo., AB 1068 (Sub-No. 1X) (STB served June 7, 2013).

<sup>5</sup> In a letter dated February 12, 2015, MFB renewed its request for public hearings and asked the Board to consider whether viable offers by potential operators have been made. MCRR responded in a letter dated February 19, 2015. Under 49 C.F.R. § 1152.27(c)(2), formal expressions of intent to file an offer of financial assistance (OFA) were due no later than 10 days after the Federal Register publication of the notice of exemption. The deadline for an OFA filing in this case was December 18, 2014. The Board has not received a formal expression of intent to file an OFA under § 1152.27(c)(2).

<sup>6</sup> A corrected decision was served on January 7, 2015.

requests for trail use and public use conditions in a subsequent decision. The abandonment exemption became effective on January 7, 2015.

## DISCUSSION AND CONCLUSIONS

In this decision, the Board denies MFB's stay request and imposes trail use and public use conditions because the statutory requirements to invoke the Trails Act and the public use provisions have been met.

MFB suggests that a stay of the abandonment is warranted because additional environmental review of the proposed abandonment is required. However, all required and appropriate environmental review has been conducted. The EA and Final EA took the requisite hard look at potential environmental impacts of the proposed abandonment required by the National Environmental Policy Act (NEPA). See Iowa S. R.R.—Exemption—Aban. In Pottawattamie, Mills, Fremont & Page Cntys., Iowa, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990) (environmental review in abandonment cases is limited to the diversion of traffic to other rail lines or transportation modes and the consequences of removing the track and related structures). The Board does not conduct an environmental review of potential conversion to interim trail use/rail banking, because the Board does not exercise sufficient federal control over trail use proposals under 16 U.S.C. § 1247(d) to qualify as a “major federal action” under NEPA. See Goos. MCRR submitted the Environmental and Historic Report required by the Board's environmental rules, and, as the Final EA explains, all appropriate agencies, including those cited by MFB, were contacted and notified of the opportunity to comment on the Environmental and Historic Report. Agencies and the general public also had the opportunity to comment on the EA. The fact that particular agencies declined to comment does not mean that the environmental review process is not complete. Furthermore, OEA's final recommended conditions, which the Board imposed, specifically require MCRR to consult with the agencies cited by MFB, including the Corps, EPA, and USFWS.

MFB also requests public hearings in the project area. The Board's regulations do not require public hearings on proposed abandonments or trail use and public use requests, and the agency has only occasionally held public hearings on proposed abandonments. As noted, the statutory requirements to invoke the Trails Act and the public use provisions have been met. As such, a Board hearing is not necessary.

With respect to MFB's concerns related to the requests for a NITU, the Board's regulations provide that to invoke the Trails Act, a prospective trail sponsor must file a request with the Board accompanied by a statement of willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 C.F.R. §§ 1152.29(a), (d). If the railroad indicates its willingness to negotiate a rail banking/interim trail use agreement, the Board will issue a NITU. See Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702, slip op. at 3-5 (STB served Apr. 30, 2012); see also 16 U.S.C. § 1247(d) (requiring the Board to “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment where a trail sponsor offers to assume responsibility for a right-of-way for use in the interim as a trail.);

Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001); Goos, 911 F.2d at 1295.

Accordingly, because MDNR's request complies with the requirements of 49 C.F.R. § 1152.29 and MCRR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. §§ 1152.29(d)(2), (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702. If no agreement is reached within 180 days, MCRR may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

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, 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. 49 C.F.R. § 1152.28(a)(2). Because MDNR has satisfied these requirements, a 180-day 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 segment of the corridor (other than tracks, ties, and signal equipment), commencing from the January 7, 2015 effective date of the exemption, until July 6, 2015.

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 trail use and public use conditions will be imposed at this time, the public use condition will expire on July 6, 2015, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until August 25, 2015. If a trail use agreement is reached on a portion of the right-of-way prior to July 6, 2015, MCRR must keep the remaining segment of the right-of-way intact for the remainder of the 180-day public use condition 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.

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

It is ordered:

1. MFB's requests for a stay and for public hearings are denied.
2. The notice served and published in the Federal Register on December 8, 2014, exempting the abandonment of the line segments described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit MDNR to negotiate with MCRR for trail use for the above-described segments of the right-of-way, for a period of 180 days from the service date of this decision and notice, until August 25, 2015, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the January 7, 2015 effective date of the exemption, until July 6, 2015.
3. Consistent with the public use and interim trail use/rail banking conditions imposed on the above-described segments of the right-of-way in this decision and notice, MCRR may discontinue service and salvage track and related materials. MCRR shall otherwise keep intact the segments of the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days until July 6, 2015, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the segments of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the segments of the right-of-way; (ii) any legal liability arising out of the transfer or use of the segments of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the segments of the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the segments of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the segments of the right-of-way described in ordering paragraph 5 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the segments of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by August 25, 2015, for the segments of the right-of-way, interim trail use may be implemented. If no agreement is reached, MCRR may fully abandon the line segment.

9. This decision and notice is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.