

SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS

#EO-2450

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 1068 (SUB-NO. 3X) AND
DOCKET NO. AB 1070 (SUB-NO. 3X)

January 5, 2015

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, the Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) (collectively, Applicants) filed a notice under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon and for CMR to discontinue service and operating rights over an approximately 144.3-mile rail line in two segments in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri. The Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on December 12, 2014 for public review and comment with comments due on January 2, 2015. In the EA, OEA recommended four environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments

OEA received one environmental comment letter during the 15-day comment period regarding the proposed abandonment and discontinuance of service. In addition, the Surface Transportation Board's (Board) Office of Proceedings received a letter during the comment period that references a number of environmental concerns. Both letters (see attached) are from the Missouri Farm Bureau Federation (MFBF), and are discussed in detail below.

MFBF states that the Missouri Natural Resources Conservation Service (MNRCS) has identified sections of prime farmland acreage adjacent to the rail corridor that MFBF believes could be adversely impacted during salvage operations or any post abandonment activities if the land is disturbed by the creation of new access roads or drained in any manner. Additionally, MFBF opposes any possible rail-to-trail conversion because it believes that farmers' access to numerous roads currently used to cross the right-of-way would be restricted, and further asserts that established farm biosecurity practices currently in place, such as those used in dairy

production, could be compromised by trail users.

MFBF recommends that the Board follow a number of protocols or best practices when reviewing rail line abandonments with the potential for trail conversions, and requests that the Board stay the comment period to allow key agencies, such as the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), and the U.S. Fish and Wildlife Service (USFWS), additional time to comment on the proposed abandonment and discontinuance of service. Finally, MFBF urges the Board to conduct public hearings at locations along the rail corridor to hear oral comments from persons affected by the proceeding. OEA has addressed the comments MFBF directs toward the EA and the environmental review process in this proceeding. MFBF's recommendations to the Board are more appropriately addressed by the Board itself in the final decision in this case.

While MFBF's two letters were the only environmental comments received during the comment period, OEA notes that two letters in support of a possible trail conversion were filed with the Board. The Missouri Department of Natural Resources (MDNR) filed comments requesting that the Board impose a public use condition and a trail use condition in this proceeding. Applicant MCRR commented that it supports a public use condition and a trail use condition and is interested in entering into negotiations with MDNR to rail bank the rail line. As discussed in the EA, this line would connect two rail line segments previously filed for abandonment and discontinuance that have become a trail or are in the process of becoming a trail under the Trails Act: AB 1068X and AB 1070X; and AB 1068 (Sub-No. 1X) and AB 1070 (Sub-No. 1X).

Response to MFBF's Comments

The National Environmental Policy Act (NEPA) requires federal agencies to take into account the potential environmental impacts of their discretionary decision-making. NEPA applies only to "major federal actions." 42 U.S.C. § 4332(2)(C)(1994). In other words, NEPA does not apply to situations in which agencies lack the ability to exercise discretion.

It is well established that OEA's responsibility in preparing an EA in a rail abandonment proposal is to assess the potential environmental impacts of diverting train traffic to other rail lines or other modes and salvage of the track and rail-related appurtenances on the rail line.¹ With regard to MCRR's salvage operations and the potential for prime farmland disturbance, the EA noted that MCRR's salvage would involve removing the rail, steel track materials, and ties only. MCRR has no plans to remove or alter the contour of the existing roadbed or drainage patterns, or undertake in-stream work or dredge and/or use fill materials.

In terms of access, the attached January 5, 2015 email from MCRR's legal counsel indicates that MCRR's salvage activities would be conducted primarily using existing grade crossing access. If a temporary access point outside of the existing access roads is needed during salvage, MCRR has stated that it would require its salvage contractor to seek permission from the affected landowner. MCRR's temporary salvage work does not encompass trail construction, which is a separate action that would happen after salvage is completed.

¹ See Iowa Southern R. Co. – Exemption – Abandonment, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

OEA's analysis does not extend to the subsequent reuse of the rail line as a trail because the Board does not exercise sufficient discretion when imposing interim rail use/railbanking conditions to qualify those actions as a "major federal action" under NEPA. Such decisions are essentially ministerial under the terms of the Trails Act. Therefore, OEA does not conduct an environmental review of a potential conversion of a rail line to a trail because the Board's authority to impose trail use conditions is limited in scope and largely ministerial under the Trails Act.

With regard to MFBF's request to stay the abandonment proceeding in order to hear from other key environmental agencies, OEA notes that all the appropriate agencies, including those cited by MFBF, were sent an environmental and historic report for their review and comment prepared by the applicant at least 20 days before the abandonment proceeding was filed at the Board. These reports described the proposed abandonment and discontinuance and the potential environmental effects (salvage of the rail line) that would be likely to occur should the Board approve the abandonment and discontinuance. All of these agencies, as well as NRCS, were on the service list when the EA was issued on December 12, 2014. And even though these agencies have not submitted comments for consideration in this Final EA, OEA has recommended conditions to the Board that would require MCRR to consult with the Corps, EPA, USFWS, and MDNR (see Environmental Conditions 1 through 4 recommended in the EA).

In addition, OEA notes that Environmental Condition 4 recommended in the EA effectively stays the abandonment process because it precludes MCRR from filing its consummation notice or initiating 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.

OEA has determined that no further action with regard to MFBF's comments is needed, and concludes that if the conditions below are imposed, the proposed action would not significantly affect the quality of the human environment.

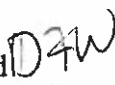
Conclusion

The EA comment period has ended. Accordingly, OEA recommends that the four conditions recommended in the EA should be imposed upon any decision granting abandonment authority. The conditions are:

1. Prior to commencement of any salvage activities, the Missouri Central Railroad Company (MCRR) shall consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements and, if applicable, shall comply with the reasonable requirements of the Corps.
2. To ensure appropriate consideration of the National Pollution Discharge Elimination System (NPDES) requirements, MCRR shall consult with U.S. Environmental Protection Agency or the Missouri Department of Natural Resources (whichever agency is authorized to administer the NPDES program) prior to commencement of any salvage activities and shall comply with the reasonable NPDES requirements.

3. MCRR shall contact the U.S. Fish and Wildlife Service (USFWS) prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species. MCRR shall report the results of this consultation to the Board's Office of Environmental Analysis (OEA) in writing. Should any potential impacts be identified, MCRR shall consult with OEA and USFWS to develop appropriate mitigation measures prior to initiating the salvage process.
4. 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 (the Area of Potential Effect) 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. MCRR shall report back to OEA regarding any consultations with the State Historic Preservation Office and the public. 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 this condition.

OEA CONTACT:

Diana Wood 
202-245-0302
woodd@stb.dot.gov

Distribution:

Office of Proceedings
OEA Chron
ECT

EL-20733



237260

237261

MISSOURI FARM BUREAU FEDERATION

P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893-1400

December 17, 2014

Ms. Rachel Campbell, Director
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
December 17, 2014
Part of
Public Record

RE: Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri; and Docket No. AB 1070 (Sub-No. 3X) Central Midland Railway Company—Discontinuance of Service and Operating Rights Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri

Dear Ms. Campbell:

On behalf of Missouri Farm Bureau, the state's largest general farm membership organization, I submit the following comments in response to the Notice of Abandonment Exemption (FR Doc. 2014-28658) pertaining to the dockets referenced above.

Many landowners whose property the existing rail corridor traverses are among those who oppose the anticipated conversion of the Rock Island rail line to interim trail use. Missouri Farm Bureau also opposes converting this line to a recreational trail. Our organization's policy position in this regard was modified during our annual meeting last week by members representing county Farm Bureaus statewide to read as follows:

We favor keeping the old Rock Island Line from Owensville to Kansas City as a railroad, because railroads are vital to agriculture and the economy of rural communities and are a far better choice than the tax burden of building and maintaining a trail. We oppose any effort to create a recreational trail. If efforts to stop the conversion of the rail corridor to a recreational trail fail, then we oppose state or federal taxpayer funding for conversion and maintenance of such a trail.

In terms of both numbers of affected landowners and impact on individual landowners, we believe a recreational trail would be extraordinarily disruptive to adjoining farm operations. Many of these farmers and ranchers have had full access to the corridor for many years. If existing crossings and other access points were closed or restricted, as is typical for a recreational trail, crop and livestock production on both sides of the corridor would be impeded.

Because the rail corridor essentially spans the width of the state crossing through predominately agricultural areas, biosecurity is a major concern. Exposing adjacent farms and ranches to public access poses a biosecurity risk that merits thorough evaluation before abandonment and interim trail use proceedings advance further. Dairy farms, for example, are subject to strict protocols to ensure the safety of milk produced at these facilities. The risk of increased exposure associated with public access would be likely to result in dairy farmers choosing to take additional security precautions either of their own accord or under terms dictated by processors, or in some cases, choosing to discontinue their operations. Moreover, if a biosecurity breach were to occur, clearly the human health impact could be significant.

Missouri Farm Bureau's policy position regarding the rails-to-trails conversion process under the National Trails Systems Act was also modified last week during our annual meeting to read as follows (emphasis added):

If not repealed altogether, we believe that the National Trails System Act should be amended as follows:

- 1. Allow only those abandoned railroad rights-of-way which have a realistic probability of being used again someday for a railroad be approved for interim use as recreational trails;*
- 2. Require the state or other trail sponsor which receives certification for interim trail use of an abandoned railroad be held responsible for fencing, taxes, maintenance of the right-of-way, and other such costs which were required of the railroad and also be responsible for compensating the owners of the right-of-way for use of the property easement;*
- 3. Require railroads to notify individual affected landowners in advance of proposed abandonment;*
- 4. Require railroads to disclose to individual affected landowners the legal status of its occupancy of their tract of property;*
- 5. Provide for automatic compensation to landowners whose property is taken as a result of railbanking;*
- 6. Require a public comment period prior to certification or notification for interim trail use;*
- 7. Require that the Surface Transportation Board evaluate and report specific findings regarding the suitability of the corridor for interim trail use prior to certification or notification for interim trail use, including safety, health, security, privacy, biosecurity and food security and the economic interests of adjacent landowners; and*
- 8. Require approval by the local governing bodies in affected communities and counties as a condition for eligibility before railbanking can be authorized.*

The Environmental Assessment (Decision 44129) prepared by the Surface Transportation Board's Office of Environmental Analysis (OEA) cites the lack of input provided to date by several federal, state and local agencies, most notably, the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Department of Agriculture's Natural Resource Conservation Service, and U.S. Fish and Wildlife Service. Conditions recommended by the OEA to be imposed on any decision granting abandonment authority reflect potentially

significant matters as yet unaddressed by these agencies as noted in the "Environmental Review" and "Historic Review" sections of the Assessment.

In short, the scope of the potential impact of this proposed rail line abandonment and anticipated conversion to interim trail use relative to the environment, human health, economic interests, and public safety remains largely unknown. We urge the Surface Transportation Board to ensure that the matters identified in the Environmental Assessment on which information is lacking be addressed before the exemption becomes effective and interim trail use is authorized.

Furthermore, we urge the Surface Transportation Board to conduct public hearings at locations along the rail corridor for the purpose of promoting transparency by providing an opportunity for those most directly affected to learn firsthand about this proceeding and have their views heard by representatives of the government agency that is conducting this proceeding. We respectfully suggest that the need for information by both the Board and local citizens warrants granting a stay to allow time for further review and comment by all concerned. Finally, if a stay is not granted, we request that neither a Public Use Condition nor Interim Trail Use Condition be issued until the matters referenced previously are addressed.

Thank you for your consideration. If we can be of assistance in the Board's deliberations, please do not hesitate to contact my office.

Sincerely,



Blake Hurst
President

cc: U.S. Senator Roy Blunt
U.S. Senator Claire McCaskill
Governor Jay Nixon
Congresswoman Vicky Hartzler
Congressman Blaine Luetkemeyer
State Senator Mike Kehoe
State Senator Mike Parson
State Senator-Elect Dave Schatz
State Representative Wanda Brown
State Representative Tom Hurst
State Representative David Wood
County Commissioners
J.R. Flores, State Conservationist, Natural Resources Conservation Service
Sara Parker Pauley, Director, Missouri Department of Natural Resources
Richard Fordyce, Director, Missouri Department of Agriculture

CERTIFICATE OF SERVICE

I certify that I have this 17th day of December, 2014, served copies of Missouri Farm Bureau's filing regarding Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri upon all known parties of record in this proceeding by first-class mail or a more expeditious method.

A handwritten signature in cursive script that reads "Leslie Holloway".

Leslie Holloway

**MISSOURI FARM BUREAU FEDERATION**

P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893-1400

December 29, 2014

Ms. Diana Wood
Surface Transportation Board, Case Control Unit
395 E Street, SW
Washington, D.C. 20423

RE: Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri; and Docket No. AB 1070 (Sub-No. 3X) Central Midland Railway Company—Discontinuance of Service and Operating Rights Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri

Dear Ms. Wood:

On behalf of Missouri Farm Bureau, the state's largest general farm organization, I submit the following comments regarding the Environmental Assessment (Decision ID 44129) pertaining to the docket referenced above.

We submit for the Board's consideration the fact that prime farmland acreage adjoining the rail corridor could be significantly adversely impacted by the proposed abandonment and post-abandonment activities. According to information compiled by the Missouri Natural Resources Conservation Service, acreage designated as "prime farmland" or "prime if drained" adjoins sections of the corridor.

In comments submitted previously (Decision ID 237260 and 237261), we noted that if the corridor were converted to a recreational trail, many farms and ranches would be adversely impacted. Our concerns encompass not only the impact on prime farmland but on other productive farmland, including pasture operations. In addition to risks relative to access to the corridor and biosecurity, we are concerned that adjoining farmland will be adversely impacted by activities associated with salvage activities and trail construction and maintenance. If new access points are installed to accommodate salvage activities, increased farmland acreage could be adversely affected and more farming operations could be disrupted. Moreover, increased exposure to trespass and other unauthorized entry poses long-term risk to adjoining farms and ranches.

The Environmental Assessment notes the lack of input from several federal, state and local agencies, most notably, the U.S. Army Corps of Engineers, U.S. Environmental Protection

Page 2 of 2

Agency, U.S. Department of Agriculture's Natural Resource Conservation Service, and U.S. Fish and Wildlife Service. Conditions recommended by the Office of Environmental Analysis to be imposed on any decision granting abandonment authority reflect potentially significant matters as yet unaddressed by these agencies as noted in the "Environmental Review" and "Historic Review" sections of the Assessment.

We again urge the Surface Transportation Board to ensure that the matters identified in the Assessment on which information is lacking be addressed before the exemption becomes effective and interim trail use is authorized. If a stay is not granted, we request that neither a Public Use Condition nor Interim Trail Use Condition be issued until the matters referenced previously are addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Hurst". The signature is fluid and cursive, with the first name "Blake" and last name "Hurst" clearly distinguishable.

Blake Hurst
President

E1-20878



RE: AB 1068 3X VERY Important Question

Brown, Sandra

to:

Diana.Wood@stb.dot.gov, Benz, David

01/05/2015 10:18 AM

Cc:

"Vicki.Rutson@stb.dot.gov"

Hide Details

From: "Brown, Sandra" <Sandra.Brown@thompsonhine.com>

To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>, "Benz, David"

<David.Benz@thompsonhine.com>

Cc: "Vicki.Rutson@stb.dot.gov" <Vicki.Rutson@stb.dot.gov>

Diana,

Thank you for forwarding the new letter from the Farm Bureau. The following is MCRR's response.

MCRR's salvage activities will be conducted primarily using existing grade crossing access. If a temporary access point is needed during salvage that is outside of the existing access roads, MCRR will require its salvage contractor to seek permission from the affected landowner. As the Board is aware, MCRR's temporary salvage work does not encompass trail construction which is a separate action that would happen after salvage is completed.

Please let me know if you have any questions.

Regards, Sandy

Sandra L. Brown | Partner | Thompson Hine LLP

1919 M Street, N.W., Suite 700 | Washington, DC 20036-1600

Office: 202.263.4101 | Mobile: 202.841.0067

Fax: 202.331.8330 | Email: Sandy.Brown@ThompsonHine.com

Web: <http://www.ThompsonHine.com>

Ranked a top-tier firm nationally for transportation law by *Chambers USA: America's Leading Lawyers for Business* and by U.S. News Media Group/Best Lawyers.

Atlanta | Cincinnati | Cleveland | Columbus | Dayton | New York | Washington, D.C.

**THOMPSON
HINE**

From: Diana.Wood@stb.dot.gov [<mailto:Diana.Wood@stb.dot.gov>]

Sent: Monday, January 05, 2015 8:49 AM

To: Brown, Sandra; Benz, David

Cc: Vicki.Rutson@stb.dot.gov

Subject: AB 1068 3X VERY Important Question

Sandy:

I received another comment letter (e-filed to me) from MFBF (see attached). Can you confirm that MCRR will not be creating any new access roads during salvage operations? I need to include their new concerns in the Final EA and need a response from you this morning.

Thanks

Diana

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)