



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 29, 2015

Najah Duvall-Gabriel, Historic Preservation Specialist
Advisory Council on Historic Preservation
Federal Permitting, Licensing and Assistance Section
401 F Street, NW, Suite 308
Washington, DC 20001-2637

Re: STB 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, Mo.

STB 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, Mo.; Federally Recognized Tribe Addition to Executed MOA

Dear Ms. Duvall-Gabriel:

The Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) 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 MCRR and 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.¹ The Surface Transportation Board's (Board) approval of this abandonment

¹ The State of Missouri is interested in preserving the corridor by establishing a trail on the right-of-way, pursuant to the National Trails System Act at 16 U.S.C. § 1247(d). The trail would be a separate action by the State and would be an extension of a trail currently being developed on the 5.6-mile portion of the MCRR right-of-way between milepost 262.906 and milepost 257.283, and the 42-mile portion between milepost 257.283 and milepost 215.325. Both line segments were previously proposed for abandonment.

and discontinuance of service is considered an undertaking under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (NHPA) and is thus covered under its provisions. The Board's Office of Environmental Analysis (OEA) is responsible for ensuring the agency's compliance with the National Environmental Policy Act (NEPA) and NHPA.

I am writing to notify you that we have updated the attached Memorandum of Agreement (MOA) that was executed on June 1, 2015 with the Missouri State Historic Preservation Office and the Missouri Central Railroad Company, and the Missouri Department of Natural Resources' Division of State Parks as an invited signatory and the City of Stover as a concurring party to include the Osage Nation as a concurring party due to their ancestral connections to the project area (see attached October 26, 2015 letter to the Osage Nation with project timeline and corresponding email thread, as well as the Osage Nation's October 5, 2015 letter). Accordingly, we have included the Osage Nation in the attached MOA as a concurring party. Aside from the addition of the Osage Nation as a concurring party, the MOA remains unchanged from the June 4, 2015 submission date to your office.

If you have any questions, require additional information regarding this proceeding, or have any concerns, please do not hesitate to contact me by telephone at 202-245-0302, or by email at woodd@stb.dot.gov.

Sincerely,



Diana Wood
Environmental Project Manager
Office of Environmental Analysis

Attachments

cc: Judith Deel, Missouri SHPO (SHPO Log # 003-MLT-15)
Sandra Brown, Thompson Hine LLP
Mary Bryan, DNR/DSP
Sharon Fry, City of Stover
Andrea Hunter, Osage Nation

MEMORANDUM OF AGREEMENT

Among

**THE SURFACE TRANSPORTATION BOARD,
MISSOURI CENTRAL RAILROAD COMPANY,
MISSOURI STATE HISTORIC PRESERVATION OFFICE, and
MISSOURI DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF STATE PARKS
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Regarding

**STB 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**

Whereas, on November 18, 2014, Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon, and for MCRR and CMR to discontinue service over, approximately 144.3 miles of rail line in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri. The rail line abandonment is in two segments: (1) between mileposts 263.5 and 262.906 (near Pleasant Hill) in Cass County, Missouri, and (2) between milepost 215.325 (near Windsor) in Pettis County, Missouri and milepost 71.6 (near Beaufort) in Franklin County, Missouri.

Whereas, the rail line abandonment and discontinuance of service constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and,

Whereas, in a decision served on January 6, 2015,¹ the Surface Transportation Board (Board) imposed a condition for the proposed abandonment and discontinuance of service that requires MCRR to retain its interest in and take no further steps to alter the historic integrity of all historic properties within the project right-of-way (the Area of Potential Effects)² that are eligible for listing or are listed in the National Register of Historic Places (NRHP) until the Section 106

¹ The Board issued a corrected decision on January 7, 2015, but that correction had no impact on the Section 106 condition.

² For abandonments, the railroad right-of-way is the Area of Potential Effects or APE, defined at 36 C.F.R. § 800.16(d) as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.”

process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA)³ has been completed and the Board has removed this condition; and,

Whereas, the rail corridor is part of the former Rock Island Line, which became the first rail line to connect Chicago with the Mississippi River in 1854, and it is significant in Missouri railroad history because, in 1901, the Rock Island acquired a local line – the St. Louis, Kansas City & Colorado RR line – as part of a plan to connect Kansas City with St. Louis. Accordingly, based on consultation with the Missouri State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Board's Office of Environmental Analysis (OEA) determined that based on the prior review of two related proceedings in Docket No. AB 1068X and Docket No. 1068 (Sub-No. 1X) the rail line is likely eligible for inclusion in the NRHP. The basis for the prior designation was under Criterion A, for the line's association with events that have made a significant contribution to the broad patterns of our history. In addition, the certain rail structures are possibly eligible for listing in the NRHP under Criterion C, as objects that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; and,

Whereas, the rail corridor passes through or near the communities of Cole Camp, Stover, Versailles, Barnett, Eldon, Eugene, Meta, Freeburg, Belle, Bland, Owensville, Rosebud, Gerald, Leslie, and Beaufort; and,

Whereas, a historic report has been prepared for the structures in the Area of Potential Effect (APE) (See the railroads' Combined Environmental and Historic Report, dated October 28, 2014); and,

Whereas, based on consultation with the SHPO, OEA has determined that the proposed abandonment and discontinuance of service may likely have an adverse effect on the above mentioned historic resources; and,

Whereas, in a letter dated May 7, 2015, the Board notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect in accordance with 36 C.F.R. § 800.12; and,

Whereas, in a letter dated May 15, 2015, the ACHP declined to participate in the Section 106 process for this rail line abandonment, including the preparation of this MOA; and,

Whereas, pursuant to 36 C.F.R. § 800.3, the Board sent letters on March 27, 2015 inviting the Eastern Shawnee Tribe of Oklahoma, United Keetoowah Band of Cherokee, Otoe-Missouria Tribe of Indians, Omaha Tribe of Nebraska, Iowa Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Sac and Fox Nation of Oklahoma, The Osage Nation, Peoria Tribe of Indians in Oklahoma, Sac and Fox Tribe of the Mississippi in Iowa, and Sac and Fox Nation of Missouri in Kansas and Nebraska (collectively, "Tribes") to participate as consulting parties in the

³ The NHPA was recodified in December 2014 to Title 54. 16 USC § 470f is now known as 54 USC § 306108.

preparation of this MOA; in a letter dated April 9, 2015, the Peoria Tribe of Indians in Oklahoma declined to consult, and the Board has received no other responses or indications of interest from any other Tribes; and,

Whereas, based on currently available information, the proposed abandonment and discontinuance of service will not affect any locations known to include Native American burial sites, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*); and,

Whereas, MCRR owns the historic property that will be adversely affected by the proposed Undertaking and has participated in the consultation process and, pursuant to 36 C.F.R. § 800.6(c)(2)(iii), the Board has invited MCRR to be a signatory party in this MOA, which will guide the process for taking such effects into account; and,

Whereas, MCRR has accepted the invitation to be a signatory to this MOA; and,

Whereas, Missouri Department of Natural Resources, Division of State Parks (DNR/DSP), is an interested party, and has participated in the consultation process, and pursuant to 36 C.F.R. § 800.6(c)(2)(iii), the Board has invited DNR/DSP to be a signatory party in this MOA; and

Whereas, DNR/DSP has accepted the invitation to be a signatory party to this MOA; and,

Whereas, the communities of Cole Camp, Stover, Versailles, Barnett, Eldon, Eugene, Meta, Freeburg, Belle, Bland, Owensville, Rosebud, Gerald, Leslie, and Beaufort are located adjacent to a portion of the rail corridor and the Board has consulted with these locales and invited them to sign this MOA as a concurring party; and

Whereas, the City of Stover has accepted the invitation to be a concurring party to this MOA; and,

Whereas, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO, MCRR, DNR/DSP, and the City of Stover regarding ways to avoid, minimize, or mitigate potential effects to the historic resources as a result of abandonment and the Board, SHPO, MCRR, DNR/DSP, and the City of Stover have all agreed upon the measures described below under "Stipulations;" and

Whereas, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

Now, therefore, the Board, SHPO, MCRR, and DNR/DSP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking, and all of its parts until this MOA expires or is terminated. Additionally, the Board, SHPO, MCRR, DNR/DSP, and the City of Stover agree that the execution of this MOA and its subsequent submission to ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with ACHP for purposes of the NHPA. Execution and submission of the MOA, and implementation

of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board will ensure that the following stipulations are carried out prior to taking any action that could adversely affect a NRHP eligible property:

I. STANDARDS

- A. Professional Qualifications: All historic preservation activities, research, evaluations, and reports implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines for Professional Qualifications Standards* (48 Fed. Reg. 44738-44739) in the appropriate disciplines.

II. IDENTIFICATION

- A. The Board and MCRR have consulted with the SHPO, DNR/DSP, Tribes, and the City of Stover; reviewed existing information on cultural resources within the APE; and sought appropriate information from consulting parties and other interested parties, organizations, or federally-recognized Tribes likely to have knowledge of, or concerns regarding, cultural resources within the APE.
- B. A Combined Environmental and Historic Report was prepared by MCRR and submitted to the Board on October 28, 2014 in order to document and identify potential NRHP eligible properties within the APE.

III. EVALUATION OF EFFECTS

- A. The Board and MCRR have consulted with the SHPO, DNR/DSP, Tribes, and the City of Stover regarding the evaluation of the Undertaking's adverse effects on the following properties identified in the APE: the rail corridor, bridges, tunnels, culverts, and communities along the rail corridor.

IV. RECORDATION OF HISTORIC AND CULTURAL PROPERTIES

Prior to the alteration of any NRHP-eligible properties, the following recordation measures will be carried out in consultation with the SHPO.

- A. Bridges and Tunnels

1. MCRR will provide 5 x 7 and 8 x 10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of the bridges and tunnels. Digital copies of all photos will be provided.
 - a. The photographs should be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with NRHP Bulletin #16A. Three to four printed photographs will be provided for each bridge and tunnel.
2. MCRR will prepare appropriate written documentation including but not limited to: bridge measurements, engineering, history, and biographical information on the fabricator as available. Some of this information will probably be more available than others.

B. Culverts

1. MCRR will provide 5 x 7 and 8 x 10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of representative samples of the culverts on the rail line at the discretion of the archaeologist in consultation with SHPO. Only one representative culvert of each type and general size need be documented with printed photos. Digital copies of photos of all culverts on the line will be provided.
 - a. The photographs should be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with NRHP Bulletin #16A. Two photographs will be provided for each culvert that is documented.

C. Rail Corridor, Infrastructure, Tracks, and Ties

1. MCRR will provide 5 x 7 and 8 x 10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of the approximately 144.3-mile line, including representative photos of the rail corridor and associated properties. Digital copies will also be provided.
 - a. The photographs will be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with NRHP Bulletin #16A. A minimum number of photographs will be determined in consultation with the SHPO and will be provided for each resource.
 - b. As part of the Draft Report described below in Section V, MCRR will submit a draft contextual history of the rail line and the small communities along the 144.3-mile corridor, focusing on the importance of the railroad to the economy and development of the communities.

- c. If available, MCRR will submit copies of the original construction plans and historic photographs of associated historic properties, including but not limited to depots, water towers, granaries, etc.

V. REPORTING REQUIREMENTS

- A. Draft Report: MCRR shall complete historic research, photo documentation, and a written report within 3 months of the execution of this MOA.
 1. Comment Period. Following receipt of the Draft Report, the SHPO, DNR/DSP, and the City of Stover will have 30 days to comment on the Draft Report. After considering all comments submitted during the 30-day comment period, OEA will determine whether any additional information or revisions are appropriate, and MCRR shall modify the Draft Report in accordance with OEA's determination. Failure of SHPO, DNR/DSP, or the City of Stover to comment within the specified period shall be deemed by the Board to constitute approval of the Draft Report.
- B. Distribution of Final Report. A copy of the Final Report identified in Section V (in both hard copy and electronic format) will be sent by MCRR to: the Board, SHPO, DNR/DSP, and the City of Stover and to other appropriate archives or recipients designated by the Board and SHPO.

VI. UNANTICIPATED DISCOVERIES

- A. Procedures for Unanticipated Discoveries of Cultural Resources and Historic Properties.
 1. There are no known archaeological sites located within the 144.3-mile right-of-way. However, in the event that any unreported or unanticipated archaeological sites or cultural resources are discovered during salvage⁴ activities, MCRR shall:
 - a. immediately cease all work;
 - b. clearly mark the area of discovery;
 - c. implement interim measures to protect the discovery from looting and vandalism; and
 - d. notify OEA, federally-recognized Tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b)

⁴ For abandonment proceedings, salvage activities may include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right-of-way, and regrading the right-of-way. Salvage may be performed within the right-of-way or, if necessary, via the construction of new access points to the right-of-way.

2. Upon notification of the discovery, OEA shall consult with the SHPO, DNR/DSP, federally-recognized Tribes, MCRR, and other consulting parties, if any, to determine the NRHP eligibility of the discovery and whether appropriate mitigation measures, such as protection in place or archaeological data recovery plans, are necessary.
 - a. OEA, in consultation with the SHPO and appropriate federally-recognized Tribes, will have 30 calendar days following notification to determine the NRHP eligibility. OEA may assume the newly discovered property to be eligible for the NRHP.
 - b. If the find is determined to be potentially significant, OEA will consult with the SHPO and appropriate federally-recognized Tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). Once presented, the SHPO and the federally-recognized Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:
 - i. formal archaeological evaluation of the site;
 - ii. visits to the site by the SHPO and/or appropriate Tribes; and/or
 - iii. preparation and implementation of a mitigation plan by OEA in consultation with federally-recognized Tribes for approval by the SHPO.
 3. In the event that any human remains (other than from a crime scene) are discovered or excavated, they are subject to the immediate control, possession, custody, and jurisdiction of the SHPO, pursuant to the Missouri Unmarked Human Burials Sites Act (RSMo. 194.400-194.410). The excavation of human remains will follow guidance obtained through DNR/DSP, SHPO, and federally-recognized Tribes. The excavation, handling, and processing of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony shall be in accordance with the SHPO instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found in the APE.⁵
- B. In the event of any unanticipated discoveries, MCRR shall ensure that a report on the archaeological investigations conducted pursuant to this "Unanticipated Discoveries" section is provided to the SHPO and OEA, and upon request to other interested parties.
- C. Any report on unanticipated discoveries shall follow (1) procedures for the processing, analysis, and curation of collected materials as described in the Advisory Council's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the

⁵ This excludes any cemetery human remains that may be discovered or excavated in the APE. These finds would be regulated by local government and law enforcement agencies, pursuant to Chapter 214, Cemeteries.

Interior's Guidelines, and (2) currently accepted standards for the analysis and curation of archaeological remains. (DNR/DSP shall curate at Rock Bridge).

ADMINISTRATIVE PROVISIONS

The Board shall ensure that a determination, finding, or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis.

A. **Dispute Resolution:** Should any signatory party to this MOA object at any time to the manner in which the terms of the MOA are implemented, the Board shall consult with the objecting party to resolve the objection. If the Board determines, within 15 days after consultation begins, that such objection cannot be resolved, the Board will either:

1. Render a decision regarding the dispute within 30 days after it has determined that the dispute could not otherwise be resolved. The Board will notify all parties of its decision in writing within this time frame. In reaching its decision, the Board will take all comments from the objecting party regarding the dispute into account. The Board's decision will be final; or

2. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. § 800.2(b)(2). Any ACHP comments, and all comments from either party to this MOA, will be taken into account by the Board in reaching a final decision regarding the dispute. The Board's decision will be final.

B. **Amendments, Non-Compliance, and Termination:** If any signatory party believes that the terms of this MOA cannot be carried out or that an amendment to its terms should be made, that party shall immediately consult with the other parties to develop amendments to this MOA pursuant to 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). No amendments shall take effect without the unanimous consent of the signatory parties. If this MOA is not amended as provided for in this stipulation, any signatory party may terminate it, whereupon the Board shall proceed in accordance with 36 C.F.R. § 800.6(c)(8).

C. **Duration of the MOA:** Unless terminated, this MOA will be in effect until the earlier of (i) the date that the Board, in consultation with the other signatory parties, determines that all of its terms have been satisfactorily fulfilled, or (ii) three (3) years from the date of last signature hereon of a signatory party. Upon a determination by the Board that all terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. The Board will promptly provide the other signatory parties with written notice of its determination and of termination of the MOA.

D. **Effective Date:** This MOA will take effect on the date it is executed by the Board, SHPO, MCRR, and DNR/DSP.

E. **Designated Point of Contact for OEA, MCRR, SHPO, DNR/DSP, and the City of Stover:** Each party is responsible for providing current phone numbers, e-mail address, and mailing

addresses for their designated point of contact. (Contact information is included in the Appendix).

Execution of this MOA by the Board, SHPO, MCRR, and DNR/DSP; its transmittal to ACHP; and subsequent implementation of its terms evidences that the Board has afforded ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NRHP and applicable implementing regulations.

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: 

Victoria Rutson, Director
Office of Environmental Analysis

Date: June 1, 2015

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

Toni M. Prawl, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____

Date: _____

James A. Sobule, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By: _____

Date: _____

William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: Toni M. Prawl Date: 05/28/15
Toni M. Prawl, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____ Date: _____
James A. Sobule, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By: _____ Date: _____
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

SIGNATORY PARTIES

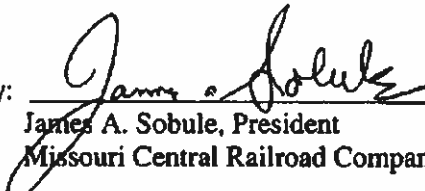
SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Toni M. Prawl, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By:  _____ Date: 5/29/2015
James A. Sobule, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By: _____ Date: _____
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

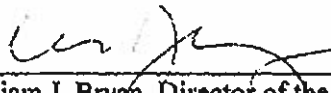
By: _____ Date: _____
Toni M. Prawl, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____ Date: _____
James A. Sobule, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By:  _____ Date: 5/22/15
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

CONCURRING PARTY

CITY OF STOVER

By: Sharon Fry, City Clerk Date: 5-28-15
Sharon Fry, City Clerk
City of Stover

MEMORANDUM OF AGREEMENT

Among

**THE SURFACE TRANSPORTATION BOARD,
MISSOURI CENTRAL RAILROAD COMPANY,
MISSOURI STATE HISTORIC PRESERVATION OFFICE, and
MISSOURI DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF STATE PARKS
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Regarding

**STB 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**

**CONCURRING PARTY
ADDED OCTOBER 2, 2015**

OSAGE NATION

By: _____ Date: _____
Name, Title
Osage Nation

APPENDIX

SURFACE TRANSPORTATION BOARD

Diana Wood	Email: woodd@stb.dot.gov Phone: (202) 245-0302 Fax: (202) 245-0454 Surface Transportation Board Office of Environmental Analysis 395 E Street S.W., Room 1110 Washington, DC 20243
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MISSOURI STATE HISTORIC PRESERVATION OFFICE

Judith Deel	Email: Judith.deel@dnr.mo.gov Phone: (573) 751-7862 P.O. Box 176 Jefferson City, Missouri 65102
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MISSOURI CENTRAL RAILROAD COMPANY

Sandra Brown David Benz	Email: Sandra.Brown@thompsonhine.com David.Benz@thompsonhine.com Phone: (202) 331-8800 1919 M Street N.W. Suite 700 Washington, DC 20036-1600
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**MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE
PARKS**

Mary Moulton Bryan	Email: mary.bryan@dnr.mo.gov Phone: (573) 751-7987 P.O. Box 176 Jefferson City, Missouri 65102
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CITY OF STOVER

Sharon Fry	Email: cityofstover@windstream.net Phone: (573) 377-4510 503 W. 2nd St. P.O. Box 370 Stover, Missouri 65078
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OSAGE NATION**Contact Names:**

Dr. Andrea Hunter, Director, THPO

Jackie Rodgers
Archaeologist

Email: ahunter@osagenation-nsn.gov
jroddgers@osagenation-nsn.gov
Phone: (918) 287-5328

Address: Osage Nation Historic Preservation
Office
627 Grandview Avenue
Pawhuska, OK 74056



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 26, 2015

Andrea A. Hunter, Ph.D.
Director, Tribal Historic Preservation Officer
Osage Nation
627 Grandview
Pawhuska, OK 74056

Re: STB 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, Mo.

Dear Dr. Hunter:

Thank you for your October 5, 2015 letter and maps delineating probable locations of Osage ancestral homelands, including camps, burials, trails, and other significant cultural resources along the areas of potential effects (APE) or project right-of-way of the Missouri Central Railroad Company (MCRR) approximately 144.3-mile rail line abandonment in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri. Your letter requests that a cultural resources survey be conducted for this project, and specifically, shovel testing, so as to avoid any potential adverse effects to Osage cultural resources. Below, I have provided an overview of this rail line abandonment proceeding, summarized the Section 106 process, and most importantly, responded to your request.

Overview of This Proceeding

On November 18, 2014, Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice of exemption under 49 C.F.R. § 1152.50 requesting that Surface Transportation Board (Board) allow MCRR to abandon, and MCRR and CMR to discontinue service over, approximately 144.3 miles of rail line in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri. The rail line abandonment and discontinuance, which constitute the Undertaking under Section 106 of the National Historic Preservation Act, is in two segments: (1) between mileposts 263.5 and 262.906 (near Pleasant Hill) in Cass County, Missouri, and (2) between milepost 215.325 (near Windsor) in Pettis County, Missouri and milepost 71.6 (near Beaufort) in Franklin County, Missouri.

The Board's Office of Environmental Analysis (OEA) prepared an Environmental Assessment (EA) and issued the EA for public review and comment. Comments were due on December 30, 2014. One comment was received from the Missouri Farm Bureau Federation (MFB). On January 5, 2015, OEA issued a Final EA responding to the comment and concluding that the proposed abandonment would have no potential for significant environmental impacts if the conditions recommended by OEA in the EA are imposed.

In a decision served on January 6, 2015, the Board granted the proposed abandonment, contingent on MCRR complying with four environmental conditions requiring MCRR to (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 or the Missouri Department of Natural Resources, whichever has delegated authority to administer the federal National Pollution Discharge Elimination System Program (NPDES) 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; and (4) 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 (National Register) until the Section 106 process of the NHPA, 16 U.S.C. 470f, has been completed. MCRR shall report to OEA regarding any consultations with the Missouri State Historic Preservation Office (SHPO) 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 the condition.

After the Board granted the abandonment, OEA continued to work through the steps in the Section 106 process under the NHPA, described below.

The Section 106 Historic Preservation Process

MCRR's rail corridor is part of the former Rock Island Line, which became the first rail line to connect Chicago with the Mississippi River in 1854. It is significant in Missouri railroad history because, in 1901, the Rock Island acquired a local line – the St. Louis, Kansas City & Colorado RR line – as part of a plan to connect Kansas City with St. Louis. Accordingly, based on consultation with the SHPO, OEA determined that the rail line is likely eligible for inclusion in the National Register. In addition, the line is likely eligible, under Criterion A, for the line's association with events that have made a significant contribution to the broad patterns of our history and Criterion C, as objects that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

OEA determined that the proposed rail line abandonment would constitute an adverse effect and in a letter dated May 7, 2015, the Board notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect in accordance with 36 C.F.R. § 800.12. Following the next steps in the Section 106 process, OEA then determined that a Memorandum of Agreement (MOA) was needed to appropriately avoid, minimize, or mitigate impacts on historic sites and structures that would occur from the proposed Undertaking, which here, consisted of the removal of tracks and ties in the rail bed while leaving the ballast in place.

OEA negotiated a draft MOA with the SHPO and MCRR to resolve any adverse effects to historic properties for the proposed undertaking, pursuant to 36 C.F.R. § 800.6(b)(i)(iv). The Missouri Department of Natural Resources' Division of State Parks also signed the MOA as an invited signatory, and the City of Stover signed the MOA as a concurring party. The MOA was executed on June 1, 2015 and submitted to the ACHP on June 4, 2015.

The filing of the MOA with ACHP completes the Board's compliance responsibilities under Section 106 of the NHPA, and accordingly, in a decision served on August 11, 2015, the Board removed the Section 106 condition. The Board decision added a new condition for unanticipated discoveries, based on a July 14, 2015 letter from the SHPO that indicated that it had no objection to MCRR beginning salvage activities along the 144-mile abandonment rail line, providing that if any cultural materials are encountered during the salvage process, MCRR shall immediately cease all site work and contact the SHPO to determine an appropriate course of action. This requirement is also listed as a detailed stipulation in the MOA but states that in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during MCRR's salvage activities, MCRR shall immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, interested federally recognized tribes, MCRR, and other consulting parties, to determine whether appropriate mitigation measures are necessary.

After the executed MOA was filed with ACHP on June 4, 2015, OEA received a late request from the Osage Nation on June 8, 2015 indicating that it had an interest in participating in the development of the MOA. OEA informed the Osage Nation that invitational letters to participate in the development of the MOA were sent to the 11 federally recognized tribes, including the Osage Nation, on March 27, 2015 with a requested response date of April 27, 2015. During this time, OEA received one response letter. The Peoria Tribe of Indians in Oklahoma commented that it was declining to consult in the process.

On June 16, 2015, OEA re-invited the Osage Nation to participate in the process as a concurring party and provided a July 6, 2015 deadline to respond. Although OEA did not receive a response back by the requested deadline, the original parties to the MOA agreed that the Osage Nation should receive the historical and cultural information that was being prepared in accordance with the stipulations set forth in the MOA, and the three-volume set of the Phase I Archaeological Survey (Survey Report) was sent to the Osage Nation on August 25, 2015 for

review and comment with a response date of September 30, 2015. On September 29, 2015, the Osage Nation requested an extension to October 5, 2015, which was granted.

On October 5, 2015, the Osage Nation provided its comments to the Survey Report by requesting that additional cultural surveys be undertaken, and specifically, that shovel testing be conducted during salvage operations because Osage affiliated sites were highly likely to have been impacted during construction of the railroad between 1901 and 1905. The Osage Nation asserted that shovel testing would ensure that these sites are properly identified and safeguarded from any impacts that may occur as a result of future construction.

Response to the Concerns and Requests of the Osage Nation

If construction activities were to occur in this proceeding, it would be reasonable to grant the request of the Osage Nation to conduct shovel testing on the 144 mile rail line. However, no construction activities will occur. This Undertaking is a rail line abandonment and discontinuance of service. As such, no ground disturbance is contemplated by the railroad, other than what is required to remove the tracks and ties. The ballast and rail roadbed will remain in place, untouched by the salvage of the track materials. Any archaeological resources of concern, if present, would exist below the made environment within the original soil profile. Any resource recovery would require disturbing the original stratum that would not otherwise be disturbed during the salvage process. Furthermore, OEA believes the existing procedures that have been developed in this abandonment proceeding in consultation with the SHPO are sufficient enough to prevent and/or mitigate adverse effects associated with MCRR's salvage of the 144-mile rail line, as detailed below.

1. The Board imposed a condition that requires MCRR to immediately cease all work and notify the Board's OEA, interested federally recognized tribes, and the SHPO in the event any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage activities. OEA would then consult with the SHPO, interested federally recognized tribes—including the Osage Nation—MCRR, and other consulting parties, to determine whether appropriate mitigation measures are necessary.
2. The MOA contains stipulations for handling unanticipated discoveries of cultural resources and historic properties during the salvage process that require MCRR to immediately cease all work; clearly mark the area of discovery; implement interim measures to protect the discovery from looting and vandalism; and notify OEA, federally recognized Tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). The MOA requires that, upon notification of the discovery, OEA shall consult with the SHPO, federally recognized Tribes, MCRR, and other consulting parties, if any, to determine the National Register eligibility of the discovery and whether appropriate mitigation measures, such as protection in place or archaeological data recovery plans, are necessary.

OEA, in consultation with the SHPO and appropriate federally recognized Tribes, will have 30 calendar days following notification to determine the National Register eligibility. OEA may assume the newly discovered property to be eligible for the National Register. Mitigation includes formal archaeological evaluation of the site; visits to the site by the SHPO and/or appropriate Tribes; and/or preparation and implementation of a mitigation plan by OEA in consultation with federally recognized Tribes for approval by the SHPO. The excavation of human remains will follow guidance obtained through DNR/DSP, SHPO, and federally recognized Tribes. The excavation, handling, and processing of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony shall be in accordance with the SHPO instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found in the APE.

Any unanticipated discoveries require MCRR to prepare a report on the archaeological investigations is conducted pursuant to this "Unanticipated Discoveries" section and provided to the SHPO and OEA, and upon request to other interested parties, and that any report on unanticipated discoveries shall follow procedures for the processing, analysis, and curation of collected materials as described in ACHP's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the Interior's Guidelines, and currently accepted standards for the analysis and curation of archaeological remains.

3. MCRR has stated that it will salvage the rail line according to the following practices: The salvage contractor (Contractor) will be removing only the steel track material (rails, tie plates, spikes, switch components, etc.) and the wooden ties from the rail bed with the exception that they will not remove ties from the bridges. Since many locations along the railroad have not seen rail service in a number of years and have become overgrown with trees and other vegetation, the Contractor will need to remove the trees and vegetation from the rail bed. This tree removal, which will also remove root balls, will be limited to an approximate width of 15 – 20 feet all within the rail embankment and ballast area such that no original or subsurface soil will be disturbed. The Contractor may also have to remove tree limbs overhanging the rail bed in order to get their equipment through but the Contractor will not be removing the root ball outside of the limited road bed area.

The Contractor will then unbolt the rail joints and set aside the steel material. Next, the rail bed ballast (the top layer in the rail embankment) will be disturbed just enough to remove the wooden railroad ties. After the ties have been removed, the Contractor will then smooth out the ballast so that the Contractor can drive down the rail bed and pick-up the steel rail components that had been set aside earlier. Whenever possible, existing grade crossings will be used to access the rail bed.

The Contractor is not permitted to build temporary haul roads or additional vehicular or pedestrian crossings. No excavation will be performed and when the salvation operations have been completed, the rail bed will be essentially unchanged except for the removal of the steel and ties and the clearing of the vegetation that was growing in the rail bed. The Contractor will be working on the rail bed and will not be altering the rail embankment and will not be disturbing subsurface ground.

As previously indicated, the Board imposed a condition in this proceeding that sets forth a process to protect any artifacts that may be discovered when the tracks and ties are removed from the rail corridor. Although it is highly unlikely that any artifacts would be discovered in the track material, this condition provides additional protection, as described above, and would include interested federally recognized tribes (including the Osage Nation). This condition is consistent with the language in the MOA that was executed with the SHPO and MCRR to resolve any adverse effects to historic properties for the proposed undertaking, pursuant to 36 C.F.R. § 800.6(b)(i)(iv). In terms of any future uses along the right-of-way, such as interim trail use/rail banking, the Board's role in establishing trail use is ministerial in that it lacks discretion to force or deny interim trail use if the statutory conditions are met. Potential trail use does not require environmental review nor is it part of the Section 106 process (see *CART v. STB* 267 F. 3d 1144 (D.C. Cir. 2001) and *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990)).

If you have any questions, require additional information regarding this proceeding, or have any concerns, please do not hesitate to contact Diana Wood of my staff at 202-245-0302, or by email at woodd@stb.dot.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Rutson".

Victoria Rutson
Director
Office of Environmental Analysis



#E1-21140
w/out maps

TRIBAL HISTORIC PRESERVATION OFFICE

Date: October 5, 2015

File: 1415-1656MO-4

RE: Missouri Central Railroad Company Right of Way in Benton, Cole, Cass Franklin, Gasconade, Maries, Miller, Morgan, Osage, and Pettis Counties, MO

Office of Environmental Analysis, Surface Transportation Board
Diana Wood
395 E Street SW, Room 1110
Washington D.C. 20243

Dear Ms. Wood,

The Osage Nation Historic Preservation Office has received notification and accompanying information for the proposed project listed Missouri Central Railroad Company Right of Way in Benton, Cole, Cass Franklin, Gasconade, Maries, Miller, Morgan, Osage, and Pettis Counties, MO. The entirety of this project lies within the heart of Osage ancestral homelands. So much so, that many modern features such as Osage County and the Osage River are named after the Osage Nation. Therefore, there are several locations with a high probability of containing Osage sites, camps, burials, trails, and other significant cultural resources along the projected APE for this project. The Osage Nation requests that a cultural resources survey including shovel testing be conducted for this project in order to avoid adversely affecting potential Osage cultural resources in the APE. Our office has reviewed the APE, and is attaching six maps with the areas we consider to have the highest probability of encountering Osage cultural resources highlighted. We request that shovel testing be conducted in these areas. When the railroad was initially constructed from 1901-1905, it is highly likely that sites affiliated with the Osage were impacted at that time. Our request for shovel testing is to ensure that those sites will be identified, and will not be further impacted through future construction.

In accordance with the National Historic Preservation Act, (NHPA) [16 U.S.C. 470 §§ 470-470w-6] 1966, undertakings subject to the review process are referred in 501 (d)(6)(A), which clarifies that historic properties may have religious and cultural significance to Indian tribes. Additionally, Section 106 of NHPA requires Federal agencies to consider the effects of their actions on historic properties (36 CFR Part 800) as does the National Environmental Policy Act (43 U.S.C. 4321 and 4331-35 and 40 CFR 1501.7(a) of 1969).

The Osage Nation has a vital interest in protecting its historic and ancestral cultural resources. Should you have any questions or need any additional information, please feel free to contact me at the number listed below. Thank you for consulting with the Osage Nation on this matter.


Andrea A. Hunter, Ph.D.
Director, Tribal Historic Preservation Officer


Jackie Rodgers, BPA
Archaeologist

#E1-21133



RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company
Andrea Hunter

to:

'Diana.Wood@stb.dot.gov'

10/02/2015 09:05 AM

Hide Details

From: Andrea Hunter <ahunter@osagenation-nsn.gov>

To: "'Diana.Wood@stb.dot.gov'" <Diana.Wood@stb.dot.gov>

History: This message has been replied to.

The Osage Nation will remain a consulting party for the duration of the project.

Dr. Andrea A. Hunter
Director/THPO
Osage Nation Historic Preservation Office
627 Grandview Avenue
Pawhuska, OK 74056

Office Phone: (918) 287-5328

Office Fax: (918) 287-5376

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

Sent: Thursday, October 01, 2015 11:06 AM

To: Andrea Hunter

Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Hunter:

MCRR plans to salvage the tracks and ties but intends to leave the railroad bed intact. MCRR also plans to use existing access roads, but will be cutting vegetation along the right-of-way where necessary to remove track structures. The rail line will be converted to a trail afterwards. Salvage is expected to take about two years.

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)

From: Andrea Hunter <ahunter@osagenation-nsn.gov>

To: "'Diana.Wood@stb.dot.gov'" <Diana.Wood@stb.dot.gov>

Date: 10/01/2015 10:25 AM

Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Ms. Wood,

The Traditional Cultural Advisors Committee would like to know are any of the tracks or rails going to be removed or is the

line just going to be abandoned and left in place?

Dr. Andrea A. Hunter
Director/THPO
Osage Nation Historic Preservation Office
627 Grandview Avenue
Pawhuska, OK 74056

Office Phone: (918) 287-5328
Office Fax: (918) 287-5376

From: Diana.Wood@stb.dot.gov [<mailto:Diana.Wood@stb.dot.gov>]
Sent: Thursday, October 01, 2015 9:10 AM
To: Andrea Hunter
Cc: Brown, Sandra; Judith Deel; Bryan, Mary; Stover City Hall; Najah Duvall-Gabriel
Subject: Fw: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Hunter:

Please refer to the explanation in the June 16, 2015 email below, as well as the preceding emails in the thread below, regarding your request to be included in the MOA process as an invited signatory party. As stated prior, the Osage Nation participated in the development of an MOA in AB 1068X as a concurring party and we welcome your participation in that capacity. We based this decision - now and in the past - on the understanding that the rail line is not located on tribal lands and that the Osage Nation would not be assuming review of other responsibilities under the MOA (per ACHP guidance). We believe the stipulations below from the executed MOA adequately address the inadvertent discovery of any cultural resources and historic properties. I've also retained the concurring party signature block and contact information from that email. If you concur with the MOA, please sign and return with any comments you may have on the Phase 1 Archaeological Draft Report by the deadline, per your request to extend, of October 5, 2015. Once I receive this information, I'll submit an amended executed MOA to ACHP indicating that we have added another consulting party.

I've also attached the information you requested in AB 1068 (Sub-No. 1X) and AB 1070 (Sub-No. 1X), which is available on the Board's web site at www.stb.dot.gov, then go to environmental, then click on environmental correspondence, and either incoming or outgoing. Information on the abandonment is contained in docket numbers AB 1068 (Sub-No. 1X) and AB 1070 (Sub-No. 1X).

In terms of ACHP's comment questionnaire that you included in your 9/29/15 email, and excerpted below, I can assure you that the STB regularly includes tribes in its Section 106 consultations. We typically include tribes as signatories to our agreement documents if the project is located on tribal lands, and concurring parties when the tribe has ancestral connections to the project area.

In addition, the STB provides tribes opportunities to comment on agreement documents regardless of a tribe's signatory status. Our inclusions of tribes is important, as tribes have special expertise that only they can provide the STB.

Excerpted from 9/29/15 email:

Greetings,

It has recently come to the attention of the ACHP that some Indian tribes are not being invited to sign memoranda of agreements or programmatic agreements either as concurring parties or invited signatories. This has led, in some cases, to tribes being excluded from post-agreement implementation. To help us understand the extent of the issue, we ask that you provide answers to the following questions:

1. Does your tribe seek to become either an invited signatory or concurring party?
2. Is your tribal routinely invited to sign agreements as an invited signatory or concurring party?
3. If not, which agencies are not inviting your tribe to sign and what is their reasoning?
4. Has the lack of signatory or concurring party status resulted in your exclusion from participating in the work or review under the agreement?
5. If you have been invited to sign, which agencies are involved and are they inviting you to sign or concur?

Sincerely,

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)

----- Forwarded by Diana Wood/STB on 09/29/2015 11:52 AM -----

From: Diana Wood/STB
To: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, Stover City Hall <cityofstover@windstream.net>, "Deel, Judith" <judith.deel@dnr.mo.gov>, "ngabriel@achp.gov" <ngabriel@achp.gov>, "Brown, Sandra" <Sandra.Brown@thompsonhine.com>, "woodd@stb.dot.gov" <woodd@stb.dot.gov>, "Bryan, Mary" <mary.bryan@dnr.mo.gov>
Date: 06/16/2015 11:20 AM
Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Chovanec:

The attached executed MOA from another line segment of the same railroad included the Osage Nation as a concurring party, and we welcome your participation in that capacity. We based this decision - now and in the past - on the understanding that the rail line is not located on tribal lands and that the Osage Nation would not be assuming review of other responsibilities under the MOA (per ACHP guidance). We believe the stipulations below from the executed MOA adequately address the inadvertent discovery of any cultural resources and historic properties.

Please understand that as a concurring party, you will continue to receive information regarding the project but that your concurrence will not change the stipulations of the MOA or its date of execution. I have included a pdf of the executed MOA and also a signature and contact information page for you to complete and return. I will send out the revised MOA to all parties and ACHP once I receive your concurrence and contact information. In the interest of time, please provide the requested information no later than July 6, 2015.

I. UNANTICIPATED DISCOVERIES

A. Procedures for Unanticipated Discoveries of Cultural Resources and Historic Properties.

1. There are no known archaeological sites located within the 144.3-mile right-of-way. However, in the event that any unreported or unanticipated archaeological sites or cultural resources are discovered during salvage For abandonment proceedings, salvage activities may include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right-of-way, and regrading the right-of-way. Salvage may be performed within the right-of-way or, if necessary, via the construction of new access points to the right-of-way. activities, MCRR shall:

- a. immediately cease all work;
- b. clearly mark the area of discovery;
- c. implement interim measures to protect the discovery from looting and vandalism; and
- d. notify OEA, federally-recognized Tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b)

2. Upon notification of the discovery, OEA shall consult with the SHPO, DNR/DSP, federally-recognized Tribes, MCRR, and other consulting parties, if any, to determine the NRHP eligibility of the discovery and whether appropriate mitigation measures, such as protection in place or archaeological data recovery plans, are necessary.

- a. OEA, in consultation with the SHPO and appropriate federally-recognized Tribes, will have 30 calendar days following notification to determine the NRHP eligibility. OEA may assume the newly discovered property to be eligible for the NRHP.
- b. If the find is determined to be potentially significant, OEA will consult with the SHPO and appropriate federally-recognized Tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). Once presented, the SHPO and the federally-recognized Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:
 - i. formal archaeological evaluation of the site;
 - ii. visits to the site by the SHPO and/or appropriate Tribes; and/or
 - iii. preparation and implementation of a mitigation plan by OEA in consultation with federally-recognized Tribes for approval by the SHPO.

3. In the event that any human remains (other than from a crime scene) are discovered or excavated, they are subject to the immediate control, possession, custody, and jurisdiction of the SHPO, pursuant to the Missouri Unmarked Human Burials Sites Act (RSMo. 194.400-194.410). The excavation of human remains will follow guidance obtained through DNR/DSP, SHPO, and federally-recognized Tribes. The excavation, handling, and processing of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony shall be in accordance with the SHPO instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found in the APE. This excludes any cemetery human remains that may be

discovered or excavated in the APE. These finds would be regulated by local government and law enforcement agencies, pursuant to Chapter 214, Cemeteries.

B. In the event of any unanticipated discoveries, MCRR shall ensure that a report on the archaeological investigations conducted pursuant to this "Unanticipated Discoveries" section is provided to the SHPO and OEA, and upon request to other interested parties.

C. Any report on unanticipated discoveries shall follow (1) procedures for the processing, analysis, and curation of collected materials as described in the Advisory Council's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the Interior's Guidelines, and (2) currently accepted standards for the analysis and curation of archaeological remains. (DNR/DSP shall curate at Rock Bridge).

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)

From: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, "woodd@stb.dot.gov" <woodd@stb.dot.gov>, "Deel, Judith" <judith.deel@dnr.mo.gov>, "Brown, Sandra" <Sandra.Brown@thompsonhine.com>, "ngabriel@achp.gov" <ngabriel@achp.gov>, Stover City Hall <cityofstover@windstream.net>
Date: 06/11/2015 10:06 AM
Subject: RE: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Ms. Wood,
Thank you for your email, for detailing the situation, and providing options for the Osage Nation's involvement. Our preferred path would be included as an invited signatory. Please let me know if this would be possible.

Kind regards,

Zuzana Chovanec, Ph.D.
Archaeologist
Osage Nation Historic Preservation Office

From: Diana.Wood@stb.dot.gov [Diana.Wood@stb.dot.gov]
Sent: Tuesday, June 09, 2015 10:19 AM
To: Zuzana Chovanec
Cc: Andrea Hunter; woodd@stb.dot.gov; Deel, Judith; Brown, Sandra; Diana.Wood@stb.dot.gov; ngabriel@achp.gov; Stover City Hall
Subject: Re: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Dr. Chovanec:

I am in receipt of your request below to participate in the Section 106 consulting process and development of an MOA in the above referenced proceeding. Unfortunately, the invitation letter (see attached) I sent to all potential Section 106 parties was dated March 27th and had a 30-day response time. Since I did not hear anything back within the time specified, the MOA was developed with only those parties who responded back. The MOA has since been executed and sent to the ACHP. I have, however, discussed this situation with Najah Duvall-Gabriel at the ACHP, and she said that it is up to the agency to decide if it wants to amend an MOA to allow for additional concurring parties. Najah suggested that I first contact you and ask if, in lieu of becoming an official concurring party, it would be acceptable to receive all the documents that will be prepared per the MOA stipulations, as if you were a concurring party, but not officially be part of the MOA. If this is acceptable, then I will include you in all future correspondence. If not, then I will have to begin the process of amending the MOA with the ACHP and other parties to include you in the process.

I've attached the MOA for your review. Please let me, and others cc'ed here, know which path you wish to take.

Thanks!

Regards,
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)

From: Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
To: "woodd@stb.dot.gov" <woodd@stb.dot.gov>
Cc: Andrea Hunter <ahunter@osagenation-nsn.gov>, Zuzana Chovanec <zchovanec@osagenation-nsn.gov>
Date: 06/08/2015 11:46 AM
Subject: Consulting Party Status: STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company

Dear Ms. Wood,

The Osage Nation Historic Preservation Office has received notification and accompanying information for the STB Docket No. AB 1068 (Sub-No. 3X) Missouri Central Railroad Company - Abandonment and Discontinuance of Service Exception - In Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Mo.

The Osage Nation has a vital interest in protecting its historic and ancestral cultural resources. We appreciate and accept your invitation to participate as a consulting party in the Section 106 process and in the development of a Memorandum of Agreement.

Please feel free to contact us with any questions or further information. Thank you for consulting with the Osage Nation on this matter.

Zuzana Chovanec, Ph.D.

Archaeologist
Osage Nation Historic Preservation Office