



MCRR - conditions

Benz, David

to:

'Diana.Wood@stb.dot.gov'

02/10/2014 04:19 PM

Hide Details

From: "Benz, David" <David.Benz@thompsonhine.com>

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

#EI-20396
AB 10681X
AB 10701X

3 Attachments



image003.jpg



image002.jpg



MCRR.letter.to.NGS.08.26.13.pdf

Diana:

Here is a status of all the conditions:

1. Section 7 (Indiana Bat). Imposed July 8, 2013. Removed Aug. 12, 2013.
2. NGS markers. Imposed July 8, 2013. MCRR has consulted with NGS. See the attached letter. MCRR has heard nothing in response to this letter. Hence, the consultation seems complete.
3. Section 106 (historic). Imposed July 8, 2013. Removed Dec. 11, 2013.
4. Public Use. Imposed July 8, 2013. Expired Jan. 5, 2014.
5. Interim Trail Use. Imposed July 8, 2013. Extended in decision Jan. 8, 2014...but this condition does not prevent salvage.
6. MDNR consultation. Imposed August 12, 2013. This condition requires MCRR consult with MDNR regarding (1) proper handling and disposal of rail, ties, and track materials; and (2) whether a permit for open air burning is necessary. The STB also directed MCRR to comply with MDNR's reasonable requirements regarding these issues.

In order to fulfill its duties under this condition #6, MCRR had a phone conference with MDNR on December 18, 2013. MCRR and MDNR discussed the following:

1. No disposal of metal will occur. The metal rail materials (rails, ties plates, spikes, bolts/nuts) will be salvaged by MCRR's contractor. They will be removed and sold.
2. Ties. MDNR has agreed to be responsible for disposal of ties. MDNR has asked MCRR to obtain optional, separate prices from contractors on MDNR's behalf to properly dispose of the ties along the route. MCRR included this tie-removal pricing request in the bid package sent to proposed contractors. During salvage of metal items, MCRR's contractor may stack the ties in the right-of-way to facilitate the salvage work.
3. No open air burning will occur. The contractor specifications state that no open air burning is permitted.
4. Cutting of vegetation. Any cuttings of vegetation will be placed in the ROW, and not in any streams, ditches, or waterways.

With the December 18th phone conference, I believe that the MDNR consultation has been completed.

Therefore, I believe that all conditions have either been fulfilled (numbers 1-4 and 6) or do not prevent salvage (number 5).

Please let me know if you disagree with my assessment. If my assessment is accurate, then finalization of the Report required under the MOA is the last step before salvage can occur. Please let me know if this is incorrect.

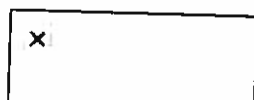
Thanks for all your help!!!

David E. Benz | Associate | **Thompson Hine LLP**
1919 M St. NW, Suite 700, Washington, DC 20036
Office: 202.263.4116 | Mobile: 202.821.3449
Fax: 202.331.8330 | Email: david.benz@ThompsonHine.com

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cid:image002.jpg@01CF267C.40876910" alt="Description: Description: Description: cid:image002.jpg@01CF267C.40876910">

From: Diana.Wood@stb.dot.gov [mailto:Diana.Wood@stb.dot.gov]
Sent: Monday, February 10, 2014 10:20 AM
To: Benz, David
Subject: RE: MCRR - abandonment - Draft Report

David:

I just reviewed the various Board decisions and it does appear that there are a few consultation conditions remaining. So, please let me know when those have been completed and we'll take it from there. And, as you know, we now need to wait the additional four days for Judith Deel's comments on the draft report.

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: "Benz, David" <David.Benz@thompsonhine.com>
To: "'Diana.Wood@stb.dot.gov'" <Diana.Wood@stb.dot.gov>
Cc: "judith.deel@dnr.mo.gov" <judith.deel@dnr.mo.gov>, "chris.crocker@dnr.mo.gov" <chris.crocker@dnr.mo.gov>, Sandra Underwood <windsor@iland.net>, "Brown, Sandra" <Sandra.Brown@thompsonhine.com>
Date: 02/10/2014 09:34 AM
Subject: RE: MCRR - abandonment - Draft Report

Thanks.

From the STB's perspective, is there any other impediment to commencement of salvage? I know that the STB attached some consultation conditions to its decisions, and MCRR has already done (or is in the process of doing) the required consulting with various other government entities.

From your e-mail, it sounds like there is no need for MCRR to print a new version of the report with "Final" on the cover. Please let me know if this understanding is incorrect.

David E. Benz | Associate | **Thompson Hine LLP**
1919 M St. NW, Suite 700, Washington, DC 20036
Office: 202.263.4116 | Mobile: 202.821.3449
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From: Diana.Wood@stb.dot.gov [<mailto:Diana.Wood@stb.dot.gov>]
Sent: Monday, February 10, 2014 9:27 AM
To: Benz, David
Cc: judith.deel@dnr.mo.gov; chris.crocker@dnr.mo.gov; Sandra Underwood; Brown, Sandra
Subject: Fw: MCRR - abandonment - Draft Report

Hi David:

This email is to inform you that the 30-day comment period for the Draft Phase One Archaeological Survey Report has ended. I didn't receive any comments from the above cc'ed MOA signatory parties; therefore, I think it's safe to say that the draft document can now be considered as the final document.

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)

----- Forwarded by Diana Wood/STB on 02/10/2014 09:05 AM -----

From: Diana Wood/STB
To: "Benz, David" <David.Benz@thompsonhine.com>
Date: 01/16/2014 07:21 AM
Subject: Re: MCRR - abandonment - Draft Report

Hi David:

This is to confirm that I have received the Draft Report.

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: "Benz, David" <David.Benz@thompsonhine.com>
To: "Diana Wood (woodd@stb.dot.gov)" <woodd@stb.dot.gov>, "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>
Date: 01/09/2014 12:08 PM
Subject: MCRR - abandonment - Draft Report

Diana:

This e-mail concerns STB Docket No. AB-1068 (Sub-No. 1X). The Missouri Central Railroad Company is sending today, via certified U.S. Mail, its Draft Report to the STB and the other parties listed in the Memorandum of Agreement. As described in the MOA, there will now be a 30-day comment period.

Please let me know if you do not get a copy of the Draft Report by January 14.

Thanks!!!!

David E. Benz | Associate | **Thompson Hine LLP**
1919 M St. NW, Suite 700, Washington, DC 20036
Office: 202.263.4116 | **Mobile:** 202.821.3449
Fax: 202.331.8330 | **Email:** david.benz@ThompsonHine.com

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August 26, 2013

Simon Monroe
Information Services Branch
NOAA, NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

simon.monroe@noaa.gov

Re: STB Docket No. AB-1068 (Sub-No. 1X), Missouri Central Railroad Company – Abandonment Exemption – in Cass, Henry, Johnson, and Pettis Counties, Missouri

Dear Mr. Monroe:

As you know, the Missouri Central Railroad Company ("MCRR") is seeking authorization from the Surface Transportation Board ("STB") in the above-captioned proceeding to abandon an approximately 42-mile segment of rail line in western Missouri. In accordance with STB regulations, MCRR sent an initial consultation letter to the National Geodetic Survey ("NGS") on February 15, 2013 in which MCRR requested NGS's assistance in identifying impacts of the proposed abandonment. MCRR also sent the Combined Environmental and Historic Report ("CEHR") to NGS on March 21, 2013. In an electronic mail message dated April 5, 2013, you stated that "approximately" twelve geodetic survey markers "may" be located in the area of the MCRR abandonment. You also stated that MCRR should consult with NGS at least 90 days prior to starting salvage work that will disturb or destroy any geodetic markers. This e-mail message was sent to MCRR's counsel Sandra Brown, the STB, and the Missouri Department of Natural Resources ("MDNR"). On July 8, 2013, the STB imposed a condition on the proposed abandonment, stating that MCRR must consult with NGS and notify NGS at least 90 days prior to beginning any salvage activities that could disturb or destroy any geodetic station markers.

MCRR has evaluated the twelve geodetic markers identified in your April 5th e-mail message, and has prepared a map showing the location of the markers in relation to the MCRR rail line. The map also includes a detailed narrative description of each of the twelve markers. I have enclosed a copy of this map and description for your review.

As a result of its evaluation, MCRR has determined that the following eight markers are located outside the MCRR right-of-way:

NGS point ID number	latitude	longitude
JE0206	N 38-41-53.0	W 94-06-12.0
JE0205	N 38-42-24.0	W 94-06-12.0
JE0249	N 38-37-49.0	W 94-00-19.0
JE0250	N 38-38-0.2	W 94-00-21.0
JD2282	N 38-36-28.0	W 93-55-44.0
JD2298	N 38-34-54.0	W 93-48-7.0
JD1924	N 38-32-26.4	W 93-31-10.8
JD1925	N 38-32-9.0	W 93-31-27.9

As stated on page 4 of the CEHR, MCRR only plans to salvage the track, ties, and other track materials located within the MCRR right-of-way. MCRR will leave the ballast and railbed intact. Given that the eight markers listed above are outside the right-of-way, they will not be disturbed or destroyed as a result of salvage of the track and ties.

MCRR has also determined that salvage will have no negative effects on the four remaining markers. Although these four markers are in the MCRR right-of-way, they are far enough from the rail line that they will not be disturbed or destroyed as a result of salvage of the track and ties. The four markers in the MCRR right-of-way are:

NGS point ID number	latitude	longitude
JD2247	N 38-32-35.3	W 93-31-30.1
JD2246	N 38-32-45.1	W 93-31-30.7
JD1933	N 38-32-7.0	W 93-30-59.0
JD1932	N 38-31-33.0	W 93-30-15.0

The enclosed map and description provides additional information and a detailed evaluation of each marker. Marker #JD1933 is approximately fifteen feet from the MCRR track, which is the closest to the track of any of the markers. Despite this proximity, the salvage of track and ties will not disturb or destroy the marker. In order to ensure no negative impacts, MCRR proposes to mark and protect this marker prior to salvage operations.

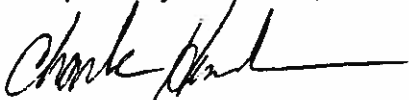
In the STB abandonment proceeding, MDNR filed a Notice of Interim Trail Use ("NITU") on June 14, 2013 to signify its interest in purchasing the rail line upon abandonment authorization in order to construct a trail. As stated in a letter filed at the STB on June 19, 2013, MCRR is willing to negotiate with MDNR regarding sale of the rail line under the Rails-to-Trails Act. However, that trail construction, if any, will occur under the ownership and direction of MDNR. The environmental review that is occurring as part of the abandonment proceeding in STB Docket No. AB-1068 (Sub-No. 1X) is limited to the cessation of rail service and the salvage of the track and ties.

The STB does not have jurisdiction over trail construction. On this issue, the STB previously stated that it "does not conduct an environmental review of a potential conversion to interim trail use/railbanking because it does not exercise sufficient federal control so as to qualify as a 'major federal action' under the National Environmental Policy Act (NEPA)." Environmental Assessment in Missouri Central Railroad Company – Abandonment and Discontinuance of Service Exemption – in Cass County, MO, STB Docket No. AB-1068X, slip op. at 6 (n. 8) (served Dec. 3, 2010).

Assuming that the Board authorizes the abandonment, MCRR does not expect to begin salvage work until December 2013 at the earliest, depending on fulfillment of any remaining conditions. As mentioned above, your e-mail message of April 5th stated that MCRR should consult with NGS at least 90 days prior to starting salvage work that will disturb or destroy any geodetic markers. The NGS website provides similar guidance, stating that "[i]f marks will be disturbed by the abandonment, NGS requests 90-day advance notice to attempt their formal relocation." See <http://geodesy.noaa.gov/marks/railroads/>. Given that MCRR's abandonment and salvage of the track and ties will not disturb or destroy any markers, MCRR believes that no further consultation with or notice to NGS is necessary. If NGS disagrees with this assessment, we would appreciate guidance from you as to the further actions that MCRR must take with respect to the abandonment and salvage. If we do not hear from you, we will presume that you agree with MCRR's evaluation and position.

MCRR is grateful for the efforts of NGS in identifying the relevant markers and assisting with the abandonment process thus far. Please do not hesitate to contact us with further guidance if you believe that the assessment in this letter is not correct.

Respectfully submitted,

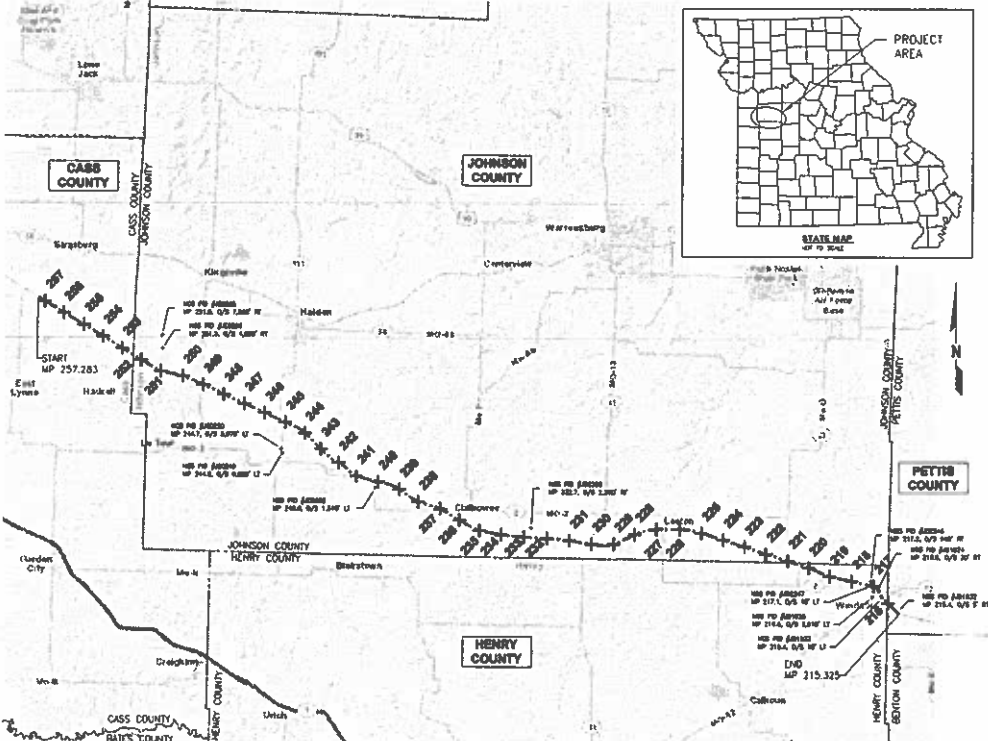
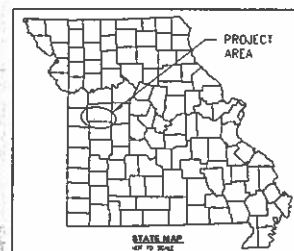


Charles Henderson
Managing Executive
Ameren Missouri for
Missouri Central Railroad Company

enclosure (map)

cc: Sandra Brown, Thompson Hine LLP *w/a*
Diana Wood, Surface Transportation Board *w/a*

**MISSOURI CENTRAL RAILROAD ABANDONMENT /
CENTRAL MIDLAND RAILWAY DISCONTINUANCE IN CASS,
JOHNSON, HENRY AND PETTIS COUNTIES, MISSOURI**



CONTEXT MAP WITH HQS GEODETIC SURVEY MONUMENT
 SCALE: 1" = 2 MILES ON 27934
 SCALE: 1" = 4 MILES ON 11117

THE UNDERGROUND LIFELINES SHOWN HERE WERE A
VALUABLE INFORMATION AND DO NOT NECESSARILY
ACRUAL EXISTENCE. NONEXISTENCE, SIZE, TYPE, AGE
OF THE OR OTHER VARIATIONS. THE ORIGIN, LOCATION
BE RESPONSIBLE FOR VERIFYING THE ACRUAL LOCATION
UNDERGROUND LIFELINES, SHOWN OR NOT SHOWN, AND
LOCATION THE LIFELINES IN THE FIELD PRIOR TO ANY
EVALUATION OR CONSTRUCTION APPROVALS.

RECEIVED FOR REVIEW	CEB
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CDG
ENGINEERS
500 Engineers Appointed Planners Inc.
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DRIVEN BY DJR
CHECKED BY OEB
SCALE ON 22"x34" 1" = 2 MILES
DATE 8/28/83

MISSOURI CENTRAL RAILROAD MAP DOCUMENT, DOCKET AS-489 (200-46) (2)
CENTRAL MISSOURI RAILROAD MAP DOCUMENT, DOCKET AS-489 (200-46) (2)
CLARK, JOHNSON, HENRY AND PETTIS COUNTIES, MISSOURI
CONTEXT MAP WITH HIGH GEOLOGIC SURVEY MONUMENTS

PROJECT NO.	12085
DRAWING NO.	EXHIBIT A