



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