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SEA

SERVICE DATE – JANUARY 29, 2008

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-1014

**Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in
Mineral County, CO**

BACKGROUND

In this proceeding, the City of Creede, Colorado (the City) filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (the Board) authorize the third-party or adverse abandonment of approximately one mile of rail line owned by the Denver & Rio Grande Railway Historical Foundation (the Foundation) in Mineral County, Colorado. The line is located between milepost 320.9 and milepost 319.9 (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA).

DESCRIPTION OF THE LINE

According to the City, the Line is about a mile in length and runs north to south. The Line has been out of service since around 1970 and is part of what is known as the Creede Branch (the Branch). The Branch is 21.6 miles in length and runs from South Fork, Colorado to the City, which is at the end of the Branch. It was constructed by an affiliate of the former Denver & Rio Grande Western Railroad Company (D&RGW).

The City states that the land under the Line was deeded to the City many years ago but is subject to pre-existing rights-of-way granted by the state and Federal government to a railroad predecessor to the Foundation. The City indicates that the proposed abandonment would result in the termination of the Foundation's rights-of-way according to the terms of the state and Federal grants. After the removal of the Foundation's rights-of-way, the City states that it would then require that the track be removed from the Line. The City indicates that there is one wooden bridge about 47 feet in length along the right-of-way that may also be removed at some point.

The Branch was initially constructed to Wagon Wheel Gap in 1884 or 1885 and was extended to the City in 1892 in order to serve the mining industry around the City. When mining activity dropped off in the early 1900s, the demand for rail service declined as well. Around 1970, the D&RGW stopped operating freight trains into the City, and the few trains that did operate on the Branch stopped at Wason, about two miles south of the City. All freight service

ceased on the Branch, and the Branch has been out of service since 1985. In 1988, the D&RGW acquired control of the Southern Pacific Transportation Company, and both companies were acquired by the Union Pacific Railroad Company (UP) in 1996.

ENVIRONMENTAL REVIEW

The City submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. Applicants served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules [49 CFR 1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

According to the City, the railroad predecessors to the Foundation never owned the land under the Line. An affiliate of the former D&RGW obtained a right-of-way grant from the State of Colorado in 1892 for part of the track in the City located in Section 36. The 1892 right-of-way was replaced by a 1969 right-of-way agreement between D&RGW and the Colorado State Land Board. In 1965, the land board then deeded its land under the right-of-way to the City, but subject to the pre-existing right-of-way. By its terms, the 1969 right-of-way agreement terminated after there had been no rail operations for 12 consecutive months. The City states that the termination provision in the 1969 right-of-way agreement has not become operative, however, because the track in the City, although out of service, remains under the jurisdiction of the Board.

The former D&RGW also obtained a right-of-way from the Federal government over Federally owned land located in Section 25 of the City in 1892. The Federal government subsequently deeded its land to the City in 1901. The proposed abandonment would allow the Federal right-of-way to terminate pursuant to Federal law.

Over many years, the City indicates that the land under the Line has been used for various public uses including a playground and a public parking lot. The City indicates that it also installed water and sewer lines under the right-of-way and streets over the right-of-way. The City states that it would like to develop the land in other ways in order to best serve the public interest. However, the City states that the Foundation has recently threatened these public uses by tearing up public streets and the public parking lot and by damaging the playground. Moreover, the City believes that it can not make further improvements or allow the land to be developed in other ways because the land is burdened by the Foundation's easements.

The City states that UP filed a notice of exemption to abandon the Branch in Docket No. AB-33 (Sub-No. 132X) in December 1998. At that time, SEA prepared an EA in which it concluded that the abandonment of the entire Branch, including the Line in the City, would not have any adverse environmental impact. The City believes that nothing has changed since that time. The Branch was not abandoned, however, because the Foundation acquired the Branch in

2000 pursuant to the offer of financial assistance procedure. The Foundation stated at that time that it was going to restore rail freight service on the Branch. According to the City, the Foundation has not provided any train operations since it acquired the Branch.

The U.S. Fish and Wildlife Service stated that the proposed abandonment would not affect any threatened or endangered species and does not appear to impact wetlands or other trust resources. Therefore, no further consultation pursuant to Section 7 of the Endangered Species Act is required.

The Colorado Department of Public Health indicated that it does not expect any adverse effects on public health to arise from the proposed abandonment.

The National Geodetic Survey (NGS) stated that one geodetic station marker has been identified that may be affected by the proposed abandonment. Accordingly, SEA will recommend that the Board impose a condition requiring that NGS be notified at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

The City indicates that it contacted the U.S. Army Corps of Engineers (the Corps) by letter dated October 29, 2007. The City indicates that a small wooden bridge carries the track of the Line over Willow Creek at the south end of town, and Willow Creek is channeled through town by a flume that was constructed and operated by the Corps. The City states that it has not yet heard back from the Corps. Accordingly, SEA will provide a copy of this EA to the Corps for its review and comment.

The City states that there has been no rail service over the Line for the last thirty years and that there are no shippers in the City. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities, transportation of ozone-depleting materials, or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. SEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Noise associated with abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Based on all information available to date, SEA does not believe that abandonment activities would cause significant environmental impacts.

HISTORIC REVIEW

The City served the historic report on the Colorado Office of Archeology and Historical Preservation (SHPO), pursuant to 49 CFR 1105.8(c). The SHPO stated that in order to avoid an adverse affect, care should be taken to: 1) ensure that the existing rail corridor is maintained, so that it remains recognizable as a rail corridor; and 2) ensure that the historic integrity of the Creede train station is not reduced as a result of the project. The SHPO suggested that the City consult with the Colorado State Historical Fund (CSHF). The City states that it is opposed to the

first recommendation because it would defeat the purpose of its application for adverse abandonment. Moreover, the City states that the track in the city limits is already unrecognizable as a rail corridor.

The City indicates that it consulted with CSHF. CSHF recommended that a short segment of track be preserved in front of or behind the station to help keep the restored depot in historical context. The City states that it is not opposed to the preservation of this short segment of track. However, the City indicates that the Foundation would have to decide whether it would be willing to donate the track adjacent to the station to the Historical Society. Because the City prepared the historical report and has already consulted with the SHPO, we are recommending a condition requiring the City to complete the Section 106 process of the National Historical Preservation Act, 16 U.S.C. 470f prior to any salvage activities.

SEA conducted a search of the Native American Consultation Database at <http://www.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that there are no tribes that may have an interest in the proposed project.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

1. The City of Creede, Colorado (the City) shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (generally, 50 years old or older) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. The City shall report back to the Section of Environmental Analysis regarding any consultations with the Colorado Office of Archeology and Historical Preservation and any other Section 106 consulting parties. Salvage activities related to abandonment (including removal of tracks and ties) may not commence until the Section 106 process has been completed, and the Board has removed this condition.
2. Notice shall be given to the National Geodetic Survey at least 90 days prior to the commencement of salvage activities that will disturb or destroy any geodetic station markers.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, if the recommended conditions are imposed, abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

As an alternative to the proposed abandonment, denial should also not affect the existing quality of the human environment and energy consumption.

PUBLIC USE

Because this is an adverse abandonment proceeding, offers of financial assistance and public use requests are not appropriate and will not be entertained.

TRAILS USE

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with a grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by February 12, 2008, and should address this issue.

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Danielle Gosselin, the environmental contact for this case. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-1014 in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Danielle Gosselin by phone at (202) 245-0300, fax at (202) 245-0454, or e-mail at danielle.gosselin@stb.dot.gov.

Date made available to the public: January 29, 2008.

Comment due date: February 26, 2008.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Attachment

Anne K. Quinlan
Acting Secretary