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OEA

SERVICE DATE – AUGUST 28, 2015

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

Docket No. AB 603 (Sub-No. 4X)

**V and S Railway, LLC – Abandonment Exemption – In Pueblo,
Crowley, and Kiowa Counties, Colo.**

BACKGROUND

In this proceeding, the V and S Railway, LLC (V&S) filed a notice under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 to abandon an approximately 121.9-mile segment of rail line along the Towner Line in Pueblo, Crowley, and Kiowa Counties, Colorado. The rail line extends westward from milepost 747.5, near Towner 81071, to milepost 869.4, near NA Junction and North Avondale 81022. The proposed abandonment traverses U.S. postal zip codes 81022, 81025, 81062, 81033, 81063, 81076, 81021, 81045, 81036, and 81071.

The rail line passes through rural, nearly level land, and parallels Colorado State Highway 96. Agriculture is the predominant land use, although the line passes through or near the small towns of North Avondale; Boone; Olney Springs; Crowley; Ordway; Sugar City; Arlington; Haswell; Eads; Chivington; Brandon; Sheridan Lake; and Towner. The right-of-way is generally 100-feet in width. There are a number of small streams and drainage ditches that traverse the area, and V&S indicates that the abandonment right-of-way contains 58 structures relative to these conveyances, including bridges, trestles, culverts, and casings.

According to V&S, the rail line was constructed in the latter part of the 19th century and was formerly owned by the Missouri Pacific Railroad (MoPac). V&S states that the Union Pacific Railroad Company (UP) acquired the Towner Line in 1982 from MoPac but that the line lost its significance under this ownership and was abandoned in a merger with the Southern Pacific Transportation Company that was authorized by the Surface Transportation Board (Board) in 1996. V&S notes that the Colorado Department of Transportation purchased the rail line in 1998 and V&S acquired the line in 2005, and formally in 2012 in an acquisition proceeding that was authorized by the Board.

V&S states that portions of the rail line proposed for abandonment were constructed on easements through public lands obtained under the General Railroad Right-of-Way Act of 1875 and use of the right-of-way for other than railroad purposes is limited. Accordingly, continued use of the right-of-way may occur through the offer of financial assistance (OFA) process, pursuant to 49 U.S.C. § 10904, or through the interim trail use/rail banking process, pursuant to

16 U.S.C. § 1247(d). If the notice becomes effective, V&S would be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way. A map depicting the line in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

V&S submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. V&S served the environmental report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

V&S states that no local traffic has moved over the line proposed for abandonment for at least two years and there has been no request for service by shippers of any kind during the past three years. Any overhead traffic can be rerouted over other rail lines. V&S indicates that alternative rail service is available from the Kansas & Oklahoma Railroad (K&O) at Towner; from UP at NA Junction; and from the BNSF Railway Company (BNSF) between Holly and NA Junction. 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.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or if necessary, via construction of new access points to the right-of-way. If abandonment authority is granted, V&S would salvage the rail, tie, and track material, but would retain the underlying roadbed and ballast, and any structures including bridges, trestles, and culverts to permit alternative uses. Accordingly, existing drainage flows would not be impeded or altered by salvage operations.

The Kiowa County Board of County Commissioners (Kiowa) commented that it opposes abandonment of any portion of the Towner Line because it would negatively affect its programs and those of neighboring counties. Kiowa contends that mismanagement of the Towner Line has had an impact on the economy through reduced tax revenues and lower grain prices, and that additional truck traffic has negatively affected area roads. Kiowa indicates that there have been at least two viable offers to purchase the entire Towner Line, and believes that the rail line may

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 603 (Sub-No. 4X).

be suitable for shipping local crops, such as the drought tolerant proso millet, to markets for export to Asia. However, should the abandonment proceeding move forward, Kiowa asks that V&S take certain steps to ensure that the right-of-way is left in a suitable condition. Specifically, Kiowa asks that V&S: 1) manage wildlife and noxious weeds; 2) survey the right-of-way and provide the plats to Pueblo, Kiowa and Crowley counties; 3) preserve or relocate any survey markers; 4) remove rail appurtenances including rails, ties, spikes, poles, and wires, and return the area to its original appearance; 5) preserve historic structures; 6) remove non-historic structures; 7) reconstruct at-grade crossings; and 8) post surety bonds with the affected counties listed in item 2 for work to be performed. In response to Kiowa's concerns regarding the continued use of the line, OEA notes that V&S has stated that it has received no requests from shippers for the past three years to use the line; that alternative rail service is available from K&O at Towner, UP at NA Junction, and BNSF between Holly and NA Junction; and that an OFA can be made, pursuant to 49 U.S.C. § 10904. OEA also notes that because the line has been out-of-service for over two years, no rail traffic would be converted to truck traffic; therefore the proposed abandonment would not impact area roads. In terms of removing all rail appurtenances, non-historic structures, and restoring the area, OEA notes that V&S intends to salvage the rail materials, but would leave the roadbed, bridges, and other structures intact for future uses. However because the future use of the rail line right-of-way is not known with regard to site restoration, and to address Kiowa's other concerns over wildlife and noxious weeds, survey plats, and surety bonds, OEA is recommending a condition that would require V&S to consult with Kiowa County, Pueblo County, and Crowley County regarding these four issue areas prior to initiating salvage of the rail line, and for V&S to comply with each county's reasonable requirements related to salvage of the right-of-way. Kiowa's other concerns regarding at-grade public highway crossings, geodetic markers, and historic and archaeological resources are addressed elsewhere in this EA, as appropriate.

The Colorado Public Service Commission (CPSC) commented that it has jurisdiction over the closing of all railroad public highway crossings in the state and requires that a railroad company abandoning a public crossing file an application with CPSC so that it may evaluate the effects that the proposed action would have on public health and safety. Since there are a number of cities and towns that may have public highway crossings, such as North Avondale; Boone; Olney Springs; Crowley; Ordway; Sugar City; Arlington; Haswell; Eads; Chivington; Brandon; Sheridan Lake; and Towner, OEA has included a condition in this EA that would require V&S to consult with CPSC prior to conducting salvage operations to determine the need to file an application with CPSC, and to comply with CPSC's reasonable requirements related to salvage work in the right-of-way.

The Natural Resources Conservation Service (NRCS) commented that it has no comments to offer regarding the proposed abandonment. OEA has therefore determined that no further consultation with NRCS is necessary in this proceeding.

The U.S. Environmental Protection Agency (EPA) commented that no environmental issues were identified during its review. EPA noted that the area is largely agricultural and has been in a period of extreme to severe drought for several years, and stated that the drought may have affected rail service. OEA has therefore determined that no further consultation with EPA is necessary in this proceeding.

The Colorado Department of Public Health and Environment (CDPHE) commented that the disposal of track materials is of concern, and requested that V&S comply with all state and federal environmental regulations. OEA has therefore included a condition in this EA that would require V&S to consult with CDPHE prior to conducting salvage operations to ensure that the track materials are properly disposed of, and to comply with CDPHE's reasonable requirements related to salvage of the right-of-way.

The U.S. Fish and Wildlife Service (USFWS) commented that it has no concerns regarding the proposed abandonment in terms of project applicability to Section 7 of the Endangered Species Act. OEA has therefore determined that no further consultation with USFWS is necessary in this proceeding.

The National Geodetic Survey (NGS) commented that approximately 104 geodetic station markers may be affected by the proposed abandonment. OEA is therefore recommending a condition that would require V&S to notify NGS at least 90 days before beginning salvage operations that would disturb or destroy these geodetic station markers.

OEA has not received comments from the U.S. Army Corps of Engineers (Corps), but believes that a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) would not be required because V&S has stated that it has no plans to alter the contour of the underlying roadbed, or perform any work that would alter or impede drainage. However, because there are numerous streams and other drainage features along the 121.9-mile rail line proposed for abandonment, OEA has included a condition in this EA that would require V&S to consult with the Corps prior to initiating salvage to determine if a Corps permit would be required, and if so, to comply with the Corps' reasonable requirements for obtaining any necessary permits.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage 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, OEA does not believe that salvage activities would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this EA to the following agencies for review and comment: the U.S. Fish and Wildlife Service; the U.S. Environmental Protection Agency; the U.S. Army Corps of Engineers; the Natural Resources Conservation Service; the National Park Service; the National Geodetic Survey; the Colorado Public Service Commission; the Colorado Department of Public Health and Environment; Kiowa County Board of County Commissioners; Pueblo Board of County Commissioners; Crowley Board of County Commissioners; and the Ute Mountain Ute Tribe.

HISTORIC REVIEW

V&S served the Historic Report on the Colorado Office of Archaeology and Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c) as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)]. The SHPO commented

that the former Missouri Pacific Railroad was determined eligible for listing on the National Register of Historic Places (National Register) in 1998. The SHPO stated that the possible reuse of the rail line would have an adverse effect on historic resources because the transfer out of federal oversight would remove the resource from the protections afforded under Section 106 of the National Historic Preservation Act (NHPA).

Accordingly, OEA is recommending a condition that would require V&S to 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, or APE, eligible for listing or listed in the National Register until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American and the Tribal Directory Assessment Tool Consultation Databases to identify federally recognized tribes that may have ancestral connections to the project area.² The databases indicate that there are four federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way or APE of the proposed abandonment and OEA is providing a copy of this EA to the following tribes for review and comment: the Comanche Nation; Arapaho Tribe of Wind River Reservation; the Cheyenne and Arapaho Tribes, Oklahoma; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation; and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

CONDITIONS

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

1. Prior to commencement of any salvage activities, the V and S Railway, LLC (V&S) shall consult with the Board of County Commissioners in Kiowa County, Pueblo County, and Crowley County regarding wildlife and noxious weeds, survey plats, site restoration, and surety bonds within the area of the proposed abandonment, or right-of-way. V&S shall comply with each county's reasonable requirements related to salvage of the right-of-way.
2. Prior to commencement of any salvage activities, V&S shall consult with the Colorado Public Service Commission (CPSC) regarding its requirements for closing all public highway-rail crossings within the area of the proposed abandonment and comply with CPSC's regulatory requirements related to salvage of the right-of-way.
3. Prior to commencement of any salvage activities, V&S shall consult with the

² Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited August 21, 2015) and the U.S. Housing and Urban Development's Tribal Directory Assessment Tool at <http://egis.hud.gov/tadat/Tribal.aspx> (last visited August 21, 2015).

Colorado Department of Public Health and Environment (CDPHE) regarding the proper disposal of track materials and comply with CDPHE's reasonable requirements related to salvage of the right-of-way.

4. V&S shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
5. Prior to commencement of any salvage activities, V&S shall consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements and, if applicable, shall comply with the reasonable requirements of the Corps related to salvage of the right-of-way.
6. V&S shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. V&S shall report back to OEA regarding any consultations with the State Historic Preservation Office and the public. V&S may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed and if the recommended mitigation is imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPAGAC directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Diana Wood, who prepared this Environmental Assessment. 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 603 (Sub-No. 4X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Diana Wood, the environmental contact for this case, by phone at (202) 245-0302, fax at (202) 245-0454, or e-mail at woodd@stb.dot.gov.

Date made available to the public: August 28, 2015.

Comment due date: September 14, 2015.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment