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**Environmental Assessment
Docket No. AB-597X**

**Butte-Silver Bow County-Abandonment Exemption-
In Silver Bow County, Montana**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	1
1.1 Proposed Action	1
1.2 Description of Line	1
1.3 History of the MGBH Line and Butte Mining District	2
1.4 MGBH Relationship to CERCLA Activities	4
1.5 NEPA and Implementing Regulations	5
1.6 Preliminary Draft Environmental Assessment (PDEA)	5
1.7 The 1995 Trails Act and the Board's Environmental Review	6
1.8 PUBLIC USE	7
2.0 DESCRIPTION OF THE EXISTING ENVIRONMENT	7
2.1 Land Use	7
2.2 Transportation	7
2.3 Source, Nature, and Extent of Contamination Associated with the Railroad Bed	7
2.3.1 Human Health Risks	9
2.3.2 Ecological Risk	9
2.4 Hydrology	10
2.5 Cultural Resources	10
2.5.1 Historic Preservation	11
2.6 Vegetation	12
2.7 Wildlife	13
2.7.1 Threatened, Endangered, and Sensitive Species Inventory	14
2.8 Wetlands	14
2.9 Air	14
2.10 Noise	15
2.11 Energy	15
2.12 Safety	15
3.0 ENVIRONMENTAL IMPACTS OF ABANDONMENT	15
3.1 Land Use	15
3.2 Transportation	16
3.3 Contamination Associated with the Railroad Bed	16
3.4 Vegetation	16
3.5 Wildlife	17
3.6 Wetlands	17
3.7 Cultural Resources	17

3.8	Air	18
3.9	Noise	18
3.10	Energy	18
4.0	ALTERNATIVES TO ABANDONMENT	18
4.1	No Action Alternative	18
4.2	Discontinuance of Service and Continued Operation	19
5.0	CONCLUSION	19
6.0	SEA RECOMMENDED MITIGATION AND REQUEST FOR COMMENTS	19
7.0	PUBLIC ASSISTANCE	20
8.0	COMMENTS	20

List of Exhibits

<u>Exhibit</u>	<u>Description</u>
A	Vicinity Map, MGBH Line
B	Map of the Upper Clark Fork River Basin Superfund Sites
C	May 30, 2001, Letter from Susan Greer requesting preparation of a PDEA
D	July 27, 2001, Letter from SEA providing concurrence for preparation of a PDEA

EXECUTIVE SUMMARY

Background

The Surface Transportation Board's Section of Environmental Analysis (SEA) has prepared this Environmental Assessment in response to a petition for exemption filed by the combined city-county government of Butte-Silver Bow County, Montana (BSB) seeking authority from the Surface Transportation Board (STB or Board) pursuant to 49 USC 10502 for an exemption from the provisions of 49 USC 10903 with regard to the proposed abandonment of 11.76 miles of its Missoula Gulch and Butte Hill Line (MGBH) located within Silver Bow County, Montana. Authority to abandon and salvage the MGBH is sought by BSB as part of the cleanup activities mandated by the Environmental Protection Agency (EPA) in an EPA Unilateral Administrative Order (UAO), under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)¹ requiring MGBH and other named parties to address potential or actual threats to public health and the environment posed by the release of lead, arsenic, and other metal contaminants from mining-related wastes and contaminated soil on railroad beds in and near Butte.

The entire MGBH lies within the boundaries of the Silver Bow Creek/Butte Area Superfund Site (Superfund Site)² because levels of lead and arsenic have been recorded on the MGBH railbeds by EPA that exceed acceptable level for human and environmental exposures. Elevated concentration of contaminants in the mine waste material identified on or along the right-of-way pose potential risks to the environment. The MGBH right-of-way is located within two areas called Operable Units: the Butte Priority

¹42 U.S.C. §9601 *et seq.* CERCLA, commonly known as Superfund, was enacted by Congress on December 11, 1980 and created a tax on the chemical and petroleum industries. CERCLA provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. When EPA negotiates with a Potentially Responsible Part (PRP) to do cleanup work at a Superfund site, the agreement may be documented in an "Administrative Order on Consent". If the negotiations fail, EPA has the authority to compel the PRP to do the cleanup by issuing a Unilateral Administrative Order (UAO).

²Pursuant to Section 105 of CERCLA, EPA listed the Silver Bow Creek Superfund Site on the National Priorities List on September 9, 1983 at 48 Fed.Reg. 40658. The listing was expanded to include the Butte Area on July 22, 1987, at 52 Fed. Reg. 17627, and the Superfund site became known as the Silver Bow Creek/Butte Area Superfund site.

Soils Operable Unit of the Silver Bow Creek/Butte Area (BPSOU)³ and the West Side Soils Operable Unit (WSSOU). Under CERCLA, geographical areas with similar physical, chemical or geographical features are grouped together into sites called operable units to facilitate cleanup activities.

The Superfund Site was established by EPA to address contamination related to mining related activities in an around Butte. Cleanup activities along the MGBH is part of a remediation action for the entire Superfund Site. Cleanup activities on the MGBH is overseen by EPA, in consultation with the State of Montana's Department of Environmental Quality (MDEQ) and supported by the combined city-county government of BSB. Components of the proposed cleanup plan for the right-of-way include excavation and removal of contaminated source material, site stabilization, capping, construction of sedimentation structures, drainage diversions, and access restrictions.

Potential Environmental Impacts

The primary human health and environmental risks of abandonment and salvage of the rail right-of-way are the transport of contaminated metals in the soil as storm water runoff into Silver Bow Creek, public use areas, storm water drainage channels, down-gradient receiving streams, and floodplains. Other contaminants of concern on the rail bed include aluminum, cadmium, chromium, copper, iron, silver, and zinc. Arsenic and lead in elevated concentrations can cause non-cancerous health risks to humans. Other mine waste contaminants, especially copper and zinc, can cause adverse effects on aquatic invertebrates, aquatic plants, and riparian habitat vertebrates including fish. After intense thunderstorms that often occur in the Butte area in summer months, contaminated sediments have been observed flowing several hundred yards from the railroad bed. Most receptor areas are immediately adjacent to, or within several hundred feet of the railroad bed. Releases of these contaminants into the environment may also occur through wind erosion

EPA's proposed removal action would mitigate the environmental risk of arsenic and metal contamination of down-gradient receptors including Butte Hill, Silver Bow Creek, ground water and floodplains by controlling the transport of these contaminants through storm water runoff and wind borne erosion. The potential for short-term sediment transport to storm water drainage channels and Silver Bow Creek during runoff events as a result of potential salvage activities and reclamation of the right-of-way would be reduced in the remediation action by: (1) removing the near-surface contaminated materials; (2) isolating the contaminated material; and (3) constructing, as necessary, appropriate storm water control structures. The potential for release of contaminated materials or dust would be monitored and minimized

³Authority for the cleanup of the BPSOU Railroad Bed Time Critical Removal Action is based on CERLA and regulations found at 40 CFR 300.415. These regulations pertain to removal actions for abatement, minimization, stabilization, mitigation, or elimination of the release or threat of release of hazardous substances, pollutants, or contaminants by nearby populations, animals, food chains, or sensitive ecosystems, or other conditions, situations, or factors.

by using detection equipment and dust suppression techniques at the site to avoid or reduce the occurrence.

An extensive cleanup plan has been approved by EPA for the cleanup of the railbeds in and around the Butte area. The MGBH is one of several railbeds that will be remediated under the Superfund Site cleanup. EPA's cleanup plan provides an analysis of physical impacts to the environment and recommended mitigation activities to reduce the impacts of salvage of the right-of-way to humans and the environment. EPA's UAO for removal response activities, Butte Railroad Beds TCRA⁴, contains an order which describes the remediation work to be performed based on studies and the administrative record for the MGBH and other railbeds.

The MGBH itself has been identified by the Montana State Historic Preservation Officer (SHPO) as a significant historical structure eligible for listing in the *National Register of Historic Places* (National Register). As part of the remediation action plan for the Superfund Site, the BSB Community Historic Preservation Officer (CHPO)⁵ and the SHPO prepared two Programmatic Agreements for the MGBH. The agreements stipulate that the adjacent area would include a recreational trail with interpretive features and signage along the trail to mitigate the loss of the rail line. The SHPO is currently reviewing the proposed abandonment and salvage proposal to determine its effects on the MGBH as required by Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR 800. Until the Section 106 process is completed, SEA recommends that BSB retain its interests in the line and maintain it unaltered until completion of the Section 106 process.

Conclusion

In sum, if the proposed abandonment is granted and the cleanup plan as proposed by EPA, coupled with the Board's mitigating conditions, is implemented, impacts on the existing environment of the MGBH and adjacent area, (including cultural resources, wetlands, air, transportation, noise, energy, and safety) would not be significant. Moreover, salvage of the right-of-way and contaminant removal actions are anticipated to have a beneficial affect on the environment. Conversely, denial of the proposed abandonment (leaving the track structure in place) would require EPA to modify its remediation actions for the MGBH right-of-way. Environmental risks associated with exposures to arsenic and lead and other heavy metals would continue until alternative removal actions for the right-of-way are designed by EPA and implemented by the railroad. EPA has stated in its TCRA that conditions associated with the railroad bed presently exist which, if not addressed, could lead to an imminent and substantial endangerment to the public health, welfare or environment.

⁴EPA Docket No. CERCLA -8-2000-02. Unilateral Administrative Order for Removal Response Activities, Butte Railroad Beds, Time Critical Removal Action - OU OI. January 13, 2000.

⁵Local historic preservation officer for the Butte area.

1.0 INTRODUCTION

1.1 Proposed Action

On May 17, 2002, the combined city-county government of Butte-Silver Bow County, Montana (BSB) filed a petition for exemption with the Surface Transportation Board (STB or Board) pursuant to 49 U.S.C. 10502 seeking authority to abandon its Missoula Gulch and Butte Hill Line (MGBH). BSB proposes to abandon approximately 11.76 miles of the MGBH in and near Butte, in Silver Bow County, Montana.

BSB, the current owner of the MGBH, acquired the railroad in October 2001 by order of the court through a petition filed in State District Court in Butte, Montana. Before, BSB the owner of the MBGH was the now-defunct Butte/Anaconda Historic Park and Railway Corporation (BAHPR). The BAHPR has not operated the MGBH for several years. The abandonment is being sought by BSB to facilitate environmental cleanup actions in and around Butte, Montana, in response to the U.S. Environmental Protection Agency's (EPA) Unilateral Administrative Order (UAO), under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), requiring MGBH and other named parties to perform a Time Critical Removal Action (TCRA)⁶ on and near railroad beds within Butte. TCRA clean up activities are required to begin as soon as determinations are made, by EPA and other agencies with jurisdiction, to abate, prevent minimize, stabilize, mitigate, or eliminate the threats to public health or the environment.

CERCLA regulations pertain to removal actions for the abatement, minimization, stabilization, mitigation, or elimination of the release or threat of release of hazardous substances, pollutants, or contaminants. Such measures apply to the actual or potential exposure to hazardous substances or pollutants or contaminants to nearby populations, animals, food chains, or sensitive ecosystems, or other conditions, or situations.

1.2 Description of Line

The MGBH is located in Silver Bow County, Montana. The MGBH is divided into two sections:

⁶EPA issues TCRA actions when there is an immediate response action required to mitigate impacts on human health and the environment. Authority for this Railbed TCRA is based on CERLA and regulations found at 40 CFR § 300.415. These regulations pertain to removal actions for the abatement, minimization, stabilization, mitigation, or elimination of the release or threat of release of hazardous substances or pollutants. Regulations at 40 CFR § 300.415(b)(3) state that TCRA removal actions shall begin as soon as an agency determination to remediate are made.

the Missoula Gulch Line and the Butte Hill Line. The Missoula Gulch main line portion of the MGBH begins at milepost 0.0 at Rocker, Montana and extends to milepost 4.40 at the Butte Hill Yard. The Butte Hill main line portion of the MGBH begins at milepost 0.0 at the Butte Hill Yard and extends northwesterly then northeasterly to milepost 3.69 near the Badger Mine. In addition, there are approximately 3.67 miles of yard tracks, sidings, and turnouts, which result in a total of 11.76 miles of rail bed. Portions of the MGBH have previously had either the rail or both the rail and the ties removed. The location of the MGBH is shown on the Vicinity Map attached as Exhibit A.

1.3 History of the MGBH Line and Butte Mining District

Mining Operations

Historically, Butte has been a mining, milling and smelting district. More than 100 years of mining in the area resulted in the development of over 500 mines and shafts, 3,000 miles of underground workings, 120 major reclaimed and unreclaimed waste rock dumps, contaminated railroad bed, and the Berkeley and Continental Pits with their ancillary tailings ponds, waste dumps and leach pads.

In 1864, the first gold claims in Butte were discovered. By 1870, dozens of lode claims were recorded. In the mid-1870s, the first successful processing of Butte's silver ores was accomplished and followed several years later by the construction of mills and smelters capable of processing the copper ores. The 1880s represented a pivotal decade in Butte mining history as the copper industry developed. In 1881, the arrival of the Utah & Northern Railroad (a Union Pacific subsidiary) and the purchase of the Anaconda Claim by Marcus Daly marked a significant turning point for Butte. Daly and his financial partners organized the Anaconda Copper Mining Company. The ownership of mining properties in Butte was consolidated. Although steamboats and wagons initially carried mining machinery and ore throughout the west, railroads were essential to base-metal mining. Within the next few years, the Montana Central and Montana Union (each of which ultimately became part of what is now the Burlington Northern and Santa Fe Railroad Company) joined the Utah & Northern in serving Butte by constructing additional railroad lines. In 1883, a shortage of efficient smelter capacity, high labor costs, and environmental problems led Daly to seek development of his own smelting facility 25 miles away in the new town of Anaconda.

The Butte Anaconda and Pacific (BA&P) was incorporated in 1891 and, beginning in 1892, construction of a rail line between the mining sites in Butte and the smelting site in Anaconda, Montana was initiated. Spurs of the BA&P main line tied the copper mines on Butte Hill to the smelter works in Anaconda. By 1910, the Butte district produced over 284 million pounds of copper, making it the largest producer of copper in North America. The construction and maintenance of the railroad lines, in part, were performed using mining-related materials in the bed for fill (low-grade ore and waste rock) and as ballast (slag).

The startup of operations at the Berkeley Pit in 1955 greatly increased traffic on the BA&P. Large

quantities of low-grade ore were moved from Butte to processing facilities in Anaconda. However, in the 1960s and early 1970s, changes in mining and processing procedures brought changes to the BA&P. The completion of the Weed Concentrator in 1964 at the southern edge of the Berkeley Pit reduced the amount of ore requiring transport to Anaconda to one trainload per day, down from about twelve trainloads a day previously. The cessation of underground mining in 1973 ended almost all rail activity on Butte Hill. In 1977, the Atlantic Richfield Company (ARCO) merged with The Anaconda Company (formerly known as the Anaconda Copper Mining Company) through a series of transactions. The closure of the smelter in Anaconda by ARCO in 1980 eliminated almost all of the Butte-Anaconda main line traffic.

Rail Operations

The MGBH was constructed in the early 1890s, and was part of a larger system operated by the BA&P that included a line extending from Butte to a point west of Anaconda, Montana. The MGBH intersects with the Butte-Anaconda Line in Rocker, Montana.

The BA&P primarily hauled copper ore mined in Butte to smelters in Anaconda. In the early 1980s, the remaining mines and smelter ceased operations, substantially decreasing the demand for the BA&P's services. In 1984, the BA&P filed an application for abandonment with the Interstate Commerce Commission (ICC)⁷ (Docket No. AB-235, Butte, Anaconda & Pacific Ry. Co. - Abandonment - in Deer Lodge and Silver Bow Counties, MT). Subsequent to filing the application for abandonment, the BA&P and the State of Montana entered into an agreement by which the BA&P donated a portion of its line, and sold the remainder to the State of Montana, after which the BA&P withdrew its application for abandonment. The State of Montana then leased all of the former BA&P lines to Rarus Railway Company (Rarus), with an option to purchase.⁸ In 1988, the Rarus lease was modified to exclude the MGBH. In 1988, at the time the Rarus lease was modified, the State of Montana leased the MGBH to a small non-profit corporation, the Butte/Anaconda Historical Park and Railroad Corporation (BAHPR). The BAHPR was incorporated in Montana as a non-profit corporation in 1981. The BAHPR operated a tourist train between Rocker and the former Butte Hill Yard.

In 1991, the BAHPR purchased the MGBH from the State of Montana.⁹ At the time of the purchase there had been no commercial shipping traffic over the MGBH for several years. In 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State's Office. The assets of the BAHPR

⁷The ICC is the predecessor agency to the STB.

⁸See ICC Finance Docket No. 30640, Rarus Railway Company -- Exemption from 49 U.S.C. 10901 and 11301.

⁹See Exhibit D, ICC Finance Docket No. 31982, Butte-Anaconda Historic Park and Railroad Corporation Acquisition Exemption – State of Montana, Department of Commerce.

were not distributed and, until recently, were held by the BAHPR. The Second Judicial District Court in Butte was petitioned in 2001 to direct the assets of the dissolved BAHPR to the local government body, BSB. The Court has ruled affirmatively on that petition and the assets of the BAHPR, including the MGBH, have been conveyed to BSB.¹⁰ The Board approved BSB's acquisition of the MGBH in a decision issued March 15, 2002.

1.4 MGBH Relationship to CERCLA Activities

The entire MGBH lies within the boundaries of the Silver Bow Creek/Butte Area Superfund Site (Superfund Site) in and near the town of Butte, in Silver Bow County. This Superfund Site was established by the EPA to address contamination related to mining and mining-related activities in and around Butte. The area encompassing Silver Bow Creek near Butte was initially listed as a Superfund Site by the EPA in 1983. The Superfund Site was subsequently expanded to encompass portions of Butte. The Silver Bow Creek/Butte Area Superfund Site actually is one of three related and contiguous Superfund Sites in southwestern Montana. Exhibit B shows the location and geographic relationship of the three Superfund Sites.

The MGBH lies within two Operable Units (OU) of the Silver Bow Creek/Butte Area Superfund Site: the Butte Priority Soils OU (BPSOU) and the West Side Soils OU (WSSOU). Railroad bed and associated samples have been collected by EPA as part of the investigations and cleanup actions and studies that evaluated mining, milling, and smelting waste materials throughout the Superfund Site. EPA has identified the MGBH and other railroad beds in the Butte area as having elevated levels of arsenic and lead that present environmental concern. In May 1999, EPA issued an "Enforcement/Action Memorandum"¹¹ authorizing a "time -critical"¹² removal action addressing the MGBH and other railroad beds in the area of the of the BPSOU. Following EPA's issuance of the May 1999 Enforcement/Action Memorandum, a group of the potentially responsible parties for the railroad bed removal action drafted a "Work Plan" under EPA's direction and supervision. Once EPA was satisfied with the Work Plan, it issued, an order, requiring MBGH and certain other named railroads and parties to develop and implement a cleanup plan on and near railroad beds within the Butte area to reduce the level of contaminates on the right-of-ways

¹⁰See the Dissolution of Butte/Anaconda Historical Park and Railroad Corporation, an involuntarily dissolved Montana non-profit corporation. Cause No. DV-01-100, October 29, 2001.

¹¹The Enforcement/Action Memorandum discusses site conditions, reports EPA's findings regarding a threat to human health or the environment, and describes the proposed removal action and alternatives, among other things.

¹²Time critical actions require immediate agency response.

and on adjacent soils.¹³ Subsequent to issuance by EPA of the UAO, further studies have been conducted and “Design Reports” have been generated. Design Reports describe the findings of the sampling efforts and describe the specific cleanup work to be performed on each railroad bed.

BSB is seeking the Board’s authority to abandon the entire MGBH. The current cleanup plan, as approved by EPA in consultation with the State of Montana’s Department of Environmental Quality (MDEQ) and supported by BSB, calls for removal of track structure on the existing portion of the MGBH, and the cleanup of substantial portions of the railroad bed. Before any cleanup actions can proceed, BSB must request and receive authority from the Board to abandon the MGBH. BSB filed a petition with the Board in May 2002 seeking authority to abandon and salvage the MGBH.

If the Board approves the proposed abandonment, BSB states that the proposed end use for the portion of railroad bed between Rocker and the Kelley Mine Yard is a pedestrian trail. BSB stated in its exemption petition that it intends to submit a trails use request at the appropriate time in the abandonment proceeding and a public use condition for the portion of the MGBH above the Kelley Mine Yard, which is proposed as a public road. Response actions above the Kelley Mine Yard are limited to sections of existing track within the right-of-way.

1.5 NEPA and Implementing Regulations

Procedures for the implementation of environmental laws applicable to rail line abandonment and salvage are designed to assure adequate consideration of environmental factors in the Board’s decision-making process pursuant to the National Environmental Policy Act (NEPA) and implementing regulations in 49 Code of Federal Regulations (CFR) §§ 1105 and 42 U.S.C. 4332 the Energy Policy and Conservation Act, 42 U.S.C. 6362 (b). Additionally, this EA has been prepared to consider related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, the Endangered Species Act, 16 U.S.C. 1531 and CERCLA, as appropriate. Because the MGBH is located within a Federal Superfund Site, CERCLA regulations and requirements apply.

1.6 Preliminary Draft Environmental Assessment (PDEA)

By letter of May 30, 2001, Ms. Susan J. Geer, on behalf of the BSB, requested the concurrence of SEA to prepare and submit to SEA a PDEA¹⁴ to serve as the environmental and historic report required under the Board’s environmental rules (see Exhibit C). SEA concurred with Ms. Geer request to submit

¹³See EPA Docket No. CERCLA-8-2000-2. Unilateral Administrative Order for Removal Response Activities, Butte Railroad Beds, Time Critical Removal Action - OU OI. January 13, 2000.

¹⁴The Council on Environmental Quality regulations at 40 C.F.R. 1506.5(b) permit Applicants to prepare EAs. The Board’s environmental rules at 49 CFR 1105.4(g) permits applicants to prepare environmental reports in the form of PDEA’s.

a PDEA (see Exhibit D). A PDEA was submitted as part of BSB's petition for exemption. Ms. Geer also requested that an Environmental Assessment (EA) be prepared in this proceeding. SEA concluded that an EA was the appropriate form of documentation given the extensive environmental record prepared by EPA as part of the cleanup activities under CERCLA, the Montana Department of Environmental Quality, and SEA's independent review of BSB supporting environmental documentation.

The PDEA included information that has been collected to date for CERCLA activities in and around Butte, including, EPA's Railbed OAU studies and environmental information required by the Board's environmental rules. SEA used the PDEA as an starting point in the preparation of the EA for this abandonment.

1.7 The 1995 Trails Act and the Board's Environmental Review

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned. The Trails Act is intended to preserve railroad rights-of-way for future railroad use.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Certificate of Interim Trails Use (CITU))¹⁵ to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board imposes a CITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Act is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal agencies require environmental review.

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 20 days of publication of the notice of the petition for 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 a right-of-way as a trail (49 CFR 1152.29).

¹⁵This process allows railroad rights-of-way to be preserved by allowing interim trail use on lines that otherwise would be abandoned. In exempt abandonment procedures, it is a notice of interim trails use (NITU) that is issued rather than a CITU.

1.8 PUBLIC USE

Following abandonment and salvage of the rail line, BSB believes that the right-of-way would be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

2.0 DESCRIPTION OF THE EXISTING ENVIRONMENT

This section provides an overview of the existing environment in the vicinity of the proposed abandonment, including a description of the source, nature and extent of contamination within the right-of-way, adjacent land use, and ecosystems.

2.1 Land Use

The MGBH right-of-way is currently zoned as a transportation corridor due to its past use. Current adjacent land use along the eastern half of the right-of-way through Butte is predominantly residential or mining in areas on the upper, northeastern portion of the Butte Hill. The western half of the MGBH is outside of Butte and adjacent land use is open space along mostly undeveloped land. Much of the land along the railroad right-of-way contains contaminants determined by EPA to pose a threat to human health and the environment.

2.2 Transportation

The MGBH has been out of service since 1996 when the already-dissolved BAHPR ceased operating a tourist train over the line. BSB states that it is not aware of any foreseeable plans for any viable entity to operate on the MGBH. Current ownership of rail lines within the Butte area include, among others, the Burlington Northern Santa Fe Railroad Company, Montana Resources Incorporated, Montana Western Company, Universal Royal Apex Limited Montana Mining Properties Inc., RARUS Railroad Company, BGM LLC, and BAHRC and Union Pacific Railroad Company. According to BSB, the existing railroad infrastructure in Butte can meet current and foreseeable expanded rail transportation requirements should the Board grant this abandonment.

2.3 Source, Nature, and Extent of Contamination Associated with the Railroad Bed

The MGBH railroad bed is located in residential, commercial/industrial and open space/recreational areas near Butte. The primary contaminants of concern (COC) identified by EPA for the MGBH are arsenic and lead. Other COCs include cadmium, copper, and zinc. The primary potential environmental exposure pathways are erosion and suspension of COCs and transport by storm water runoff.

The Butte area experiences brief but intense thunderstorms, especially late in the summer. The physical condition (e.g., unvegetated or poorly vegetated railroad bed and slopes associated with railroad

bed), combined with climatic conditions, may cause contaminants to be released and transported in both the dissolved and suspended state in surface water flow. This surface water has the potential to impact down-gradient residential and public use areas, streambed, storm water conveyance channels, receiving surface waters, ground water, and floodplains. Environmental release of these source materials through wind erosion may also occur, although the particle sizes of the railbed and ballast material generally preclude significant wind erosion.

Railroad bed characterization data has been compiled into reports from a variety of sample collection efforts undertaken by the BPSOU Potentially Responsible Party Group¹⁶ and the EPA. In particular, the most extensive of these reports is the Field Survey of Unreclaimed Areas (FSUA) Summary Report, which identifies and maps all previous surface soil sampling data. Visual inspections in unreclaimed areas within Butte were also conducted to identify possible additional mine waste areas. As part of the FSUA, the railroad bed was inspected and soil samples were collected in areas that potentially pose a threat to human health or the environment. A comprehensive surface soil database was generated from the compiled data.

A Baseline Risk Assessment (BRA) for lead and arsenic was undertaken by EPA for residential, commercial/industrial and open space/recreational areas. The BRA established levels at which a remedial action would be taken for the Butte area which included MGBH. Since there are no specific Federal or state Applicable or Relevant and Appropriate Requirements for arsenic and lead in soil or waste material, the action levels were established through site-specific analyses. To ensure that people in the Butte area are not exposed to unsafe levels of arsenic, EPA established the amount of chemical toxicity that could be present in the adjacent soils in residential areas before remedial actions were required. Cleanup activities were posed for those areas that EPA determined posed a potential danger to the welfare of humans and the environment.

Generally, elevated concentrations of arsenic and lead in railbed are due to the use of mineralized materials in the subgrade or bed fills or ballast. A review of the data from surficial soil samples presented in relevant reports listed in the Railbed TCRA Enforcement/Action Memorandum indicates some areas on the railroad bed, side slopes and adjacent areas exceed applicable residential, commercial/industrial or open space/recreational action levels for arsenic concentrations. Exceedances of lead action levels also exist, but are less frequent than arsenic exceedances. Surficial railroad bed soil data indicates that most railroad bed material with lead exceedances also exceed the designated action levels for arsenic. EPA's railbed potential short-term impacts would be adequately mitigated through appropriate best management practices and construction engineering controls.

¹⁶Atlantic Richfield Company, Union Pacific Railroad Company, Burlington Northern/Santa Fe Railroad Company, Montana Western Railroad Company, RARUS Railroad Company, BGM Limited Liability Corporation, Universal Royal Apex Limited, Montana Mining Properties Incorporated and Montana Resources incorporated.

Overall, EPA determined that data from the sampling analyses appear to be consistent with the premise that mine wastes used in the construction of the original railbed fills and for ballast are essentially confined to that area, except for locations where erosion and hydraulic transport have occurred. There is evidence of elevated concentrations of lead and other contaminants in areas lateral to the right-of-way, outside the railbed, but typically at lower concentrations than in the railbed itself. Supporting data on EPA's studies and cleanup activities is available through EPA's, Region 8 Office in Helena, Montana.¹⁷

2.3.1 Human Health Risks

EPA's BRA for arsenic evaluated potential human health risks associated with arsenic in soils, interior dust, respirable particles of fugitive dust, and surface water within the Butte area. Risks due to ingestion of surface soil and interior dust, and inhalation of contaminated fugitive dust were calculated. Eight residents within the Butte area were assessed to better characterize actual exposure and risk to residents. Railroad exposures were evaluated for all railroad tracks and railroad yards within Butte. Exposure due to ingestion of surface water, dermal absorption via surface water, and inhalation of contaminated fugitive dust were calculated based upon a recreational use scenario (e.g., inner-tubing in Silver Bow Creek).

The arsenic BRA concluded that occupational exposure to contaminants poses some potential carcinogenic and non-carcinogenic risks from ingestion of arsenic and lead, particularly to pregnant workers. Excessive recreational exposures may be of concern if no clean up or response actions were to be implemented. Residential exposures to some railbed materials left in the right-of-way within Butte are currently considered unacceptable by the EPA.

The response actions for the MGBH would address these potential human health risks by capping the waste materials to isolate the wastes from human contact, and minimize erosion and down-gradient transport. These actions are expected to permanently address the potential health risks.

2.3.2 Ecological Risk

A final environmental risk characterization¹⁸ has not yet been completed for the Butte area, which includes the Railroad Bed TCRA. A Draft Ecological Risk Assessment (ERA) for the Butte area was initiated in 1999 and completed in 2001. The Draft Final ERA concludes that storm water runoff with

¹⁷Parties seeking information on EPA's, Enforcement/Action Memorandum, Railroad Bed Time Critical Removal Action, May, 1999 should contact Robert L. Fox, Chief, Superfund Section, Montana Office, EPA Region 8 Montana, Federal Building, 10 West 15th Street, Helena, Montana 59626. Mr. Fox can be reached by telephone at 406-457-5033.

¹⁸Risk characterization performed by the EPA includes the evaluation of the type and toxicity of COCs present in soils, the transport of the COCs, potential ecological areas impacted, potential exposure routes and extent/duration and identification of uncertainties of assessing the impacts.

elevated concentrations of arsenic and other metals from mine waste areas poses a risk to nearby receiving streams. It is anticipated that this potential exposure pathway will be partially addressed through cleanup activities. No other significant ecological risks associated with the railbed in the Butte area are anticipated to be identified.

2.4 Hydrology

The Missoula Gulch portion of the Storm Water TCRA reclaimed the upper drainage that was historically disturbed by mining activities and, prior to conducting the TCRA, was subject to erosion of surface sediments including mine waste sources. Whiskey Gulch is the only significant drainage along the MGBH west of Butte. It is an ephemeral drainage that conveys runoff from the west and south side of Big Butte to Silver Bow Creek. The MGBH is aligned along the west and north slopes of the drainage on bedrock and alluvial gravels. It crosses Interstate 15/90 at the Interstate overpass of Whiskey Gulch just west of Butte. Mine waste fill is evident along portions of the MGBH in the Whiskey Gulch drainage.

Arsenic and other metal contaminants may impact storm water runoff from Butte Hill and the ephemeral channels along the alignment of the MGBH, since a portion of the MGBH and other areas of Butte contain mining-related fill. The COCs are released and transported in both the dissolved and suspended state in surface/storm water flow to residential properties, public-use areas, storm water conveyance channels, down-gradient receiving streams and floodplains. During brief but intense thunderstorms that frequent the Butte area in the summer months, sediments from the railbed have been observed flowing several hundred yards away from their original location. Surface water impacts from mining materials along the railroad grade and the potential human health risk from direct exposure, are the primary reason for the EPA-required actions under the rail bed TCRA which are designed to prevent such direct exposure.

2.5 Cultural Resources

In 1962, the Secretary of the Interior recognized the historic significance of the Butte mining district by designating it as a National Historic Landmark District. Between 1981 and 1985, the Butte Historical Society inventoried historical resources in preparation of a master plan for identification and interpretation of historic resources found in Butte and Anaconda. In 1990, the Historic Properties Management Plan was completed. The Management Plan describes procedures for future historic resource inventory and assessment work as well as a procedure for resolving any conflicts that emerge between proposed reclamation strategies and the preservation of the historic mining landscape.

The MGBH itself has been identified as a significant historical structure eligible for listing in the *National Register*. Its significance is related to the nature and methods of mine transportation and the historic mining fabric of the Butte area. During the years in which the railroad operated, a number of buildings were constructed to support railroad activities. Buildings constructed by BA&P included bunkhouses, tool sheds, warehouses, and depots. The majority of the buildings were removed in the latter

years of rail operation. The only remaining buildings are those associated with underlying land leases to private parties or those constructed on the right-of-way illegally by persons not affiliated with the railroad. The remains of various loading buildings related to mining, including building foundations, can still be found along the right-of-way.

2.5.1 Historic Preservation

The Silver Bow Creek/Butte Area Superfund Site has been the subject of extensive historic preservation research and planning. Generally, historic preservation issues have been addressed broadly for the three Superfund Sites comprising the Upper Clark Fork River Basin Superfund Sites, rather than on a site-by-site basis. Currently, a Programmatic Agreement prepared in 1994 and a Regional Historic Preservation Plan (RHPP) completed in 1993 are in place to guide historic preservation actions for the Upper Clark Fork River Basin Superfund Sites. The MGBH was identified in the RHPP and the 1994 programmatic agreement as a historic resource.¹⁹ Therefore, these documents and their provisions and requirements are relevant to the proposed cleanup activities on the MGBH and to the proposed abandonment and salvage of the line.

From the predictions and goals set in the RHPP, procedures and mitigation approaches were established in the 1994 Programmatic Agreement, which implemented the applicable components of the RHPP in a legally binding agreement under the National Historic Preservation Act. The RHPP was developed with community and local government involvement and was adopted as the planning document for all future environmental cleanup and preservation efforts within the region by county, state, and Federal historic authorities.

At the time the RHPP and the 1994 programmatic agreement were written, it was anticipated that the BAHPR tourist railroad would continue to operate. Since that time, the BAHPR has ceased operations, has had its corporate status involuntarily dissolved by the State of Montana and has had its assets distributed to BSB by the State District Court. Also, since the time the RHPP and the Programmatic Agreement were written, EPA determined that mining and mining-related wastes associated with the railroad bed in Butte, including much of the MGBH, require cleanup activities to mitigate potential risks to the environment.

¹⁹An earlier Programmatic Agreement was signed in 1992 by EPA, the MDEQ, ARCO, the State Historic Preservation Office, the Advisory Council on Historic Preservation, and the local governments of Anaconda-Deer Lodge (ADL), Butte-Silver Bow (BSB), and Walkerville, which called for a programmatic approach to addressing historical resources throughout the area affected by Superfund activities. These entities worked together on the development of the RHPP. The first task in preparing the RHPP was a review and compilation of the existing historic properties and inventory information available in libraries and archives at the state and local level. The inventory information was entered in the Historic Resources Database. The information is geographically specific and is integrated with a geographic information system (GIS), a computer-based mapping system.

More recently, extensive public comment was taken regarding the status of the historic MGBH and proposals for its future use. At the end of that process, the BSB Council of Commissioners endorsed the removal of the rail segment within the BPSOU and preparation of a mitigation plan by the BSB Community Historic Preservation Officer (CHPO). Conversion of the railbed to a trail is one component of mitigation measures identified by BSB.

BSB states that it envisions the trail which will include historic interpretive features and signage as an important part of a regional trail system extending from Butte to Anaconda. A historic mitigation plan, the BA&P Historic Mitigation Plan, has been developed with the involvement and concurrence of BSB, Atlantic Richfield Company (a CERCLA potentially responsible party in the BPSOU) and the community's historic preservation officer. Under the Mitigation Plan the loss of the MGBH would be mitigated through conversion of the MGBH to a pedestrian trail. Recreation and historic interpretation amenities are also described in the Mitigation Plan. BSB and the Atlantic Richfield Company has entered into an agreement providing for the implementation and funding of the Mitigation Plan and BSB was awarded grant funding for implementation of the Plan as well. The community's historic preservation officer for BSB has determined that the anticipated historic preservation activities for the MGBH are appropriate, and he has concurrence from the State Historic Preservation Office.

A visitor and transportation center in Butte was completed in 1997 as a joint cooperative effort by local and state government agencies, corporations, non-profit entities, and private citizens. The center is home to and managed by the BSB Chamber of Commerce and houses the orientation display of historic resources as outlined in the RHPP.

Other historic and cultural resources in the area include the BA&P Historic District, U.S. Highway 10, the Bluebird Mill site, the Josephine & Arlington Lodes, and the Granite Mountain Memorial. Interpretive signage is planned for the Alice Dump and the Butte Reduction Works and pedestrian trails have been constructed as part of past EPA response actions and will be included in future actions along with portions of the MGBH where tracks and/or ties were previously removed. If trail use is approved, conversion of the MGBH to an historic interpretive trail would serve as a significant piece of a broader trail system with historic interpretive features. Under the 1994 Programmatic Agreement, all completed and to-be-completed mitigation would be documented.

The SHPO is currently reviewing the proposed abandonment of the MGBH as required by Section 106 of the National Historic Preservation Act, and its implementing regulations, 36 CFR 800. The SHPO has not completed its review of the impact of abandonment and salvage activities on the MGBH, under these circumstances SEA recommends that a Section 106 condition be placed on any authority granting ABANDONMENT of the line.

2.6 Vegetation

The habitat types associated with the MGBH are primarily upland areas on south and east facing slopes. The upper eastern extent of the MGBH traverses through areas that have been significantly

disturbed by mining activities and include unvegetated mine waste dumps and other mining infrastructure. Human activity in Butte and along Silver Bow Creek has historically resulted in varying degrees of disturbance to the native vegetation of the area. Sources of disturbance include construction of railbed, grazing, industrial activities, deposition of tailings on the floodplain, and residential and commercial use. The existing vegetation of the area reflects this history of disturbances.

Native vegetation communities were assessed broadly in the Butte area in an effort to identify threatened and endangered species and their habitats in 1994.²⁰ Vegetation areas were also assessed in a field survey along the railroad right-of-way during the week of May 7, 2001. The majority of the habitat along the railroad includes a native mixed rangeland plant community consisting of scattered Rocky Mountain juniper (*Juniperus scopulorum*), several sagebrush species (*Artemisia spp.*), and horsebrush (*Tetradymia canescens*). The herbaceous species include a dominance of bluebunch wheatgrass (*Agropyron spicatum*) and western wheatgrass (*Agropyron smithii*), followed by blue grama (*Bouteloua gracilis*) mixed with prairie junegrass (*Koeleria cristata*), and fescue (*Festuca spp.*). Forage production in mixed rangeland is generally low because of the competition with the woody species for moisture and nutrients. Spotted knapweed (*Centaurea maculosa*), a problematic noxious weed is common throughout the mixed rangeland plant community.

Several woody draws or drainages cross under the railroad bed directing the flow of water toward Silver Bow Creek. The vegetation within these drainages includes scattered sparse stands of cottonwood (*Populus spp.*), aspen (*Populus tremoides*), and herbaceous species such as Great Basin wildrye (*Elymus cinereus*) and smooth brome (*Bromus inermis*), redtop (*Agrostis alba*) and other non-native grasses.

A search of the Montana Natural Heritage Program (MNHP) database identified no Federally listed threatened or endangered plant species occurring in Silver Bow County, Montana. Additionally, a study and survey of plants listed by the MNHP as “sensitive” was included in the review process. Taxa (i.e., species, subspecies, or species varieties) included on this list were evaluated and ranked based on both their global (range-wide) and statewide status. No species listed as sensitive vegetation were identified.

2.7 Wildlife

The majority of the MGBH is located in and near an urban environment. Terrestrial wildlife is therefore limited and may include primarily small mammals and birds. In the western portion of the MGBH outside of Butte, larger mammals (deer, etc.) may migrate through the area. However, the lack of vegetative overstory and other cover likely precludes the occupation of the area by large mammals. Birds and small mammals may also inhabit the area containing the western portions of the MGBH.

²⁰EA Engineering, Science & Technology, 1994. Wetlands and Threatened/Endangered Species Inventory with Determination of Effective Wetland Areas, Streamside Tailings Operable Unit, Silver Bow Creek/Butte Area NPL Site, July 1994.

2.7.1 Threatened, Endangered, and Sensitive Species Inventory

Both the STB and EPA are required by the Endangered Species Act to consult with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to threatened, endangered and sensitive species. Consultation on Superfund-related issues within and near the area of the MGBH was initiated as early as 1991 by EPA and has been ongoing since then.

Of wildlife species with the potential to occur within the general Butte area, the bald eagle, peregrine falcon, and gray wolf are federally listed as endangered, and the bull trout is listed as threatened. To date, no breeding or nesting places have been identified in the area of the MGBH.

2.8 Wetlands

Potential wetlands were assessed broadly in the Butte area in an effort to identify wetlands in 1994 as part of EPA's TCRA. Wetland areas were also assessed in a field survey along the MGBH right-of-way during the week of May 7, 2001. Wetlands were delineated using the procedures outlined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Manual). Several low topographic or depressional areas were observed during the field reconnaissance but did not meet the jurisdictional wetland criteria for hydric soils or wetland hydrology. In addition, these areas have been impacted due to runoff from fill materials along the railroad grade and many were void of vegetation.

2.9 Air

Air quality within the Butte area has been extensively monitored by EPA with regard to total suspended particulates (TSP) and associated metals concentrations. The majority of the air data are linked to permitting requirements for the active mining/milling areas. These data are incorporated into EPA's Aerometric Information Retrieval System (AIRS) database.

Late fall, winter, and early spring generally are associated with the highest particulate levels in the Butte area, which typically occur during periods of temperature inversions. The findings of previous studies indicate that these high particulate levels are primarily associated with smoke from wood burning, road dust, vehicle exhaust and, to a lesser extent, dust emissions from active mining operations. These high particulate levels have resulted in Butte being declared a non-attainment area with respect to the National Ambient Air Quality Standard (NAAQS) for PM-10.

PM-10 data characterize the concentration of dust particles that reportedly are respirable by humans because they are smaller than 10 microns in diameter. As such, PM-10 data characterize only a portion of TSP concentrations. PM-10 data have been collected less frequently within the Butte area than TSP data. Based on EPA's BRA, the overall low TSP contribution from source areas and no exceedances of the NAAQS for lead in Butte, all indicate that inhalation of airborne COC-bearing particulates by humans should not be a concern within the Butte area.

EPA has stated that presence of arsenic and cadmium in airborne dusts may be of concern. However, the low ambient concentrations of total airborne lead relative to the PM-10-based NAAQS and the relative ratios of lead, arsenic, and cadmium in the source areas²¹ suggest ambient arsenic and cadmium concentrations in airborne particulates are also low. Therefore, the airborne transport of COC-bearing particulates within the Butte area does not pose a significant threat to human health and the environment.

2.10 Noise

Since the MGBH has not been in service since 1996, noise levels in the area are low. Sensitive noise receptors are limited to the few nearby residences. Temporary minor noise impacts associated with salvage and cleanup would occur.

2.11 Energy

The MGBH has never transported any significant energy resources. MGBH was used almost exclusively to transport ore and ore concentrate to smelting and refining facilities to the west. Minor quantities of fuel resources (e.g., coal, fuel oil, etc.) may have been transported during operation of the mining facilities prior to 1980. However, no energy resources have been transported at least since 1980 when the line was last used to support mine operations.

2.12 Safety

Since 1996, safety issues associated with the MGBH have been limited to slip, trip, and fall potential under a trespass scenario. No equipment has operated on the MGBH since 1996. Prior to 1996, when the tourist train was operating, several safety issues arose. These safety concerns related to the safety of the passengers and the interaction of the tourist train with vehicular traffic and pedestrians at public road crossings. Since rail operations are no longer occurring or anticipated, these safety concerns are no longer an issue.

3.0 ENVIRONMENTAL IMPACTS OF ABANDONMENT

3.1 Land Use

No significant impacts on land use is anticipated to result from abandonment of the MGBH. Because abandonment and salvage of the right-of-way would result in the timely cleanup of the right-of-way, beneficial land use impacts are likely to result from the removing or capping of contaminated soils from past mining, milling, or smelting operations that potentially pose a threat to the environment and future use of the right-of-way.

²¹Source areas include railroad bed contaminated by or constructed of mining wastes, and other mining-related wastes that contribute contamination to the receptor areas.

3.2 Transportation

There will be no effects on regional or local transportation systems and patterns as a result of the abandonment or salvage of the MGBH because the MGBH has been completely out of service since 1996. Moreover, the line has not been used for commercial shipping service since at least 1981. Although, there are other rail lines located in and near Butte, many of these lines are also located within the Superfund site and are also being remediated under an EPA removal action plan. Future use or operations over these lines are not known.

3.3 Contamination Associated with the Railroad Bed

As described earlier in this document, elevated concentrations of arsenic and lead exist in the MGBH railbed due to the use of mining related ballast material and/or from spillage during transport of ore or ore concentrates over the line. EPA determined that lead and arsenic materials with concentrations of contaminants of concern (COC) above risk-based action levels exist in and along the MGBH and that those materials present a potential environmental concern.²² Erosion and transport of contaminated railbed materials onto adjacent properties and into storm water drainage channels is evident in many locations near the line.

It is not anticipated that abandonment and salvage of the MGBH would have significant impacts on environmental exposure and transport of COCs. Removal of track structures would not change the extent or nature of the mine wastes in the railroad grade. Abandonment and salvage activities would, however, facilitate cleanup under the EPA-approved design.

Cleanup of the right-of-way would minimize direct human contact with and erosional transport to residential properties by railroad bed material containing contaminated metals. Regraded soils from the railroad bed would be consolidated into the railroad bed side slopes under an appropriate surface cap. Excess or isolated wastes will be disposed of in the designated BSB Mine Waste Repository or another EPA-approved location.

Environmental exposures along the right-of-way would continue to be of concern if no clean up or response actions were to be implemented. Based on local and/or regional planning, the abandonment/salvage of the MGBH would be consistent with existing Butte and Silver Bow County land use plans.

3.4 Vegetation

Given the lack of vegetation on the railroad grade, existing vegetation resources would not be

²²See EPA Docket No. CERCLA-8-2000-02. Unilateral Administrative Order for Removal Response Activities, Butte Railroad Beds, Time Critical Removal Action - OU OI. January 13, 2000.

impacted by the proposed abandonment and salvage of the MGBH. Vegetation suppression techniques along the grade have apparently been used to minimize vegetation growth. However, abandonment activities may increase the potential for spread of noxious weeds. This impact would be mitigated by controlling areas where construction vehicles drive or park during abandonment and other practices such as requiring the use of weed-free seed for revegetation or washing the undercarriage of construction vehicles to remove weed seed. No federally listed threatened or endangered plant species occurring in Silver Bow County, Montana.

3.5 Wildlife

Based on the available information and investigations to date, it is not anticipated that threatened or endangered species with the potential to occur within the general Butte area would be adversely affected by the proposed abandonment or the proposed response actions required by EPA. However, consultation and coordination with the USFWS would continue until salvage and EPA cleanup activities are completed.

3.6 Wetlands

Based on field evaluation of the MGBH, no jurisdictional wetlands or 100-year floodplains exist within the right-of-way of the MGBH. The proposed abandonment and salvage activities would not contribute additional contamination to water bodies. The proposed abandonment and salvage of the rail line does not require the placement of dredged or fill material below the ordinary high water mark of the nation's rivers, streams, lakes or in jurisdictional wetlands or the disturbance of stream bank. Under these circumstances, no permits, review or approval under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 402 of the Clean Water Act (33 U.S.C. 1342) are required for salvage of the MGBH. As necessary, the reclamation design would include protective and mitigation measures for drainages crossed by the MGBH grade. No adverse impacts to wetlands are anticipated.

3.7 Cultural Resources

The MGBH itself has been identified as a significant historical structure eligible for listing in the *National Register*. The Butte mining district is a National Historic Landmark District. If abandonment authority is granted, the only potentially historic resource that would be disturbed is the track structures.

As described above, two Programmatic Agreements, the RHPP, and the Butte Hill Mitigation Plan outline historic preservation methods agreed upon by the Montana State Historic Preservation Officer as part of EPA's remediation plan. Under the Programmatic Agreements and the Butte Hill Mitigation Plan, the proposed end land use for the MGBH is a rail-to-trail conversion for the portion of the MGBH between Rocker and the Kelley Mine Yard. The right-of-way corridor would be preserved and the envisioned trail

would include historic interpretive features and signage as mitigation for the loss of the historic rail. These interpretive features would enhance other cultural and historic resources along the MGBH through improved public access and interpretation of the line and adjacent historic resources (e.g., abandoned mines the MGBH previously served). Trail use and public use is dependent on the Board granting abandonment to BSB for the MGBH.

The SHPO is currently reviewing the proposed abandonment of the MGBH as required by Section 106 of the National Historic Preservation Act, and its implementing regulations, 36 CFR 800. The SHPO has not completed its review of the impact of abandonment and salvage activities on the MGBH. Under these circumstances SEA recommends that a Section 106 condition be placed on any authority granting ABANDONMENT of the line.

3.8 Air

There should be no significant impacts on air quality because of abandonment and salvage of the MGBH. Construction activities to remove the track structures may result in some temporary particulate (dust) generation. However, this can be mitigated by provisions of the Design Report Railroad Bed TCRA under the oversight of EPA which will require standard best management practices for dust suppression, such as suspending operations during periods of high wind and watering work areas. SEA is recommending imposition of a condition (which BSB has voluntarily agreed to) requiring BSB to comply with EPA's TCRA.

3.9 Noise

There is no current ambient noise level associated with the MGBH. However, salvage and response action activities may create temporary noise that could directly impact residents in the surrounding area. Potential short-term noise impacts would be adequately mitigated through appropriate best management practices and construction engineering controls. Any increase in noise impact to residents in the surrounding area would be minimized to the extent practicable through the use of these controls.

3.10 Energy

There will be no effects on transportation of energy resources due to the abandonment and salvage of the MGBH. Since at least 1981, the MGBH had no commercial shipping traffic. There are no known plans for commercial shipping or transportation over the MGBH.

4.0 ALTERNATIVES TO ABANDONMENT

4.1 No Action Alternative

A potential alternative to abandonment and salvage of the MGBH is a No-Action alternative. This would result in leaving the existing track structure in place and not abandoning the MGBH. The available environmental information indicates that the "No-Action" alternative would limit the ability of Superfund

response actions to mitigate contaminant exposure and transport. The three ARCO design reports and the EPA's Railbed TCRA Enforcement/Action Memorandum ²³ explain that removal of the track structure is consistent with response action measures (including mine waste removal and/or capping) that would significantly reduce or eliminate environmental concerns associated with the railbed materials. Partial abandonment of the line is also not a feasible alternative because it would preclude the effective cleanup of the right-of-way.

EPA advises that, without salvage, the implementation of the selected response action measure would be more difficult and less effective/protective. Moreover, deterioration of the track structure as a result of weathering and other natural forces would continue. Thus, while response action measures can be implemented in the event of a denial of the abandonment application, abandonment and salvage would facilitate those activities and provide a more permanent, stable surface upon which the pedestrian trail desired by the community may be developed. Implementation of a No-Action alternative to the MGBH would continue to have a significant impact on human health and environmental exposure and transport of COCs.

4.2 Discontinuance of Service and Continued Operation

Other alternatives to the proposed abandonment include discontinuance of service without abandonment, and resumption of rail service by another operator. In any of these cases, conditions associated with the railroad bed which presently exist, if not mitigated, would continue to pose a potential threat to the public health, welfare or environment.

5.0 CONCLUSION

Based on the information provided from all sources to date and its independent analysis, SEA preliminarily concludes that abandonment and salvage of the MGBH would have no significant environmental impacts if the Board imposes and BSB implements the EPA requirements under the Railbed TCRA. Under these circumstances, the environmental impact statement process is unnecessary.

6.0 SEA RECOMMENDED MITIGATION AND REQUEST FOR COMMENTS

Based on the information available to date, consultations with appropriate agencies, and review of the extensive environmental analysis prepared by EPA and others, SEA developed preliminary environmental mitigation measures to address the potential environmental impacts of the proposed abandonment. SEA emphasizes that the recommended environmental mitigation measures²⁴ are

²³To obtain information regarding these documents you may contact Robert L. Fox, Chief, Superfund Section, Montana Office, EPA Region 8 Montana, Federal Building, 10 West 15th Street, Helena, Montana 59626. Mr. Fox can be reached by telephone at 406-457-5033.

²⁴The Board has limited authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transactions before it, must be reasonable, and must be supported by the record before the Board. Thus, the Board's

preliminary. SEA invites comments on all aspects of this Environmental Assessment including its proposed mitigation. Comments must be post marked no later than August 15, 2002. Specific instructions for submitting comments on this Environmental Assessment are set forth below. In order for SEA to effectively address the comments, it is critical that the public be specific regarding any desired mitigation and the reasons for it. SEA preliminary recommends that the Board impose the following mitigation measures in any decision approving the abandonment exemption.

Mitigation Measures

1. As agreed to by BSB, it shall comply with the Environmental Protection Agency Enforcement/Action Memorandum and Administrative Order for the Butte Priority Soils Time Critical Removal Action Plan.
2. BSB shall ensure that Best Management Practices are implemented to minimize fugitive dust emissions during construction transport activities.
3. BSB shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices.
4. BSB shall obtain all necessary Federal, state, and local permits if salvage activities require the alteration of wetlands, ponds, lakes or streams or if these activities would cause soil or other materials to wash into these water resources.
5. BSB shall retain its interests in the line and maintain it unaltered until completion of the Section 106 process of the National Historic preservation Act.
6. BSB shall control areas where construction vehicles drive or park during salvage to reduce the potential spread of noxious weeds along the right-of-way.
7. BSB shall use weed-free seed for revegetation of the right-of-way.
8. BSB shall mitigate potential short-term noise impacts through appropriate best management practices and construction engineering controls.

7.0 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) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Room 848, Washington, D.C. 20423.

8.0 COMMENTS

If you wish to file comments regarding this environmental assessment, please send an **original and two copies** of your comments to the Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Phillis Johnson-Ball, who prepared this environmental assessment. **Please refer**

practice consistently has been to mitigate only those impacts that result directly from the proposed action. The Board typically does not require mitigation for pre-existing environmental conditions.

to Docket No. AB-597X in all correspondence addressed to the Board. If you have questions regarding this environmental assessment, you should contact Phillis Johnson-Ball at (202) 565-1530.

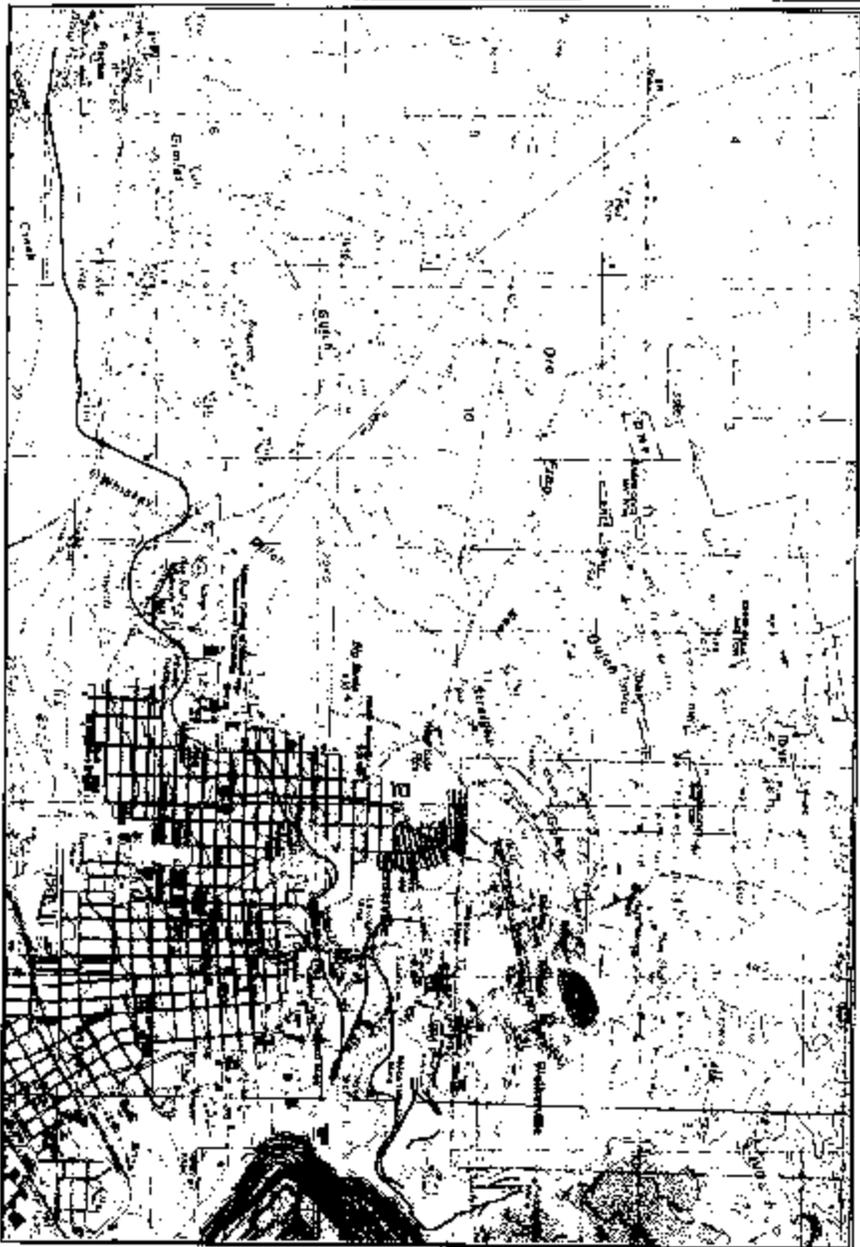
Date made available to the public: July 16, 2002

Comment due date: August 15, 2002

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

Vernon A. Williams
Secretary

Attachments



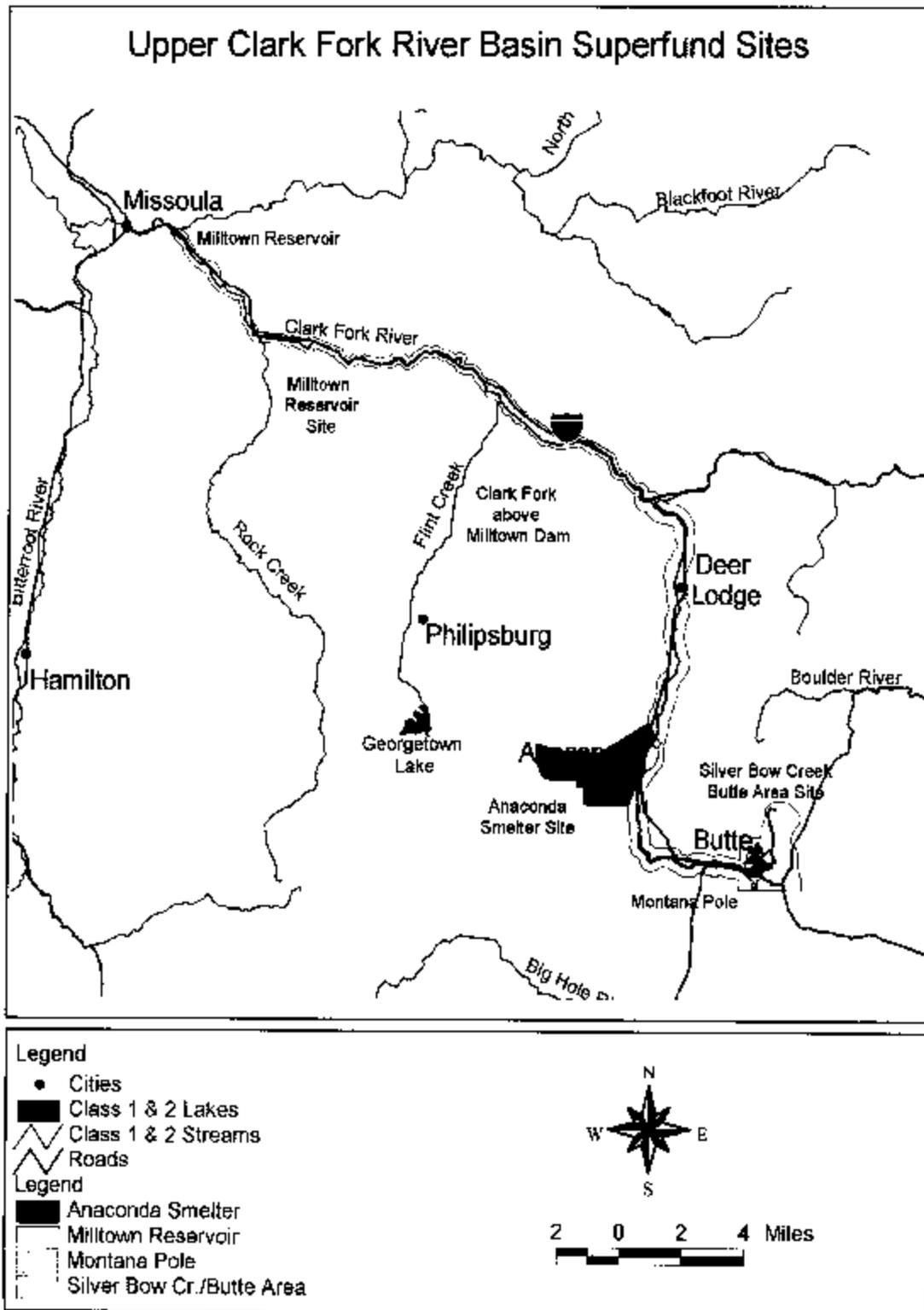
**Exhibit A
Vicinity Map
Missoula Gulch
and
Butte Hill Line**

Legend

-  Missoula Gulch Burn in 1976
-  Road

Prepared for:
Butte Silver Bow County







Davis Graham & Stubbs LLP

May 30, 2001

VIA FEDERAL EXPRESS

Victoria Rutson, Acting Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W. Suite 500
Washington, D.C. 20423

Re: Abandonment of the Missoula Gulch and Butte Hill Line in Butte, Montana;
Description of and Request for Concurrence in the Environmental Review
Process

Dear Ms. Rutson:

I am writing on behalf of the Applicant, Butte-Silver Bow County ("BSB"),¹ to request the concurrence of the Section of Environmental Analysis ("SEA") in an environmental review process for a proposed adverse abandonment² of the Missoula Gulch and Butte Hill Rail Line (MGBH) in Silver Bow County, Montana. Specifically, Applicant proposes to submit to SEA a Preliminary Draft Environmental Assessment ("PDEA")³ in lieu of the environmental and historic report required under 49 C.F.R. §§ 1105.7 and 1105.8 when filing an application for an adverse abandonment.

I understand, based on conversations with David Konschnik, Director of the Office of Proceedings, that adverse abandonment applicants must submit an application for abandonment under 49 U.S.C. § 10903 and 49 C.F.R. § 1152.22. Applicant intends to submit an application for abandonment in July 2001, as further detailed below. Described below is some relevant

¹ A combined city-county government. Applicant neither owns the right-of-way, nor has common carrier status for the Line.

² ARCO and the Applicant are facilitating the abandonment of the MGBH because there is no active operator or owner of the line. Under certain circumstances, the Board allows third-party non-carriers to seek abandonment of a line of railroad. See, e.g., *Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994). When abandonment authority is sought by a party other than the railroad itself, the abandonment is termed an "adverse" abandonment. There are no specific Board regulations governing adverse abandonments.

³ CTR regulations at 49 C.F.R. § 1506.5(h) permit applicants to prepare Environmental Assessments. Here, Applicant would prepare a PDEA, evaluating the potential environmental impact and any reasonable alternative to the proposed action, and submit the report at, or prior to, the time they file their project with the Board. The PDEA must include the information required by the Board's regulations at 49 C.F.R. §§ 1105.7 and 1105.8.

Susan A. Geer, Esq. (202) 852-7367 susan.geer@dgs-aw.com

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Victoria Rutson
May 30, 2001
Page 2

background information and information concerning the unique environmental circumstances in this case.

Background Information

Description of the Line Proposed for Abandonment

The MGBH consists of two continuous rail line segments operated as a single line within Silver Bow County, Montana.⁵ The Missoula Gulch segment extends from milepost 0.0 at Rocker to milepost 4.40 at the Butte Hill Yard. The Butte Hill segment extends from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine. The Butte Hill Yard is also known as the Kelley Mine Yard. Many of the rails and some of the ties have been removed from the Butte Hill portion of the Line, so that the current northeastern terminus of the continuous portion of the line is the Kelley Mine Yard. Attached to this letter are four maps depicting the Line. The map labeled "Figure 1" depicts the total length of the right-of-way and the three maps labeled "Figure 2a," "Figure 2b," and "Figure 2c" depict the current layout of the Line, indicating locations where either rails or rails and ties previously have been removed.

Historical Context

The MGBH was constructed in the early 1890s, and operated by the Butte, Anaconda and Pacific Railway Company ("BA&P"). The line includes a segment that extends from Butte to a point west of Anaconda, Montana. The MGBH intersects with the Butte-Anaconda line in Rocker, Montana. Among other commodities, the BA&P hauled copper ore mined in Butte to the smelters in Anaconda. In the early 1980s, the remaining mines and smelter ceased operations, substantially decreasing the demand for the BA&P's services. In 1984, the BA&P filed an application for abandonment with the Interstate Commerce Commission ("ICC").⁵ Subsequent to filing the application for abandonment, the BA&P and the State of Montana entered into an agreement by which the BA&P donated a portion of its line and sold the remainder of the line to the State of Montana, resulting in the withdrawal of the abandonment application. The State of Montana then leased the lines to Rarus Railway Company ("Rarus"), with an option to purchase.⁶ In 1988, the lease was amended to exclude MGBH. At the time the lease was amended in 1988, the State of Montana leased MGBH to a small non-profit

⁵ None of the rights-of-way for the MGBH were federally granted, they were either purchased or acquired through condemnation.

⁵ See Docket No. AB-235, Butte, Anaconda & Pacific Ry. Co. - Abandonment - in Deer Lodge and Silver Bow Counties, MT.

⁶ See Finance Docket No. 30540, Rarus Railway Company - Exemption from 49 U.S.C. 10901 and 11301.

Victoria Rutson
May 30, 2001
Page 3

corporation, the Butte/Anaconda Historical Park and Railroad Corporation ("BAHPR").⁷ The BAHPR operated a tourist train over the line. In 1991, BAHPR purchased the MGBH from the State of Montana. The BAHPR was incorporated in Montana as a non-profit corporation in 1981. In 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State's Office. The assets of the BAHPR never were distributed. As such, title to MGBH's right-of-way is currently held by the BAHPR.⁸

The Silver Bow Creek/Butte Area Superfund Site

The MGBH lies within the Silver Bow Creek/Butte Superfund Site ("Superfund Site") in and near the town of Butte, in Silver Bow County, Montana. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"),⁹ the United States Environmental Protection Agency ("EPA") has ordered or will order a number of parties¹⁰ to conduct cleanup activities on railroad beds in and around Butte, including MGBH. EPA, in consultation with the Montana Department of Environmental Quality ("MDEQ"), has determined that mining wastes on the portion of MGBH that lies between Rocker and the Kelley Mine Yard, as well as on discrete portions of MGBH above the Kelley Mine Yard, should be cleaned up.

⁷ The state district court in Silver Bow County (Second Judicial District) is being petitioned to direct that the assets of the BAHPR be distributed to BSB, but that has not yet occurred.

⁸ See Finance Docket No. 31982, Butte/Anaconda Historic [sic] Park and Railroad Corporation - Acquisition Exemption - State of Montana, Department of Commerce. At the time the BAHPR purchased MGBH from the State, there had been no commercial shipping traffic over the Line for several years. The BAHPR had a "Trackage Rights Agreement" in place with Rarus by which Rarus agreed to provide common carrier service over the line if necessary. The Trackage Rights Agreement also expressly provided that BAHPR was not relinquishing its common carrier status over the line. In its Notice of Exemption in Finance Docket No. 31982, the ICC noted that Rarus was required to obtain the necessary authority to lease and operate the line from the ICC should Rarus commence operations over MGBH after that point. No commercial shipping occurred on MGBH subsequent to its acquisition by BAHPR, and Rarus never sought authorization from the ICC or the Board to operate the Line. It appears that at the time the BAHPR purchased the Line, at least some of the rails and ties had been removed from the Butte Hill portion of the Line. A tourist railroad operated over the Line between Rocker and the Kelley Mine Yard.

⁹ 42 U.S.C. §§ 9601 et seq.

¹⁰ As we have discussed by telephone, I represent ARCO. ARCO is one of several parties who have been named "potentially responsible parties" by EPA at the Superfund Site. ARCO is providing support and assistance to the Applicant.

Victoria Rutson
May 30, 2001
Page 4

The Superfund Site was established to address contamination related to mining and mining related activities in and around Butte.¹¹ In May 1999, EPA issued an "Action Memorandum"¹² authorizing a "time-critical" removal action addressing railroad beds in the Butte Priority Soils Operable Unit ("Railbed UAO") and surrounding railroad beds. I have enclosed a copy of the May 1999 Action Memorandum with this letter. Following EPA's issuance of the May 1999 Action Memorandum, a group of the potentially responsible parties for the railroad bed removal action drafted a "Work Plan" under EPA's direction and supervision. Once EPA was satisfied with the Work Plan, it issued a Unilateral Administrative Order ("UAO")¹³ requiring certain named parties to perform the work described in the Work Plan. Subsequent to issuance of the Railbed UAO, further studies have been conducted and "Design Reports" have been generated. Design reports describe the findings of the sampling efforts and describe the specific cleanup work to be performed on each railroad bed.

EPA, in consultation with MDEQ, has approved a cleanup plan for MGBH that contemplates abandonment of the entire Line, salvage of the rails and ties and capping of the railroad bed on the portion of MGBH between Rucker and the Kelley Mine Yard, as well as discrete portions of the Line above the Kelley Mine Yard. The Applicant, EPA and MDHQ also strongly favor conversion of the railbed between Rucker and the Kelley Mine Yard from rail use to a pedestrian and bicycle trail with historic interpretive features.¹⁴ For a number of reasons, EPA currently is requiring cleanup actions only on limited portions of the Line. The proposed abandonment and salvage of MGBH is being sought as part of the Railbed UAO cleanup activities.

¹¹ The MGBH lies within the Butte Priority Soils Operable Unit and the West Side Soils (formerly Non-Priority Soils) Operable Unit. A number of investigations and short-term cleanup actions have been conducted within the Superfund Site over the past almost twenty years, most of which have occurred within the Butte Priority Soils Operable Unit.

¹² The Action Memorandum discusses site conditions, reports EPA's findings of a threat to human health or the environment, and describes the proposed removal action and removal action alternatives, among other things.

¹³ EPA Docket No. CERCLA-8-2000-2, issued on January 12, 2000.

¹⁴ Applicant intends to submit a Trails Use request at the appropriate time in the proceeding for the portion of the line between Rucker and the Kelley Mine Yard. A request for a notice of interim trail use between Rucker and the Kelley Mine Yard will be filed with the Board within 10 days of the publication of the abandonment request in the *Federal Register*. This request will comply with the Board's rules for use of rights-of-way as trails (49 CFR § 1152.29). Applicant also will submit a public use request for the upper portion of the Line, so that it may continue to be used as a transportation corridor.

Third Party Contractor

The Board regulations establishing procedures for implementation of environmental laws provide that if the SEA employs a third-party contractor²¹ to assist it in preparing the environmental documentation necessary for Board action, the requirement that a formal environmental report be filed can be waived.²²

Applicant anticipates that SEA will verify the information submitted in the PDEA and evaluate the environmental effects of the proposed abandonment independently.²³ Applicant will, nevertheless, strive to submit a document of such quality, accuracy, and conformity with SEA's own requirements that SEA will be able to adopt the preliminary draft environmental assessment as its own environmental assessment with minimal revisions. If requested by SEA, Applicant and TRIC will be available to address any questions SEA may have concerning the information contained in the PDEA. Applicant understands that once SEA completes preparation of its environmental documentation, SEA will issue the draft environmental document for public review and comment, then prepare a final environmental document responding to comments and setting forth SEA's ultimate environmental recommendations to the Board.

Conclusion

In sum, applicant requests SEA approval of its proposal for an environmental review process consisting of the following components:

- Preparation and submittal of a PDEA to SEA in lieu of an environmental and historic report. The PDEA will be prepared utilizing and incorporating the extensive data and other information collected to date as part of the CERCLA activities at the Superfund Site and under the Railroad LAO;
- Submission of the PDEA to SEA prior to submission of the application for adverse abandonment;

²¹ Third-party contracting is a voluntary arrangement in which a railroad pays for a contractor to work under the sole direction, control, and supervision of SEA to assist in developing the environmental analyses.

²² See 49 C.F.R. § 1105.10(d).

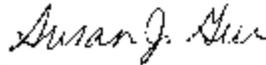
²³ If it is necessary for SEA to retain a third party contractor to assist in the preparation of environmental documentation for this project, Applicant acknowledges that it will be at Applicant's expense.

Victoria Rutson
May 30, 2001
Page 7

- SEA may retain a third-party contractor, at Applicant's expense, to assist SEA in an independent review and verification of Applicant's PDEA; and
- The Applicant and TREC will provide assistance, at SEA's request, as necessary to complete SEA's environmental review.

Once SEA has had the opportunity to consider this request, please advise me whether the proposal is acceptable. Please do not hesitate to contact me with any questions, or to discuss this request further. I can be reached by telephone at (303) 892-7367, or by email at susan.geer@dgsllaw.com. I appreciate your consideration of this proposal.

Sincerely,



Susan J. Geer
for
DAVIS GRAHAM & STUBBS LLP

SJG/amg
Enclosures

cc (w/o enc.): Henry Elsen, Esq., EPA Region 8
Sara Sparks, EPA Region 8
Jon Sesso, BSB
Robert McCarthy, Esq., BSB
Mary Capdeville, Esq., MDEQ
Kevin Kirley, MDEQ
Robin Bullock, ARCO

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

July 27, 2001

Ms. Susan J. Geer
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Dear Ms. Geer:

This letter responds to your May 30, 2001, request for the concurrence of the Section of Environmental Analysis (SEA) in an alternative environmental review process for a proposed adverse abandonment¹ of the Missoula Gulch and Butte Hill Rail Line (MGBH) in Silver Bow County, Montana. Specifically, you request concurrence for the Applicant, Butte-Silver Bow County (BSB), to submit to SEA a Preliminary Draft Environmental Assessment (PDEA) in lieu of the environmental and historic report required under 49 CFR 1105.7 and 1105.8 when filing an application for an adverse abandonment.

Based on our discussions and the supporting documentation submitted with your proposal, SEA concurs with your request to submit a PDEA² in lieu of the environmental and historic report for the proposed adverse abandonment. The PDEA will serve as an administrative draft to SEA in preparing its Environmental Assessment. To allow SEA time to adequately review the PDEA, BSB has agreed to submit the PDEA to SEA at least two months prior to formally filing the application for adverse abandonment with the Board.

SEA will review the PDEA and make a determination regarding any need for SEA to retain a third-party contractor, at Applicant's expense, to assist us in an independent review and verification of the PDEA. SEA will notify you of any decision regarding the retaining of a third party contractor.

Once SEA completes its independent analysis of the proposed abandonment, SEA will prepare a Draft Environmental Assessment (EA) and issue the EA for public review and comment. SEA will then prepare a post environmental document that responds to any comments

¹Applicant is facilitating the abandonment of MGBH because there is no active operator or owner of the line. When abandonment authority is sought by a party other than the railroad itself, the abandonment is termed an "adverse" abandonment. There are no specific Board regulations governing adverse abandonments.

²CFR regulations at 49 CFR 1506.5(b) permits Applicants to prepare Environmental Assessments. The PDEA must include the information required by the Board's regulations at 49 CFR 1105.7 and 1105.8.

or new information received. SEA will consider all comments received in making our final recommendations to the Board.

If you have any questions or concerns, please feel free to contact Ms. Phillis Johnson-Bull at 202-565-1530.

Sincerely,

Victoria Rutson
Chief
Section of Environmental Analysis