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SEA

SERVICE DATE – JUNE 12, 2007

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**ENVIRONMENTAL ASSESSMENT**

**STB DOCKET NO. AB-1229X**

**DENVER REGIONAL TRANSPORTATION DISTRICT—ABANDONMENT  
EXEMPTION—IN DENVER AND JEFFERSON COUNTIES, CO**

**BACKGROUND**

On May 7, 2007, the Denver Regional Transportation District (DRTD) filed a notice of exemption from regulation under 49 U.S.C. 10903, pursuant to the provisions of 49 U.S.C. 10502 and 49 CFR 1152.50 for abandonment of the residual rail freight rights over 6.5 miles of rail line between milepost 0.0 near Denver and milepost 6.5 near Lakewood in Denver and Jefferson Counties, Colorado. A map depicting the rail line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties, and other railroad appurtenances and dispose of the right-of-way.

DRTD acquired this line from the former Burlington Northern Railroad Company, the former Denver & Rio Grande Western Railroad Company, the former Atchison, Topeka & Santa Fe Railway Company, and the Chicago Pacific Corporation (collectively, the Railroads), in December 1988. Prior to DRTD's acquisition of the line, the Railroads, which jointly owned the line, received authorization from the Interstate Commerce Commission (ICC) to abandon the line in Surface Transportation Board (Board) Finance Docket No. AB-6 (Sub-No. 291), et al. – Burlington Northern Railroad Company, et al. – Abandonment – In Denver & Jefferson Counties, CO (service date July 30, 1987). The ICC delayed the implementation of the abandonment pending an Offer of Financial Assistance (OFA). The OFA was later withdrawn and the ICC set conditions for abandonment. DRTD states that there is no record that the conditions imposed by the Board were ever satisfied, and no record that the abandonment was ever consummated with the requisite notice of consummation being filed with the Board. In order to proceed with DRTD's plans to redevelop the right-of-way as part of a light rail corridor, DRTD is filing this Notice of Exemption to ensure that the line is fully abandoned.

**ENVIRONMENTAL REVIEW**

DRTD submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of abandonment, including salvage and disposition of the right-of-way. DRTD served the environmental and historical reports on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation

Board's (Board) environmental rules [49 CFR 1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the environmental record in this proceeding.

According to DRTD, no freight traffic has moved over the line since 1988. DRTD maintains that because no traffic has moved over the line in recent years, the proposed abandonment would not adversely affect the transportation of energy resources or recyclable commodities, and would not result in an increase in overall energy consumed in the region. In a telephone conversation of June 6, 2007, DRTD's representative Charles Spitulnik stated that a large portion of the track, ties, and other railroad appurtenances have been removed on the line proposed for abandonment. Because a large portion of the line proposed for abandonment has been salvaged, no significant noise or air quality impacts are anticipated. DRTD believes that the effects of the proposed action on regional or local transportation patterns would be positive for the local communities along the line because several at-grade crossings would be removed.

According to DRTD, the United States Fish and Wildlife Service (USFWS) has indicated, in an Environmental Impact Statement (EIS) prepared by the U.S. Department of Transportation, Federal Transit Administration and DRTD for a light rail transit project that is expected to be located in proximity to the existing rail corridor, that there are no designated critical habitats in the rail corridor. However, in the same EIS, USFWS indicated that wetlands and threatened or endangered species, particularly the Federally listed Preble's meadow jumping mouse may exist in Denver and Jefferson Counties. DRTD states that salvage activities have already occurred on a large portion of the right-of-way, and mitigation has been developed and agreed upon in the EIS to reduce or avoid impacts to any Federally-listed threatened and endangered species that may be impacted. DRTD has confirmed in its Notice of Exemption that it will implement the mitigation designed in the EIS to avoid or reduce impacts to any Federally-listed threatened and endangered species. To ensure that the Federally-listed threatened and endangered species are adequately protected in the event that the light rail project is not constructed, and to keep USFWS abreast of the proposed abandonment activities, we will require DRTD to further consult with USFWS regarding potential impacts to the Federally protected species.

DRTD states that the proposed abandonment would be handled in a manner that is consistent with the applicable Federal, state, and local water quality standards. According to DRTD, the proposed abandonment will not affect land or water use within a designated coastal zone.

Several areas of major concern to the Environmental Protection Agency (EPA) were identified in the area of the proposed abandonment, including Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation (CERCLA) and Recovery Act (RCRA) sites. DRTD explains in supplemental information provided to the Board in this proceeding that the contaminated sites were evaluated and remediated as part of the EIS prepared for the development of a regional light rail system discussed above. Because no response to DRTD's request for comments in this proceeding was provided by EPA and no documentation detailing the remediation approval by EPA has been provided by DRTD, we will require DRDT to further consult with EPA regarding the CERCLA and RCRA sites.

The United States Army Corps of Engineers (Corps) reviewed DRTD's request for comments on the proposed abandonment, and advised that any activities along the right-of-way that may involve any work in waters of the United States may require a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. 1344). DRDT advises that they will comply with any Corp requirements related to the salvage of the remainder of the line. Because two jurisdictional and one isolated wetland are located in the area of the proposed abandonment, SEA believes that the railroad should consult with the Corps prior to commencing any remaining salvage activities.

## **HISTORIC REVIEW**

DRTD submitted an historic report as required by the Board's environmental rules [49 CFR 1105.8(a)] and served the report on the Colorado State Historic Preservation Office (COSHPPO) pursuant to 49 CFR 1105.8(c). Based on available information, the COSHPPO has submitted comments stating that the proposed abandonment would not adversely affect National Register of Historic Places (National Register) historic properties located within the right-of-way (the Area of Potential Effect) of the proposed abandonment.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 CFR 800.5(b), and following consultation with the COSHPPO and the public, we have determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(e), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the COSHPPO and made available to the public through posting on the Board's web site at <http://www.stb.dot.gov>.

SEA conducted a search of the Native American Consultation Database at [www.cast.uark.edu/other/nps/nacd/](http://www.cast.uark.edu/other/nps/nacd/) to identify Federally recognized tribes that may have ancestral connections to the project area. The database identified one federally recognized tribe. Accordingly, SEA is sending a copy of this EA to the Southern Ute Indian Tribe for their review and comment.

## **CONDITION**

SEA recommends that the following environmental conditions be placed on any decision granting abandonment authority:

- Prior to commencement of any salvage activities, Denver Regional Transportation District (DRTD) shall consult with the U.S. Fish and Wildlife Service regarding potential impacts from salvaging activities to Federally- listed threatened and endangered species that may occur in the vicinity of the line. DRTD shall report the results of these consultations in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations.

- Prior to commencement of any salvage activities, DRTD shall consult with the Environmental Protection Agency to ensure that any concerns regarding potential contamination of the right-of-way are addressed. DRTD shall report the results of these consultations in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations of the remaining tack.
- Prior to commencement of any salvage activities, DRTD shall consult with the United States Army Corps of Engineers (Corps) regarding its requirements and, if applicable, shall comply with the reasonable requirements of the Corps. DRTD shall report the results of these consultations in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations of the remaining tack.

## **CONCLUSIONS**

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, abandonment would 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, discontinuance of service and salvage of the rail line, a portion of the rights-of-way may 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.

## **TRAILS USE**

A request for a notice of interim trail use is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the class 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 CFR 1152.29).

## **PUBLIC ASSISTANCE**

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

## **COMMENTS**

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Phillis Johnson-Ball, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB-1229X.** If you have any questions regarding this environmental assessment, please contact Phillis Johnson-Ball, the environmental contact for this case, by phone at (202) 245-0304, fax at (202) 245-0454, or e-mail [johnson-ballp@stb.dot.gov](mailto:johnson-ballp@stb.dot.gov).

Date made available to the public: June 12, 2007.

**Comment due date: June 27, 2007.**

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

Vernon A. Williams  
Secretary

Attachment