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Service Date: January 7, 2000
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Draft Supplemental Environmental Assessment

STB DOCKET NO. AB-33 (Sub-No. 70)

UNION PACIFIC RAILROAD COMPANY

-- ABANDONMENT --

WALLACE BRANCH, ID

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EXECUTIVE SUMMARY

The Surface Transportation Board's (Board's) Section of Environmental Analysis (SEA) has prepared this Draft Supplemental Environmental Assessment (Draft Supplemental EA) to complete the environmental review process under the National Environmental Policy Act (NEPA) for this rail abandonment proceeding. Specifically, this Draft Supplemental EA addresses the Union Pacific Railroad Company's (UP's) filings with the Board on June 18, 1999 and October 19, 1999, of environmental information required to complete the environmental review process in this rail abandonment proceeding in accordance with the Court's decision in State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994).[1] UP now seeks final approval to salvage (i.e., remove the tracks, ties, and roadbed) the rail lines known as the Wallace-Mullan Branches (Wallace Branch) in Benewah, Kootenai and Shoshone Counties, Idaho outside of the Bunker Hill Superfund Site (BHSS).[2]

To meet its obligations under NEPA, SEA has completed its independent review of the material submitted by UP and has prepared this document to address UP's environmental information and evaluate (1) whether the six environmental conditions previously imposed by the Interstate Commerce Commission (ICC) are met[3] and (2) whether the environmental concerns

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[1]A detailed discussion of the history of this abandonment proceeding is set forth at Chapter 1 of this Draft Supplemental EA.

[2] The 71.5-mile line extends from milepost 16.5 near Plummer, to milepost 80.4, near Wallace, and then to milepost 7.6, near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho. The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83846, and 83846. The Wallace Branch no longer has stations because rail service has already been discontinued. The 7.9-mile section of right-of-way within the BHSS was addressed in the BHSS Record of Decision (EPA 1992) and is not part of the salvage proposal before the Board. Section 121(e)(1), 42 U.S.C. 9261(e)(1), relieves railroads of the requirement to obtain Board approval to abandon the portions of rail lines within Superfund sites if they do so in connection with remediation actions carried out in compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

[3] The ICC Termination Act of 1995 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and established the Board to assume some

regarding salvage activity raised during the course of the environmental review process have now been appropriately addressed and resolved. The document also contains SEA's preliminary recommendations for mitigating the potential environmental impacts from salvage activity that have been identified.

For the past several years, UP has worked with the United States Environmental Protection Agency (EPA), the Idaho Department of Environmental Quality (IDEQ), the United States Justice Department, and the Coeur d'Alene Tribe (Tribe) (collectively the Governments)[4] concerning how to resolve environmental and natural resource issues related to contamination of the Wallace Branch right-of-way and the rail bed ballast material from mining activities. UP has submitted an extensive Environmental Evaluation/Cost Analysis (EE/CA) that was issued and approved by EPA, as well as other technical studies, including a streamlined risk assessment prepared as part of the EE/CA, which discuss the historical activities in the Coeur d'Alene River Basin and their effects on the ecosystems, describe the sources of contamination found at various locations along the Wallace Branch right-of-way, and evaluate various response action alternatives for the mine waste contamination.

UP has also submitted a detailed Track Salvage Work Plan (the Plan), which describes controls to mitigate environmental impacts associated with the implementation of track salvage on this line. The Plan contains various environmental controls that would be imposed on UP during the removal of the rails, ties, and other track materials from the right-of-way, and includes procedures to protect adjoining areas (including wetlands) from the effects of salvage and to ensure that materials that are salvaged for reuse and/or recycling are decontaminated and that materials that cannot be

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regulatory functions involving rail transportation matters that the ICC had administered, including the functions involving the abandonment of rail service at issue here. The ICC's six environmental conditions, which require consultation and possible permitting and review by appropriate agencies with specialized expertise prior to any salvage activity on this line, are set forth in full in Chapter 1, Section 1.1.1.

[4]The State of Idaho has represented the interests of IDEQ at times during the on-going consultations regarding this line. References to the Governments, then, encompass both the State of Idaho and IDEQ.

recycled or reused are properly disposed. The Governments have reviewed the Plan and have concluded that the environmental controls prescribed in the Plan, in combination with those in the EE/CA, comply with the ICC's environmental conditions. The Governments support UP's request for authority to salvage and abandon the line in accordance with the procedures set out in the Plan and the EE/CA.

UP has provided additional information identifying wetlands adjacent to the right-of-way, as required by the ICC's environmental conditions. UP's material indicates that, if the actions in the EE/CA and the Plan are implemented, impacts to water quality and the wetlands located along the right-of-way would be addressed and mitigated. In addition, UP has submitted a Biological Assessment, prepared for and approved by the U.S. Fish and Wildlife Service (USFWS), which indicates that, if the mitigation in it is implemented, the salvage project would not likely result in an adverse effect on federally listed and proposed threatened or endangered species. Furthermore, UP provided concurrence letters from various agencies with specialized expertise, including EPA, USFWS, and the United States Army Corps of Engineers. Finally, UP has submitted a cultural resources report and letter from the Idaho State Historical Society describing the historical context of the Wallace Branch and the buildings and bridges over 50 years old that have historical significance.

SEA has reviewed the EE/CA documents, as well as the summary of the responses of EPA, the Tribe, and other agencies to the comments received during public outreach sessions as part of the EE/CA process.[5] SEA adopts the analysis in the EE/CA materials and the Biological Assessment to the extent they are relevant to SEA's environmental review under NEPA here. SEA's purpose in its environmental review of this case has not been to second guess the Governments' determination as to whether the EE/CA is complete and whether there has been compliance with CERCLA[6] and other

[5] At the direction of the Board, UP also provided all of the environmental documentation it has submitted to SEA to the public for review prior to being submitted to SEA. The only concerns that were raised before UP during that period, however, were requests for copies of particular documents.

[6]CERCLA is defined and discussed in greater detail in Chapter 1 at footnote 4.

statutes that agencies such as EPA are charged with administering. Rather, SEA's purpose is to assess the environmental impacts of going forward with salvage activities at this time, and how best to mitigate the potential impacts of track salvage. SEA has determined in its review of all the documents filed by UP that the potential environmental effects of salvage have been thoroughly assessed, and that the actions that UP would be required to take under the EE/CA, the Plan, and the Biological Assessment appear to be reasonable and appropriate mitigation to address any potential significant adverse impacts that would result from track salvage of the Wallace Branch.

Moreover, the available environmental information makes clear that the "no-action" alternative to UP's proposed salvage activity — leaving the track structure in place — would have adverse impacts on the environment and is not a permanent solution. Removal of the track structure would permit UP to undertake response actions (including tailings removal and asphalt capping of the right-of-way) that would significantly reduce or eliminate environmental concerns associated with the rail bed in its present state. On the other hand, without salvage, the potential for exposure to mine wastes would continue because response actions could not be implemented with the track in place. Also, deterioration of the track structure as a result of flooding and other natural forces would continue and with it the potential for the transport of mine waste contamination off of the right-of-way. Thus, the denial of UP's requested salvage activity on this line likely would be worse from an environmental standpoint than authorizing UP's proposed salvage activity.

Based on SEA's independent evaluation of all the available information, SEA preliminarily concludes that the material provided by UP is sufficient to satisfy five of the six environmental conditions imposed by the ICC to ensure that prior to salvage of the line, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated.[7]

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[7]The only condition that has not yet been satisfied is the ICC's Environmental Condition No. 6, involving historic preservation. As detailed in Chapter 5, Section 5.2.6, extensive work has been done to comply with that condition, which states that UP shall retain its interest in and take no steps to alter the historic integrity of all structures, including the line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f. However, the historic review process cannot be deemed to be completed at this point. That is because the outcome of that process depends on whether the Board issues a trail condition pursuant to the Trails Act, 16 U.S.C. 1247(d), for this line, and the Board has stated that it will not

Furthermore, SEA concludes, based on the available information and the input of the Governments and other agencies with specialized expertise, that if UP complies with the EE/CA and the Plan, and if the additional mitigation SEA recommends in this Draft Supplemental EA is imposed and implemented, UP's proposal to salvage the Wallace Branch would not have significant adverse environmental impacts.

SEA encourages the general public and interested agencies, government entities, and parties to participate in the environmental review of UP's salvage proposal by commenting on this Draft Supplemental EA during the 45-day comment period which ends February 22, 2000. SEA seeks public input on all aspects of this Draft Supplemental EA, as well as on the Board's environmental review process, so that SEA can assess public concerns and issues related to the UP proposal and determine whether additional environmental analysis and mitigation are necessary to analyze and effectively mitigate the potential environmental impacts that could occur as a result of track salvage activity on this line.

SEA will fully consider all comments that it receives in preparing final environmental recommendations to the Board, which will be based on further documentation and analysis, if any is needed. The Board then will consider the entire environmental record, the Draft Supplemental EA, all public comments, SEA's Post EA recommendations, including SEA's final recommended environmental mitigation before issuing a decision either granting or denying UP final authority to salvage the portion of the Wallace Branch outside of the BHSS. In that decision, if UP's proposal is approved, the Board will impose any environmental conditions it deems appropriate. Directions on how, when, and where to submit comments to this Draft Supplemental EA is set forth below in Chapter 7, Section 7.3.

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rule on any Trails Act requests until it issues its final decision in this proceeding. See discussion in Chapter 5. Therefore, SEA recommends that the Board impose a modified historic preservation condition on any decision approving salvage. SEA's recommended condition (set forth in Chapter 6) would require UP, until the Board acts on any requests for a trail condition, to retain its interest in and take no steps to alter the historic integrity of all structures, including the rail line itself, that are 50 years old or older until completion of the historic review process.

Date Draft Supplemental EA Made Available to the Public: January 7, 2000

Comment Due Date: February 22, 2000

CHAPTER 1

INTRODUCTION AND PROCEDURAL BACKGROUND

1.1 The Legal History of the Proceeding

1.1.1 The Original ICC Proceeding

The proceedings before the Surface Transportation Board (Board) in this case began on August 22, 1991, when UP filed an application with the Board's predecessor agency, the Interstate Commerce Commission (ICC),[8] seeking authority under former 49 U.S.C. 10903 to abandon and discontinue operations over a 71.5 mile rail line known as the Wallace Branch that extends across the panhandle in northern Idaho.[9] UP presented evidence that the line was, and would continue to

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[8]The ICC Termination Act of 1995 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, established the Board to assume some regulatory functions involving rail transportation matters that the former ICC had administered, including the functions involving the abandonment of rail service at issue here. Section 204(c) of ICCTA provides, in general, that if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by ICCTA, subsequent proceedings related to the case shall proceed under the law and regulations in effect at the time of the subsequent proceedings. This rail abandonment proceeding was remanded in part to the ICC by the United States Court of Appeals for the District of Columbia Circuit in 1994. State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994). The rail abandonment functions at issue here were retained and continue to be found in 49 U.S.C. 10903. Thus, current 49 U.S.C. 10903 will apply to this proceeding on remand.

[9]The ICC (and now the Board) has exclusive and plenary authority over rail line abandonments. Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 319 (1981). A rail carrier must apply to the ICC/Board, under 49 U.S.C. 10903, for a certificate of abandonment or discontinuance. Before relieving a carrier of its obligation to provide service on the line and authorizing a physical abandonment of the property, the ICC/Board must determine whether "the public convenience and necessity require or permit the abandonment." 49 U.S.C. 10903(a). In making this determination, the ICC/Board balances the needs of shippers and communities for the

be, unprofitable and that the impact of abandonment on shippers and the community would not be substantial because truck service was available and had been used to carry traffic in the past.

With its application, UP submitted an environmental report.[10] It also served an environmental notice on the Idaho Department of Transportation and 12 state and local agencies, notified appropriate Federal and state agencies of its intent to abandon the Wallace Branch, and published newspaper notices in the counties where the line is located.

The ICC received objections to UP's proposal on both transportation and environmental grounds. As relevant here, many of the environmental concerns related to alleged contamination on the right-of-way as a result of heavy metals escaping through drainage holes, known as "weep holes," in rail cars transporting mine materials over this line. Contamination also resulted from mine wastes used as ballast for the UP rail line and spills of concentrate materials. Moreover, approximately seven miles of the line is located in an area designated as a "Superfund"[11] toxic waste site due to the presence of heavy metals (including antimony, arsenic, cadmium, copper, lead,

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line against the burden that the line imposes on the carrier and on interstate commerce. Colorado v. United States, 271 U.S. 253, 268 (1926).

[10]Rail abandonment authorizations by the ICC/Board are among the Federal activities to which NEPA applies. Therefore, in every abandonment case, the ICC/Board considers the environmental effects of the proposed abandonment: the likely impact of diversion of traffic to other rail lines or transportation modes and the likely disruptive consequences of removing the track and associated structures. Normally, the ICC prepares an Environmental Assessment (EA) in rail abandonment cases. 49 CFR 1105.6, 1105.10(a). The EA is made available for public comment. The agency then considers the EA, the public comments, and the final EA before rendering its decision on the application. 49 CFR 1105.10(b).

[11]"Superfund" is a term commonly used to refer to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to released or threatened released of hazardous substances that may endanger public health or the environment. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites, provided for liability of persons responsible for releases of hazardous waste at these sites, and established a trust fund to provide for clean up when no responsible party could be identified.

mercury, and zinc) resulting from mining and smelter operations at the Bunker Hill smelter complex, which closed in 1982.

On September 27, 1991, the ICC's environmental staff, the Section of Environmental Analysis (SEA), issued an Environmental Assessment (EA) of the proposed abandonment based on its review of the environmental information provided by the parties and other agencies. After issuing the EA, SEA continued its environmental investigation and consulted with various environmental agencies, including the United States Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and the United States Army Corps of Engineers (the Corps).

In a decision served November 2, 1992, the ICC granted UP's abandonment application subject to various conditions. In its decision, the ICC allowed UP to discontinue service on the line at once,[12] but provided that the carrier could not fully abandon the line — salvage and permanently remove it from the rail network — until the environmental impact of the proposed abandonment was resolved. The ICC imposed six specific environmental mitigation conditions developed by SEA that require consultation and possible permitting and environmental review by various state and Federal environmental agencies with the appropriate jurisdiction and expertise prior to any salvage and reuse of the track. Those conditions are as follows:

> 1. UP shall not salvage any railroad infrastructure, including the rail and ties, along the entire right-of-way until it has consulted with the Idaho Department of Environmental Quality and the United States Environmental Protection Agency. This consultation will ensure that, if and when salvage activity ultimately takes place, it will be in compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601, et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, et seq. and/or other applicable laws and regulations.
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> 2. Pursuant to the United States Fish and Wildlife Service's (USFWS) request, UP, prior to any salvage activity, shall determine, using National Response Wetland Inventory Maps, if

[12]The ICC concluded that the discontinuance of rail operations would be likely to have beneficial environmental impacts because contamination of the right-of-way during rail operations would cease. The ICC found no indication that increased use of motor carriage to transport this traffic would be any more deleterious from an environmental standpoint than the operations that were currently conducted by rail.

wetlands are located along the right-of-way. If wetlands are located along the right-of-way, UP shall consult with USFWS prior to any disturbance of the right-of-way

and comply with any applicable requirement of the U.S. Fish and Wildlife Coordination Act, 16 U.S.C. 1661.

3. UP shall not undertake any salvage activities on the Wallace Branch until compliance with section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531, has been completed. As a part of the section 7 compliance process, UP shall retain an independent biological consultant to work under the Board's Section of Environmental Analysis and in cooperation with USFWS to prepare a Biological Assessment.

4. A Water Pollution Control Act permit under 33 U.S.C. 1251, et seq., may be required prior to salvage of the portion of the Wallace Branch where it crosses the Coeur d'Alene River. Prior to any salvage activities, UP shall contact the Idaho Department of Health and Welfare, Division of Environmental Quality, to determine if such a permit is required and to take the necessary steps to secure a permit.

5. The United States Army Corps of Engineers (the Corps) has expressed concern regarding impacts to wetlands and water quality if UP salvages the right-of-way. In addition, the Corps has indicated that materials in the area through which the track passes should be tested prior to any attempt to remove it. Accordingly, UP shall consult with the Corps prior to undertaking any salvage activities to determine what appropriate mitigation may be required.

6. UP shall retain its interest in and take no steps to alter the historic integrity of all structures, including the line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. section 470f.

In its decision, the ICC also gave consideration to the parties' environmental concerns. The ICC explained that, while it appreciated the parties' concerns regarding past contamination of the right-of-way, its role and obligations are limited to the anticipated impacts of the abandonment proposal before the agency, e.g., the likely diversion of traffic to other rail lines or transportation modes and the likely disruptive consequences of removing the track and associated structures. See Iowa Southern R. Co.- Exemption- Abandonment, 5 I.C.C.2d 496 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1993). With respect to salvage activities, the ICC recognized that soil samples had indicated the presence of heavy metal concentrates on the line. It also recognized that these concentrates may pose a serious threat to human health and safety — whether left in place or disturbed. The ICC concluded that EPA and/or the Idaho Department of Environmental Quality (IDEQ) were the appropriate agencies for developing and implementing remediation plans for sites

where hazardous materials were present. Accordingly, the ICC used its conditioning powers to ensure that any salvage activities would not exacerbate the already existing problem. Specifically, it required (in Environmental Condition No. 1) that before undertaking any salvage activity, including removing the track and ties and associated structures, UP would be required to consult with IDEQ and EPA. The ICC noted that this consultation would ensure that salvage, if and when it were to take place, would be conducted in compliance with the CERCLA, RCRA and other applicable environmental laws and regulations.

In addition, the ICC (in Environmental Condition No. 3) required UP to hire a consultant to prepare a Biological Assessment under section 7 of the Endangered Species Act (ESA). The ICC's other conditions (for a total of six conditions) were designed to address water quality, wetlands, and other environmental issues that had been raised.

1.1.2 **The D.C. Circuit Court Proceeding**

The State of Idaho, by and through the Idaho Public Utilities Commission, and three mining companies sought judicial review of the ICC's decision on both transportation grounds (relating to the discontinuance of the rail service) and environmental grounds (relating to the salvaging of track and release of the right-of-way). The Coeur d'Alene Tribe (Tribe), through whose reservation the line runs, maintained that the ICC should have imposed an additional condition requiring UP to clean up pollution on the right-of-way. On judicial review (State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994) (copy of the court's decision is attached at Appendix A-1), the court affirmed the ICC's decision to permit UP's immediate discontinuance of rail operations. Thus, that portion of this case is administratively final and no longer at issue. The court also rejected the argument of the Tribe that the ICC should have required UP to clean up the alleged pollution on the line.[13] In addition, however, the court concluded that the ICC had attempted to delegate away too much of its responsibility to look at the potential environmental impacts of salvage activity before authorizing

[13]The court agreed with the ICC that a pending civil action was the proper vehicle pursuant to which the Tribe should seek clean up relief from UP.

such activity, as required by NEPA, and accordingly remanded the ICC's conditional salvage authorization.

Specifically, the court found that the ICC's environmental analysis was not complete because the ICC did not have all the information needed to take a "hard look" at the environmental impact of salvage, and weigh it against the economic benefits of permitting salvage, in the circumstances of this case. The court did not find fault with the substance of the six environmental conditions imposed by the ICC or disapprove of the ICC's practice of consulting with, and relying on, the technical expertise of appropriate Federal and state agencies. However, the court was concerned that the NEPA conditions did not require any further assessment by the ICC prior to salvage. It noted that, under the ICC's approach, each agency would attend to only one aspect of the problem, and no agency would assess "the total environmental impact" of salvage activities. Contrasting the NEPA conditions with the agency's Endangered Species Act condition (Condition No. 3), the court found that the ESA condition passed muster because, as required by the ESA, the condition called for supervision by the ICC over the preparation of the Biological Assessment, and that the ICC give "final approval" to salvage operations once the Biological Assessment is completed.

1.1.3 **Subsequent Developments At The ICC**

Pursuant to the court's decision, the ICC, by decision issued December 2, 1994 (attached at Appendix A-2), reopened this proceeding to complete the environmental analysis of the potential impacts of salvage and vacated its conditional authorization of salvage (except for the portion of the line within the Bunker Hill Superfund Site (BHSS)).[14]

[14]Section 121(e)(1), 42 U.S.C. 9621(e)(1), relieves UP of the requirement to obtain ICC or Board approval to abandon the portion of the line within the BHSS, if it does so in connection with remediation action carried out in compliance with CERCLA. The 7.9 mile section of the Wallace Branch right-of-way within the BHSS was addressed as part of the BHSS Record of Decision (ROD) (EPA 1992) and is not at issue here. Within the BHSS, there has been some removal of track and protective barriers have been placed over soils. In developing the Environmental Evaluation/Cost Analysis or EE/CA, EPA relied on the experience gained from salvage and remediation activities on the line within the BHSS.

The ICC made clear that the grant of abandonment authority to UP in this proceeding would not be final (and that UP could not conduct salvage activities on the portion of the line outside the BHSS) until UP submitted the necessary environmental documentation to complete the environmental compliance process and received final approval from the Board to salvage that portion of the line.

1.1.4 **The 1995 Trails Act Request**

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. The Act is intended to preserve railroad rights-of-way for future railroad use, which is called railbanking. Many railroads do not own the land on which their track lies. Rather, they have easements over the land of adjoining property owners. Unless those easements are railbanked by converting them to a trail under the Trails Act, they are extinguished, and the land may revert to the adjoining property owners when the Board authorizes the abandonment of the line and the abandonment authority is exercised.

Under the Trails Act and the Board's implementing procedures (the regulations at 49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Certificate of Interim Trail Use or "CITU" in abandonments processed under 49 U.S.C. 10903, as was the case with the Wallace Branch) to begin the trail use process on a line approved for abandonment if it 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 will impose a CITU, which gives the trail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking.[15] The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail

[15]As the courts have found, trail use under 16 U.S.C. 1247(d) is voluntary and the railroad is under no obligation either to negotiate concerning, or enter into, a trails use agreement with a trail sponsor. See e.g., National Wildlife Federation v. ICC, 850 F.2d 694, 696 (D.C. Cir. 1988).

use agreements. The Board also is not authorized to regulate activities over the actual trail, and has no authority to deny the trails use request if the statute has been properly invoked and the railroad has consented to negotiate. 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 trail use/railbanking because it does not exercise sufficient Federal control to render Rails-to-Trails conversions "major Federal actions" under NEPA. See Iowa Southern R. Co.- Exemption-Abandonment, aff'd Goos, supra.

Although the possibility that the Wallace Branch will be used for interim trail use/rail banking is not part of the Board's environmental review of UP's request for final authority to salvage this line, it should be noted that, in August 1995, the Rails to Trails Conservancy (RTC) requested the immediate issuance of a CITU on the entire Wallace Branch, and UP agreed to negotiate with RTC. By decision issued November 15, 1996 (attached at Appendix A-3), in this proceeding, however, the Board denied the request for a CITU as premature. As discussed below, new requests for a CITU on this line now are pending before the Board, and UP has concurred in the requests. Moreover, the various studies and response actions that are discussed in this Draft Supplemental EA reflect the possibility that there may be interim trail use/railbanking under section 1247(d) on this right-of-way.

1.2 Purpose And Need For The Continuation of This Rail Abandonment Case

UP has filed the information with the Board that it believes is necessary to complete the environmental review process and receive final approval from the Board to salvage the Wallace Branch. As discussed in more detail in Sections 1.1.1 and 1.1.2, in 1992, the ICC had granted UP's application, filed under 49 U.S.C. 10903, to abandon this line, subject to six environmental conditions. Further approval from the Board is required, however, because in 1994 the court in Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994) (see Appendix A-1), affirmed in part and reversed in part the ICC's 1992 abandonment decision. The court affirmed the ICC's decision to permit UP's immediate discontinuance of rail service on the Wallace Branch. Thus, that portion of the Wallace Branch abandonment case is no longer at issue. However, the court concluded that the ICC had

attempted to delegate away too much of its responsibility to look at the potential environmental impacts of track salvage activity before authorizing such activity because the ICC's environmental conditions did not require any further assessment by the ICC prior to salvage. Accordingly, the court remanded the ICC's conditional salvage authorization.

Pursuant to the court's decision, the ICC, by decision issued December 2, 1994 (see Appendix A-2), reopened its proceeding to complete the environmental analysis of the potential impacts of salvage and vacated its conditional authorization of salvage (except for the portion of the line within the BHSS). The ICC made clear that the grant of abandonment authority to UP in this proceeding would not be final (and that UP could not conduct salvage activities on the portion of the line outside the BHSS) until UP submitted the necessary environmental documentation to complete the environmental compliance process and received final approval from the Board to salvage that portion of the line.

Approximately five years later, in 1999, UP informally notified the Board that it would soon submit to the agency the environmental documentation required to complete the environmental review process and seek final approval to salvage the line. The Board also received a letter dated May 20, 1999 (attached at Appendix B-1) from the Tribe, the State of Idaho, EPA, the United States Justice Department, and the Federal trustees for natural resources in the Coeur d'Alene Basin (the Department of Interior, including the U.S. Fish and Wildlife Service and the Bureau of Land Management, and Department of Agriculture-Forest Service) (collectively the Governments).[16] In that letter, the Governments stated that, for the past three years, representatives of the Governments have consulted and negotiated with UP concerning the appropriate actions necessary to satisfy the ICC's six environmental conditions and comply with CERCLA, RCRA, and other applicable environmental laws and regulations. The Governments stated that they believe UP has complied with the ICC's six environmental conditions. Furthermore, they stated that they fully support UP's

[16]The State of Idaho has represented the interests of IDEQ at times during the on-going consultations regarding this line. References to the Governments, then, encompass both the State of Idaho and IDEQ.

salvage of the Wallace Branch in accordance with the procedures that had been worked out in the supporting documents that UP would submit to the Board.

To assure that the general public and all interested parties had notice of UP's intent now to seek authority to complete the Wallace Branch abandonment proceeding, and how the Board would proceed, the Board directed UP to file a Notice of Intent to Complete Abandonment Proceeding (Notice)(attached at Appendix A-4). The Notice (which UP filed on May 18, 1999) stated that on or about June 18, 1999, UP intended to file with the Board environmental information required to complete the environmental review process and receive final approval to salvage the line. The Notice described in detail the background of this case and set out the process for the continuation of the proceeding. It explained that SEA intended to prepare environmental documentation analyzing UP's environmental documentation to preliminarily determine whether the outstanding environmental issues have been resolved and this abandonment proceeding may proceed. The Notice stated that a Draft Supplemental EA[17] would be prepared and made available for public review and comment. Then, based on SEA's independent review of UP's environmental documentation, any further environmental review and consultation that SEA believes is needed, and all timely comments received on the Draft Supplement EA, SEA would make final environmental recommendations to the Board. The Board would then issue a final decision granting or denying UP final authority to salvage the portion of the line outside of the BHSS, imposing any further environmental mitigation that is deemed appropriate if final approval to salvage were granted.

The Notice further explained that following any final approval by the Board to salvage the line, the line could be suitable for other public use, including interim trail use/rail banking under 16 U.S.C. 1247(d).[18] Interested persons also were advised as to how to file a written comment or

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[17]As noted, SEA issued an EA for public review and comment on September 27, 1991, in connection with UP's original abandonment application.

[18]The Notice stated that although the Board had denied the Rails-to-Trails Conservancy's trail use request, filed in 1995, as premature by decision issued November 15, 1996 (see Appendix A-3), another request for a trail condition under 16 U.S.C. 1247(d) and the regulations at 49 CFR 1152.29, or a request for a public use condition under 49 U.S.C. 10905 (section 1152.28 of the Board's rules) could be filed after UP submitted its environmental information. The Notice added

protest with the Board to become a party to this abandonment proceeding. Finally, the Notice stated that the line sought to be abandoned would be available for subsidy or sale for continued rail use, if the Board grants final approval to salvage, in accordance with applicable law and regulations (49 U.S.C. 10904 and 49 CFR 1152.27).

As the Board had directed, UP published the Notice once a week for three consecutive weeks in local newspapers in Benewah, Kootenai, and Shoshone Counties on May 26, and June 2 and 9, 1999. The Notice also was published in the Federal Register and sent to appropriate Federal, state and local agencies and to all persons on the service list of the parties to the original ICC abandonment proceeding.

1.3 Filing of Environmental Documentation Needed to Go Forward With This Abandonment Proceeding

On June 18, 1999, UP submitted environmental information to the Board in response to the six environmental conditions imposed by the ICC, the court remand, and the ICC's decision reopening this proceeding to complete the environmental compliance process. The information submitted by UP consists of the following documents:

> (1) An Environmental Evaluation/Cost Analysis (EE/CA)(the Executive Summary of which is attached at Appendix B-2[19]) and other technical documents including a Streamlined Risk Assessment, prepared by EPA in consultation with IDEQ and the Tribe, which discuss mine waste contamination on the Wallace Branch right-of-way, evaluate alternatives for addressing the contamination, and recommend specific response actions that the participating agencies and the Governments believe comply with CERCLA, RCRA, the ICC's environmental conditions, and other applicable environmental laws and regulations. The EE/CA also

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that UP then would have the opportunity to notify the Board whether and with whom it agreed to negotiate under the Trails Act. On August 3, 1999, the State of Idaho and the Tribe requested that a CITU be issued and enclosed the requisite "Statement of Willingness to Assume Financial Responsibility." UP then concurred in the Trails Act request. The Board has stated that it intends to consider all trail use requests at the time of issuance of its final decision in this matter. No requests for a public use condition under 49 U.S.C. 10905 have been filed.

[19]Because the entire document previously was made available to the public for review and comment by UP, only the Executive Summary is included in the appendix.

contains a discussion of the historical activities in the Coeur d'Alene River Basin and their effects on the ecosystems. The EE/CA was prepared in accordance with the National Contingency Plan and EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA (EPA, 1993).

- Because interim trail use/rail banking under 16 U.S.C. 1247(d) is contemplated for this line, the EE/CA takes into account potential impacts on human health that would be posed by the possible use of the right-of-way for interim trail use/railbanking. The EE/CA concludes that interim trail use would make it easier to implement the recommended alternatives for addressing contamination from mine waste that currently is present on the right-of-way.

- The EE/CA was issued for public review and comment from January to March 1999 and several open house meetings were held to provide information on the proposed response actions. More than 500 people either attended the open house meetings or filed written comments. Responses to the comments were prepared by EPA, the Tribe, and the Idaho Department of Parks and Recreation in May 1999. These responses were part of UP's submission to SEA (see Appendix B-3).

(2) A separate Track Salvage Work Plan, prepared by UP in consultation with the agencies involved in the EE/CA, which recommends specific environmental controls to be imposed on UP in the removal of rail, track, ties, and other track materials on the Wallace Branch (assuming that the Board authorizes salvage). The Track Salvage Work Plan includes procedures to remove ore concentrates and protect adjoining areas such as wetlands and other sensitive areas from the effects of salvage. The environmental controls are intended to minimize and address the potential for transport of contaminants by fugitive dust, vehicular traffic, surface water runoff, and dispersal by construction activities both within and off the right-of-way during the salvage operations. The controls also are intended to assure that materials that are salvaged for reuse and/or recycling are appropriately decontaminated. The Track Salvage Work Plan is attached to this Draft Supplemental EA at Appendix B-4.

(3) A Biological Assessment, prepared by an independent contractor for SEA, EPA, and USFWS, and approved by the USFWS pursuant to section 7 of the Endangered Species Act. The Biological Assessment addresses potential effects of salvage on Federally listed, threatened or endangered species within the project area and concludes that, if the mitigation in the Biological Assessment is implemented, the subject project is not likely to adversely affect endangered, threatened, or proposed threatened species. The Executive Summary to the Biological Assessment and the USFWS's letter of concurrence dated April 30, 1999, are attached to this Draft Supplemental EA at Appendix B-5.[20]

[20]Because the entire document previously was made available to the public for review and comment by UP, only the Executive Summary is included in the appendix.

(4) A Cultural Resource Inventory Report prepared by UP and the Idaho State Historical Society.

(5) A figure depicting relevant National Wetland Inventory Maps and correspondence from the Justice Department, EPA, the Tribe and IDEQ which states that, while wetlands are located along the Wallace Branch right-of-way, the response actions described in the EE/CA and Track Salvage Work Plan are expected to conserve and enhance fish and wildlife and their habitats, and that, as a result, the contemplated response actions and salvage would comply with the Fish and Wildlife Coordination Act, 16 U.S.C. 661.

(6) Correspondence from appropriate government agencies regarding the potential environmental impact of the proposed salvage action on human and ecological resources, and the adequacy of the mitigation in the EE/CA and Track Salvage Work Plan to minimize or eliminate the potentially significant adverse effects. See Appendix B-1, B-6.

UP indicated that, at the request of Board staff, it had made copies of all these documents available for public review and comment for 20 days in May and June 1999 (prior to the filing of these materials with the Board) at several locations near the Wallace Branch, offering to provide copies to interested persons who requested them. Furthermore, UP stated that during the preparation of this documentation, it had consulted with the Governments, as well as USFWS and the Corps. These agencies provided guidance for evaluating potential impacts to human health and the natural environment, including natural resource damage claims related to historical mine waste found within the right-of-way and reviewing environmental documentation.

On October 7, 1999, EPA issued an action memorandum concluding the EE/CA process, which also has been submitted to SEA (attached as Appendix C-1). The action memorandum provides further information on the sources of contamination within the right-of-way, and the threats of the contamination to the public health and welfare, the experience gained from the salvage actions that have been undertaken on the portion of the line within the BHSS, the determination of appropriate response actions needed to address human health and environmental concerns along the rest of the right-of-way, and the estimated cost of those actions (expected to be in excess of $25 million). The action memorandum reflects EPA's concern that, should the proposed removal actions be delayed or not taken, hazardous substances will remain as potential human health and environmental threats along the right-of-way and the Coeur d'Alene River system. Furthermore, it makes clear that EPA, the State of Idaho, and the Tribe will oversee UP's removal actions to ensure

that the actions to be conducted are protective of public health and the environment, and that the actions comply with a settlement agreement and anticipated Consent Decree.[21]

1.3.1 Coordination and Consultation with Federal and State Agencies

EPA is the primary Federal agency responsible for overseeing and implementing much of the permitting and applicable regulation of hazardous waste sites under statutes such as CERCLA.[22] UP consulted extensively with EPA (which issued the EE/CA, the action memorandum, and other technical documents pursuant to CERCLA) and the Governments to resolve environmental and natural resource damage concerns related to historical mine waste found within the right-of-way. UP also consulted with the Governments in developing its Track Salvage Work Plan, which describes controls to mitigate the potential adverse impacts associated with the implementation of track salvage on the Wallace Branch. UP submitted to SEA the EE/CA and the other technical documents issued by EPA, including a Streamlined Risk Assessment. UP also provided SEA with concurrence letters from the Governments and other agencies with specialized expertise, including the Corps and various Idaho state agencies, and the summary of responses prepared by EPA, the Tribe, and the State of Idaho to the comments received during public outreach sessions as part of the EE/CA process.

The EE/CA documents and EPA's action memorandum discuss the historical activities in the Coeur d'Alene River Basin and their effects on the ecosystems, describe the sources of contamination found at various locations along the Wallace Branch, and evaluate various response action alternatives for the mine waste contamination. SEA has reviewed the EE/CA documents and the action memorandum, as well as the concurrence letters and other correspondence reflecting the views of the Governments and other agencies, and the summary of the responses of EPA, the Tribe, and other agencies to the comments received during public outreach sessions as part of the EE/CA

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[21]The background and details of the settlement agreement and Consent Decree are discussed in Chapter 2, Section 2.1.

[22] Appropriate portions these documents are included in the Appendix to this Draft Supplement.

process.[23] SEA adopts the analysis in the EE/CA materials to the extent it is relevant to SEA's environmental review under NEPA here. SEA's purpose in its environmental review of this case has not been to second guess the Governments' determination as to whether the EE/CA is complete and whether there has been compliance with CERCLA and other statutes that agencies such as EPA are charged with administering. However, information from the EE/CA analysis, the action memorandum, and the concurrence letters and correspondence from agencies with specialized expertise have assisted SEA in complying with the Board's responsibilities under NEPA in this proceeding, i.e., assessing (1) whether the six environmental conditions previously imposed by the ICC are met, (2) the environmental impacts of going forward with salvage activities at this time, and (3) how best to mitigate the potential impacts of track salvage.

As required by the ICC's environmental conditions, a Biological Assessment, prepared by an independent contractor for SEA and the USFWS, and approved by the USFWS, evaluated the ecological risks to Federally listed threatened and endangered species that may be found within the right-of-way. See Appendix B-5. SEA has used the Biological Assessment to determine if the potential effects of salvage on Federally listed, threatened, or endangered species within the project area have been properly analyzed and addressed. Furthermore, in order to identify, assess the potential impacts to, and ultimately mitigate any adverse effects to historic sites and structures within the project area, UP worked closely with the Idaho State Historical Society. These consultations, and the Cultural Resource Inventory Report and correspondence which resulted, have assisted the Board in complying with its responsibilities under the National Historic Preservation Act.

Finally, SEA recently received a request from the National Oceanic and Atmospheric Administration of the United States Department of Commerce for a condition involving geodetic station markers. See Appendix C-2. In response, SEA developed an appropriate condition, which is included in Chapter 6 of this Draft Supplemental EA.

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[23] At the direction of the Board, UP also provided all of the environmental documentation it has submitted to SEA to the public for review prior to being submitted to SEA. No substantive concerns were raised before UP during that period, however.

1.3.2 Public Review Process

To ensure broad public notice of UP's intent to seek final authority to salvage the Wallace Branch, the Board directed UP to file the Notice discussed above (see Appendix A-4), which as stated earlier, UP filed on May 18, 1999. UP also posted the Notice at UP's National Customer Service Center, the station which handled business over the line proposed for abandonment. In addition, UP mailed the Notice to various governmental agencies and organizations including the Governor of Idaho, the Idaho Public Utilities Commission, and the Idaho Extension Service Director, and to all persons on the service list of the ICC's abandonment proceeding.

The Notice was published in the Federal Register. Furthermore, the Notice was published once each week for three consecutive weeks in newspapers generally circulated in the following counties:

Newspaper	County	Dates Published
Coeur d'Alene Press	Kootenai	May 26, June 2 and June 9, 1999
St. Maries Gazette Record	Benewah	May 26, June 2 and June 9, 1999
Shoshone News Press	Shoshone	May 26, June 2 and June 9, 1999

At the Board's request, UP also made copies of the supporting environmental documents, which included the EE/CA, Track Salvage Work Plan, Biological Assessment, and Cultural Resource Inventory report, available for public review and comment at the following locations prior to being filed with the Board:

North Idaho College Library	Wallace Public Library	Plummer Public Library
100 West Garden Avenue	415 River Street	800 D Street
Coeur d'Alene, Idaho 83814	Wallace, Idaho 83873	Plummer, Idaho 83851
(208) 769-3254	(208) 752-4571	(208) 686-1812

Interested parties had 20 days to submit written documentation regarding concerns about the documents to UP. UP was directed to consider any concerns in its supporting environmental documentation and to forward all documentation raising concerns to SEA. No such documentation

was received by UP prior to the time it filed its environmental material with the Board on June 18, 1999.

Since that time, SEA has received correspondence from members of the general public raising environmental concerns about UP's proposal and/or the EE/CA, and the plans to use the instant right-of-way for interim trail use. As discussed above, however, SEA's purpose in preparing this Draft Supplemental EA is not to second guess the Governments as to their determination as to whether the EE/CA is complete, and whether there has been compliance with CERCLA and other statutes that agencies such as EPA are charged with administering. Nor is the possibility that the Wallace Branch may be used as a trail under 16 U.S.C. 1247(d) part of the Board's environmental review process. Rather, SEA's sole purpose is to complete the environmental review process for this rail abandonment proceeding by assessing (1) whether the six environmental conditions previously imposed by the ICC are met, (2) the environmental impacts of going forward with salvage activities at this time, and (3) how best to mitigate the potential impacts of track salvage.

Some of the correspondence that SEA has received raises issues that are beyond the purview of this Draft Supplemental EA, and all of it was prepared without the benefit of the Draft Supplemental EA. Accordingly, SEA now encourages the general public and interested agencies, government entities, and parties to present comments responsive to this Draft Supplemental EA during the 30 day comment period on it. SEA seeks public input on all aspects of this Draft Supplemental EA, as well as on the Board's environmental review process, so that SEA can assess public issues and concerns related to the UP proposal and determine whether additional environmental analysis and mitigation are needed to analyze and effectively mitigate the potential environmental impacts that could occur as a result of track salvage on the Wallace Branch. SEA will fully consider all timely comments that it receives in preparing final environmental recommendations to the Board, which will be based on further documentation and analysis, if any is needed.

CHAPTER 2
ENVIRONMENTAL ANALYSIS

2.1 History of the Line and the EE/CA Process

Originally constructed in the late 1800s to serve the mining industry in the Silver Valley, the Wallace Branch extends from railroad milepost 26.5 near Plummer to railroad milepost 80.4 and/or 0.00 near Wallace, then to the end of the line at railroad milepost 7.6 near Mullan, a distance of 71.5 miles, in Benewah, Kootenai and Shoshone Counties, Idaho. See map attached at Figure 1. Construction took place over a period of approximately three years, from 1888 to 1890.

During its period of operation, the Wallace Branch primarily served the mining industry, transporting ores and concentrates from the mines and mining process facilities. Rail transport was also used by the timber industry, agriculture, and the general public riding passenger cars to Spokane, Washington, and other destinations. Rail sidings were built to serve mining facilities, saw mills, rock quarries, warehouses, fueling stations, and maintenance facilities. The sidings serving the mining industry were generally located on the South Fork of the Coeur d'Alene River basin. Sidings west of Enaville generally served sawmills and quarries, where cars were coupled to or uncoupled from mine trains. The Wallace Branch operated continuously from the 1890's to 1992.

Rail service along the Wallace Branch was discontinued in accordance with the approval of the predecessor agency of the Board, the ICC in 1992, which was upheld by the United States Court of Appeals for the District of Columbia Circuit in State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994). Except for the portion of the right-of-way within the BHSS, the track structure has not been removed. Within the BHSS, the track was removed as part of the implementation of the

MAP TO BE SCANNED

BHSS 1992 Record of Decision under CERCLA. The EE/CA and other documents supplied by UP reflect the experience gained from the salvage operations conducted within the BHSS.

The EE/CA process has occurred because in 1991, the Tribe sued UP and several mining companies for natural resource damages, allegedly caused by their releases of hazardous materials in the Coeur d'Alene Basin. In 1996, the Justice Department, on behalf of EPA and the Departments of Agriculture and Interior filed a lawsuit against several mining companies for releases of mining wastes into the Coeur d'Alene Basin. The suit alleged claims under CERCLA, seeking a declaration of liability for clean up costs and recovery of natural resource damages and a claim for natural resource damages under the Clean Water Act. The suit was subsequently consolidated for pretrial discovery purposes with the lawsuit filed previously by the Tribe.

Under CERCLA, any party who owned or operated a facility from which there was a release of hazardous substances into the environment may be liable for the full costs of clean up and the payment of damages based on injuries to natural resources. In the case of the Wallace Branch, lead, zinc, cadmium, and other heavy materials from mining activities have been released into the environment and along the UP right-of-way between Plummer and Mullan. To resolve potential and pending claims against it by the United States, Tribe, and State of Idaho, UP made a settlement offer which includes clean up activities along the right-of-way and its agreement to transfer of the right-of-way to the Tribe and the State for use as a recreational trail under 16 U.S.C. 1247(d). Responding to this offer, the Governments have entered into negotiations with UP to settle their claims and hope to finalize the terms of their settlement through a Consent Degree.[24] A standard Consent Decree provides a release from liability for clean up upon certification that the work required by the Consent Decree has been completed. Through the Consent Decree for this case, the Governments will provide UP with a release from liability for clean up assuming that the agreed-to response action process is implemented. Additionally, UP will remain liable for clean up if information previously unknown to the Governments is later received and indicates that the response actions selected through the EE/CA

[24] EPA has advised SEA that a Consent Decree is anticipated shortly.

process will not protect human health and the environment. UP also will be responsible into perpetuity for the operation and maintenance of the various barriers that will be used in implementing the response actions, and EPA and other agencies will oversee UP's activities. Additional clean up activities may also be performed or funded by other potentially liable parties.

2.2 Existing Environment

This section provides a summary of the existing environment of the Wallace Branch. The regional geology and soils in the area of the right-of-way are described, as well as the source, nature, and extent of contamination associated with the right-of-way. In addition, structures located on the line, adjacent land use, ecosystems, and vegetation and wildlife are described. A more complete description of the existing environment is set forth in the EE/CA.

2.2.1 Overview

The right-of-way covers a total area of approximately 1,400 acres, extending from Plummer to Mullan, Idaho. The location of the Wallace Branch is shown at Figure 1. The westernmost end of the Wallace Branch begins in Benewah County, at Milepost 16.6, and traverses east-northeast to Milepost 30, near Harrison. This segment of the line passes through Heyburn State Park and crosses Lake Coeur d'Alene by means of a 3179-foot long trestle bridge, which includes a 224-foot swing span section. At the east end of the trestle bridge, the line turns north and follows the east shore of the lake. The right-of-way enters Kootenai County approximately at Milepost 24.5. As the right-of-way passes through he community of Harrison, it sweeps to the west and begins a routes roughly parallel to the main stem of the Coeur d'Alene River. This stretch of the line, from Harrison to Enaville, traverses the lower basin of the Coeur d'Alene River. The confluence of the North and South Forks of the Coeur d'Alene River is at Enaville. From this point eastward, the right-of-way alignment follows the South Fork of the Coeur d'Alene River to the eastern terminus of the line in Mullan.

The right-of-way passes through a wide variety of natural settings and terrain. Approximately 80 percent of the line generally follows the Coeur d'Alene River and is mostly within

the flood plain. The remaining portion of the line is adjacent to Lake Coeur d'Alene or in the upland areas of the Coeur d'Alene Indian Reservation. As a whole, the settings traversed by the rail right-of-way can be grouped into three categories:

- The Upper Basin: the upper South Fork of the Coeur d'Alene River Basin, which includes the eastern portion of the Mullen Branch line from Mullen at milepost MP 7 to Wallace at milepost MP 0 and the eastern most portion of the Wallace Branch extending from Wallace at milepost MP 80 to west of Enaville at milepost MP 62.

- The Lower Basin: the lower Coeur d'Alene River Basin, which starts downstream of the confluence of the south and North Forks of the Coeur d'Alene River west of Enaville at milepost MP 62 to Harrison (milepost MP 31).

- The east shoreline of Lake Coeur d'Alene beginning at Harrison (milepost MP 31) and the upland rolling hills west of Lake Coeur d'Alene to Plummer Junction (milepost MP 6).

2.2.2 Geology

The regional geologic setting of the Wallace Branch is located in the western part of the Northern Rocky Mountains' physiographic province, within the western slopes of the Bitterroot Range. This area is characterized geologically by extensive exposures of the Precambrian Belt Supergroup — a thick sequence of fine grained, metasedimentary rocks — which also host the ore deposits of the Coeur d'Alene District. Aside from a few small and scattered intrusive bodies of Mesozoic age, the next youngest rocks in the area are associated with the middle Columbia River Basalt Group, with exposures limited to the western portions of the project. Pleistocene glacial deposits overlie these Miocene basalts.

The structural geology of the Coeur d'Alene valley is characterized by extensive northwest trending bedrock faults and folds. Much of the project area lies within a regional structural feature known as the Lewis and Clark Line, a west and northwest-trending zone of steep faults that traverse northern Idaho from the Columbia Plateau, to approximately 250 miles southeastward into west-central Montana.

2.2.3 Soils

Soils outside of river valleys generally consist of four to six inches of loam, underlain by gravelly silt-loam subsoils, which extend 14 to 25 inches in depth to fractures bedrock. These layers of volcanic ash and wind-blown loess are apparent in the soil profile. Soils on the valley floors occur over river and glacial deposits and range up to 100 feet in thickness. Steep upper valley soils are composed of boulders and cobbles. The results of a soil survey conducted for Kootenai County, Idaho is set forth at page 8 in the EE/CA.

2.2.4 Source, Nature, and Extent of Contamination Associated with the Right-of-Way

Construction records of the Wallace Branch indicate that the subgrade embankment, particularly in the area Lower Basin, was built using coarse rock and gravel obtained from local quarries. On the portion of line east of Enaville to Mullan, the track bed was constructed over river-deposited mill tailings. Additionally, at some locations on this portion of the right-of-way, original construction of the rail line used locally available mine waste rock as fill to elevate the track. In the remainder of the right-of-way, the subgrade embankment is composed primarily of clean material quarried from adjacent hillside areas.

Materials originally used to construct the ballast section of the rail line throughout the right-of-way consisted of a mixture of jig tailings (waste product from the mechanical process used in the early years of mining in the Silver Valley), waste rock (the rock excavated in pursuit of ore) and locally available gravels. Materials for subsequent maintenance and upgrading of the ballast, including repairs to areas eroded by the river throughout the operating life of the rail line, consisted of quarried rock, rather than mill tailings.

Over time, additional ballast materials were added as part of railroad grade maintenance activities. The newer ballast was subjected, over time, to the same conditions that have contaminated the native soils along the rail right-of-way, including airborne and waterborne transport of tailings.

The EE/CA materials explain how environmental data was collected from the right-of-way and how the data was used in making decisions about clean up and track salvage. First, there was extensive sampling of the 7 miles of the right-of-way within the BHSS. In addition, during 1996 UP initiated a program of representative sampling of the track within the right-of-way to further analyze the nature and extent of contamination. The sampling program focused on those areas of the right-of-way where the probability of encountering residual contamination from past railway operations was considered to be the greatest (i.e., sidings, loading and unloading areas, etc.), as well as areas of the rail line considered to be representative of the various sections of the line. Additional sampling was conducted in 1997 and 1998 to provide a more thorough understanding of the mine waste-related contamination found on the railroad corridor. Environmental data from these sampling activities are included in the EE/CA. The sampling focused on the four contaminants found along the right-of-way: arsenic, cadmium, lead and zinc. These contaminants were selected because of historic ore mining, milling and waste disposal practices, as well as construction and operation of the line.

The data from the sampling was consistent with the premise that tailings used in the construction of the original ballast sections are essentially confined to the ballast section. The sampling provided evidence of elevated concentrations of lead, zinc, cadmium, and arsenic in the lateral zones of the right-of-way, outside of the rail bed, but typically at lower concentrations than in the rail bed ballast section. Concentrations in the lateral zone of the right-of-way are generally consistent with those found in other areas of the flood plain. The majority of the right-of-way (between Enaville and Harrison) is within the flood plain of the Coeur d'Alene River and is subject to sedimentary materials consisting of tailings being transported from upstream sources during floods. Analytical data from the soil sampling along the right-of-way verify the existence of tailings in the flood plain, including a layer beneath the railroad subgrade embankment in some locations.

The Wallace Branch primarily served the mining industry in the Silver Valley, transporting ores and concentrates to and from the mines and mine process facilities. According to the EE/CA materials, at various locations along the right-of-way, and in particular at sidings and loading/unloading areas, there is evidence of spillage of these ores and concentrates. Lead bearing

tailings are pervasive throughout the river flood plain and much of the lateral zones of the right-of-way.

2.2.5 Structures on the Right-of-Way

During the years in which the railroad operated over the Wallace Branch, a number of buildings were constructed to support railroad activities. Buildings constructed by UP included bunkhouses, toolsheds, warehouses, and depots. The majority of the buildings were removed in latter years of rail operation. The only remaining buildings are those associated with underlying land leases to private parties or those constructed illegally by persons not affiliated with the railroad on the right-of-way. The remains of various loading buildings related to mining, including building foundations, can still be found along the right-of-way.

Bridges and culverts are a common feature along the Wallace Branch. A total of 36 bridges were constructed to cross rivers, creeks, and Lake Coeur d'Alene. The bridges include 11 single-span structures, constructed of timber, steel, concrete or other comparable materials, and 24 multi-span timber trestles, 3 of which have steel center spans. The Chatcolet bridge (mentioned above) is a 3179-foot timber trestle with a 224-foot steel swing-span across the St. Joe River channel. Construction drawings indicate that as many as 200 culverts may have been constructed along the rail line. The culverts were constructed of various materials, including corrugated steel, concrete, and wood.

2.2.6 Adjacent Land Use

Existing land use in the vicinity of the right-of-way ranges from undeveloped forest to urban communities. Much of the nearby land has been developed for farming. With the exception of the few urban communities along the right-of-way, the population density in the area is relatively low. The right-of-way passes through a number of incorporated and unincorporated communities having a total population of approximately 5,000. A summary of land use on 13 segments of the right-of-way are set forth in detail in the Streamlined Risk Assessment prepared as part of the EE/CA process.

2.2.7 Ecosystems

The Coeur d'Alene Basin is a large watershed that contains a number of interconnected and interactive ecosystem components. These ecosystem components are rivers and streams, the riparian zone, wetlands, uplands, lateral lakes, and Lake Coeur d'Alene. Each ecosystem component is described in detail in Section 2.8 of the EE/CA.

2.2.8 Vegetation and Wildlife

The original vegetation of the upland areas of the Coeur d'Alene Basin was coniferous forest and included such species as ponderosa pine, western white pine, wester larch, Douglas fir, western red cedar, grand fir, and western hemlock. Lodgepole pine is abundant as a second growth in burned-over areas. Ponderosa pine thrives on drier, well-drained slopes. Grand fir and western hemlock are abundant toward the eastern and higher parts of the district. Other common tree species are subalpine fir, Engelmann spruce, and mountain hemlock.

Western red cedar once covered much of the water-saturated valley flats. Deciduous trees typically found in the valley flats and along perennial streams include willow, alder, and black cottonwood, some aspen are found on high, open slopes. The density and abundance of shrubs and other ground cover varies throughout the region, depending on slope, aspect, and moisture. Common shrub species are listed at section 2.8.2.1 of the EE/CA.

Small mammals generally found in the area include voles, deer mouse, shrews, chipmunk, tree squirrel, and ground squirrel. These animals provide important links in the food webs. Larger mammals present within the Basin include coyote, bobcat, cougar, raccoon, black bear, mule deer, white-tailed deer, and elk. In the wetland and riparian habitats, muskrat, beaver, and mink are found. Moose are also found within the Basin. Deer and elk are the most abundant big game species in the area.

Over 280 bird species are found within the Coeur d'Alene Basin. Many of the bird specifies of the areas are migratory. Many waterfowl and neotropical migrants arrive in great numbers during April and May. Avian exposure to contaminants in the lower Coeur d'Alene is high. Waterfowl are at especially high risk from exposure to contaminated sediments through ingestion. Federally endangered, threatened, and candidate wildlife species that may be found within the Coeur d'Alene Basin are summarized in the EE/CA materials and analyzed in detail in the Biological Assessment, the executive summary to which is included at Appendix B-5.

CHAPTER 3
ENVIRONMENTAL IMPACTS OF SALVAGE

Potential hazards to both human and ecological health associated with contamination along the right-of-way are set forth in most detail in the Streamlined Risk Assessment, which is part of the EE/CA materials. When analyzing impacts to human health, the Streamlined Risk Assessment considers three exposure scenarios — residential, recreational, and occupational. The primary contaminant of concern identified in the Streamlined Risk Assessment is lead due to its higher concentrations. Secondary contaminants of concern include zinc, cadmium, and arsenic.

The rail right-of-way is a narrow, continuous strip of land within the much larger Coeur d'Alene Basin. Therefore, the Streamlined Risk Assessment considers only human activities and behavior that may result in exposure to soils and dusts on the right-of-way, and focuses on assessing the incremental risk that could result from residents and visitors using the right-of-way. The Streamlined Risk Assessment does not address contaminants other than lead, zinc, cadmium, and arsenic or exposures that could occur through activities beyond the right-of-way, such as camping, fishing, and swimming. A more comprehensive risk assessment for the Coeur d'Alene area, however, will be conducted as part of a study to be performed for the BHSS.

In summary, data from sampling appear consistent with the premise that tailings used in the construction of the original ballast section of the right-of-way are essentially confined to the that area, except for locations where washouts have occurred. The ballast section is approximately 18 inches

thick. There is evidence of elevated concentrations of lead and the other contaminants that were analyzed in areas lateral to the right-of-way, outside the rail bed, but typically at lower concentrations than in the rail bed ballast section.

Exposure to these contaminants would typically occur by any one of three means: direct exposure from ingestion or inhalation; direct migration to surface water by erosion, dissolution, and translocation of materials during flooding; and leaching of material from the rail bed either by precipitation or inundation from flood waters.

According to the Streamlined Risk Assessment, of greatest concern because of the potential for acute and chronic health effects is direct exposure to human and environmental receptors. The movement of rail bed materials as a result of severe flooding is also of concern because of the potential impact of contaminants loading the river system. Leaching to groundwater is of less priority because impacts to groundwater has less potential to be significant.

3.1 Human Health Risks

The Streamlined Risk Assessment and EPA's action memorandum dated October 7, 1999, evaluate health risks associated with exposure of contaminants by estimating the cancer risk for ingested arsenic; the non-carcinogenic health risk for arsenic, cadmium, and zinc; and the incremental blood lead increases for sub-chronic lead exposure. Based on these evaluations, the Streamlined Risk Assessment and action memorandum predict that, if no clean up or response actions are conducted to reduce exposure to contaminants on the right-of-way, or if there is significant delay, potentially significant exposure to carcinogenic, non-carcinogenic, and blood lead increments would occur.

The Streamlined Risk Assessment and action memorandum conclude that occupational exposure to contaminants pose some potential carcinogenic and non-carcinogenic risks from ingestion to arsenic and lead exposure, particularly to pregnant workers. Excessive recreational exposures would be of concern if no clean up or response actions were to be implemented. Following the implementation of the proposed response actions in the EE/CA materials, however, potential

excessive exposures would occur only on remote areas along the right-of-way. Residential exposures to soil left in the right-of-way are currently considered unacceptable; however, the proposed clean up actions would remedy this situation.

3.2 Ecological Risks

According to the material submitted by UP, ecological receptors have the potential to be exposed to contaminants along the right-of-way primarily through three means: direct contact with mine waste materials and with water and sediments contaminated by mine waste materials; ingestion of mine waste materials and water and sediments contaminated by mine waste materials; and ingestion of contaminated food, such as sediment or soil dwelling insects and vegetation. Threats to ecological receptors will be evaluated separately through studies prepared for the BHSS and in the Natural Resource Damage Assessment for the Coeur d'Alene Basin, which is currently ongoing.

CHAPTER 4

IDENTIFICATION AND ANALYSIS OF ALTERNATIVES TO UP'S SALVAGE PROPOSAL

Alternatives to the proposed action include denial of the proposed salvage, which would prevent salvage from occurring and would leave the existing right-of-way in its current condition. Denial of UP's request that the Board grant it final authority to salvage the line would not include a denial of UP's discontinuance of service, which is typically an alternative to abandonment. As discussed earlier, the discontinuance of service on this line has already been permitted by the ICC and upheld by the court in State of Idaho v. ICC.

The available environmental information makes clear that the "no-action" alternative to UP's proposed salvage activity—leaving the track structure in place—would have adverse effects on the physical environment and is not a permanent solution. The EE/CA and other materials submitted by UP explain that removal of the track structure would permit UP to undertake response actions (including tailings removal and asphalt capping of the right-of-way) that would significantly reduce

or eliminate environmental concerns associated with the rail bed in its present state. Furthermore, UP prepared a detailed Track Salvage Work Plan, in consultation with the Governments, which describes controls to mitigate environmental impacts associated with the implementation of track salvage on this line. The Track Salvage Work Plan identifies various environmental controls that would be imposed on UP during the removal of the rails, ties, and other track materials from the right-of-way, and includes procedures to protect adjoining areas including wetlands from the effects of salvage and to ensure that materials that are salvaged for reuse and/or recycling are decontaminated and that materials that cannot be recycled or reused are properly disposed of.

On the other hand, the EE/CA materials make clear that, without salvage, the potential for exposure to mine wastes would continue because response actions could not be implemented with the track in place. Moreover, deterioration of the track structure as a result of flooding and other natural forces would continue and with it the potential for transport of mine waste contamination off of the right-of-way. Thus, the denial of UP's requested salvage activity on this line likely would be worse from an environmental standpoint than authorizing UP's proposed salvage activity.

CHAPTER 5

SEA'S DETERMINATION OF UP'S COMPLIANCE WITH THE SIX ENVIRONMENTAL CONDITIONS

5.1 Overview

To complete the environmental review process under NEPA for this case, SEA has conducted an independent review of the supporting environmental documentation submitted by UP for compliance with the ICC's six environmental mitigation conditions, and has reviewed and assessed the EE/CA materials, Biological Assessment, maps showing the location of wetlands, and other data, analysis and correspondence prepared by EPA, the Governments and other agencies with specialized expertise over the types of environmental issues of concern in this proceeding. SEA has also

reviewed the summary of the responses of EPA, the Tribe, and other agencies to the comments received during public outreach sessions as part of the EE/CA process.

SEA adopts the analysis in the EE/CA materials and Biological Assessment to the extent they are relevant to SEA's environmental review here. SEA's purpose in its review of the material submitted by UP in this case has not been to second guess the Governments' determination as to whether the EE/CA is complete and whether there has been compliance with CERCLA and other statutes that agencies such as EPA are charged with administering. Rather, in accordance with State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994), and the ICC's 1994 decision reopening this case, SEA's purpose in this Draft Supplemental EA is to assess the environmental impacts of going forward with salvage activities at this time, and how best to mitigate the potential impacts of track salvage.

SEA has determined in its review of all the documents filed by UP, including EPA's recent action memorandum, that the potential environmental effects of salvage have been thoroughly assessed and that the actions that UP would be required to take under the EE/CA materials, Track Salvage Work Plan, and Biological Assessment appear to be reasonable and appropriate mitigation to address any potential significant adverse impacts that would result from track salvage of the Wallace Branch. Based on the information available to date, SEA has found nothing in its review of the available environmental information to indicate that more exploration of the potential environmental effects of salvage is required, or that the actions that UP would be required to take under the EE/CA materials, Track Salvage Work Plan, and Biological Assessment are not reasonable and appropriate mitigation to address any potential significant adverse impacts that could result from track salvage.

SEA preliminarily concludes that, based on its independent evaluation of all the available information, the material provided by UP is sufficient to satisfy five of the six environmental conditions the ICC had imposed to ensure that, prior to salvage, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated. (As discussed below, UP has satisfied the last condition related to historic preservation to the extent that it

can until the ultimate disposition of the rail line is determined. See discussion at Section 5.2.6 below.)

Moreover, as set forth in Chapter 6 entitled "Additional Recommended Mitigation Measures," SEA has recommended certain other additional mitigation conditions (including a modified historic preservation condition) to further mitigate any potential environmental impacts of track salvage and ensure completion of the historic review process. SEA concludes, based on the available information and the input of EPA, the Governments and other agencies with specialized expertise, that if UP complies with the EE/CA materials including the Track Salvage Work Plan, and if the additional mitigation SEA recommends in this Draft Supplemental EA is imposed and implemented, UP's proposal to salvage the Wallace Branch would not have significant adverse environmental impacts.

5.2 UP's Compliance with the Six Environmental Conditions

5.2.1 Compliance with Condition 1: Environmental Condition No. 1 (set forth in full at Section 1.1.1) requires that UP consult with EPA and the IDEQ prior to any salvage to ensure that, when and if salvage activity takes place, it is in compliance with CERCLA, RCRA, and other applicable laws and regulations. To demonstrate compliance with Environmental Condition No. 1, UP submitted the EE/CA, which was issued by EPA (the responsible Federal agency for the implementation of CERCLA and RCRA). The EE/CA materials (including a Streamlined Risk Assessment and EPA's October 1999 action memorandum) describe the sources of contamination on the Wallace Branch right-of-way and the rail bed and contain EPA's determination of an appropriate response under CERCLA, RCRA, and other applicable Federal environmental laws and regulations for mine waste contamination found at various locations along the Wallace Branch.

As discussed above, as part of the EE/CA process, UP also supplied a Track Salvage Work Plan setting forth various environmental controls that would be placed on UP during the removal of rails, ties, and other track materials from the right-of-way. The environmental controls in the Track Salvage Work Plan include procedures to protect adjoining areas, such as wetlands and other

sensitive areas, from the effects of salvage. The environmental controls address the potential for transport of contaminants by fugitive dust, vehicular traffic, surface water runoff, and dispersal by construction activities both within and off the right-of-way during salvage operations. The controls also provide procedures to ensure that materials that are salvaged for reuse and/or recycling will be appropriately decontaminated and that other materials are properly disposed of. Finally, UP consulted with the Governments (which include the State of Idaho and the Tribe) in the development of the EE/CA and the Track Salvage Work Plan; the Governments also have reviewed all the EE/CA materials and have concluded, in a May 1999 letter that UP submitted (attached as Appendix B-1), that the environmental controls in the EE/CA and the Track Salvage Work Plan comply with the ICC's environmental conditions. The EE/CA materials (portions of which are attached at Appendix B-1-B-4 and C-1) plainly demonstrate compliance with Environmental Condition No. 1.[25]

5.2.2 Compliance with Condition 2: Environmental Condition No. 2 (set out in full at Section 1.1.1) requires UP, prior to salvage, to determine using National Response Wetland Inventory Maps, if wetlands are located along the right-of-way. If there are any such wetlands, UP must consult with the USFWS prior to any disturbance of the right-of-way and comply with any applicable requirements of the U.S. Fish and Wildlife Coordination Act. SEA concludes that UP has complied with this condition. As the ICC directed, UP filed maps identifying wetlands along the right-of-way. UP also indicated that the environmental controls in the Track Salvage Work Plan incorporate procedures to address and mitigate the impacts of any work that may occur within or adjacent to these wetlands. UP's materials make clear that UP consulted with USFWS, that the response actions in the EE/CA and the Track Salvage Work Plan will not result in the impoundment, diversion, or modification of surface water bodies, and that therefore the U.S. Fish and Wildlife Coordination Act is inapplicable. The Governments' May 1999 letter at Appendix B-1 supports these conclusions.

5.2.3 Compliance with Condition 3: This condition (set out in full at Section 1.1.1) calls for the preparation of a Biological Assessment to determine the effects of salvage on Federally listed, threatened or endangered species. To address this condition, UP submitted a detailed Biological

[25] See also the recommended additional mitigation specifically requiring that UP comply with the EE/CA materials in its track removal actions detailed in Chapter 6.

Assessment (the executive summary of which is attached as Appendix B-5) prepared by an independent third-party contractor for SEA, EPA, and the USFWS. The Biological Assessment concludes that, if the specified mitigation in the Biological Assessment is implemented, the subject project will not likely adversely affect endangered, threatened, or proposed threatened species. By letter dated April 30, 1999 (see Appendix B-5), the USFWS concurred with the conclusions of the Biological Assessment. Based on UP's submissions, SEA concludes that UP has met the requirements of Environmental Condition No. 3.[26]

5.2.4 Compliance with Condition 4: Environmental Condition No. 4 (requiring that UP consult with appropriate agencies to determine if a Water Pollution Act permit is required prior to salvage of the portion of the Wallace Branch where it crosses the Coeur d'Alene River, and, if appropriate, secure a permit) is set out in full at Section 1.1.1. To demonstrate compliance, UP stated that it has consulted with all the Governments, including the State of Idaho, with respect to any required water pollution permits. UP adds that, as reflected in the EE/CA and the May 1999 concurrence letter from the Governments, it has been determined that no water pollution permits would be required for the salvage of the Wallace Branch or the response actions contemplated under the terms of the EE/CA materials including the Track Salvage Work Plan. SEA concludes that UP's information shows compliance with Environmental Condition No. 4.

5.2.5 Compliance with Condition 5: Under Environmental Condition No. 5 (set out at Section 1.1.1) the ICC directed UP to consult with the Corps prior to any salvage regarding impacts to wetlands and water quality and what appropriate mitigation should be required. The Corps provided comments to EPA in a letter dated May 20, 1998 (attached at Appendix B-6). The Corps' letter makes clear that issues raised by the Corps regarding the effects of salvage on listed species or critical habitat and the subsequent reuse and conversion and long-term maintenance of the right-of-way were considered in the development of the EE/CA materials and the Track Salvage Work Plan. SEA is satisfied that UP has undertaken the appropriate consultation with the Corps regarding the potential

[26] As discussed in Chapter 6, SEA also recommends an additional mitigation measure requiring UP to comply with the mitigation measures set forth in the Biological Assessment to reduce impacts to the bald eagle and to Ute-ladies tresses.

effects of salvage of the Wallace Branch on wetlands and water quality and that the mitigation in the EE/CA materials and the Track Salvage Work Plan are adequate to address impacts to wetlands and water quality.

5.2.6 Compliance with Condition 6: Environmental Condition No. 6 (set out in full at Section 1.1.1), requires UP to retain its interest in the Wallace Branch and take no steps to alter the historic integrity of all structures, including the rail line itself, that are 50 years old or older until completion of historic review under Section 106 of the National Historic Preservation Act. To demonstrate compliance, UP supplied a letter from the Idaho State Historical Society (SHPO) (included in Appendix B-6), together with a detailed cultural resources report describing the historical context of the Wallace Branch and the buildings and bridges over 50 years old that have historical significance. The SHPO determined that the Wallace Branch, including associated structures and features, is eligible for listing on the National Register of Historic Places under the Secretary of Interior's Criteria A and C. In addition, the SHPO determined that the Kellogg passenger depot, Lake Coeur D'Alene swing bridge (bridge 23.45) and four through truss bridges (bridges 58.01, 62.14, 63.48, and 79.36) are individually eligible for listing.

The SHPO further determined that conversion of the Wallace Branch to a recreational trail under the Trails Act, 16 U.S.C. 1247(d), as has been proposed for this right-of-way, would have no adverse effect on historic properties provided that the historic bridges and features associated with the line are not removed or altered. Alternatively, however, the SHPO has indicated that salvage without conversion to a recreational trail would constitute an adverse effect on historic properties and that, if the Wallace Branch is not converted into a recreational trail, a Memorandum of Agreement should be developed between the Board and the SHPO to determine appropriate mitigation of historic properties.

At this point, there is no way to know whether the Wallace Branch right-of-way will be converted into a recreational trail pursuant to the Trails Act. As discussed above, requests for a trail condition permitting interim trail use on this line now are pending before the Board, and UP has concurred in the requests. However, the Board has stated that it will not rule on any Trails Act

requests until it issues its final decision in this proceeding. Furthermore, the Board has stated that the line sought to be salvaged will be available for public use under 49 U.S.C. 10905 and 49 CFR 1153.28, or for subsidy or sale for continued rail use in accordance with 49 U.S.C. 10904 and 49 CFR 1152.27, if the Board grants final approval to salvage.

In these circumstances, SEA concludes that, whereas there has been substantial work on the identification and evaluation of historic properties, it would be premature to determine that there has been full compliance with Environmental Condition No. 6 pending a resolution regarding the final disposition and reuse of the right-of-way. Accordingly, SEA recommends that the Board impose a modified section 106 condition on any decision approving salvage. SEA's recommended condition (set forth in full in Chapter 6) would require UP, until the Board acts on any requests for a trail condition (CITU), to retain its interest in and take no steps to alter the historic integrity of all structures, including the rail line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. section 470f. If a CITU permitting trail use pursuant to the Trails Act is issued, the section 106 process would be complete, and Environmental Condition No. 6 would be satisfied without further action by the Board. If no CITU is issued, however, the SHPO has indicated that the resulting impact on historic sites and structures would be adverse. Therefore, it would be necessary to enter the mitigation phase of section 106. In that event, the Board and the Idaho SHPO then would be required to develop a Memorandum of Agreement pursuant to the regulations of the Advisory Council on Historic Preservation at 36 CFR 800.6(b)(1). Following the execution of an acceptable Memorandum of Agreement, the section 106 condition would be satisfied.

CHAPTER 6

ADDITIONAL RECOMMENDED MITIGATION FOR POTENTIAL IMPACTS OF SALVAGE

In conducting its environmental analysis, SEA also considered what, if any, additional mitigation measures would be appropriate in this case. To ensure that UP's proposal to salvage the

Wallace Branch would not have significant adverse environmental impacts, and to allow completion of the historic review process under the National Historic Preservation Act, 16 U.S.C. 470f,[27] SEA recommends four additional mitigation measures. Based on the information available to date, SEA recommends that this mitigation be imposed on any final decision of the Board granting UP authority to salvage the Wallace Branch. The recommended conditions are as follows:

1. UP shall comply with the mitigation measures set forth in (a) the Environmental Evaluation Cost Analysis (EE/CA) and related technical documents prepared by EPA in consultation with the State of Idaho and the Coeur d'Alene Tribe to address contamination on the Wallace Branch, and (b) the separate Track Salvage Work Plan prepared by UP in consultation with the agencies involved in the EE/CA, including any modifications and refinements that are made to these documents prior to the time track salvage is completed. UP's removal actions pursuant to the EE/CA materials and the Track Salvage Work Plan also shall be subject to appropriate oversight by EPA, the State of Idaho, and the Coeur d'Alene Tribe.

2. UP shall comply with the mitigation measures set forth in the Biological Assessment prepared by an independent contractor for SEA, EPA, and the United States Fish and Wildlife Service (USFWS) and approved by the USFWS, to reduce impacts to the bald eagle and to Ute-ladies tresses.

3. Until the Board rules on any pending requests for a Certificate of Interim Trail Use (CITU) under the Trails Act, 16 U.S.C. 1247(d), UP shall retain its interest in and take no steps to alter the historic integrity of all structures, including the rail line itself, that are 50 years old or older to allow completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

4. The National Geodetic Survey has identified 58 geodetic station markers which are listed in Appendix C-2 that may be affected by UP's salvage proposal. Therefore, prior to engaging in

[27] A complete discussion of the historic review process is set out in Chapter 5.

any salvage activities on this line, UP shall provide at least 90 days notice to the National Geodetic Survey to plan for the station markers' relocation.

CHAPTER 7
CONCLUSIONS AND REQUEST FOR COMMENTS

7.1 **Conclusions**

To complete its environmental review under NEPA, SEA has carefully reviewed the supporting environmental documentation submitted by UP for compliance with the ICC's six environmental conditions. In conducting its analysis, SEA has independently assessed all of the EE/CA materials, as well as the Biological Assessment, maps showing the location of wetlands, and other data, analysis, and correspondence prepared by EPA and other agencies with specialized expertise over the types of environmental issues of concern in this proceeding.

SEA adopts the analysis in the EE/CA materials and the Biological Assessment to the extent they are relevant to SEA's environmental review under NEPA here. SEA's purpose in its review of the EE/CA materials in this case has not been to second guess the Governments' determination as to whether the EE/CA is complete and whether there has been compliance with CERCLA and other statutes that agencies such as EPA are charged with administering. Rather, SEA's purpose in this Draft Supplemental EA is to assess the environmental impacts of going forward with salvage activities at this time, and how best to mitigate the potential impacts of track salvage.

SEA has determined based on the information available to date that the potential environmental effects of salvage have been thoroughly assessed, and that the actions that UP would be required to take under the EE/CA materials, the Track Salvage Work Plan, and the Biological Assessment appear to be reasonable and appropriate mitigation to address any potential significant adverse impacts that would result from track salvage of the Wallace Branch.

Moreover, the available environmental information makes clear that the "no-action" alternative to UP's proposed salvage activity — leaving the track structure in place— would have adverse impacts on the environment and is not a permanent solution. Removal of the track structure would permit UP to undertake response actions (including tailings removal and asphalt capping of the right-of-way) that would significantly reduce or eliminate environmental concerns associated with the rail bed in its present state. On the other hand, without salvage, the potential for exposure to mine wastes would continue because response actions could not be implemented with the track in place. Also, deterioration of the track structure as a result of flooding and other natural forces would continue and with it the potential for the transport of mine waste contamination off of the right-of-way. Thus, the denial of UP's requested salvage activity on this line likely would be worse from an environmental standpoint than authorizing UP's proposed salvage activity.

Based on SEA's independent evaluation of all the available information, SEA preliminarily concludes that the material provided by UP is sufficient to satisfy all but one of the six environmental conditions the ICC had imposed to ensure that, prior to salvage and full abandonment of the line, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated. (As discussed in Chapter 5, Section 5.2.6, ICC Environmental Condition No. 6, involving historic preservation, is the only condition that has not yet been completely satisfied.) Furthermore, SEA concludes, based on the available information and the input of the Governments and other agencies with specialized expertise, that if UP complies with the EE/CA materials, the Track Salvage Work Plan, and the Biological Assessment, and if the additional mitigation SEA recommends in this Draft Supplemental EA (which includes a modified historic preservation condition to ensure completion of the historic review process) is imposed and implemented, UP's proposal to salvage and fully abandon the Wallace Branch Line would not have significant adverse environmental impacts.

SEA encourages the general public and interested agencies, government entities, and parties to participate in the environmental review of UP's proposal to comment on this Draft Supplemental EA during the **45** day comment period which ends **February 22, 2000**. SEA seeks public input on all aspects of this Draft Supplemental EA, as well as on the Board's environmental review process, so

that SEA can assess public concerns and issues related to the UP proposal and determine whether additional environmental analysis and mitigation are necessary to analyze and effectively mitigate the potential environmental impacts that could occur as a result of track salvage activity on this line.

SEA will fully consider all comments that it receives in preparing final environmental recommendations to the Board, which will be based on further documentation and analysis, if any is needed. The Board then will consider the entire environmental record, the Draft Supplemental EA, SEA's Post EA recommendations, all public comments, and SEA's final environmental mitigation recommendations before issuing a decision either granting or denying UP final authority to salvage the portion of the Wallace Branch outside of the BHSS. In that decision, if UP's proposal to salvage is approved, the Board will impose any environmental conditions it deems appropriate. Directions on how, when, and where to submit comments to this Draft Supplemental EA is described below.

7.2 **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, 1925 K Street NW, Washington, DC 20423-0001.

7.3 **Comments**

If you wish to file comments regarding this Draft Supplemental Environmental Assessment, you should send an **original and two copies** to Vernon A. Williams, Surface Transportation Board, Office of the Secretary, Room 711, 1925 K Street NW, Washington, DC 20423-0001, to the attention of Phillis Johnson-Ball. **Please refer to Docket No. AB-33 (Sub No. 70) in all correspondence addressed to the Board.** If you have questions regarding this Draft Supplemental Environmental Assessment, you should contact Ms. Johnson-Ball at (202) 565-1530.

Date made available to the public: January 7, 2000.

Comment due date: Tuesday, February 22, 2000.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

APPENDIX A THROUGH C TO BE SCANNED