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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36471

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Public Record

COLORADO, MIDLAND & PACIFIC RAILWAY CO. – LEASE AND OPERATION
EXEMPTION CONTAINING INTERCHANGE AGREEMENT –
UNION PACIFIC RAILROAD CO.

MOTION TO REJECT NOTICE OF EXEMPTION

Introduction

Friends of Browns Canyon (FOBC) hereby files a motion to reject the Notice of Exemption submitted by Colorado Midland and Pacific Railway Company (CMP) in Docket No. FD 36471 and requests a full environmental impact statement (EIS) for CMP's proposed lease and operation as mandated by the National Environmental Policy Act (NEPA).

FOBC is a 501(c)(3) Colorado nonprofit conservation organization founded in 2002 with more than 1,500 members. FOBC's mission is to preserve and support conservation of Browns Canyon National Monument (BCNM) and the surrounding landscape. We work to provide and facilitate a unified voice for those concerned about protection and conservation of Browns Canyon and to provide educational opportunities for and to engage the public in conservation efforts. FOBC is the primary advocate for the preservation and protection of the Browns Canyon landscape, which includes wilderness-quality lands – a Bureau of Land Management wilderness study area and a U.S. Forest Service roadless area.

The 163-mile section of the Tennessee Pass rail line between Parkdale and Sage, Colo., runs alongside important headwaters waterways, most notably the upper Arkansas River and the Eagle River. Along the upper Arkansas River, the rail line follows 102 miles of river designated as a Gold Medal fishery and passes through Browns Canyon National Monument and the Royal Gorge. This section of rail line, dormant for almost 25 years, passes through numerous communities that rely on unspoiled natural resources as the foundation of their socioeconomic health. In Chaffee County alone, recreational and tourism activity associated with the upper Arkansas River generated local economic activity of \$72 million in 2017 ([Envision Community Action Plan](#), p. 13). Industrial freight trains along the river would undermine this vibrant economy and damage the natural resources that Browns Canyon National Monument was established to protect.

Any proposals to resume rail operations on the Tennessee Pass line, including those proposed by CMP and Union Pacific Railroad Company (UP), should be reviewed with the greatest level of scrutiny by the Surface Transportation Board (STB) and should be subject to the full environmental reporting

requirements outlined in 49 CFR 1105. The potentially devastating impacts to the surrounding human environment are immeasurable and necessitate a complete and thorough review before any operation of the railroad can be contemplated. Our motion, comments, and petition outline our concerns with CMP's proposed lease and operation of the Tennessee Pass line, describe the values and aspects of the human environment that would be impacted, and present our requests to the STB.

1. Docket No. FD 36471 Notice of Exemption should be rejected on the grounds that (a) the Notice of Exemption contains false and misleading information and (b) the proposed lease and operations are neither "routine" nor "non-controversial."

- a. In accordance with 49 CFR 1150.32(c), "If the notice [of exemption] contains false or misleading information, the exemption is void *ab initio*." Under this authority, Friends of Browns Canyon asserts that the notice of exemption as filed by CMP in Docket No. FD 36471 in fact contains both false and misleading information.
 - i. **CMP includes contradictory information regarding the endpoints of the rail line that they are leasing from Union Pacific Railroad.** CMP asserts that the leased rail line will be between Milepost 171.90 at Parkdale, Colo., and Milepost 335.00, near Sage, Colo. However, CMP states, "the affected interchange points [for rail traffic] are Parkdale, CO and Dotsero, CO," located at Milepost 341.9, a 6.9-mile discrepancy is misleading and is crucial to potential operations.
 - ii. **CMP's projected revenues are misleading and seems to be an attempt to avoid complying with requirements of 49 CFR 1150.32(e).** CMP claims, "the projected annual revenue of CMPR will not exceed \$5 million," which would exempt the company from requirements in 49 CFR 1150.32(e). However, publicly available information indicates the rehabilitation and operation of the Tennessee Pass Line would cost hundreds of millions of dollars, making CMP's proposed operations not financially viable. Furthermore, at recent public meetings, CMP representatives have stated that they have not made any kind of plan for the operation of the Tennessee Pass line. Without a plan for operating the line, their projected annual revenue is not valid. Therefore, either CMP is making false claims about projected revenue, or their proposed operations are not financially viable and not in the public interest. The below information summarizes information that is available regarding the rehabilitation and operation costs of the Tennessee PassLine.
 1. KVCN, LLC, and Colorado Pacific Railroad, LLC, submitted a Feeder Line Application to the STB on Feb. 14, 2020. That application that includes a detailed budget for the Tennessee Pass line between Dotsero and Cañon City (Docket No. FD 36386). The applicants estimate the cost of rehabilitating the line at \$278 million. This would equate to approximately \$1.7 million per mile of tracks.
 2. In the same Feeder Line Application, KVCN and Colorado Pacific Railroad estimate their annual operating costs to be between \$5.7 million and \$6.7 million, demonstrating that CMP's projected annual revenue of \$5 million is either wildly

inaccurate or not economically feasible.

- b. The class exemption procedure that CMP is pursuing through its notice of exemption is not appropriate for the proposed lease and operation of the Tennessee Pass line as the proposed operations are neither “non-controversial” nor “continuing an existing common carrier rail service.” The class exemption procedure is intended for “routine transactions that have not attracted substantial controversy and local interests, such as transactions where new operators would be continuing an existing common carrier rail service over lines that selling carrier can no longer operate profitably.”

- 1. As documented below, CMP’s proposed lease and operation of the Tennessee Pass line has already attracted substantial controversy and local interest.

- a. At the time of this writing, there are 59 filings regarding FD 36471, and the majority of these oppose CMP’s proposed operations and notice of exemption. Opposition have been submitted by Chaffee County, Town of Avon & Eagle County, local business owners, landowners, residents, and local and national advocacy organizations.

- 2. CMP falsely asserts that their lease and operation will not result in significant changes in carrier operations while, in fact, the opposite is true. CMPs claim of continuing existing operations is patently false, and the fact that operations will be significantly changed should disqualify them from receiving an exemption from the STB.

- a. In their own filing, CMP states numerous times that “there has been no traffic on the Line in over 20 years.” However, they also make multiple assertions that their operations will not result in significant changes in operations and that there will not be an increase in rail traffic of at least 100 percent. Since the Tennessee Pass line from Sage to Parkdale has been dormant for almost 25 years, these statements have no veracity.

- b. Since the Tennessee Pass line became dormant in 1997, significant changes have occurred along the rail corridor. The population of the communities in the river corridor has increased dramatically. For example, the population of Chaffee County has increased almost 40 percent. The river recreation and outdoor tourism sector has also grown dramatically, becoming the focal point of economic growth, careers, culture, real estate, and lifestyle. In 2019, the upper Arkansas River recorded 240,694 commercial users, making it the most popular stretch of whitewater in the country and exemplifying the importance of the river corridor to the local economy. These developments and changes are incompatible

with CMP's proposed operation of the Tennessee Pass line, especially where there are conflicts with river-related values and urban areas.

2. CMPR's proposed lease and operations of the Tennessee Pass Line would significantly affect the quality of the human environment, and a full EIS should be required pursuant to NEPA (42 USC 4332(2)(c)).

- a. The STB uses the definition of "significantly" from 40 CFR 1508.27 to determine whether or not federal action "has the potential to affect significantly the quality of the human environment" (49 CFR 1105.5(a)). According to 40 CFR 1508.27, both context and intensity need to be considered.
 - i. Since the proposed lease and operation are specific to 163 miles of rail line in the upper Arkansas and Eagle River corridors, the context for "significance" should be in the context of the local region. Based on factual evidence and our firsthand knowledge of Browns Canyon and the upper Arkansas River, we assert that the impacts from the proposed exemption will have a significant impact on numerous aspects of the affected region.
 - ii. The intensity of the action should be evaluated against numerous different factors, including effects on public health and safety, unique natural characteristics of the area, and when effects to the human environment are likely to be highly controversial (40 CFR 1508.27).
 1. Public health and safety would be significantly affected, with a high level of intensity, as a result of the proposed exemption. Population in the affected corridor has significantly increased since the rail line was last active. There are innumerable train crossings in developed, urban areas that intersect with state and county highways that have seen increased traffic in the last 24 years.
 2. The Arkansas River corridor has numerous unique characteristics between Parkdale and Leadville, Colorado including Browns Canyon National Monument, Browns Canyon Area of Critical Environmental Concern, multiple river segments determined "suitable" for inclusion in the National Wild and Scenic River System, a Gold Medal Trout Fishery between Lake Fork Creek and Parkdale, and the Arkansas Headwaters Recreation Area, among others.
 3. The potential effects on the human environment will be highly controversial in both the local and regional area. The proposed exemption by CMP has already caused significant alarm and distrust in Chaffee County communities. Thousands of people have signed petitions opposing the reactivation of the rail line, and numerous business owners, counties, and local residents have already filed opposing comments to the STB.

- iii. Considering both the applicable context and intensity of the numerous factors summarized above, it is evident that the human environment would be significantly affected by CMP's Notice of Exemption and proposed lease and operation of the Tennessee Pass Line. Friends of Browns Canyon formally requests that a full EIS be prepared, including applicable public participation opportunities as outlined in 49 CFR 1105.10.

We appreciate the opportunity to file our comments with the STB.

Sincerely,



Joe N. Stone
Board Member
Friends of Browns Canyon
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Salida, CO 81201
www.browncanyon.org
friendsofbrowncanyon@gmail.com
720-414-2289

CC: Parties of Record

**Attachment: Friends of Browns Canyon Petition to Deny Notice of Exemption
(STB Docket No. FD 36471)**

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board Office of Proceedings
395 E Street, SW Washington, D.C. 20423

**Re: Docket No. 36471, Colorado Midland & Pacific Railway Company – Lease and Operation
Exemption Containing Interchange Commitment – Union Pacific Railroad Company**

Dear Ms. Brown,

We are writing to you today to express concerns about Colorado Midland and Pacific Railway application for an exemption for the lease and operation of 163 miles of the Tennessee Pass Rail line. As conservation organization dedicated to protecting the unique natural resources of Browns Canyon National Monument, we are concerned about the impacts to the natural, scenic, and recreational values of the upper Arkansas River, especially where it flows through the national monument. Browns Canyon exemplifies Colorado's conservation values, and the operation of this line would have devastating impacts on our vibrant local recreation and tourism economy, [which generated \\$72 million in Chaffee County in 2017.](#)

The notice of exemption contains what we believe to be false or misleading information. Previous applications for operation of this dormant line identified annual operating costs between Parkdale and Dotsero to be \$5.7 million. Colorado Midland and Pacific Railway (CMP) have claimed annual revenues would not exceed the \$5 million threshold as exceeding this threshold would make their operations ineligible for exemption. The rehabilitation of the line which has not had any train activity for almost 25 years would likely cost \$278 million, according to a previous application, making CMP's estimate of operating costs financially untenable.

The CMP application states that the company is leasing tracks from Union Pacific for continued use while simultaneously identifying that the tracks have not been used in more than two decades. The misleading information in the exemption notice exceeds the standard of "routine" and "non-controversial" required for an exemption. The potential impacts to local communities and their economies has already stirred controversy and opposition to this proposal in local communities.

We request that you deny the Colorado Midland and Pacific Railway this exemption on the grounds that it does not meet the requirements of the exemption process, it contains false and misleading information, and it is not in the public interest.

Sincerely,



Joe N. Stone
Board Member
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