

Greater Arkansas River Nature Association

301566



PO Box 1522
Salida, Colorado
81201

719.539.5106
www.garna.org
info@garna.org

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

ENTERED
Office of Proceedings
February 1, 2021
Part of
Public Record

Re: Docket No. FD 36471, Coalition Against the Tennessee Pass Rail Line's Motion to Object to Notice of Exemption and Comments

Dear Ms. Brown:

The Greater Arkansas River Nature Association (GARNA) submits to the U.S. Surface Transportation Board (STB) the following objection and comments regarding Rio Grande Pacific Corporation (RGPC) and Colorado, Midland & Pacific Railway Company's (CMP) Notice of Exemption filed with the Surface Transportation Board on December 31, 2020: Docket No. FD 36471.

GARNA, through community collaboration, inspires a conservation ethic by providing educational opportunities and experiences so that those who live, work, and play in the Upper Arkansas Valley are motivated to take care of the natural resources and leave a legacy of responsible use of the natural environment. GARNA is a 501(c)(3) nonprofit environmental organization based in Salida, Colorado, which supports the petition of the Coalition Against the Tennessee Pass Rail Line (CATPRL) for the following reasons:

"Much has changed since the Tennessee Pass rail line went dormant 24 years ago in 1997. In 2014, after decades of intensive toxic cleanup from past mining operations, the Arkansas River achieved Gold Medal Fishery status along a 102- mile stretch from Leadville, CO to Parkdale, CO. In 2015, the Browns Canyon National Monument was established, providing a critical wildlife habitat, including big game and bighorn sheep herds. The Arkansas River whitewater rafting industry now generates roughly 225,000 visitors annually, bringing in nearly \$75 million in local economic revenue. With the increase in recreation in the Arkansas River valley, so, too, have the valley's communities grown. They rely on the continued protection CATPRL demands, in order to maintain and grow the recreational tourism revenue so vital to our economies.

The Tennessee Pass rail line is notorious for its steep, dangerous grades and tight turns, which have led to multiple derailments in the past. We cannot risk future environmental damage to this prized area of Colorado by allowing trains to return to this line..."

As stated in the CATPRL petition, the 163-mile section of the Tennessee Pass rail line between Parkdale and Sage, CO, runs alongside important watershed headwaters, 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 Gold Medal fishery, which attracts thousands of anglers annually. Data collected in a 2016 report by the Colorado River Outfitters Association showed that the Arkansas River brought in \$73 million in economic revenue and had 223,878 paying guests taken down the river that season. That represented 40.6% of the Colorado commercial river rafting market. The Arkansas River also runs through the recently designated Browns Canyon National Monument, a critical wildlife habitat for big game and bighorn sheep herds, as well as the Royal Gorge, a popular tourism destination. This section of rail line, dormant for nearly 25 years, passes through numerous communities that rely on these recreational tourism resources to support their economies. Industrial freight trains along the river would undermine the vibrant recreational tourism economies that have flourished since the rail line went dormant, and damage or potentially devastate the natural resources that Browns Canyon National Monument was established to protect.

Any proposals to resume rail operations on the Tennessee Pass rail line, including those proposed by CMP and Union Pacific Railroad Company, should be reviewed with the highest level of scrutiny by the STB and should be subject to the full environmental reporting requirements outlined in 49 CFR 1105. The potentially devastating impacts to the surrounding ecosystem and human environment are immeasurable and necessitate a complete and thorough review before any operation of the railroad can be contemplated. Our comments outline our concerns with CMP's proposed lease and operation of the Tennessee Pass rail line and present our requests to the STB.

- 1. Docket No. FD 36471 Notice of Exemption should be rejected because (a) the Notice of Exemption contains false and misleading information and (b) the proposed lease and operations are neither "routine" nor "non-controversial."**
 - a. 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 rail 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."
 - i. As documented below, CMP's proposed lease and operation of the Tennessee Pass rail line has already attracted substantial controversy and local interest.
 1. At the time of this writing, there are 63 filings regarding FD 36471, and the majority of these oppose CMP's proposed operations and notice of exemption. Opposition has been submitted by Chaffee County, Town of Avon & Eagle County, local business owners, landowners, residents, and local and national advocacy organizations.

- ii. 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.
 - 1. 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.
 - 2. 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 rail line, especially where there are conflicts with river-related values and urban areas.

2. CMP’s proposed lease and operations of the Tennessee Pass rail 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 resulting from 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 intersecting 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. GARNA seconds the comments made by Audubon of Central Colorado that there will indeed be serious potential environmental impacts, including:
 - *Air quality impacts*, including impacts to adjacent Class I wilderness areas in the mountains of Colorado.
 - *Water quality impacts*, particularly impacts from potential train derailments that could contaminate headwater streams.
 - *Impacts to the climate* related to the burning of fossil fuels.
 - *Impacts to protected lands*, including Browns Canyon National Monument and Bureau of Land Management Areas of Critical Environmental Concern.
 - *Impacts to wilderness values* (solitude, beauty, spiritual connection, mental and physical well-being, quality of life).
 - *Impacts to communities and businesses that depend on angling, rafting, and wildlife watching*. The environmental resilience of these communities depends upon their economic resilience
 - *Impacts to birds, fish, other wildlife, plants, and their habitats*. The river corridor of Browns Canyon National Monument represents one of the only riparian ecosystems along the Arkansas River that remains relatively undisturbed. It is an important migratory corridor for birds moving through that area of the mountains. Because of this, several Colorado Bird Species of Concern/Sensitive Species can be found here: Black Swift, Rufous-crowned Sparrow, Mexican Spotted Owl, Lewis’s Woodpecker, Ferruginous Hawk, Peregrine Falcon, Bald Eagle, Sage Sparrow, and Gray Vireo. A mammal Species of Concern that frequents Browns Canyon is the Bighorn Sheep, Colorado’s State Mammal.

- 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.

Thank you for considering our comments and concerns to the STB.

Sincerely,

A handwritten signature in black ink, reading "Dominique Naccarato". The signature is written in a cursive, flowing style.

Dominique Naccarato
Executive Director
Representing GARNA's Board of Directors
209 E. 3rd Street
Salida, CO 81201
719-539-5106
GARNA.org
Dominique@garna.org

CC: PARTIES OF RECORD