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mcculley@swm.legal

November 3, 2022

Ms. Danielle Gosselin, Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

**Re: Docket No. AB 857 (Sub-No. 2)
Colorado Landowners—Adverse Abandonment—
Great Western Railway of Colorado, LLC, In Weld County, CO**

Dear Ms. Gosselin:

Landowners, in complying with 49 C.F.R. Part 1105(c), received the attached letter in response from the U.S Army Corps of Engineers. Salvaging the Welty Branch will not impact waters of the United States.

Sincerely,

A handwritten signature in blue ink, which appears to read "Elizabeth McCulley".

Elizabeth Gepford McCulley

+ 2100 Central | Suite 22
Kansas City, MO 64108
P 816.303.1500
F 816.527.8068

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Certificate of Service

I hereby certify that on November 3, 2022, I served the foregoing document via electronic mail only upon the following counsel of record:

Karl Morell
440 1st Street, NW, Suite 440
Washington, DC 20001

Katelyn S. Werner
Quintairos, Prieto, Wood & Boyer, P.A.
216 16th Street, Suite 1750
Denver, CO 80202

Matt LeCerf, Town Manager
City of Johnstown
450 Parish Avenue
Johnstown, CO 80534

Thomas F. McFarland
Thomas F. McFarland, P.C.
2230 Marston Lane
Flossmoor, IL 60422-1336

A handwritten signature in blue ink, reading "Elizabeth McCullough", is written over a horizontal line.



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
DENVER REGULATORY OFFICE, 9307 SOUTH WADSWORTH BOULEVARD
LITTLETON, COLORADO 80128-6901

SUBJECT: Section 404 of the Clean Water Act Initial Comments

To whom it concerns:

In accordance with Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers reviews and authorizes any work associated with the discharge of dredged or fill material, and any excavation associated with a dredge or fill project, either temporary or permanent, in waters of the United States. Waters of the United States may include ephemeral, intermittent and perennial streams, wetlands, lakes, ponds, drainage ditches and irrigation ditches. Please note that the discharge of dredged or fill material into upland areas or aquatic resources which are not waters of the United States does not require authorization from this office.

Jurisdictional Determinations identify the locations and amounts of aquatic resources within a specified area to determine if they are or are not waters of the United States. Prior to submitting a request for a Jurisdictional Determination, we recommend a wetland delineation be conducted in the field by a qualified environmental consultant. A wetland delineation identifies the boundaries of aquatic resources located within your project area and must be conducted using the methods outlined in the Corps of Engineers Wetlands Delineation Manual and applicable regional supplements.

Nationwide Permits authorize common types of dredge and fill activities in waters of the United States that will result in a minimal adverse effect to the environment. Some fill activities require a pre-construction notification (PCN) to the Corps prior to any work and possibly coordination with other local or state agencies. Descriptions of the current nationwide permits and their general conditions can be found at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/>

Regional General Permits authorize specific types of dredge and fill activities in waters of the United States that will result in a minimal adverse effect to the environment. These fill activities require a pre-construction notification to the Corps prior to starting work, and possibly coordination with other local or state agencies. Please note several of the RGP's are applicant and location specific. Descriptions of the current regional general permit activities and their general conditions can be found at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/Regional-General-Permits/>

Standard Individual Permits authorize dredge and fill activities that do not qualify for Nationwide or Regional General Permits. We recommend contacting the Denver Regulatory Office to arrange for a pre-application consultation prior to applying for a

Standard Individual Permit. Standard Individual Permits include public interest review procedures, including public notice, notification of adjacent property owners and review of public and agency comments. Standard Individual Permits require an evaluation of effects for a range of alternatives. The Corps will evaluate practicable (cost, logistics, and technology) alternatives that meet the overall project purpose for environmental effects. Alternatives can include off-site alternatives and alternative designs. When evaluating Standard Individual Permit applications, the Corps can only issue a permit for the least environmentally damaging practicable alternative (LEDPA). In some cases, the LEDPA may not be the applicant's preferred alternative. The Standard Individual Permit application form and instructions can be found at:

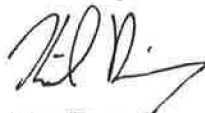
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>

A federal action occurs when a discharge of dredged or fill material into waters of the United States requires a Clean Water Act Section 404 permit. For the Corps to make a permit decision, the applicant must provide enough information to demonstrate compliance with Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA).

Dredge and fill activities in waters of the United States must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to the maximum extent practicable at the project site. Mitigation, including avoiding, minimizing, rectifying, reducing, or compensating for resource losses, will be required to the extent necessary to ensure that the adverse effects to the aquatic site are minimal. Any loss of function at an aquatic site may require mitigation. Mitigation requirements will be determined during the Clean Water Act Section 404 review process.

If the activity you described would impact waters of the United States, the Denver Regulatory Office should be notified. Please include a map identifying dimensions of work in each aquatic site, the county, Township, Range and Section and the latitude and longitude of the activity in decimal degrees, along with a description of your request, to the Denver Regulatory Office mailbox located at DenverRegulatoryMailbox@usace.army.mil or contact the Denver Regulatory Office at 303-979-4120.

Sincerely,



Kiel Downing
Chief, Denver Regulatory Office