

SERVICE DATE – DECEMBER 14, 2022

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 857 (Sub-No. 2)

**Colorado Landowners—Adverse Abandonment—
Great Western Railway of Colorado, LLC in Weld County, Colo.**

BACKGROUND

In this proceeding, a group of 27 landowners (Landowners)¹ filed an application² under 49 U.S.C. § 10903 and 49 C.F.R. § 1152.22 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment of 6.2 miles of rail line extending from milepost 0.0 at Johnstown, Colorado, to milepost 6.2 near Welty, Colorado (the Line), owned by Great Western Railway of Colorado, LLC (GWRC).

The Line branches off the GWRC mainline at the intersection of Route 17 and North 2nd Street in Johnstown, extends in a southwesterly direction through Johnstown until it reaches Route 15 and then extends westerly through a predominately rural area to the end of the Line just west of Interstate Hwy 25. The rail corridor right-of-way is approximately 80 feet in width and the topography is generally flat. The Line traverses U.S. Postal Service Zip Codes 80534 and 80513. A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA).

DESCRIPTION OF THE LINE

According to the Landowners, the Line was constructed in 1902 and 1903 and used to transport sugar beets from a sugar beet dump facility, which closed in the 1970s. The Landowners assert that the Line, which is the stub-ended portion of the Welty Branch, has not been used for Board-regulated rail transportation for approximately 43 years and that there is no reasonable prospect for such use in the foreseeable future. The Landowners state that no shippers have used the Line since 1979, and that the Line has been used only for random and sporadic rail car storage between 2008 and 2016. The Landowners further claim that GWRC has

¹ The 27 landowners are listed in Appendix 1 of the application.

² The application is considered filed on October 5, 2022, 20 days after the Landowners filed a revised environmental and historic report on September 13, 2022 and on September 15, 2022 to include a state agency that was inadvertently excluded from the earlier filing. See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo., LLC, in Weld Cnty., Colo., AB 857 (Sub-No. 2), (STB served Sept. 7, 2022).

not maintained the right-of-way and that future use of the Line for rail transportation would be impossible if not cost prohibitive.

The Landowners are seeking the proposed adverse abandonment to free the land from an easement held by GWRC. According to the Landowners, the easement is limited exclusively to railroad purposes and each of the individual conveyance deeds specify that the right-of-way must revert to the Landowners when no longer in railroad use. If the proposed adverse abandonment is authorized and GWRC refuses to remove the track materials and to voluntarily relinquish its easements for railroad purposes, the Landowners indicate that they would seek an order of ejectment of GWRC under Colorado law. Following removal of the track materials, the Landowners state that they intend to make productive non-rail uses of the right-of-way land formerly subject to GWRC's easement.

In 2008, GWRC filed a verified Notice of Exemption to abandon the Line in Docket No. AB 857 (Sub-No. 1X). As part of that proceeding, the Board issued a notice of interim trail use authorizing negotiations for interim trail use/rail banking of the Line, pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and the Board's regulations at 49 C.F.R. § 1152.29. The Board also conducted an environmental review and concluded, following consultation with other agencies, that the proposed abandonment would have no significant impacts on the environment.³ In 2014, after the Board granted six one-year extensions of the abandonment deadline to allow GWRC to continue negotiating a trail use agreement, GWRC filed a letter with the Board stating that it had decided to reopen the Line and would not be consummating the abandonment. On April 6, 2022, GWRC notified the Board's Office of Environmental Analysis (OEA) in Docket No. AB 857 (Sub-No. 3X) that GWRC intended to file a new Notice of Exemption seeking abandonment authority from the Board on or about June 1, 2022. Although GWRC filed a combined environmental and historic report (E&H Report) and indicated that it was interested in pursuing interim trail use/railbanking of the Line, GWRC has not filed a Notice of Exemption for abandonment authority.

ENVIRONMENTAL REVIEW

The Landowners submitted a revised combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed adverse abandonment of the Line, including salvage. The Landowners served the revised E&H Report on appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)]⁴ implementing the National Environmental Policy Act. OEA has reviewed and investigated the record in this proceeding.

³ The agencies providing comments in the environmental review included the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the National Geodetic Service; the Natural Resources Conservation Service; the National Park Service; and the Colorado State Historic Preservation Office.

⁴ The revised E&H Report is available for viewing on the Board's website at <https://www.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "857" "2" sequentially in the first three boxes for "Docket

Diversion of Traffic

According to the Landowners, no shippers have used the Line since 1979, and the Line has been used only for rail car storage between 2008 and 2016. Accordingly, the proposed adverse abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. If the proposed adverse abandonment is authorized, the Landowners indicate that they would seek an order of ejectment of GWRC under Colorado law if GWRC refuses to remove the track materials and to voluntarily relinquish its easements for railroad purposes.

The Landowners submitted their revised E&H Report to the U.S. Fish and Wildlife Service, Colorado Ecological Service Field Office (USFWS) for review of the potential impact the proposed adverse abandonment may have on protected wildlife, including federally listed threatened and endangered species under the Endangered Species Act (16 U.S.C. §§ 1531-1544). To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.⁵ The following nine species may be present in the project area:

#

Protected Species in Weld County, Colorado			
Group	Common Name	Federal Status	Habitat Description
Mammals	Gray wolf	Endangered	Temperate forests, mountains, tundra, grasslands and deserts.
	Preble's Meadow Jumping Mouse	Threatened	Dense shrub, grass and forb ground cover along creeks, rivers, and associated waterbodies.
Birds	Eastern Black Rail	Threatened	Stable shallow water including salt and brackish marshes with dense cover and surrounding upland areas.
	Piping Plover	Threatened	Sandy beaches; tidal flats; sandbars along major rivers; and gravel or sand flats next to alkali lakes.

Number,” then selecting “Search.” The E&H Report was filed on September 13, 2022 and revised on September 15, 2022 to include a state agency that was inadvertently excluded from the earlier filing.

⁵ U.S. Fish and Wildlife Service, Information, Planning, and Conservation (IPaC) System, <http://ecos.fws.gov/ipac> (OEA confirmed on September 15, 2022).

	Whooping Crane	Endangered	Coastal marshes and estuaries; inland marshes; and prairie pools. Breeds in remote northern forests near lakes and ponds.
Fishes	Pallid Sturgeon	Endangered	Deep turbid river channels, usually in strong current over firm sand or gravel.
Insects	Monarch Butterfly	Candidate	Fields containing milkweed and nectar-bearing plants.
Flowering Plants	Western Prairie Fringed Orchid	Threatened	Moist tallgrass prairies and sedge meadows.
	Ute Ladies'-tresses	Threatened	Moist meadows near perennial stream terraces, floodplains, and oxbows; and seasonally flooded river terraces.

The database indicates that there is no designated critical habitat for these species in the project area.

As previously noted, the Landowners claim that the right-of-way has not been maintained and submitted photographs showing that the right-of-way is disturbed and barren in various locations due, in part, to erosional and depositional processes. Given the disturbed state of the right-of-way and that no critical habitat exists at this location, including any of the habitat described above, OEA has determined that salvage-related impacts would have no effect on the above federally listed species. OEA is providing USFWS a copy of this Draft EA for its review.

The Landowners submitted their revised E&H Report to the U.S. Army Corps of Engineers, Omaha District (the Corps) for comments on potential permitting requirements under Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344). On November 3, 2022, the Landowners submitted a form letter from the Corps that explains the Corps' review and permit authorization requirements for various types of projects contemplating dredge or fill activities. Although the letter was not specific to potential salvage-related impacts that may result from the proposed adverse abandonment, OEA does not anticipate the need for a Corps permit under the CWA because there are no waterbodies in the project area. Accordingly, OEA has determined that salvage of the Line would not affect any waters of the U.S. OEA is providing a copy of this Draft EA to the Corps for review.

The proposed adverse abandonment is not located within a Coastal Zone. Therefore, no further consultation under the Coastal Zone Management Act is required.

The National Geodetic Survey (NGS) commented during the 2008 environmental review that no geodetic survey markers were present in the area of the proposed abandonment. Therefore, OEA concludes that no further consultation with NGS is recommended in this proposed adverse abandonment proceeding.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Similarly, any noise related to salvage operations would also be temporary and should not have a significant impact on the area surrounding the proposed adverse abandonment.

Based on all information available to date, OEA does not believe that the proposed adverse abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment: the USFWS; the Corps; the U.S. Environmental Protection Agency; and the NGS.

HISTORIC REVIEW

The Landowners submitted a revised historic report as required by the Board's regulations at 49 C.F.R. § 1105.8(a) and served the report on History Colorado (State Historic Preservation Office or SHPO) pursuant to 49 C.F.R. § 1105.8(c) and the Section 106 regulations of the National Historic Preservation Act (53 U.S.C. §§ 300101-307108). By letter dated October 4, 2022, the SHPO submitted comments (SHPO #HC 80837) stating that the Welty Branch is eligible for listing in the National Register of Historic Places (National Register) and that the proposed adverse abandonment would adversely affect this National Register-eligible property. OEA will continue to consult with the SHPO and other Section 106 consulting parties regarding potential effects to the Welty Branch.

Accordingly, OEA is recommending that the Board impose a condition requiring all parties, including GWRC and the Landowners, to retain their interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://stb.gov/resources/environmental/historic-preservation-overview/>.

Lastly, pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development Tribal Directory Assessment Tool to identify federally recognized tribes that may have ancestral connections to the project area.⁶ The database indicates that there are six federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way or APE of the proposed adverse abandonment. The tribes are: the Apache Tribe of Oklahoma; the Arapaho Tribe of Wind River Reservation, Wyoming; the Cheyenne and Arapaho Tribes, Oklahoma; the Comanche Nation, Oklahoma; the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. OEA is sending a copy of this Draft EA to these tribes for review and comment.

⁶ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat/> (last visited October 4, 2022).

CONDITION

OEA recommends that the following condition be imposed on any decision granting abandonment authority.⁷

All parties, including the Great Western Railway of Colorado, LLC (GWRC) and the 27 Landowners, shall retain their interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. A consummation notice may not be filed, and salvage activities related to abandonment (including removal of tracks and ties) may not be initiated until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that if the condition above is imposed by the Board, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed adverse abandonment would include denial (and therefore no change in status of the Line), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

TRAILS USE

A request for a certificate of interim trail use (CITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the proposed adverse abandonment in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁸ As the Federal Register notice instructed, any request for a CITU should address whether the issuance of a CITU in this case would be consistent with the grant of an adverse abandonment application.

⁷ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with this condition would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

⁸ Id.

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

OEA encourages interested parties to submit their comments on the Draft EA electronically through the Board's website at <https://www.stb.gov>. From the Board's home page, select "File an Environmental Comment" below the "Need Assistance?" button. Log-in accounts are not needed to file environmental comments electronically, and brief comments can be typed in the comment field, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats.

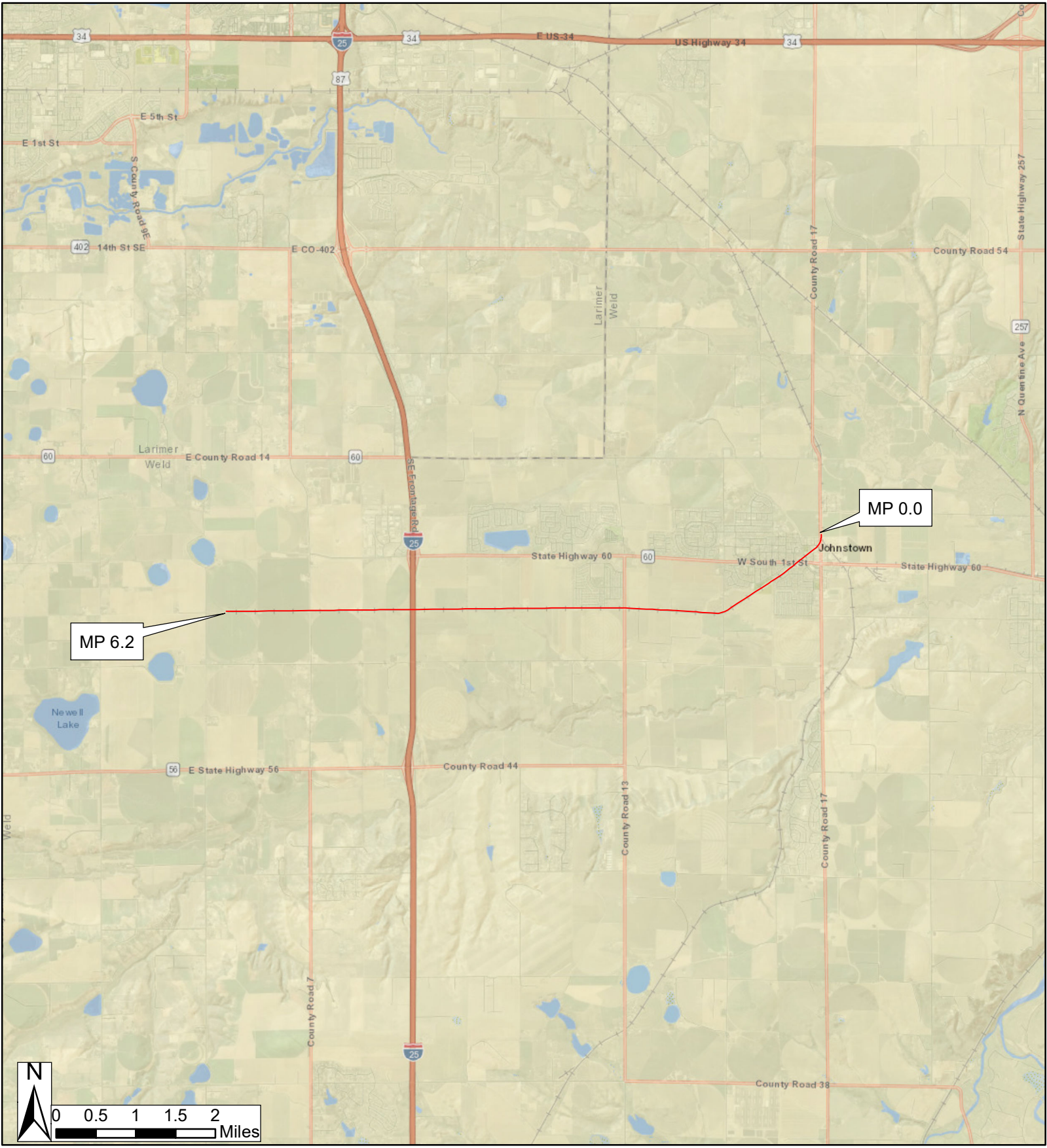
Alternatively, comments submitted by mail should be addressed to: Diana Wood, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, Attention: Environmental Filing, Docket No. AB 857 (Sub-No. 2). If you have any questions, please contact Diana Wood by email at Diana.Wood@stb.gov or by phone at 202-245-0302.

Date made available to the public: December 14, 2022.

Comment due date: January 14, 2023.

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

Attachment

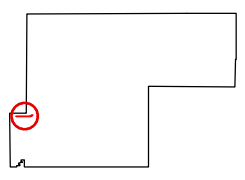


Docket No. AB 857 (Sub-No. 2)
Landowners
Adverse Abandonment
Great Western Railway of Colorado
Weld County, Colo.

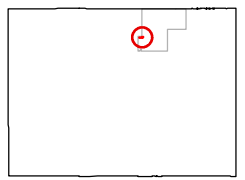
Legend

— the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



Weld County



Colorado