

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 180X

**The Lowville & Beaver River Railroad Company – Abandonment Exemption –
In Lewis County, N.Y.**

BACKGROUND

In this proceeding, the Lowville & Beaver River Railroad Company (LBRR) filed a notice with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad located in Lewis County, New York. The rail line proposed for abandonment is approximately 10.57 miles in length and extends from milepost 00.00 to milepost 10.57 between the Village of Lowville and the Village of Croghan (the Lowville-Croghan Line).¹ In addition, LBRR is seeking to abandon a branch line, which extends approximately 0.4 miles from Deveines Road in the Town of New Bremen northward towards the Hamlet of Beaver Falls in Lewis County (the Beaver Falls Secondary Track). Collectively, the Lowville-Croghan Line and the Beaver Falls Secondary Track are referred to as “the Line.”²

In a decision served on January 22, 2024 (January 22 Decision), the Board placed the proceedings in Docket Nos. AB 180X and AB 768X in abeyance because more information was required. With respect to the environmental and historic review here, the Board required LBRR to update its environmental and historic report (E&H Report) to: include maps of the Line in its entirety; clarify the number of bridges and culverts on the Line; describe the location and extent of track and track materials that had been removed and any ground disturbances; and discuss

¹ LBRR, a subsidiary of Genesee Valley Transportation Company, Inc. (GVT), filed its notice of exemption on September 12, 2023. In the notice, LBRR stated that the endpoint of the proposed abandonment was at milepost 10.44. LBRR filed supplemental information on April 4, 2024 that, among other things, clarified that the endpoint is at milepost 10.57, not 10.44.

² On September 11, 2023, Mohawk, Adirondack & Northern Railroad Corporation (MAN), also a subsidiary of GVT, filed a notice of exemption in Docket No. AB 768X to abandon an approximately 16-mile rail line between the Village of Lowville and the Village of Carthage (Lowville-Carthage Line). MAN also seeks to abandon approximately 0.5 miles of unused spur track and 300 feet of MAN’s terminal main line, all within the Village of Lyons Falls, N.Y. The Line at issue here connects with the Lowville-Carthage Line in Lowville. OEA is conducting a separate environmental review in Docket No. AB 768X.

what salvage activities would occur on the Line. See January 22 Decision at 4-5. LBRR submitted a revised E&H Report on April 5, 2024 and a supplement on April 29, 2024, including the information requested by the Board. On January 14, 2025, the Board removed the proceedings in Docket Nos. AB 180X and AB 768X, including the environmental and historic reviews, from abeyance.

A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If this notice of exemption becomes effective, LBRR would be able to salvage the track, and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

As noted above, the Line connects to the Lowville-Carthage Line³ in Lowville and travels in a northeasterly direction through the Town of New Bremen and then branches into two separate segments. The Beaver Falls Secondary Track segment veers northwestward and ends on the south side of the bridge crossing the Beaver River into Beaver Falls. The Lowville-Croghan Line segment travels northeastward and ends in Croghan. The land use outside the town centers is predominantly rural and in agricultural use, and the terrain is flat to gently rolling. According to LBRR, the Line has four bridges, all original, and 30 to 35 culverts, most or all original construction, that date to about 1914 or earlier. The bridges cross the Black River; the Black River floodplain; a pond in the Town of New Bremen; and a tributary of the Beaver River in Croghan. LBRR does not own the bridge that crosses the Beaver River on the Beaver Falls Secondary Track segment.

LBRR states that there has been no local or overhead traffic on the Line for at least 15 years, and that there are no existing or prospective shippers. LBRR believes that the Line would be suitable for public use and indicates that it has entered into an agreement with Lewis County for the County to purchase the Line following consummation of abandonment to convert the right-of-way to a multi-use recreational trail. LBRR does not intend to invoke the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) for the trail. LBRR states that prior to the purchase agreement for the trail and without its knowledge or consent, Lewis County removed about 300 feet of track on the south side of where the Lowville-Croghan Line crosses East Road in Lowville to construct an access road for its new highway department facility. LBRR notes that Lewis County also dumped topsoil from its construction site onto the right-of-way, which fouled a portion of the track. LBRR indicates that in early 2022, it filed a report with New York State Police and instructed Lewis County to remove the soil and replace the track. LBRR states that Lewis County refused, which prompted LBRR to file an action in United States District Court for the Northern District of New York to have Lewis County restore the track that it had removed. In an earlier filing dated October 24, 2023, LBRR explained that the suit was still pending but should be dismissed as part of the sale agreement for the trail between LBRR and Lewis County. In its April 29, 2024 E&H Report supplement, LBRR indicated that LBRR and the County had subsequently agreed on the terms and conditions of the County's planned acquisition of the Line.

³ See Docket No. AB 768X.

The right-of-way is generally 66 feet wide, and the Line traverses United States Zip Codes 13367 and 13327. Based on available information, LBRR states that the Line does not contain any federally granted rights-of-way.

ENVIRONMENTAL REVIEW

LBRR submitted a combined E&H Report, which it later updated in response to the Board's January 22 Decision, that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including abandonment-related salvage activities.⁴ LBRR provided the E&H Reports to a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)] implementing the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 to 4370m-11). The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the entire record in this proceeding.

Since LBRR filed its notice of exemption, the Board has received numerous comments from local businesses, farmers, and private citizens within the area of the proposed abandonment. Specifically, commenters have expressed both support for and opposition to the proposed abandonment, but many were also concerned about the potential effects, both positive and negative, of Lewis County's planned acquisition of the right-of-way and conversion to a multi-use trail following abandonment.

Specifically, commenters opposing the proposed abandonment and trail have stated: (1) that the Line should be retained as a transportation option to support the state's climate initiatives, which call for a 70 percent reduction in carbon emissions by 2030 and a 100 percent reduction by 2040, because shipping by rail is more efficient and less polluting than shipping by truck; (2) that demand will only increase in the area for trains equipped with electric powered locomotives over electric trucks to ship commodities because electric trucks may be unreliable in the cold weather and the number of charging stations might be limited; (3) that existing truck-served businesses may leave the area if demand for freight rail increases, and there is no rail option; (4) that the Line is located in an environmental justice area that currently lacks transportation options and will continue to decline economically, particularly if freight-dependent businesses outside the area are interested in relocating to Lewis County but are forced to locate to another rail-served area; (5) that there would be a loss of prime agricultural farmland as a result of the proposed abandonment; (6) that the proposed abandonment would increase flooding; (7) that the proposed abandonment would impact wetlands and waterways; (8) that there is a potential for residual chemicals, if present in the ballast and railbed, to be released into surrounding waterways, wetlands, and a sole source aquifer as a result of the proposed abandonment; (9) that the proposed abandonment would impact wildlife, farms, farm animals

⁴ The E&H Report is available for viewing on the Board's website at <https://stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "180" "0" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on September 12, 2023 and amended and refiled on April 5, 2024 and supplemented on April 29, 2024.

and farm production; (10) that the Line should be retained for existing and future generations as a teaching tool; (11) that the Line and associated rail infrastructure (culverts, bridges, trestles, tracks, signals, switches, turntable, depots, engine houses, and other components and infrastructure) is eligible for listing on the National Register of Historic Places (National Register) as a railroad historic district; (12) that there could be impacts to Native American ancestral lands as a result of the proposed abandonment; and (13) that any future operations of all-terrain vehicles on the multi-use trail might negatively impact the health and safety of residents and the surrounding environment.

Commenters also filed petitions and letters of support for the proposed abandonment and future trail use, citing the numerous benefits of a multi-use trail – from the increased safety of a trail that is physically separated from area roadways to improvements in the quality of life, health, and fitness of trail users. Commenters also stated that the proposed abandonment and future trail use would bond communities, strengthen the economy, and promote tourism. Lewis County filed a letter that responded to many of the comments and provided some background about its prior community outreach and planning efforts for the multi-use trail.

The multi-use trail is not part of OEA’s environmental and historic review in these proceedings. In this Draft EA, OEA’s environmental and historic review appropriately evaluates only the potential impacts of the proposed abandonment.⁵ It is well settled that the Board’s environmental and historic review in railroad abandonment proceedings is limited to the action before the Board, which is the proposed abandonment of a line of railroad – and specifically the potential impacts resulting from the diversion of rail traffic to other transportation modes as well as abandonment-related salvage activities. Goos v. ICC, 911 F.2d 1283, 1297 (8th Cir. 1990) (the Board is not required to conduct an environmental analysis of impacts of trail use in an abandonment proceeding). If the Board authorizes the proposed abandonment and the abandonment is consummated, the Line would be removed from the Board’s jurisdiction and LBRR’s common carrier obligation on the Line would be extinguished. As a result, the Board would no longer control or have jurisdiction over the rail property or any changes that occur following consummation. 49 C.F.R. § 1152.29(e)(2).

In addition to comments relating to Lewis County’s plans for a multi-use trail, commenters also raised a variety of other concerns about potential environmental and historic impacts, including impacts to environmental justice communities, prime agricultural farmland, water resources, and cultural resources. Potential impacts resulting from diversion of traffic and salvage activities on these resource areas are part of OEA’s environmental and historic analysis as discussed below.

⁵ Lewis County is required to obtain environmental clearance from the State of New York through the State Environmental Quality Review Act (SEQRA) (6 NYCRR Part 617), in order to execute the proposed purchase agreement to develop the multi-use trail. Therefore, an appropriate environmental review of the multi-use trail will be conducted by the State of New York pursuant to SEQRA.

Diversion of Traffic

According to LBRR, no local traffic has moved over the Line for at least 15 years, and there is no overhead traffic to be rerouted. LBRR is not aware of any prospective shippers. Accordingly, the proposed 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 abandonment authority is granted, LBRR has indicated that it would limit its salvage activities to removal of the crossing protection, switches, and signals for reuse elsewhere on active rail lines and otherwise intends to convey the track, ties, ballast, bridges, culverts, and other rail appurtenances to Lewis County.

LBRR submitted its E&H Reports to the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (USACE) requesting comments on potential permitting requirements under Sections 402 and 404 of the Clean Water Act (CWA) (33 U.S.C. §§ 1342 and 1344), respectively. To date, neither agency has responded. The Line passes through the 100-year floodplain; crosses numerous waterways and wetlands; and could have residual soil and ballast contamination from prior rail operations. However, salvage would be limited to the removal of the crossing protection, switches, and signals and would not disturb any roadbed or underlying soil. Furthermore, LBRR does not intend to remove any bridges or culverts that might otherwise disturb waterways and wetlands or possibly release contaminants into surrounding waters. For these reasons, OEA believes that the proposed abandonment would not require any permits under the CWA. OEA is providing a copy of this Draft EA to USEPA Region 2 and USACE Buffalo District for review.

LBRR requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact the proposed abandonment may have on protected wildlife, including federally listed threatened and endangered species under the Endangered Species Act (16 U.S.C. § 1531 et seq.). To date, USFWS has not provided comments. To identify protected species in the area of the proposed abandonment, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.⁶ The database identified three species: two mammals (the endangered Northern Long-Eared bat and the proposed endangered Tricolored bat) and one insect (the Candidate Monarch butterfly). No critical habitat was identified for these species. The database indicates that the two bat species only need to be considered in an environmental review if the project includes the operation of wind turbines. As there are no wind turbines

⁶ U.S. Fish and Wildlife Service, Information for Planning and Consultation (IPaC) system, <https://ecos.fws.gov/ipac> (last visited April 11, 2024).

contemplated as part of the proposed abandonment and LBRR's has no plans for removal of trees or disturbance to soil, wetlands, or waters of the U.S., OEA has determined that the proposed abandonment would not affect these listed species. OEA is providing USFWS' New York Ecological Field Office a copy of this Draft EA for review.

LBRR provided the E&H Reports to the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) regarding potential impacts to prime agricultural soils under the Farmland Protection Policy Act (FPPA) (7 U.S.C. § 4201). To date, NRCS has not provided comments. OEA notes that the intent of FPPA is to minimize impacts that may unnecessarily and irreversibly convert farmland to non-agricultural uses. Although the Line is surrounded by prime agricultural land, it was constructed well before FPPA was enacted in 1984 and is in railroad use, not agricultural use. Accordingly, OEA believes that FPPA would not apply here.⁷ OEA is providing NRCS' Lowville Office a copy of this Draft EA for review.

LBRR provided the E&H Reports to the New York State Department of Environmental Conservation (NYSDEC) regarding potential impacts the proposed abandonment may have on water resources that are regulated by NYDEC's various program offices. To date, NYSDEC has not provided comments. However, LBRR has indicated that salvage would be limited to removal of switches, crossing protection, and signals and that there would be no removal of tracks, ties, or other rail appurtenances. Therefore, no grading or subsurface disturbance is contemplated. Accordingly, OEA believes that the proposed abandonment would not result in impacts to water resources that would warrant a general stormwater permit, a water quality certification, or a state coastal zone management consistency determination. OEA is providing a copy of this Draft EA to NYSDEC's Division of Fish and Wildlife and Division of Environmental Permits as well as the New York Department of State Coastal Zone Management Program (CMP) for review.

OEA believes that there would be no or minimal impact from any air emissions or noise on the area surrounding the proposed abandonment because salvage would be limited to removal of switches, signals, and crossing protection, and no land disturbance would occur.

OEA assessed the potential impacts of the proposed abandonment to determine if there would be disproportionate adverse impacts to minority or low-income populations in environmental justice (EJ) communities. Here, OEA has not identified any adverse impacts resulting from the proposed abandonment, so there would be no impacts to EJ communities. LBRR's proposal to abandon the long-dormant Line and to limit salvage to the removal of switches, crossing protection, and signals would have little to no impact on any environmental resources. OEA is providing a copy of this Draft EA to USEPA, NYDEC, and Lewis County for review.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the

⁷ NRCS's list of projects that are exempt from FPPA's requirements, <https://www.nrcs.usda.gov/conservation-basics/natural-resource-concerns/land/cropland/farmland-protection-policy-act> (last visited July 9, 2024).

Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the U.S. Department of Agriculture Natural Resources Conservation Service; the U.S. Environmental Protection Agency; the New York State Department of Environmental Conservation; and Lewis County for review.

HISTORIC REVIEW

LBRR submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the New York Parks, Recreation and Historic Preservation Office (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁸ Although the SHPO has not responded directly to LBRR's historic report, on October 4, 2023, OEA received a letter from the Railway Historical Society of Northern New York (RHSNNY) stating that the Line is eligible for listing on the National Register. The October 4, 2023 letter included the SHPO's August 26, 2022 eligibility determination that the entire Line, including associated structures, components and infrastructure, is eligible for listing on the National Register as the Lowville Beaver River Railroad Historic District under Criterion A due to its association with events that made a significant contribution to the broad patterns in our history. SHPO's designation includes two depots; two engine houses; and one turntable, all of which LBRR confirmed in its September 20, 2023 filing are owned by other entities and presumably located outside the 66-foot wide railroad right-of-way (Area of Potential Effect or APE). The SHPO's designation also includes structures that are within the railroad right-of-way, such as bridges; culverts; and the infrastructure (track and ties) of the Line.

OEA is continuing to consult with the SHPO under Section 106 of the NHPA. Since the Section 106 process is ongoing, OEA is recommending that the Board impose a Section 106 condition on any decision granting abandonment authority. The condition would require LBRR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the right-of-way (APE) 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/>.

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.⁹ The database

⁸ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found on the Board's website at <https://stb.gov/resources/environmental/historic-preservation-overview/>.

⁹ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tadat/> (last visited May 21, 2024).

indicates that there are three 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 abandonment. The three tribes are: the Oneida Indian Nation; the Onondaga Nation; and the Seneca-Cayuga Nation. OEA is sending a copy of this Draft EA to these tribes for review and comment.

CONDITION

OEA recommends that the following condition be imposed on any decision granting abandonment authority:¹⁰

The Lowville & Beaver River Railroad Company (LBRR) shall retain its 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. LBRR shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the New York Parks, Recreation and Historic Preservation Office (State Historic Preservation Office or SHPO) and the public. LBRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks, ties and other railroad appurtenances) 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, as currently proposed, and if the recommended condition is imposed, abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), 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.

PUBLIC USE

Following abandonment and salvage of the Line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment.

¹⁰ While interim trail use under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is not contemplated here, if an interim trail use agreement 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.

The Federal Register notice is also issued as a Board decision and is available on the Board's website.¹¹

TRAILS USE

While interim trail use under 16 U.S.C. § 1247(d) is not contemplated here, any request for a Notice of Interim Trail Use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption 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.¹²

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://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 180X. If you have any questions, please contact Diana Wood by email at Diana.Wood@stb.gov or by phone at 202-934-0388.

Date made available to the public: January 17, 2025.

¹¹ Board decisions are available for viewing on the Board's website at <https://stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "180" "0" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

¹² Id.

Comment due date: February 3, 2025.

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

Attachment