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December 5, 2022

VIA EMAIL

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

RE: STB Docket No. FD 36616, *Savage Tooele Railroad Company –
Construction and Operation Exemption – Line of Railroad in Tooele
County, Utah*

Dear Ms. Gosselin:

By this letter, Savage Tooele Railroad Company (“STR”) respectfully requests a waiver of the requirements of 49 C.F.R. §1105.6(a) for the captioned project because an Environmental Assessment (“EA”) rather than an Environmental Impact Statement (“EIS”) is the appropriate level of review of the project under the Surface Transportation Board’s regulations and the National Environmental Policy Act (“NEPA”).¹

I. Background

Discussions with the Office of Environmental Analysis (“OEA”) about the proposed project began with a video conference with STR representatives and OEA staff on May 4, 2022 to provide OEA with a factual background about the project, discuss its potential environmental

¹ STR notes 49 C.F.R. §1105.6(d) states in part that a request for a “reclassification” of an environmental document from an EIS to an EA “must be in writing and, in a rail construction, should be presented with the prefilming notice required by § 1105.10(a)(1) (or a request to waive that prefilming notice period).” However, it is OEA’s established practice – which STR was instructed to follow in this case – that written submissions asking OEA to prepare an EA instead of an EIS should not be submitted prior to OEA conducting a site visit and conducting other preliminary review of the project.

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impacts, and for OEA to inform STR about OEA's rules and processes. The video conference was followed on May 20, 2022 with a formal request to OEA to waive the six-month prefiling notice requirement of 49 C.F.R. §1105.10(a)(1). The letter, which is included as Attachment A, contained a description of the project and the potential environmental impacts of the proposed construction and operations, which STR stated it believed would be minimal. OEA granted the waiver request on May 24, 2022, and STR's Petition for Exemption was accepted as filed in this docket on June 30, 2022.

On July 19, 2022, OEA granted a July 1, 2022 request by STR to approve Vanasse Hangen Brustlin, Inc. ("VHB") as the independent third-party contractor to assist OEA in preparing the appropriate environmental documentation in this proceeding. The selection of VHB as the third-party contractor for this project was followed by the execution of a Memorandum of Understanding between STR, VHB and OEA on August 12, 2022, and in August OEA began hosting monthly calls to discuss the project and the environmental review.

OEA's and VHB's review of the potential impacts of the project have included a site visit on October 12 and 13, 2022, where their respective representatives were able to survey the entire proposed routing of the proposed rail track to be rehabilitated and reactivated, and the proposed locations for new tracks to be constructed up to and inside the Lakeview Business Park. OEA has also received input on the potential impacts from the U.S. Environmental Protection Agency ("USEPA"), Utah Department of Transportation ("UDOT"), Tooele County EMS Council ("EMS Council"), and several other stakeholders.

II. Grounds for Waiving EIS Preparation

Under 49 C.F.R. §1105.6(d), an applicant may request that OEA prepare an EA rather than an EIS if the applicant can demonstrate that a proposal is not likely to have a significant environmental impact. That is the case with STR's proposed project, for the reasons discussed in Attachment A, which STR believes were confirmed by the October site visit. To reiterate:

1. STR intends to simply reinstate service over an existing railroad right-of-way on which there exists tracks and railbeds which are in good enough condition that total reconstruction will not be necessary. Moreover, the areas where new track construction will occur on two small parcels where track previously existed but was removed, do not contain environmentally sensitive areas.
2. The existing Warner Spur right-of-way was constructed on land located within or adjacent to areas that are considered wetlands. However, there are no wetlands in the Lakeland Business Park area of the project. The plan for STR to reactivate the former UP rail line is to confine all rehabilitation and new construction within the existing fill limits so as not to infringe on any wetlands. In comments on the project provided to OEA on November 3, 2022, USEPA recommended "including an analysis of how rehabilitation of the line (including

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- replacing ties, rails, and culverts) and reinstituting common carrier freight service could affect the functions and values of the GSL [Great Salt Lake] wetlands, including temporary effects to wetlands and effects to the species that utilize these resources during migration.”²
3. In 2021 STR retained the firm of Ramboll U.S. Consulting, Inc. to prepare a Phase I Environmental Assessment of the seven miles of former rail line to be acquired from UP. This assessment resulted in no Recognized Environmental Conditions (“REC”) being observed by Ramboll. STR has not conducted a Phase II analysis because it has not yet executed an agreement with UP to acquire the subject right-of-way and track. STR has not had full access to the land being developed for the Lakeview Business Park and so STR does not know at this time whether any RECs are present on that property.
 4. There will be two public road crossings associated with the project: state highway SR-138 and Erda Way. These crossings were part of the prior UP tracks, and so would be reinstated as part of the project. The Utah Department of Transportation and the EMS Council had provided comments to OEA on the crossings and neither have expressed serious concerns with the project and proposed rail operations interfering with use of either road by the public or emergency medical personnel. STR is fully committed to participating with UDOT, the Council, and OEA to study the potential effects of the STR’s operations on traffic and pedestrians, and ready to work with all entities to reasonably address impacts and concerns.
 5. The introduction of rail service to this area of Tooele County will be environmentally beneficial because the proposed project is located within an area designated as nonattainment with the 2015 8-hour ozone standard. Replacing commercial trucks with lower emitting locomotives will permit the needs of this growing community to be served while reducing pollution levels.
 6. The project is being constructed in a rural area which was utilized for rail service for decades, and so the potential impacts on public safety and noise and vibrations should be minimal as well.
 7. Following the October site visit STR began coordinating with VHB and OEA to provide additional information on the project, including:

² Document EI-32659, Letter submitted by the U.S. Environmental Protection Agency, discussing recommendations concerning review of wetlands impacts, and other impacts such as air quality and other water impacts.

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- a. The possible southern route to the industrial park that was originally considered but rejected due to several major at-grade road crossings that were vital to emergency service and school bus operations, multiple crossings over a major gas pipeline, relocation of one of Tooele City's major sewer lines, and other factors.
 - b. Prior analysis of wetlands and potential impacts conducted by a firm retained by STR.
 - c. Appropriate personnel of the Lakeview Business Park development team.
 - d. A rail construction plan that demonstrates the approaches STR is taking to avoid sensitive environmental areas.
8. In addition, on December 2, 2022, STR received a number of detailed data requests from OEA on various aspects of the project and work has begun on providing responses to OEA staff on or before the January 2, 2023 deadline set out in the letter.

In light of all the foregoing, STR respectfully submits that the proposed construction and operation of the railroad line described in its Petition for Exemption are not likely to have a significant environmental impact, and that therefore the appropriate NEPA document in this proceeding is an EA. STR therefore respectfully requests that OEA waive the application of 49 C.F.R. §1105.6(a) for its review of this proposed project and prepare an EA instead of an EIS.

Please do not hesitate to contact me if you have any questions or desire additional information supporting this waiver request.

Sincerely,

A handwritten signature in blue ink that reads "Thomas W. Wilcox". The signature is fluid and cursive, with the first name "Thomas" being the most prominent.

Attorney for Savage Tooele Railroad Company

Cc: Ms. Andrea E. Poole

EXHIBIT A
Letter Requesting Waiver
of 49 CFR 1105.10(a)(1)



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May 20, 2022

VIA EMAIL

Ms. Danielle Gosselin
Director
Office of Environmental Assessment
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Request for Waiver of 6 Month Pre-filing Notice Requirement under 49
C.F.R. §1105.10(a)(1)

Dear Ms. Gosselin:

Pursuant to 49 CFR §1105.10(c)(2), the undersigned, on behalf of Savage Tooele Railroad Company (“STR”), respectfully requests a waiver of the 6 month pre-filing notice required by the Surface Transportation Board’s (“STB” or “Board”) environmental regulations at 49 CFR §1105.10(a)(1). As first discussed with you and other Office of Environmental Analysis (“OEA”) staff in a video conference on May 6, 2022, STR intends to petition the Board for an individual exemption under 49 U.S.C. §§10901 and 10502 for authority to (1) reinstate common carrier rail service over 5.9 miles of an approximately 15.8-mile branch line of railroad constructed in 1917 by a predecessor of the Union Pacific Railroad Company (“UP”) and formally abandoned in 1983; and (2) construct another approximately 5 miles of track in a new industrial park¹ being developed on 1300 acres of land near Grantsville, Utah that will connect to the reinstated main line. When both elements of the project are complete STR will carry rail traffic to and from industrial park tenants and UP’s main line at the northern end of STR’s tracks, where STR will interchange with

¹ The Lakeview Business Park (<https://www.lakeviewbusinesspark.com/>).

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UP² to provide the shippers with a connection to the national rail system.³ A map of the project and project area is attached as Exhibit A to this letter.

The waiver provisions of the Board's environmental rules require a party seeking a waiver to describe as completely as possible the environmental effects and timing of the proposed action and to show that all or part of the six-month lead time is not appropriate. Also, "the purpose of 49 C.F.R. § 1105.10(a)(1) is to provide prospective applicants with information about the Board's environmental review process and for applicants to inform OEA about the proposed project before starting the formal review." STB Docket FD 36398, *Brookhaven Rail – Construction and Operation Exemption – in Suffolk County, N.Y.* (served March 24, 2022). STR sets out the following information in accordance with these standards to demonstrate that six months advance notice is not necessary for this project.

A. Description of the Subject Rail Lines

As stated above, STR was created for the purpose of reinstating common carrier service over a portion of a 15.8-mile line of railroad that was originally constructed in 1917. The rail line, known as the Warner Branch, extended from a connection to the UP's main line Burmester, Utah southward to Tooele, Utah. The line was owned by Western Pacific Railroad Company ("Western Pacific") and remained in active use until 1983, when Western Pacific formally abandoned the entire line.⁴ Western Pacific eventually was merged into UP. UP later sold the land underlying the track from milepost (MP) 6.12 to MP 6.66 to two adjacent landowners who removed the track on those parcels. Track from the original rail line still is present on the remainder of the 5.9 miles of right-of-way being acquired by STRR. Consequently, reinstatement of the line will require the re-acquisition of right-of-way land of the two parcels and re-construction of the .54 mile of removed track.

² STR notes that the current terms of the transaction being negotiated with UP would entail STR acquiring the former branch line right-of-way and track from MP 1.04 to MP 6.94, a total of 5.9 miles. UP would retain ownership of the right-of-way and track from MP 0.0 to MP 1.04, which STR expects will be utilized as part of the private tracks used to interchange traffic between UP and STR.

³ As mentioned, and discussed in our May 6 videoconference, this transaction and proposed railroad project are the subject of a pending Verified Notice of Exemption to acquire and operate the UP line filed by STR in Docket No. FD 36524 on September 2, 2021. However, STR has moved to withdraw that notice of exemption because subsequent to its filing STR and UP learned that UP's predecessor had fully abandoned the entire Warner Branch in 1983 and so it is not an active line of railroad that can be acquired through the notice of exemption process.

⁴ ICC Finance Docket No. 30208, *Western Pacific Railroad Company - Abandonment Exemption – in Tooele County, Utah (the Warner Branch)*. Western Pacific sought and received abandonment authority and on January 4, 1984. UP provided notice that the abandonment was consummated on December 20, 1983.

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In addition to reinstating service over this section of the Warner Branch, STR proposes to connect that rail line with another five miles of newly constructed tracks inside the boundaries of the Lakeview Business Park over which STR would hold out to provide common carrier service. This park is being developed for the purpose of housing industries that will ship various commodities by railroad. The developers of the park anticipate that initially there will be one tenant located in the park that will construct an approximately 250,000 square foot facility to which STR would deliver rail carloads of frozen products and other items needing cold chain transport which will then be distributed to local businesses by truck. The goal of the park developers is to add other rail-served tenants over time.

B. Potential Environmental Impacts

STR believes that the environmental impacts of the project will be minimal because it intends to simply reinstate service over an existing railroad right-of-way on which there exists tracks and railbeds which are in good enough condition that total reconstruction will not be necessary. Moreover, the areas where new construction will occur, which is only in areas where track previously existed, do not contain environmentally sensitive areas. Nevertheless, as part of the project's design and planning, STR, and its parent company Savage Enterprises, LLC, have conducted a preliminary review of the potential environmental issues associated with the project. Below is a discussion of the issues identified to date.

Wetlands – The existing Warner Spur right-of-way was constructed on land located within or adjacent to areas that are considered wetlands. In June 2021 Savage Enterprises retained an environmental consulting firm to conduct a GPS survey of the fill limits of the existing raised railroad grade, and the plan for STR to reactivate the rail line is to confine all rehabilitation and new construction within the existing fill limits so as not to infringe on any wetlands. As such, to date neither Savage Enterprises nor STR have prepared a wetlands delineation analysis and report.

Phase I Environmental Site Assessment – In 2021 STR retained the firm of Ramboll U.S. Consulting, Inc. to prepare a Phase I Environmental Assessment of the seven miles of former rail line to be acquired from UP, with the exception of the aforementioned two right-of-way parcels UP sold to adjoining landowners. This assessment resulted in no Recognized Environmental Conditions (REC) being observed by Ramboll. STR has not conducted a Phase II analysis because it has not yet executed an agreement with UP to acquire the subject right-of-way and track. If OEA would find a copy of the Phase I report to be helpful we would be pleased to provide you with a copy. STR has not had full access to the land being developed for the Lakeview Business Park and so STR does not know at this time whether any RECs are present on that property.

Non-Attainment Area – The proposed project is located within the portion of Tooele County, Utah designated as nonattainment with the 2015 8-hour ozone standard. Tooele County is so identified on the U.S. EPA's list of nonattainment areas in Utah as of 2021.⁵

⁵ www3.epa.gov/airquality/greenbook/anayo_ut.html

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Road Crossings – The reinstatement of common carrier service over this section of the former Warner Branch will entail the re-construction of two at-grade road crossings at the southern end of the segment. The roads are (1) Route 138, which is a relatively well-traveled state road that is used to reach Interstate 80, which is approximately seven miles northwest of the industrial park, and (2) Erda Way, a lesser traveled local road that is roughly parallel to Route 138 at the crossing locations. The railroad tracks on either side of both roads are still in place. STR understands that the developer of the Lakeview Business Park has commissioned a traffic study related to re-establishment of the rail crossings.

Finally, STR is in the process of identifying and vetting potential Third Party Consultants for retention pursuant to the Board's rules to assist OEA in its review of the environmental impacts of this proposed project.

Based on all of the foregoing, the undersigned, on behalf of STR, respectfully requests OEA to waive the 6-month prefiling notice required under 49 CFR §1105.10(a)(1). We also ask that this waiver be granted as soon as practicable because STR intends to file its Petition for Exemption immediately upon issuance of the requested waiver.

Please do not hesitate to call me or email me if you have any questions or desire additional information.

Sincerely,



Thomas W. Wilcox
*Attorney for Savage Tooele Railroad
Company*

Attachments

EXHIBIT A

