

#ED-2660

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

**FINAL
ENVIRONMENTAL ASSESSMENT**

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 603 (SUB-NO. 4X)

September 21, 2015

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, V and S Railway, LLC (V&S) filed a notice under 49 C.F.R. § 1152.50 seeking an exemption from the requirements of 49 U.S.C. § 10903 to abandon an approximately 121.9-mile segment of rail line, known as the Towner Line, in Pueblo, Crowley, and Kiowa Counties, Colorado. The rail line extends westward from milepost 747.5, near Towner 81071, to milepost 869.4, near NA Junction and North Avondale 81022.

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on August 28, 2015 for public review and comment. In the EA, OEA recommended six environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

New Comments

The Colorado Office of Archaeology and Historic Preservation (State Historic Preservation Office or SHPO) submitted a comment to OEA dated September 4, 2015. V&S and the Crowley County Board of County Commissioners (Crowley County) also submitted filings on September 11, 2015 and September 14, 2015, respectively, that address potential environmental issues.

The SHPO's comment letter was the second such letter the SHPO submitted regarding the proposed abandonment. In addition to restating that the rail line segment was determined eligible for listing in the National Register of Historic Places (National Register) in 1998 and that the proposed abandonment would have an adverse effect on historic resources because the rail line would be removed from federal oversight, the SHPO expressed concern that property owners with reversionary interests would have the right to alter newly reverted land at their discretion following abandonment. The SHPO also encourages V&S and the Board to initiate consultation with the county governments to discuss avoidance and/or mitigation measures for historic resources.

Crowley County commented that it agrees with the general findings and recommended

conditions of the EA, but noted that it has concerns regarding the two at-grade road crossings in the county that serve state highways and the 35 county, municipal, or private crossings that do not come under the jurisdiction of the Colorado Public Safety Commission (CPSC). Crowley County suggests that the Board impose a condition requiring V&S to rehabilitate the 35 crossings that are outside the jurisdiction of the CPSC in the event the line is salvaged.

V&S submitted comments stating that a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 to purchase the rail line for continued rail service has been filed in this proceeding. V&S adds that if the line is sold, the Board conditions related to the abandonment and salvage would no longer be applicable. V&S also commented that the Kiowa County Board of County Commissioners' (Kiowa County) prior comments make it clear that Kiowa County is opposed to abandonment of the line. V&S states that the conditions recommended in the EA to address Kiowa County's concerns are onerous and unreasonable, and notes that neither Pueblo nor Crowley Counties raised any questions or requested any conditions regarding the proposed abandonment.

V&S states that it is willing to consult with the counties prior to beginning any salvage, and to employ best practices for salvage, and further notes that it will comply with applicable local laws and regulations associated with salvage activities in the affected jurisdiction.

The recommended conditions in the EA have been modified to address the commenters' concerns. OEA believes the revised conditions are reasonable and consistent with the types of requirements typically imposed as environmental mitigation in abandonment proceedings.

In response to OEA's review of the environmental comments received, the following conditions, as amended, should be imposed upon any decision granting abandonment authority:

1. Prior to commencement of any salvage activities, V and S Railway, LLC (V&S) shall consult with the Board of County Commissioners in Kiowa County, Pueblo County, and Crowley County regarding reasonable requests for the appropriate restoration of the right-of-way in each affected jurisdiction.
2. Prior to commencement of any salvage activities, V&S shall consult with the Colorado Public Service Commission, and the Board of County Commissioners in Crowley County, Kiowa County, and Pueblo County regarding their regulatory requirements associated with restoration of public highway-rail crossings.
3. Prior to commencement of any salvage activities, V&S shall consult with the Colorado Department of Public Health and Environment regarding its concerns related to removal and disposal of track materials.
4. V&S shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
5. Prior to commencement of any salvage activities, V&S shall consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements and, if applicable, shall comply with the reasonable requirements of the Corps related to salvage of the right-of-way.

6. V&S 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. V&S shall report back to OEA regarding any consultations with the State Historic Preservation Office and the public. V&S may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

OEA concludes that if the above conditions are imposed, the proposed action would not significantly affect the quality of the human environment.

Attachments (3)

OEA CONTACT: Diana Wood *D7W*
202-245-0302
woodd@stb.dot.gov

Distribution: Office of Proceedings
OEA Chron
ECT

#E1-21083



4 September 2015

HC #68172

Diana Wood
Case Control Unit
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: Docket No. AB 603 (Sub-No. 4X)

Proposed Abandonment of a Segment of the Towner Line, MP 747.5 to MP 869.4, Pueblo, Kiowa, and Crowley Counties, Colorado

Dear Ms. Wood:

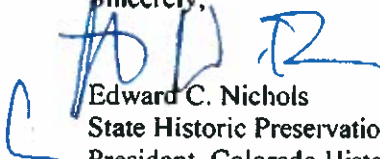
Thank you for your recent correspondence dated 28 August 2015, concerning the proposed abandonment by V and S Railway of a length of track from Milepost 747.5 to Milepost 869.4 in southeastern Colorado. Our office has reviewed the submitted materials. This segment of the former Missouri Pacific Railroad was determined to be eligible for listing on the National Register of Historic Places in 1998.

As we noted in our letter dated 2 June 2015 (presented by V&S to your office as part of their Historic Report), the abandonment of the line would have an adverse effect on historic resources as the transfer out of federal oversight would remove the resource from the protections afforded by Section 106 of the National Historic Preservation Act. This is particularly true in the case of railroad abandonments, as the recent Supreme Court decision in *Marvin M. Brandt Revocable Trust v. United States* (2014) indicates that many easements granted under the General Railroad Right-of-Way Act of 1875 (including this line) are extinguished upon abandonment. In such a case, the land reverts to the underlying property owners, who may then alter or demolish their portion of the segment as they see fit.

Per federal regulations (36.CFR.800.6), the federal agency must work to mitigate the adverse effects caused by an Undertaking. We encourage V&S and the Board to initiate consultation with the County governments, the Advisory Council on Historic Preservation, our office, and other parties to discuss ways to avoid or mitigate the adverse effect caused by this project. We look forward to working with your office as this project moves forward.

If you have any questions, please contact Joseph Saldibar, Architectural Services Manager, at (303) 866-3741.

Sincerely,


Edward C. Nichols
State Historic Preservation Officer, and
President, Colorado Historical Society

OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION

303-866-3392 * Fax 303-866-2711 * E-mail: oahp@state.co.us * Internet: www.historycolorado.org

#E1-21084

239187

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB 603 (Sub-No. 4X)

ENTERED
Office of Proceedings
September 11, 2015
Part of
Public Record

**V AND S RAILWAY, LLC
- ABANDONMENT EXEMPTION -
IN PUEBLO, CROWLEY AND KIOWA COUNTIES, CO**

COMMENTS TO ENVIRONMENTAL ASSESSMENT

ERIC M. HOCKY
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ehocky@clarkhill.com

Attorneys for V&S Railway, LLC

Dated: September 11, 2015

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB 603 (Sub-No. 4X)

**V AND S RAILWAY, LLC
- ABANDONMENT EXEMPTION -
IN PUEBLO, CROWLEY AND KIOWA COUNTIES, CO**

COMMENTS TO ENVIRONMENTAL ASSESSMENT

The Board's Office of Environmental Analysis issued an Environmental Assessment (the "EA") on August 28, 2015, in connection with the proposed abandonment by V and S Railway, LLC ("V&S") of its line of railroad between milepost 747.5 near Towner, Colorado, and milepost 869.4 near NA Junction, Colorado, a total distance of 121.9 miles (collectively, the "Line"). The EA found that an environmental impact statement process would be unnecessary, but did recommend a number of conditions be imposed by the Board on any abandonment of the Line. V&S files these comments to respond to certain of the proposed conditions which V&S believes go beyond what should be required.

Initially, it should be noted that a notice of intent to file an offer of financial assistance ("OFA") to purchase the Line has been filed in this proceeding. If the Line were to be sold pursuant to an OFA, then the line would not be abandoned and the proposed conditions on salvage of the Line would not be relevant. However, if the Line were not sold pursuant to an OFA, then the V&S has concerns about the scope of the conditions that have been opposed.

Kiowa County makes clear in its comments that it opposes the abandonment of the Line. Its list of requested conditions on salvage of the Line, are not tied to any local regulations or any

described interest in the property (other than the location of the property in the County).¹ Rather, the requested conditions seemed designed to be so onerous that V&S would reconsider abandoning the Line. Neither Pueblo nor Crowley County raised any questions or requested any conditions with respect to the proposed abandonment. Generally, V&S believes that the conditions requested by Kiowa County are not reasonable, and V&S has concerns about the implications of Condition 1 as proposed in the EA.

V&S is willing to consult with the Kiowa County and the other counties prior to beginning any salvage, and to employ best practices for the salvage of lines of railroad. And, V&S will, of course, comply with what is required by any applicable local laws and regulations imposed on a non-discriminatory basis on property owners in the respective counties. Any proposed environmental condition should require no more and no less.

Similarly, Conditions 3 and 5 should be limited to compliance with "applicable legal requirements" of the Colorado Department of Public Health and Environment and the US Army Corps of Engineers, respectively.

Respectfully submitted,



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Attorneys for V&S Railway, LLC

Dated: September 11, 2015

¹ By contrast, the Colorado Public Service Commission limits its request to compliance with its existing regulatory requirements for closing public highway-rail crossings.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2015, I served a copy of the foregoing document on the parties listed below by the method indicated:

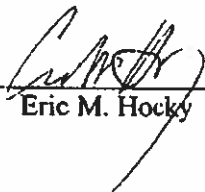
By email:

Thomas W. Wilcox
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
twilcox@gkglaw.com

By email and US First Class Mail, postage prepaid:

Richard Scott
Cindy McLoud
Donald Oswald
Kiowa County
1305 Goff Street
PO Box 100
Fads, CO 81036
kiowaco100@gmail.com

By: _____


Eric M. Hocky



BOARD OF
County Commissioners

CROWLEY COUNTY
603 MAIN ST. • SUITE 2
ORDWAY, COLORADO 81063

Phone (719) 267-5555 Ext. 2 • Fax (719) 267-3114

E1-21085
GARY GIBSON, DIST. 1

FRANK GRANT, DIST. 2

T.E. (Tobe) ALLUMBAUGH, DIST. 3

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

September 14, 2015

RE: Docket # AB 603 (Sub-No 4X) Environmental Assessment

Dear Sirs,

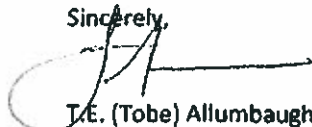
The Crowley County Board of Commissioners has reviewed the Environmental Assessment of August 28, 2015 concerning the V & S Railway, LLC Abandonment Exemption, Docket No. AB 603 Sub No. 4X. We agree with the general finding, but would like to comment on several issues in the report.

As you can see from previous letters to the STB on this matter, both of which are enclosed, we have voiced concerns about several issues concerning the abandonment. The Environmental Assessment notes Kiowa County's specific requests about these issues on Page 3, and recommends that 6 conditions be imposed on any decision granting abandonment. The Crowley County BOCC fully supports the implementation of these conditions. However, we have some concerns about rail crossings that are not under the jurisdiction of the Colorado Public Safety Commission.

There are 2 crossings in Crowley County that service State highways on the V & S right of way, but there are another 35 county, municipal, or private crossing that need to be dealt with. The other counties and towns involved also have many crossings not on State highways that will need to be rehabilitated. It is un-clear to us who has jurisdiction on these crossings in the abandonment proceedings. If the CPSC is not involved, this matter needs to be included in Condition 1 of the STB Environmental Assessment as to rehabilitation of crossings with a bonding requirement.

Inclusion of the 6 stated conditions in any abandonment decision is extremely important to all of the entities along the V & S right of way. The issues directly affect the public's health, safety and welfare, and are a severe financial concern for the counties, municipalities, and public involved.

Sincerely,


T.E. (Tobe) Allumbaugh


Frank Grant


Gary Gibson

CC: Kiowa County Commissioners; Otero County Commissioners

Enclosures (2)



BOARD OF
County Commissioners

CROWLEY COUNTY
603 MAIN ST. • SUITE 2
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GARY GIBSON, DIST. 1

FRANK GRANT, DIST. 2

T.E. (Tobe) ALLUMBAUGH, DIST. 3

June 3, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423

Re: AB603_3(X): V & S Railway, LLC – Abandonment

Dear Ms. Brown,

It has come to our attention that the V & S Railway has applied to abandon the railroad tracks from Eads, Colorado east to Towner, Colorado. They apparently have also applied for a discontinuance of service on the line from NA Junction east to Eads, Colorado. This, no doubt, is in preparation for their next application for abandonment. Their overall plan being to abandon and scrap the entire 122 mile route, running through the Colorado counties of Pueblo, Crowley, Otero and Kiowa.

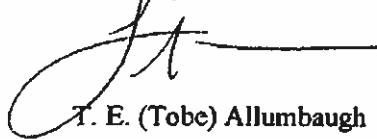
Although Crowley County would certainly prefer that another railroad obtain what is now owned by V & S, we certainly understand that the profitability of this section of track depends heavily on commerce originating from other areas. If the track has to be abandoned and scrapped, so be it. However, we understand V & S has not been a good neighbor in past abandonments and we are very concerned they will scrap the tracks and all of the other saleable materials and leave us high and dry. As such, we feel compelled to file a list of requirements that need to be met prior to allowing V & S to take their profit and escape, leaving our counties with the task of cleaning up a very expensive mess.

- There are nearly 100 railroad crossings that are currently falling apart due to lack of maintenance. These all need to be repaired now, as they are critical to the normal transportation flow. Once the tracks are removed, these crossings need to be reconstructed to match the existing road surfaces on both sides.
- V & S needs to survey the entire 122 mile corridor and provide plats to the counties being affected. Further, many section markers and bench marks are currently fixed on the rail line. These must be moved and reset to provide survey points for the future.

- Documentation regarding leases to towns and businesses must be provided to each of the counties.
- All structures of a historic nature must be preserved.
- All records regarding the railroad should be handed over to the impacted counties.
- In view of the past history of V & S Railway and their subsidiaries, we are very concerned that they will not comply with any of the requirements imposed. Rather, they will wiggle themselves down the quick and dirty path, leaving the impacted entities with a train load of insurmountable liabilities. As such, we strongly request that V & S Railroad be required to post a surety bond in the amount of \$5,000,000 to cover any costs associated with their performance or lack thereof.

Thank you in advance for assisting Kiowa County as the abandonment process proceeds, and in helping the counties of Pueblo, Crowley and Otero, when V & S determines it is our turn to face this very unpleasant demise of a piece of our history.

Sincerely,


T. E. (Tobe) Allumbaugh


Frank Grant


Gary Gibson

CC: Senator Michael Bennet
 Senator Mark Udall
 Congressman Cory Gardner
 Kiowa County Commissioners
 Pueblo County Commissioners
 Otero County Commissioners
 Bill Thiebaut, CDOT Comm. Region 2



BOARD OF
County Commissioners

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GARY GIBSON, DIST. 1

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T.E. (Tobe) ALLUMBAUGH, DIST. 3

September 24, 2013

Lucille Marvin, Director
Surface Transportation Board, Rm 1202
395 E. Street, S.W.,
Washington, DC 20423-0001

Re: Docket # AB 603 (Sub-No. 2X)

Dear Sirs:

This letter is to notify you of several areas of concern regarding the abandonment of the Towner Railroad Line, owned by V & S Railway LLC, which runs through Crowley County, Colorado. Mitigating these issues is critical to the citizens of Crowley County and must become an integral part of the V & S abandonment plan.

At a minimum, the following areas of concern must be addressed:

All of the railroad crossings in the unincorporated areas of the county and in the towns of Sugar City, Ordway, Crowley and Olney Springs must be repaired with backfill and bituminous hot mix to ensure safe passage by all forms of vehicular traffic.

All drainage laterals and subsequent culverts/bridges/etc., must be repaired to ensure flooding does not occur in the future.

All utilities that cross the existing railroad line must be protected to ensure services exist after salvaging the line.

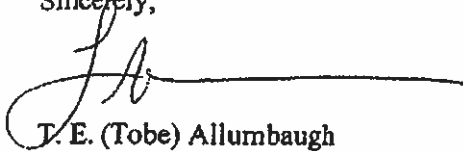
Weeds, trees, overgrowth and trash collecting in the right-of-way must be removed to mitigate the possibility of future wild fires

Crowley County objects to V & S Railway's claim that there are no Federal "Right-of-way grants.

We believe these issues are valid and appropriate and request they be entered into the record when considering V & S Railway's application for abandonment of the V & S Railroad Line.

Please advise if additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. E. (Tobe) Allumbaugh', with a long horizontal flourish extending to the right.

T. E. (Tobe) Allumbaugh
Chairman
Board of Commissioners

CC: CDOT