

From: Crawford, Amanda L. <ALCrawford@Venable.com>
Sent: Wednesday, February 12, 2020 6:46 PM
To: rutsonv@stb.dot.gov
Cc: Wayland, Joshua; Gosselin, Danielle; Debra.Rogers@icf.com; Keller, Kevin; Eric Johnson; Floyd, Kathryn K.; mmckee@7county.utah.gov
Subject: FD 36284 - Response to 01.15.2020 Letter Re Uinta Basin Railway Field Surveys
Attachments: 2020.02.12 UBRY Response to OEA - Cover Letter.pdf; 2020.02.12 UBRY Response to OEA Letter.pdf

Vicki,

Please see the attached correspondence regarding the proposed Uinta Basin Railway.

Regards,
Amanda

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February 12, 2020

VIA EMAIL

Ms. Victoria Rutson
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36284, Seven County Infrastructure Coalition—Construction & Operation Exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah

Dear Ms. Rutson,

I am enclosing the Seven County Infrastructure Coalition's ("Coalition's") response, which was prepared by the Coalition's consultant, HDR Inc., to your January 15, 2020, letter regarding the baseline environmental field surveys for the Uinta Basin Railway (UBRY) project. If you have any questions regarding this response or the revised reports and data provided to OEA via the project SharePoint site, please do not hesitate to contact me at (435) 823-5010 or mmckee@7county.utah.com or, for technical questions, contact Kevin Keller at (816) 347-1182 or Kevin.Keller@hdrinc.com.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. McKee". The signature is fluid and cursive, with the first name "Michael" and last name "McKee" clearly legible.

Michael J. McKee

encl.

cc: Joshua Wayland
Danielle Gosselin
Debra Rogers
Kevin Keller
Eric Johnson
Kathryn Floyd

**Seven County Infrastructure Coalition Response to OEA’s January 15, 2020 Letter
Regarding Field Survey and Analysis Methodologies for the UBRy Project**

I. Introduction

As you know, the field surveys for the Uinta Basin Railway (UBRY) were conducted jointly over several months by the Seven County Infrastructure Coalition’s (Coalition) consultants, HDR and SWCA, and the STB’s Office of Environmental Analysis’s (OEA) third-party consultant, ICF. These field surveys of the alternatives being carried forward by OEA for analysis in the Environmental Impact Statement (EIS), as well as the field methodologies, have been the subject of ongoing discussion and verification both in the field and during the weekly project team calls between the Coalition and OEA.

The alternatives carried forward by OEA and set forth in the Final Scope of Study¹—Indian Canyon, Whitmore Park (the Coalition’s preferred alternative), and Wells Draw—traverse mountain slopes and valley areas with grades suitable for rail operations. The study areas for the three proposed rail line alternatives are located in steep and rugged canyons, and steep ridge lines surrounding these alignments limit the potential for environmental effects in areas extending beyond the ridge lines.

Since the preliminary Whitmore Park alignment was developed in the fall of 2019, various stakeholders including adjacent landowners and cooperating agencies have asked the Coalition to consider refinements to the Whitmore Park alignment. To be responsive to that input, the Coalition’s consultant has examined refinements to the Whitmore Park alignment. Before implementing those refinements, the Coalition provided OEA with a series of kmz mapping files for the Whitmore Park alternative on September 6, September 26, and December 2, 2019.

II. Submittal of Updated Baseline Reports Reflecting All Final Alignments

OEA’s January 15, 2020, letter expressed concern that the field survey reports previously submitted to OEA by the Coalition do not reflect the final alignment for the Whitmore Park alternative. As you know, the Coalition’s consultant began field survey work along the Whitmore Park Alternative alignment before the alignment for this alternative was finalized. Accordingly, initial surveys were conducted using the preliminary Whitmore Park Alternative alignment, transmitted on September 26, 2019. As explained above, between the fall of 2019 and early 2020, the alignment of the Whitmore Park Alternative was slightly refined in response to stakeholder feedback received during the scoping period. Therefore, the baseline reports previously provided to OEA reflect different (that is, preliminary and revised) versions of the Whitmore Park Alternative.

As noted above, the Coalition provided OEA with updated information about the Whitmore Park alignment as it became available, namely on September 6, September 26, and December 2, 2019. The Coalition is also providing with this response updated baseline reports, associated GIS files,

¹ *Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah*, 84 Federal Register 68274 (Dec. 13, 2019).

and updated route centerline information, including kmz files. These reports and data reflect the final alignment for the Whitmore Park Alternative (dated February 12, 2020).

Centerline alignments for the Indian Canyon and Wells Draw Alternatives, each dated November 22, 2019, have not changed. The revised baseline reports (biological resources, waters of the United States, and archaeological, historic architectural, and paleontological resources) being provided with this response (and which have been uploaded to the project SharePoint site) reflect the final alignments for all three alternatives.

III. The Study Area Is Predominantly 1,000 Feet Wide

OEA's letter requests clarification about the study area reported by the Coalition's consultant for the waters of the United States and biological resources baseline reports. The initial study methodologies submitted to OEA in the spring of 2019 identified a 2,000-foot study area width for each alignment. When field survey work began in the late spring of 2019, the Coalition's consultant (and OEA's third-party consultant) observed that the actual conditions along the alignments, including steep slopes, ridgelines, and other topographical limitations, would constrain field surveys within the 2,000-foot study area. In fact, in some areas, the originally proposed 2,000-foot study area extended from the centerline located in one canyon up and over the ridgeline into a different canyon.

In response to the consultants' field observations and ongoing coordination with OEA during weekly project update calls, an approximately 1,000-foot study area width was considered practical and feasible in most areas. In some areas, however—for example, where the design team anticipates that a wider earthwork footprint might be needed to traverse the steep slopes with the restrictive railway grades—the study area is wider.²

IV. Summary of Areas Field Surveyed for Biological Resources and Waters of the United States

On-the-ground data for biological resources and waters of the United States were collected and analyzed for the vast majority of the study areas for all three alternatives. Table 1 summarizes the total acres within each alignment study area and the number of acres for each alignment that have been field surveyed for biological resources and waters of the United States.

² In addition, we have uploaded to the project SharePoint site revised GIS files and baseline reports, which show the correct study area width. The Coalition notes that the previously provided GIS files and baseline reports are incorrect and should not be used for further analysis. We apologize for any confusion this may have caused. Also, please note that the GIS files do not contain either desktop or field data for the tunnel areas excluding portals because neither temporary nor permanent surface disturbance is anticipated in these areas.

Table 1. Areas Field Surveyed for Biological Resources and Waters of the United States in the Alternative Study Areas

	Indian Canyon	Wells Draw	Whitmore Park
Total study area (acres)	9,814.6	13,198.8	10,615.3
Total areas field surveyed (acres)	8,211.2	8,428.2	8,282.1
Total acreage within study area not field surveyed	1,603.3	4,770.7	2,333.1
Total route alignment (miles)	80.6	103.3	87.7
Linear distance field surveyed (miles) ³	70.6	68.9	70.9

Overall, for the revised Indian Canyon, Wells Draw, and Whitmore Park study areas, about 84 percent, 64 percent and 78 percent, respectively, were field surveyed for biological resources and waters of the United States.

Finally, OEA’s letter requested additional information regarding the areas that were not field surveyed and the procedure that the Coalition used to request access to property in order to conduct field surveys. Table 2 lists the acreage for each alignment study area that was not field surveyed for biological resources and waters of the United States due to property access restrictions and safety concerns.

Table 2. Areas Not Field Surveyed for Biological Resources and Waters of the United States

	Indian Canyon	Wells Draw	Whitmore Park
Total acres field surveyed	8,211.2	8,428.2	8,282.1
Acres not field surveyed due to private property restrictions	575.5	234.6	213.3
Acres not field surveyed due to safety constraints	0	2,982.5	0

Private property restrictions. The Coalition requested access to property in accordance with the methodology explained in the ROE (Right-of-Entry) Process memorandum, which was submitted to OEA on September 4, 2019. A copy of the ROE Process memorandum is attached as Exhibit 1 for reference.⁴ As explained in the ROE Process memorandum, the methodology used to request access from property owners was designed to comply with state law requirements. Each property owner was sent a map and Notice of Entry Letter, which, among other things, requested access to the property, asked whether the property owner would like to be present when the Coalition’s

³ Miles counted as surveyed include areas where either 100% or the majority of the study area width was surveyed. Areas where the centerline was not surveyed (e.g., due to private property restrictions, safety constraints, alignment refinements, and tunnel areas) are not included in the reported linear distances.

⁴ At the time Coalition’s ROE Process memorandum was submitted to OEA, the proposed Craig alignment, part of which would have been located in Colorado, was still under consideration as an alternative. Accordingly, the ROE Process memorandum reflects separate ROE procedures for property located in Colorado and Utah. Since OEA and the cooperating agencies eliminated the Craig route from further consideration as reflected in the final scope of study, the Colorado-specific procedures addressed in the ROE Process memorandum are no longer relevant. See *Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah*, 84 Federal Register 68274 (Dec. 13, 2019).

representatives accessed the property, and provided a point of contact. A sample Notice of Entry Letter is attached as Exhibit 2. Notice of Entry letters were sent via certified mail, and all certified mail receipts were saved. The Coalition's consultant kept track of all undeliverable and returned letters and attempted to contact those property owners using an alternative method, such as by telephone.

The Coalition's consultant also tracked and documented property owner contact information as well as requests, concerns, and comments. Based on responses from property owners, the Coalition's consultant created a GIS database to track right of entry status for each parcel. This database was updated on a continuous basis and was used by survey teams as field surveys were conducted.

For privacy reasons and to protect the identity of these property owners, the Coalition is not providing detailed maps of the areas where property owners denied access. Accordingly, the Coalition is providing only the summary information in Table 2 above, which lists the total acreage of property to which access was denied.

Safety constraints. In addition to property owner restrictions, the severity of the rough terrain along the Wells Draw alignment, especially in and near Argyle Canyon, made it unsafe for the survey team to access certain areas and, consequently, on-the-ground surveys were not conducted in those areas. Specifically, these areas were unsafe due to many factors including: rough terrain with steep scree slopes and cliffs limiting on-the-ground access; unreliable or non-existent communications options due to the remote and rough terrain, which would have left field crew members isolated from other crew members, and posing a risk of inability to reach public rescue, and/or medical services in the event of an emergency. In some cases, the nearest access road was 3 to 4 miles away from the study area.⁵

The survey team made multiple attempts to reach the study area in locations that were within 0 to 2 miles of an access road. Some of these attempts were successful, but surveyors often encountered scree slopes, intermittent waterfalls, and cliff faces that blocked access.

⁵ In instances where the areas were unsafe to access for field surveys, desktop methods were used to determine the potential presence of resources.

V. Summary of Areas Field Surveyed for Cultural Resources

As described in more detail in the Draft Cultural Resources Field Reconnaissance Methodology, dated June 24, 2019, the Coalition's consultant, SWCA, conducted a selective intensive level (Class III) survey of archaeological resources to supplement information collected using desktop analysis. These surveys involved pedestrian inventories across a sample of 10 percent of each environmental zone crossed by each of the three proposed alternatives. When determining the areas to be studied, consideration was given to access as well as to areas of existing disturbance. In some areas, survey was restricted by terrain, and SWCA did not survey at an intensive level. If field crews were able to visually assess for potential cultural features, such as using binoculars, the area was documented as a *reconnaissance-level survey*⁶ These surveys, combined with existing data from previous studies provided a sample of approximately 15%, which should be statistically significant for estimating the density and nature of archaeological sites and evaluating each alternative's potential impact on archaeological resources.

Table 3. Areas Field Surveyed for Archeological Resources⁷

	Indian Canyon	Wells Draw	Whitmore Park
Acres field surveyed for archeology resources (intensive level)	658	1,013	604
Acres field surveyed for archeology resources (reconnaissance level)	163	381	159

The Draft Cultural Resources Field Reconnaissance Methodology, dated June 24, 2019, also describes the methodology used to evaluate architectural resources. The Coalition's consultant conducted a selective reconnaissance-level survey of historic architectural resources, consistent with Utah guidelines, for the majority of each proposed alternative. Table 4 below provides a summary of areas that were not surveyed due to property access restrictions. In addition, 38 acres of the Whitmore Park alignment were not surveyed because the alignment was further refined after field surveys were complete. All areas not surveyed were analyzed using the desktop methodology approved by OEA and discussed in more detail in the Draft Cultural Resources Field Reconnaissance Methodology, dated June 24, 2019, and the revised baseline report for architectural resources.

⁶ A complete Class III survey will be conducted for the entire APE of the preferred alternative carried forward in the final EIS or as stipulated in a programmatic agreement developed in support of the NEPA Record of Decision (ROD).

⁷ Intensive on-the-ground field surveys were conducted for 10% of the archaeological resource study area along the proposed alignments, excluding tribal lands.

Table 4. Areas Field Surveyed for Historic Architectural Resources

	Indian Canyon	Wells Draw	Whitmore Park
Total acres field surveyed	6,572	11,417	7,402
Acres not field surveyed due to private property restrictions ⁸	1,715	1,245	1,553

Field surveys were not conducted for paleontological resources. Analysis of paleontological resources was based on a detailed literature review, which is described more thoroughly in the revised baseline report for paleontological resources.

⁸ Please note that the acreages surveyed for historic architectural resources differed from the acreages surveyed for other resource areas due to property access restrictions and conditions encountered by SWCA survey teams in the field (e.g., locked gates and no trespassing signs).

VI. Methods Used for Areas Not Field Surveyed

For the parts of the study areas that were not field surveyed, the Coalition's consultants used desktop methods developed in coordination with OEA and its third-party consultant. To enhance a traditional desktop analysis, the Coalition determined to undertake additional data collection steps at considerable expense. Its consultants procured aerial photography and LiDAR data between April and November 2019 for all three alternatives. The following data, which was acquired or produced through that process, were used as part of the desktop analysis being provided by the Coalition to OEA:

- Aerial photography at a nominal pixel resolution of 1'
- Bare-earth LiDAR point cloud data
- DEM surface data
- 5' contour interval mapping data in shape file and dgn formats
- Color orthophotography in TIF format at 1' pixel resolution

In addition to the aerial imagery data discussed above, the Coalition's consultants also relied on numerous other data sources for purposes of conducting the desktop analyses including:

- For waters of the United States:
 - Public domain aerial mapping data;
 - Published National Wetland Inventory data;
 - Information from the National Hydric Soils List for Utah;
 - Information from the National Hydrography Dataset;
 - Web Soil Survey data from the U.S. Department of Agriculture, Natural Resources Conservation Service;
 - U.S. Army Corps of Engineers (USACE) delineation manuals and delineation reference guides; and
 - Available field data in the vicinity, such as conditions downstream of drainages not accessed in the study areas.
- For biological resources:
 - GAP/LANDFIRE National Terrestrial Ecosystems data;
 - Information from the U.S. Forest Service (USFS) Environmental Conservation Online System;
 - NatureServe Explorer data;
 - Data from the Utah Conservation Data Center database; and
 - Information obtained through consultations with agency personnel, including personnel with the USFS, the U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), Utah Division of Wildlife Resources (UDWR), and the Utah Natural Heritage Program (UNHP)
- For archaeological resources:
 - GIS shapefiles provided by the Utah Division of State History reflecting previously recorded archaeological sites and previously conducted projects within a 0.5-mile buffer from the outer edge of each proposed alignment;
 - Existing survey data; and

- Archaeological resource information provided by the USFS for areas within Ashley National Forest.
- For architectural resources:
 - Existing literature;
 - Data available from the Utah Division of State History (UDSH) PreservationPro database;
 - Information gathered in connection with a 2014 Utah Department of Transportation (UDOT) study;
 - Historical General Land Office (GLO) maps encompassing the survey area;
 - Historical USGS topographic maps encompassing the survey area; and
 - Digital county assessor data for Carbon, Uinta, Utah, and Duchesne Counties.
- For paleontological resources:
 - Record searches and published literature; and
 - Mapped areas of potentially fossiliferous geologic units and BLM Potential Fossil Yield Classification (PFYC) designations.

The desktop methods and sources of desktop data are described in more detail in the methodologies previously submitted to OEA and in the revised baseline reports provided with this response.

Exhibit 1

Uinta Basin Railway ROE Process

To: The Surface Transportation Board

From: Jones & DeMille Engineering on behalf of the Seven County Infrastructure Coalition

Subject: Rights of Entry Acquisition Process for the Uinta Basin Railway Project

Introduction

This document is in response to the request from the Surface Transportation Board (STB) for information regarding the process used by the Seven County Infrastructure Coalition (SCIC) to acquire rights of entry for the Uinta Basin Railway Project (UBRY). These rights of entry were sought for the purpose of conducting preliminary engineering investigations and environmental surveys. As you are aware the range of alternatives being considered for UBRY include alignments in Utah and Colorado. The process used to obtain rights of entry varies between states due to differing regulation between those states. Below is a summary of the process followed in each state to obtain rights of entry for UBRY.

Utah

- As per State Statute, in Utah a public body can gain access to private property for the purposes of performing preliminary engineering and surveys on a project through letter notification to the property owners.
- JDE Identified property owners along the alignments whose property needed to be accessed by the survey and environmental teams.
- JDE drafted a Notice of Entry Letter. A point of contact was included with the letter. The letter requested that if a property owner would like to be present at the time of access to please reach out to the point of contact as soon as possible. A suggested date was also included by which they should contact coalition. The letter also stated that more information regarding the Coalition and the Uinta Basin Railway Project may be found at scic-utah.org. If they had additional questions they should reach out to the point of contact.
- JDE Created visual maps of each alignment to be sent with Notice of Entry letter.
- JDE Created sent the Notice of Entry letter as well as the appropriate map to property owners via certified mail.
- All certified mail receipts have been scanned and saved on the internal drive.
- The point of contact received calls from some of those who received the letter. These calls were documented in a spreadsheet to keep track of contact information, property owner requests, concerns, and comments. If a property owner expressed a desire that the project consultants do not enter their property, that information was also recorded, and those properties have been avoided.

- JDE also kept track of all undeliverable/returned letters and made efforts to contact property owners by a different method, ex. Phone call.
- JDE created a GIS web map that is constantly being updated with the status of property access whether access was granted, denied, or the property owner requested to be present during access, etc. This is being used by the field personnel as they access properties.

Colorado

- Right of entry has been requested via phone call.
- Project information has been sent to them upon their request.
- The GIS web map has been kept up to date with right-of-entry status.

Exhibit 2



March 25, 2019

Re: *Seven County Infrastructure Coalition - Uinta Basin Railway Project*

Dear Property Owner:

The Seven County Infrastructure Coalition (“Coalition”), a governmental entity comprised of Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah counties, is preparing an Environmental Impact Statement (“EIS”) in conjunction with other regulatory bodies to evaluate the impacts and feasibility of a public rail line project in the Uinta Basin.

As part of the EIS process, field surveys and geotechnical examinations will need to be conducted. Your property has been identified as one that may need to be accessed to complete this work. Access to your property by authorized project personnel is provided under Utah Code section 78B-6-506, which states:

78B-6-506. Right of entry for survey and location.

- (1) If land is required for public use, the person or the person's agent in charge of the use may survey and locate the property. It must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter.
- (2)
 - (a) The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make examinations, surveys, and maps of the land.
 - (b) Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the land and improvements on the land caused by the entry and which is not repaired on or before the date the examinations and surveys are completed.

This letter is intended to serve as reasonable notice of access per Utah Code section 78B-6-506(2)(a). Authorized project personnel from the Coalition and other regulatory bodies may access your property during daylight hours (Sunday through Saturday) on a limited basis beginning soon after receiving this letter and continuing through July 2020. In general, project personnel will wear high-visibility vests and carry a copy of this letter for identification purposes. Project personnel will be respectful of property and will leave gates and other accesses as they are found.

If you would like to be present at the time of access, please contact Daniel Hawley with Jones and DeMille Engineering as soon as possible, or by April 8th at the latest. If you request to be present, you will be contacted by the field project personnel to coordinate access.

The EIS study area is shown on the enclosed map. This area encompasses a large enough area to allow for development of a reasonable range of alternatives and analysis of potential environmental impacts. The EIS process is currently in the early stages of data collection and analysis. As such, the study area does not necessarily represent a specific location for the potential rail line, and properties within the study area, including those involved in the field surveys and geotechnical examinations, will not necessarily be directly affected by the project.

More information about the Coalition and the Uinta Basin Railway Project may be found at scic-utah.org. Should you have questions regarding the survey or the project, please contact:

Daniel Hawley – Jones and DeMille Engineering
(435) 896-8266
Daniel.h@jonesanddemille.com

We appreciate your understanding and consideration as personnel work on and around your property.

Sincerely,

Mike McKee
Executive Director
Seven County Infrastructure Coalition