

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL

kmorell@bjllp.com

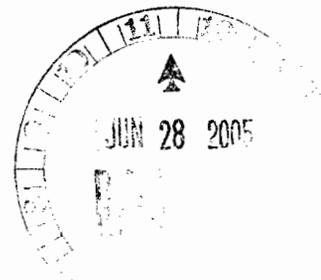
EI-1911

KB

June 28, 2005

BY HAND DELIVERY

Victoria Rutson  
Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W. - Room 504  
Washington, DC 20423



Re: STB Docket No. AB-307 (Sub-No. 6X), Wyoming and Colorado  
Railroad Company, Inc. – Abandonment Exemption – In Carbon County,  
Wyoming

Dear Ms. Rutson:

On June 10, 2005, we submitted to your office copies of the Environmental and Historic Reports in the above-captioned matter. Attached please find ten (10) copies of additional responses we received from the Natural Resources Conservation Service, Fish and Wildlife Service, U.S. Environmental Protection Agency, and the Corps of Engineers.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Enclosures



U.S. Environmental Protection Agency  
Region VIII

~~DANA~~ / ~~DANA~~ / ~~DANA~~  
**RECEIVED**

**BALL JANIK LLP**

T T O R N E E Y S

MAY 31 2005

**DANA B. ALLEN, P.E.**  
Environmental Engineer

155 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

**ECEJ-TEP**

EPA (8EPR-EP)  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
allen.dana@epa.gov

(303) 312-6870  
Fax (303) 312-6897

www.balljanik.com  
TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

May 26, 2005

① EPA has no issues  
WAPA 6/8  
they want WQS info & confirmation that no 402 permit is needed.

U.S. Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

**RE: Docket No. AB-307 (Sub-No. 6X), Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—In Carbon County, Wyoming**

Dear Sir/Madam:

By letter dated June 13, 2003, Wyoming and Colorado Railroad Company, Inc. ("WYCO") informed you of WYCO's intention to file for authority to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY (the "Line"). In that letter, WYCO sought your assistance in determining any potential effects the abandonment may have on applicable water quality standards. No response to this inquiry was received.

On June 3, 2004, WYCO forwarded to you a copy of the Environmental Report describing the proposed abandonment and any expected environmental effects. A copy of that report is attached for your convenience. On September 21, 2004, the Surface Transportation Board ("STB") issued an Environmental Assessment for the abandonment of the Line. A copy of that assessment is also attached. By decision served November 10, 2004, the STB denied WYCO's petition without prejudice to WYCO's refiling a petition.

WYCO is hereby notifying you of its intention to file a new Petition for Exemption with the STB on or about June 30, 2005, for WYCO to abandon the Line. Consequently, WYCO is updating the Environmental Report in the AB-307 (Sub-No. 5) proceeding and the updated Report will be filed in this new docket.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are again advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. WYCO does not believe any permits under Section 402 of the Clean Water Act will be required.

program  
A 15 also delegated to Wyoming

③ EPA has no issues with project.  
DAllen 6/8/05  
Please call if you have any questions

② The standards are set by the State & the 402 permit



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
4000 Airport Parkway  
Cheyenne, Wyoming 82001

In Reply Refer To:  
ES-61411/W.18/WY9549

JUN 16 2005

Mr. Karl Morell  
Ball Janik, LLP Attorneys  
1455 F Street, Northwest, Suite 225  
Washington, D. C. 20005

Dear Mr. Morell:

Thank-you for your letters of May 25 and June 10, 2005 regarding the Surface Transportation Board (STB) (Docket number AB-307) railroad abandonment by the Wyoming and Colorado Railroad Company in Carbon County, Wyoming. According to your letters the Wyoming and Colorado Railroad Company, Incorporated will be filing a petition to abandon its 23.71 mile rail line located between milepost 0.57 near Walcott, Wyoming and milepost 24.28 in Saratoga, Wyoming. Our office has provided previous correspondence on this project during July 2003 (WY7346). You requested review and comments on the proposed railroad abandonment.

In response to your request to review the proposed action, we are providing you with comments on (1) threatened, endangered and candidate species, (2) migratory birds, and (3) wetlands and riparian areas for the abovementioned project. The Service provides recommendations for protective measures for threatened and endangered species in accordance with the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Protective measures for migratory birds are provided in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act. Nearly two years have passed since our office issued a list of threatened or endangered species that may be present on the project area; thus, we are providing an updated list for which to base your determinations. Please be aware that species lists are valid only for 180 days but may be confirmed via a telephone call to our office.

<b>SPECIES</b>	<b>STATUS</b>	<b>HABITAT</b>
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	Threatened	Found throughout state
Black-footed ferret ( <i>Mustela nigripes</i> )	Endangered	Prairie dog towns
Ute ladies'-tresses ( <i>Spiranthes diluvialis</i> )	Threatened	Seasonally moist soils and wet meadows of drainages below 7000 feet elevation.

If the proposed action may lead to consumptive use of water in the Platte River System, impacts to threatened and endangered species inhabiting the downstream reaches of these systems should be included in the evaluation.

Platte River species	Endangered	Downstream riverine habitat of the Platte River in Nebraska
----------------------	------------	---

**Bald eagle:** While habitat loss still remains a threat to the bald eagle's full recovery, most experts agree that its recovery to date is encouraging. Adult eagles establish life-long pair bonds and build huge nests in the tops of large trees near rivers, lakes, marshes, or other wetland areas. Although bald eagles may range over great distances, they usually return to nest within 100 miles of where they were fledged. During winter, bald eagles gather at night to roost in large mature trees, usually in secluded locations that offer protection from harsh weather. Bald eagles often return to use the same nest and winter roost year after year.

In order to reduce potential adverse effects to the bald eagle, a disturbance-free buffer zone of 1 mile should be maintained around eagle nests and winter roost sites. Activity within 1 mile of an eagle nest or roost may disturb the eagles and result in take. If a disturbance-free buffer zone of 1 mile is not practicable, then the activity should be conducted outside of February 15 through August 15 to protect nesting birds and November 1 through April 15 to protect roosting birds.

**Black-footed ferret:** Black-footed ferrets may be affected if prairie dog towns are impacted. Please be aware that black-footed ferret surveys are no longer recommended in black-tailed prairie dog towns statewide or in white-tailed prairie dog except those noted in our enclosed February 2, 2004, letter. However, we encourage the Federal agency to protect prairie dog towns for their value to the prairie ecosystem and the myriad of species that rely on them. We further encourage you to analyze potentially disturbed prairie dog towns for their value to future black-footed ferret reintroduction.

If white-tailed prairie dog towns or complexes greater than 200 acres will be disturbed, surveys for ferrets may be recommended in order to determine if the action will result in an adverse effect to the species. Surveys are recommended even if only a portion of the white-tailed prairie dog town or complex, as identified in our enclosed letter, will be disturbed. According to the Black-Footed Ferret Survey Guidelines (USFWS 1989), a prairie dog complex consists of two or more neighboring prairie dog towns less than 7 km (4.3 miles) from each other. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

**Ute ladies'-tresses:** Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial, terrestrial orchid, 8 to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. *S. diluvialis* typically blooms from late July through August, however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October. *S. diluvialis* is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams where it colonizes early successional point bars or sandy edges. The elevation range of known occurrences is 4,200 to 7,000 feet in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where *S. diluvialis* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *S. diluvialis* is not found in heavy or tight clay soils or in extremely saline or alkaline soils. *S. diluvialis* seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. *S. diluvialis* is difficult to survey for primarily due to its unpredictability of emergence of flowering parts and subsequent rapid desiccation of

specimens. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training or services.

**Platte River water depletions:** Water depletions to the Platte River system may affect the federally listed whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*), bald eagle (*Haliaeetus leucocephalus*), and western prairie fringed orchid (*Platanthera praeclara*). In addition, depletions may contribute to the destruction or adverse modification of designated critical habitat for the whooping crane and the northern Great Plains breeding population of the piping plover. Depletions include evaporative losses and/or consumptive use, often characterized as diversions from the Platte River or its tributaries less return flows. Project elements that could be associated with depletions to the Platte River system include, but are not limited to, ponds (detention/recreation/irrigation storage/stock watering), lakes (recreation/irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), created or enhanced wetlands, hydrostatic testing of pipelines, wells, diversion structures, dust abatement, and water treatment facilities. Any actions that may result in a water depletion to the Platte River system should be identified. The document should include: an estimate of the amount and timing of average annual water use (both historic and new uses) and methods of arriving at such estimates; location of where water use or diversion occurs as specifically as possible; if and when the water will be returned to the system; and what the water is being used for. Note that if the project has peculiarities or oddities, the Service may have more specific questions regarding the potential consumptive use of water.

**Greater sage-grouse:** The Service has determined that the greater sage-grouse (*Centrocercus urophasianus*) is unwarranted for listing at this time. However, the Service continues to have concerns regarding sage-grouse population status, trends and threats, as well as concerns for other sagebrush obligates. The following information is provided for your use in the evaluation of proposed actions and their potential effects to the sage-grouse.

Greater sage-grouse are dependent on sagebrush habitats year-round. Habitat loss and degradation, as well as loss of population connectivity have been identified as important factors contributing to the decline of greater sage-grouse populations rangewide (Braun 1998, Wisdom et al. 2002). Therefore, any activities that result in loss or degradation of sagebrush habitats that are important to this species should be closely evaluated for their impacts to sage-grouse. If important breeding habitat (leks, nesting or brood rearing habitat) is present in the project area, the Service recommends no project-related disturbance between March 1 and June 30, annually. Minimization of disturbance during lek activity, nesting, and brood rearing is critical to sage-grouse persistence within these areas. Likewise, if important winter habitats are present, we recommend no project-related disturbance between November 15 through March 14.

We recommend you contact the Wyoming Game and Fish Department to identify important greater sage-grouse habitats within the project area, and appropriate mitigative measures to minimize potential impacts from the proposed project. The Service recommends surveys and mapping of important greater sage-grouse habitats where local information is not available. The results of these surveys should be used in project planning, to minimize potential impacts to this species. No project activities that may exacerbate habitat loss or degradation should be permitted in important habitats.

### **Federal Agency Responsibilities**

The Service has responsibility, under a number of Federal laws, treaties, Executive Orders, and memoranda of agreement, for the conservation and management of fish and wildlife resources. Some of these same authorities also require other Federal agencies to consider, avoid, or prevent adverse impacts

to fish, wildlife, and wetland resources. To ensure resources are afforded adequate consideration and protection, Federal agencies are often required to consult with the Service regarding potential impacts their actions may have on fish and wildlife resources.

If it is determined that any Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so the Service can assist you to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold. If it is concluded that the project "is not likely to adversely affect" listed species, you should request the Service to review the assessment and concur with the determination of not likely to adversely affect.

If you have questions regarding our comments or your responsibility under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, please contact Jessica Homyack of my staff at the letterhead address or phone (307) 772-2374, extension 24.

Sincerely,



Brian T. Kelly  
Field Supervisor  
Wyoming Field Office

cc: USDOT, Surface Transportation Board, Washington, D.C. (Project Manager)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

**References:**

U.S. Fish and Wildlife Service. 1989. Black-footed ferret survey guidelines for compliance with the Endangered Species Act, April 1989. U. S. Fish and Wildlife Service, Denver, Colorado and Albuquerque, New Mexico. 15pp.



Natural Resources Conservation Service  
Federal Building  
100 East B Street, Room 3124  
P.O. Box 33124  
Casper, WY 82602

---

Date: June 13, 2005

Ball Janik, LLP  
Karl Morell  
1455 F Street, NW, suite 225  
Washington, D.C. 20005

Dear Mr. Morell,

The Natural Resources Conservation Service is in receipt of your letter dated May 26, 2005 in regards to the abandonment of the Wyoming and Colorado Railroad in Carbon, County, Wyoming.

We have reviewed the attached information and have no additional comments concerning the abandonment of this section of the railroad.

If you have any questions, or need to discuss this comment with us, please contact either myself at 307-233-6750 or please contact Doug Gasseling, Conservation Agronomist, Cheyenne, Wyoming, at 307-772-2320, ext. 101.

Sincerely,

A handwritten signature in black ink that reads "Lincoln 'Ed' Burton" followed by "act 155".

LINCOLN "ED" BURTON  
State Conservationist



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**WYOMING REGULATORY OFFICE**  
2232 DELL RANGE BOULEVARD, SUITE 210  
CHEYENNE WY 82009-4942

June 16, 2005

Wyoming Regulatory Office

Mr. Karl Morell, Attorney  
Ball Janik LLP  
Wyoming and Colorado Railroad Company, Inc.  
1455 F Street, NW, Suite 225  
Washington, D.C., 20005

Dear Mr. Morell:

This is in response to your letter letters dated May 26 and June 10, 2005. Acting on behalf of the Wyoming and Colorado Railroad Company, Inc. (WYCO), you requested comments from our agency on WYCO's plan to file a Petition of Exemption with the Surface Transportation Board (STB) to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, and milepost 24.28, in Saratoga, Carbon County, Wyoming.

Your June 10<sup>th</sup> letter noted that this matter is now identified as **STB Docket No. AB-307 (Sub-No. 6X), Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, Wyoming**. In addition to various reports, a copy of our comment letter on this matter dated June 17, 2003, was included with your recent letters. We have reviewed the latest information you provided on this project and have no comments to add to that letter.

Thank you for your interest in complying with the provisions of the Corps of Engineers regulatory program. If you have any questions regarding this matter, please contact me at (307) 772-2300 and reference file No. 200340101.

Sincerely,

A handwritten signature in cursive script that reads "Matthew A. Bilodeau".

Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office