

EO-1149  
KB

**SURFACE TRANSPORTATION BOARD**  
**Washington, DC 20423**

**OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION**

February 11, 2009

Ms. Charlene Dwin Vaughn  
Office of Planning and Review  
Advisory Council on Historic Preservation  
The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

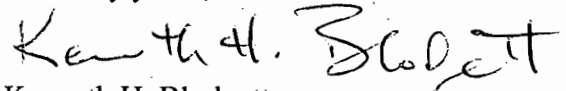
Re: AB-307 (Sub-No. 4X) – Wyoming and Colorado Railroad Company –  
Abandonment Exemption - between MP 0.19 and MP 1.31 in Laramie, Albany  
County, Wyoming  
Wyoming SHPO Number: 0201JKW003

Dear Ms. Vaughn:

The Wyoming and Colorado Railroad Company (WYCO) filed a Notice of Exemption with the Surface Transportation Board (Board) on September 23, 2003, to abandon rail line in the above-referenced proceeding. In response to WYCO's pre-filing notification regarding this proposed abandonment, the Wyoming SHPO wrote to WYCO on February 25, 2003, indicating that the abandonment might constitute an adverse effect.

The Section of Environmental Analysis (SEA) is the office within the Board responsible for conducting the environmental review process pursuant to the National Environmental Policy Act, including the National Historic Preservation Act (NHPA). Please find enclosed a copy of the Memorandum of Agreement (MOA) which resulted from the consultation process pursuant to the regulations implementing Section 106 of NHPA. The filing of this MOA with the Council completes our compliance responsibilities under Section 106 of NHPA.

Sincerely yours,



Kenneth H. Blodgett  
Section of Environmental Analysis

cc: Mr. Karl Morell, WYCO  
Ms. Mary Hopkins, Wyoming State Historic Preservation Office  
SEA Chron

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE SURFACE TRANSPORTATION BOARD,  
THE WYOMING STATE HISTORIC PRESERVATION OFFICE,  
THE WYOMING DEPARTMENT OF STATE PARKS AND CULTURAL RESOURCES,  
THE CITY OF LARAMIE,  
THE ALBANY COUNTY HISTORIC PRESERVATION BOARD,  
THE USDA FOREST SERVICE,  
THE WYOMING AND COLORADO RAILROAD COMPANY, INC.,  
REGARDING MITIGATION OF ADVERSE EFFECTS  
TO THE LARAME-HAHNS PEAK-PACIFIC RAILWAY (48AB619) WYOMING-COLORADO  
RAILROAD LINE, AB-307 (SUB-NO. 4X).**

WHEREAS, the Surface Transportation Board (STB) has received notice from the Wyoming and Colorado Railroad, Inc. seeking authority to abandon 1.12-mile of rail line within the City limits of Laramie, Wyoming; and

WHEREAS, the historic Laramie-Hahns Peak-Pacific Railway grade has been partially incorporated into the City of Laramie Greenbelt; and

WHEREAS, the Laramie-Hahns Peak-Pacific Railway is located within the boundary of the Wyoming Territorial Prison, a State Historic Site; and

WHEREAS, the STB has determined that the abandonment of the Wyoming-Colorado Railroad is an adverse effect to the Laramie-Hahns Peak-Pacific Railway (48AB619), which is eligible to the National Register of Historic Places under Criterion A of the National Historic Preservation Act of 1966, as amended through 2000 (16 U.S.C. 470, 36 CFR § 60), and has consulted with the Wyoming State Historic Preservation Office (SHPO) pursuant to 36 CFR § 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the STB has notified the Advisory Council on Historic Preservation (ACHP) and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1); and

WHEREAS, the Albany County Historic Preservation Board, and the USDA Forest Service have been invited to be consulting parties to this agreement; and

WHEREAS, Wyoming State Parks and Cultural Resources (SPCR), pursuant to Wyoming § 9-2-414, § 9-2-415, and § 36-4-108, has the authority to acquire, erect, and maintain Wyoming's Monuments and Markers; and

WHEREAS, the STB, the USDA Forest Service, the State of Wyoming, SHPO, and SPCR, do not waive their sovereign immunity and the City of Laramie does not waive its governmental immunity by entering into this Memorandum of Agreement (MOA), and each retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOA; and

WHEREAS, this MOA, consisting of seven (7) pages, and Appendix A (location map), represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

NOW, THEREFORE, that upon the STB execution of this MOA, the STB, the Wyoming-Colorado Railroad Line, the SHPO, the SPCR, the City of Laramie, the Albany County Historic Preservation Board, and the USDA Forest Service shall ensure that the following stipulations are implemented in order to take into account the adverse effects of abandonment on historic properties and that these stipulations and general provisions shall govern the project and all of its parts until this MOA is expired or terminated.

### **STIPULATIONS**

I. STB, the Wyoming Colorado Railroad Company, Inc. and the City of Laramie shall ensure that the following stipulations are implemented to mitigate adverse effects to the Laramie-Hahns Peak-Pacific Railway (48AB619):

- A. The City of Laramie shall bear the cost of constructing an interpretive sign and kiosk on SPCR property near the railroad bridge that has been incorporated into the Laramie Greenbelt. The interpretive sign shall be designed for pedestrian access and be compliant with the Americans with Disabilities Act (ADA). The interpretive sign will follow design standards similar to those used by the USDA Forest Service or those used by SPCR.
- B. The City of Laramie will contract with an appropriate graphic design and sign company to produce the final sign(s), associated kiosk or mounting structures needed.
- C. The City of Laramie shall provide resources for the repair and/or replacement of the interpretive signage and kiosk as needed. The City of Laramie will communicate, coordinate, and cooperate with SPCR on repair and/or replacement as warranted. Funding for repair and/or replacement will be provided by the City of Laramie.
- D. The City of Laramie will notify the STB and the Wyoming Colorado Railroad Company, Inc. in writing when the installation has been completed.

II. The SHPO and SPCR shall ensure that the following stipulations are implemented to mitigate adverse effects to the Laramie-Hahns Peak-Pacific Railway (48AB619):

- A. SHPO and SPCR shall develop, coordinate, review and approve interpretive text. SHPO and SPCR will coordinate with all parties to develop signage that is compatible with existing signs developed for the Laramie-Hahns Peak-Pacific Railway on USFS lands. SHPO and SPCR will develop the draft graphic layout and provide this to the City of Laramie for the final design and purchase of the interpretive sign and kiosk.
- B. SPCR will work with the City of Laramie to place the sign in an appropriate location on SPCR property on the grounds of the Wyoming Territorial Prison State Historic Site near the City of Laramie Greenbelt. SPCR central construction staff will install the interpretive sign and kiosk.
- C. SHPO shall prepare all needed documents to transfer ownership of the interpretive signage to SPCR.

- D. SHPO shall incorporate all information pertaining to the interpretive signage into the State's Monument and Marker's (M&M) inventory and place it on the M&M insurance list.
- E. SPCR staff will periodically inspect interpretive signage for damage. SPCR will notify the City of Laramie if repair or replacement is warranted. SPCR will provide a cost estimate and a final invoice to the City of Laramie as needed.
- F. SPCR Director will approve the text, design and materials for interpretive signage and kiosk pursuant to Wyoming § 9-2-414, § 9-2-415 and § 36-4-108 within 30 days of receipt once all parties have reached consensus.

III. The Albany County Historic Preservation Board and the USDA Forest Service shall ensure that the following stipulations are implemented.

- A. Members of the Albany County Historic Preservation Board shall participate in the development of text, and review and comment on drafts of interpretive text regarding Laramie-Hahns Peak-Pacific Railway.
- B. The USDA Forest Service shall provide technical assistance and interpretive expertise, information, and appropriate standards regarding design and suitable materials for the interpretive signage and kiosks.

## **GENERAL PROVISIONS**

### **I. Dispute Resolution**

A. STB shall consult with any signatory to this agreement, in accordance with 36 CFR § 800.6(c)(1), if there is an objection by a signatory in the manner in which the terms of the agreement are implemented.

B. If STB determines that the objection cannot be resolved among the involved parties, STB shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR § 800.2(b)(2). After reviewing the documentation, the ACHP will either:

- 1. Provide STB with recommendations which STB can consider in reaching a final decision regarding the dispute; or
- 2. Notify STB that it will comment pursuant to 36 CFR § 800.7(c)(4) with reference to the subject of the dispute.

C. Any recommendations or comments provided by the ACHP will pertain only to the subject of the dispute. STB's and other signatories' responsibility to carry out all actions under this agreement that are not the subject of this dispute will remain unchanged.

D. Nothing in this section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any party to this MOA.

## II. Amendment

Any parties to this agreement, in accordance with 36 CFR § 800.6(c)(1), may request that the other parties consider amending it if circumstances change over time and warrant revisions of the stipulations. Any changes, modifications, revisions, or amendments to this agreement which are mutually agreed upon by and between the parties to this agreement shall be incorporated by written amendment and signed by all parties to this agreement.

## III. Termination

A. Any party to this agreement, in accordance with 36 CFR § 800.6(c)(1), may initiate consultation for termination by providing 30 business days notice to the other parties of their intent. After notification by the initiating party, the remaining parties will have 60 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination.

B. In the event of termination, STB will seek the ACHP's comment on any remaining adverse effects to historic properties for the project and terms of this agreement.

## IV. Prior Approval

This MOA shall not be binding upon any party, unless this MOA has been reduced in writing before performance begins as described under the terms of this MOA, and unless this MOA is approved as to form by the Attorney General or his representative.

## V. Severability

Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

## VI. Third Party Beneficiary Rights

The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOA shall not be construed to create such status. The rights, duties and obligations contained in this MOA operate only between the parties to this MOA and shall insure solely to the benefit of the parties to this MOA. The provisions of this MOA are intended only to assist the parties in determining and performing their obligations under this MOA. The parties to this MOA intend and expressly agree that only parties signatory to this MOA shall have and legal or equitable right to seek to enforce this MOA, to seek remedy arising out of a party's performance or failure to perform any term or condition of this MOA, or to bring an action for the breach of this MOA.

## VII. Sunset Terms

This agreement shall be null and void if the terms are not carried out within three (3)

years, unless the signatories agree in writing to an extension for carrying out its terms.

#### **VIII. General Provisions**

A. In witness whereof, the parties to this MOA through their duly authorized representatives have executed this MOA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOA as set herein.

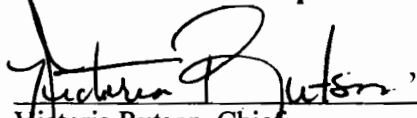
B. The effective date of this MOA is the date of the last signature affixed to this page.

C. Execution of this Memorandum of Agreement by STB and SHPO, the submission of documentation and filing of this MOA with the ACHP pursuant to 36 CFR § 800.6(b)(1)(iv) fulfills STB's Section 106 responsibilities and implementation of its terms are evidence that STB has taken into account the effects of this undertaking on the Laramie-Hahns Peak-Pacific Railway (48AB619) and afforded the ACHP an opportunity to comment and has satisfied the requirements of Section 106 of the National Historic Preservation Act.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK**

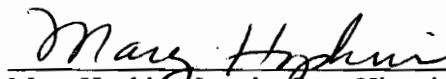
**IX. SIGNATORIES:**

**For the Surface Transportation Board**

  
Victoria Rutson, Chief,  
Section of Environmental Analysis

Date 2/5/2009

**For the Wyoming State Historic Preservation Office**

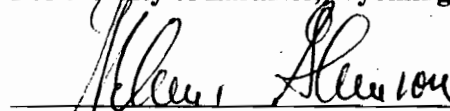
  
Mary Hopkins, Interim State Historic Preservation Officer

Date 1/16/09

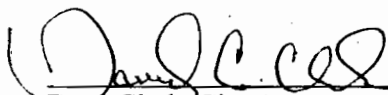
**For the Wyoming Department of State Parks and Cultural Resources**

 1-16-09  
Milward Simpson, Director

**For the City of Laramie, Wyoming**

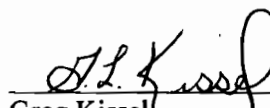
  
Klaus Hanson, Mayor

Date 12-19-08

  
Dave Clark, City Attorney

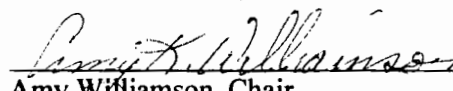
Date 12/17/08

**For the Wyoming Colorado Railroad, Inc.**

  
Greg Kissel,  
Executive Vice President

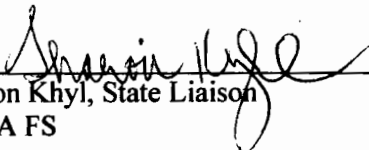
Date 2/2/09

**For the Albany County Historic Preservation Board**

  
Amy Williamson, Chair

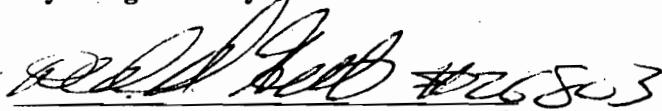
Date 11/20/2008

**For the USDA Forest Service**

  
Sharon Khyll, State Liaison  
USDA FS

Date 1.15.09

**Approved as to Form:**  
**Wyoming Attorney General's Office**

  
Don Gerstein, Assistant Attorney General

Date 1/16/09

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK