

211200

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

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JUN 03 2004

June 3, 2004

Part of
Public Record

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. 5X), Wyoming and Colorado
Railroad Company, Inc. -- Abandonment Exemption -- In Carbon
County, Wyoming

Dear Ms. Rutson:

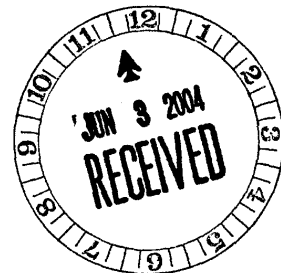
Attached please find ten (10) copies of the Environmental Report and Historic Report in the above-captioned matter. Wyoming and Colorado Railroad Company expects to file its Petition for Exemption in this matter on or shortly after June 23, 2004.

Sincerely,



Karl Morell

Enclosures





ENVIRONMENTAL REPORT
(49 C.F.R. 1105.7)
Docket No. AB-307 (Sub-No. 5X)
WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Wyoming and Colorado Railroad Company, Inc. ("WYCO"), proposes to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, in Saratoga, WY (the "Line"). Upon receipt of abandonment authority, WYCO intends to remove the rail, track material, and crossties. There are currently no plans to remove the three bridge structures along the Line.

WYCO acquired the Line in November 1987 from the Union Pacific Railroad Company ("UP"). The only traffic that moved over the Line since it was acquired by WYCO has been finished lumber and wood chips.¹

The proposed abandonment will not change rail freight operations or maintenance practices on the Line. No local traffic has been handled on the Line in over a year. Since the Line is stub-ended, no overhead traffic moves over the Line. The Line was previously used to serve a single customer located in Saratoga. That mill closed in January 2003.

¹ In the late 1990's, WYCO handled a one-time shipment of fluorspar over the line.

The only alternative to abandonment would be not to abandon the Line thereby forcing WYCO to absorb the opportunity costs of retaining this inactive Line. This would not be a prudent use of carrier resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

No passenger or freight traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line in over a year and the Line is not capable of handling overhead traffic. Since the Line no longer handles rail traffic, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

(i) WYCO believes that the proposed abandonment is consistent with existing land use plans. WYCO has contacted the Carbon County Commissioners. See Exhibit 2. To date, no response to this inquiry has been received. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) WYCO notified the Natural Resources Conservation Service of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. The State Conservationist requested additional information as to the use of the land after abandonment and the type of vegetation cover that will be used for this area. See Exhibit 4. WYCO intends to sell the right-of-way to the adjacent land owners, to the extent the right-of-way is owned in fee. The vegetative cover on the adjacent land is sage brush and Prairie Grass which presumably will also envelop the right-of-way after the line is salvaged. A copy of this Report is being supplied to the Natural Resources Conservation Service for its information and further comment.

(iii) The Line does not pass through a designated coastal zone.

(iv) The corridor appears suitable for alternative public use such as a trail. The U.S. Fish and Wildlife Service is interested in negotiating a purchase or donation of the part of the right-of-way that bisects the Saratoga National Fish Hatchery. See Exhibit 6.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(i) The proposed abandonment will have no effect on the transportation of energy resources.

(ii) The proposed abandonment will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line in over a year and the Line is not capable of handling overhead traffic.

(iv) The proposed abandonment will not cause any diversions of rail traffic to motor carriage, since no local traffic has been handled on the Line in over a year and the Line is not capable of handling overhead traffic overhead traffic.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(i) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(iii) The proposed abandonment will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(i) The proposed abandonment will have no detrimental effects on public health and safety.

(ii) The proposed abandonment will not affect the transportation of hazardous materials.

(iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the rail corridor of the Line.

(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. WYCO notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining whether endangered or threatened species or areas designated as a critical habitat are likely to be adversely affected. See Exhibit 5. The response of the Fish and Wildlife Service is attached as Exhibit 6. According to the Service, the following five threatened or endangered species, or species proposed for listing under the Endangered Species Act may be present in the project area: bald eagle (threatened), mountain plover (proposed), black-footed ferret (endangered), Ute ladies'-tresses (threatened), and Platte River species (endangered).

According to the Service, no eagle roosts are present within 1 mile of the proposed project area. Consequently, WYCO will not need to restrict salvage operations outside of the February 15 through August 15 window to protect nesting birds. In any event, WYCO's current plans call for salvaging the Line in late summer or fall if abandonment authority is timely awarded. WYCO will comply with the Service's request to conduct surveys for mountain plovers prior to salvaging the Line to avoid nesting areas from April 10 through July 10.

If prior to salvaging the Line it is determined that prairie dog towns may be affected, WYCO will contact the Service for guidance on ferret surveys. To the best of WYCO's knowledge, there are no Ute ladies'-tresses located on the right-of-way or adjacent to the right-of-way that will be affected by the salvage operations. The proposed salvage operations will not result in any water depletions to the Platte River system and, therefore, will have no effect on the whooping crane, interior least tern, piping plover, pallid sturgeon, bald eagle, Eskimo curlew and western prairie fringed orchid.

WYCO is confident that the proposed salvaging of the Line will: (1) not have an adverse effect on the black-tailed prairie dog; (2) result in nest manipulation; or (3) result in a loss of wetlands.

A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) There are no wildlife sanctuaries or refuges, National or State parks or forests along the Line that would be adversely affected by the proposed abandonment. Nevertheless, WYCO notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 7. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies. (ii) Based on consultation with the U.S. Army Corps

of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects. (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

(i) WYCO is confident that the proposed abandonment will be consistent with applicable water quality standards. WYCO contacted the Wyoming Department of Environmental Quality and the U.S. Environmental Protection Agency concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 8. The response of the Department of Environmental Quality is attached as Exhibit 9.

Consistent with the request of the Department of Environmental Quality, WYCO will obtain whatever permits are deemed necessary for the salvaging of the Line. At this time, WYCO does not believe any permits will be required because the bridges on the Line will not be removed.

To date, no response has been received from the U.S. Environmental Protection Agency. A copy of this Report is being supplied to the U.S. Environmental Protection Agency and the Wyoming Department of Environmental Quality for their information and further comment.

(ii) No designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. WYCO contacted the Corps of Engineers concerning these matters. See Exhibit 10. The Corps of Engineers determined that Department of the Army authorization is not required for the project under Section 404 of the Clean Water Act. See

Exhibit 11. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and further comment.

(iii) WYCO believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. WYCO contacted the U.S. Environmental Protection Agency concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 8. To date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency for its information and comment.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

WYCO does not expect any adverse environmental impact from the proposed abandonment and, therefore, sees no need for any mitigating actions. WYCO will, of course, adhere to any remedial actions suggested by the recipients of this Report and required by the Board.

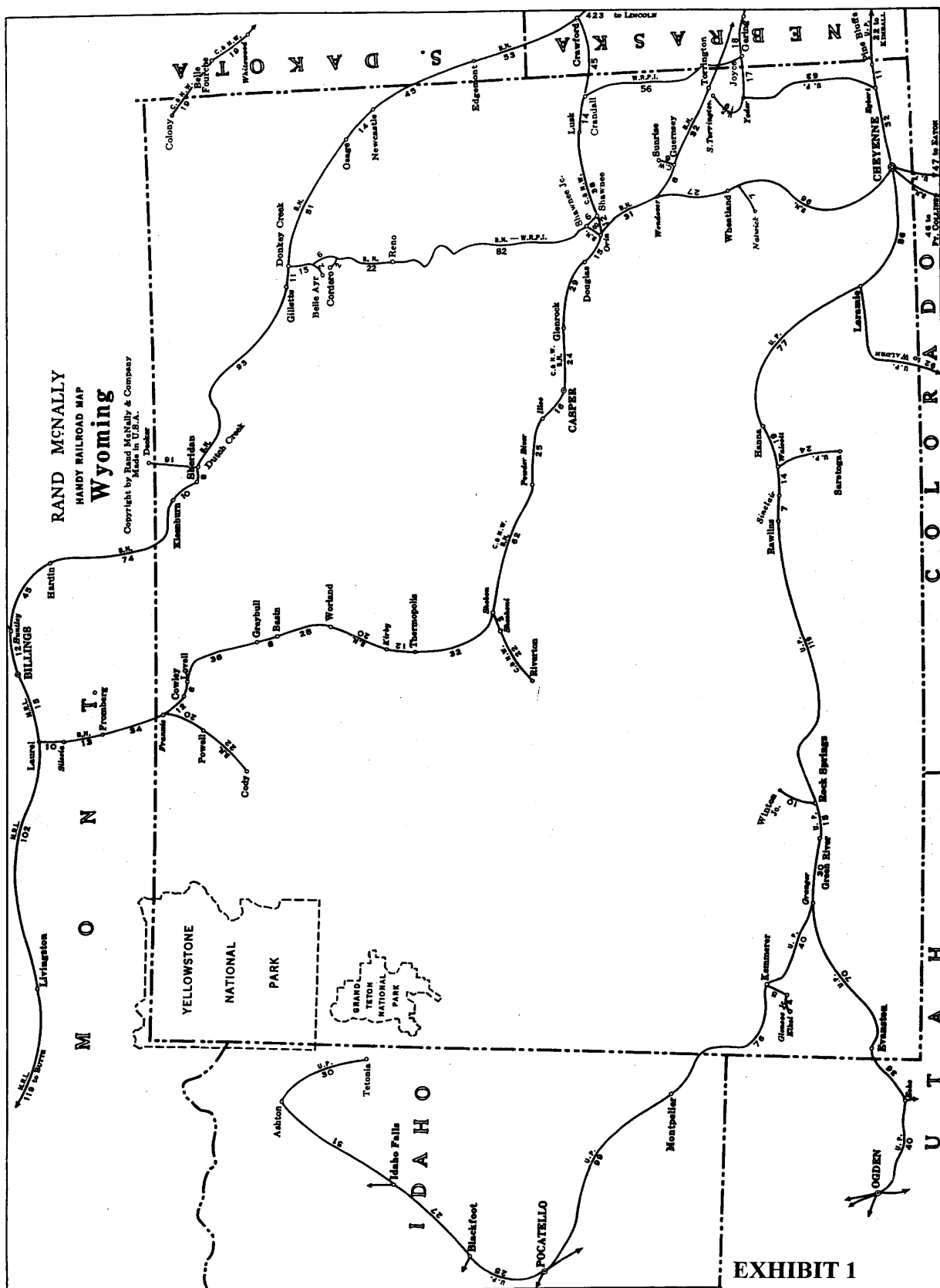


EXHIBIT 2

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@dc.bjllp.com

June 13, 2003

Carbon County Commissioners
P.O. Box 6
Rawlins, Wyoming 82301

RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad Company, Inc.--Abandonment Exemption—In Carbon County, Wyoming

Dear Sirs:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell

Attorney for:

Wyoming and Colorado Railroad Company, Inc.

EXHIBIT 3

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@dc.bjllp.com

June 13, 2003

State Conservationist
USDA Natural Resources Conservation Service
3124 Federal Building
100 East 'B' Street
Casper, Wyoming 82601

**RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad
Company, Inc.--Abandonment Exemption--In Carbon County,
Wyoming**

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on prime agricultural land.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

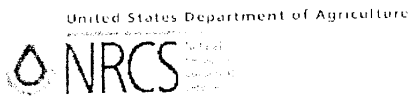
Sincerely,



Karl Morell

Attorney for:

Wyoming and Colorado Railroad Company, Inc.



Natural Resources Conservation Service
Federal Building
100 East B Street, Room 3124
Casper, WY 82601

Date: July 17, 2003

EXHIBIT 4

Ball Janik LLP
1455 F Street NW, Suite 225
Washington, D.C. 20005

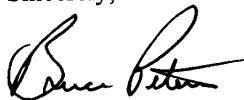
Dear Mr. Morell,

The NRCS has reviewed the letter in regards to Docket NO. AB-307 (Sub-No.5X), Wyoming and Colorado Railroad Company, Inc. Abandonment Exemption, Carbon County, Wyoming.

We do not have any comments on the abandonment of the railroad line. We would like to see a plan in place as to what the use of the land will be after the railroad is abandoned and what type of vegetative cover, etc. would be used for this area.

If you have any questions, or need to discuss this comment with us, please contact this office.

Sincerely,

 *acting:*

LINCOLN "ED" BURTON
State Conservationist

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

EXHIBIT 5

KARL MORELL

kmorell@dc.bjllp.com

June 13, 2003

U.S. Fish and Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad Company, Inc.--Abandonment Exemption--In Carbon County, Wyoming

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell
Attorney for:

Wyoming and Colorado Railroad Company, Inc.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

IN REPLY REFER TO:

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

LA-Wyoming
Saratoga NFH
General

JUN 8 1988

Mr. Karl Morell
Atty. for Wyoming & Colorado Railroad Co.
1455 F Street NW, Suite 225
Washington, D.C. 20005

RE: Docket No. AB-307 (Sub-No5X), Wyoming and Colorado Railroad
Company, Inc. -Abandonment Exemption-In Carbon County, Wyoming

Dear Mr. Morell:

In reference to your request on the above railroad right-of-way abandonment, I have forwarded it to our Endangered Species Department for response.

This railroad bisects our Saratoga National Fish Hatchery. Therefore, if the property is owned in fee by the railroad, the U.S. Fish and Wildlife Service would be interested in negotiating a purchase or donation of the right-of-way property.

Please contact me at (303) 236-8150 for further discussion.

Thank you.

Sincerely yours,

Betty R. Adler
Supervisory Realty Specialist



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.17/WY7346

July 17, 2003

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

Dear Mr. Morell:

The U.S. Fish and Wildlife Service (Service) received your request dated June 13, 2003, to provide threatened and endangered species information for a proposed Railroad Abandonment Exemption in Carbon County, Wyoming. Wyoming and Colorado Railroad Company proposes to abandon and salvage the Union Pacific railroad line south from Walcott to Saratoga, Wyoming, for a total of 24 miles. The Service would like to provide the following comments for your consideration during project planning.

In accordance with section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), my staff has determined that the following threatened or endangered species, or species proposed for listing under the Act, may be present in the project area.

LISTED AND PROPOSED SPECIES

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Nesting. Winter resident, Migrant
Mountain plover (<i>Charadrius montanus</i>)	Proposed	Grasslands statewide
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Potential resident in prairie dog (<i>Cynomys</i> sp.) colonies.
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened	Seasonally moist soils and wet meadows of drainages below 7,000 feet elevation

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. Activity within 1-mile of an eagle nest 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. No eagle roosts are present within 1-mile of the proposed project area. The North Platte River corridor near Saratoga has been designated as a crucial nesting area for the bald eagle.

Mountain plover. Mountain plover breeding and wintering habitats include grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. Plovers may nest on sites where vegetation is sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat.

To minimize potential adverse impacts to plovers in sites planned for development, the Service recommends surveys for mountain plovers in all suitable habitat as well as avoidance of nesting areas from April 10 through July 10. Please refer to the *Mountain Plover Survey Guidelines* (March 2002), for information regarding surveys and protection stipulations. For instance, to avoid "take" under the Act, the Service recommends that if an active mountain plover nest site is found, project activities near the nest site should be delayed 37 days or 7 days post hatching. If a brood of flightless chicks is observed, activities should be delayed at least 7 days. Cessation of disturbance in occupied plover habitat during the breeding season will help to protect nests and flightless broods. While the Service believes that surveys and avoidance of nesting and brood rearing areas will reduce the chances of direct impacts to and mortality of individual mountain plovers within the area, we also recommend consideration of changes in habitat suitability and habitat loss during project planning.

We strongly encourage the lead Federal agency to develop protective measures, with an assurance of implementation should mountain plovers be found within the project area. Although conferencing on species proposed for listing is only required when the proposed action is likely to jeopardize that species, development of protective measures through conferencing can expedite consultation requirements should the species be listed prior to the completion of the project.

Black-footed ferret. Black-footed ferrets may be affected if prairie dog towns are impacted. If black-tailed prairie dog (*Cynomys ludovicianus*) towns or complexes greater than 79 acres or white-tailed prairie dog (*Cynomys leucurus*) towns or complexes greater than 200 acres will be disturbed, surveys for ferrets are 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 town or complex 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 by proposed project activities, you should contact this office for guidance on ferret surveys.

Ute ladies'-tresses. Ute ladies'-tresses is a perennial, terrestrial orchid with stems 8 to 20 inches tall, and white or ivory flowers clustered into a spike arrangement at the top of the stem. *Spiranthes* 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. *Spiranthes* 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. *Spiranthes* 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. 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 species. 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*), Eskimo curlew (*Numenius borealis*), 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 proposed critical habitat for 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, soil compaction and water treatment facilities. Any actions that may result in a water depletion to the Platte River system should be identified. The document also should include an estimate of the amount and timing (by month) of average annual water depletion (both existing and new depletions), and should describe methods of arriving at such estimates.

CANDIDATE SPECIES

The species that is a candidate for listing as threatened or endangered that may occur within the project area is identified below. Many Federal agencies have policies to protect candidate

species from further population declines. We would appreciate receiving any information available on the status of this species in or near the project area. In addition, if this species is listed prior to the completion of your project, unnecessary delays may be avoided by considering project impacts to this candidate now.

Species

Expected Occurrence

Black-tailed prairie dog

Grasslands generally east of the continental divide

Black-tailed prairie dog. After reviewing all available scientific and commercial information, on February 4, 2000, the Service determined that listing of the black-tailed prairie dog as threatened throughout its range was warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17). Upon publication of this notice of 12-month petition finding, the black-tailed prairie dog was added to the Service's candidate species list.

Prairie dogs are small, stout ground squirrels. The total length of an adult black-tailed prairie dog is approximately 14-17 inches. The weight of an individual ranges from 1 to 3 pounds. Individual appearances within the species vary in mixed colors of brown, black, gray, and white. The black-tipped tail is characteristic. Black-tailed prairie dogs are diurnal, burrowing mammals and spend most of the day above ground. They do not hibernate as do white-tailed, Gunnison's, and Utah prairie dogs. The species is very social, living in population aggregations called colonies, towns, or villages. Groups of colonies comprise a complex.

Historically, black-tailed prairie dogs were one of the most conspicuous and characteristic residents of the short-grass and mixed-grass prairies of the United States. Historic range included portions of 11 States, Canada, and Mexico. Today, the species occurs from extreme southern Canada to northeastern Mexico and from approximately the 100th meridian west to the Rocky Mountains. It is present in 10 states including Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. The species has been extirpated in Arizona since as early as 1932. Black-tailed prairie dogs may be found scattered in remnant populations throughout much of the range that it once occupied. A significant portion of existing occupied habitat range wide occurs in a few large complexes.

The Service recommends that Federal, State, and other parties give consideration to candidate species in environmental planning. Questions concerning potential impacts to black-tailed prairie dog populations should be directed to our office at the letterhead address.

Should this species be proposed for listing, the lead Federal agency would be required to confer with this office if that agency determines their action (i.e., approval of the project) is likely to jeopardize the continued existence of this species.

Endangered Species Act Compliance

Should the proposed action incur future Federal agency involvement (through funding, permitting, licensing, or other authorization), then the involved Federal agency will be required

to assure that its responsibilities under section 7(a)(2) of the Act (50 CFR §402.13) are met. Section 7 (a)(2) requires consultation with the Service when a Federal action (as identified above) may affect a listed endangered or threatened species. This consultation will ensure that any action authorized, funded or carried out by a Federal agency is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The process is initiated by the Federal agency after it has determined if its action may affect (adversely or beneficially) a listed species. Section 7(a)(4) requires conferencing with the Service when a federal action is likely to jeopardize the continued existence of a proposed species or result in destruction or an adverse modification of proposed critical habitat.

Migratory Birds

The Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the MBTA states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The Bald and Golden Eagle Protection Act, 16 U.S.C. 668, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

Work that could lead to the take of a migratory bird including an eagle, their young, eggs, or nests should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of one or both of the above statutes. Removal of any active migratory bird nest or nest tree is prohibited. Permits for nest manipulation, including removal or relocation may, under certain circumstances, be issued for inactive nests only. For golden eagles, inactive nest permits are limited to activities involving resource extraction or human health and safety. Mitigation, as determined by the local Service field office, may be required for loss of these nests. No permits will be issued for an active nest of any migratory bird species, unless removal of an active nest is necessary for reasons of human health and safety. Therefore, if nesting migratory birds are present on, or near the project area, timing is a significant consideration and needs to be addressed in project planning.

If nest manipulation is proposed for this project, the project proponent should contact the Service's Migratory Bird Office in Denver at 303-236-8171 to see if a permit can be issued for this project. No nest manipulation is allowed without a permit. If a permit cannot be issued, the project may need to be modified to ensure take of a migratory bird or eagle, their young, eggs or nest will not occur.

Wetlands/Riparian Areas

The Service recommends measures be taken to avoid wetland losses in accordance with Section 404 of the Clean Water Act, Executive Order 11990 (wetland protection) and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands." Wetlands perform significant ecological functions which include: 1) providing habitat for numerous aquatic and terrestrial wildlife species, 2) aiding in the dispersal of floods, 3) improving water quality through retention and assimilation of pollutants from storm water runoff, and 4)

recharging the aquifer. Wetlands also possess aesthetic and recreational values. The Service recommends avoiding any wetlands within the proposed project corridor. If wetlands may be unavoidably destroyed or degraded by the proposed project, those wetlands in the project area should be inventoried and fully described in terms of functions and values. Acreage of wetlands, by type, should be disclosed and specific actions outlined to minimize impacts and compensate for all unavoidable wetland impacts.

Riparian or streamside areas are a valuable natural resource and impacts to these areas should be avoided whenever possible. Riparian areas are the single most productive wildlife habitat type in North America. They support a greater variety of wildlife than any other habitat. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation as well as improving water quality, maintaining the water table, controlling flooding, and providing shade and cover. Any potential, unavoidable encroachment into these areas should be minimized and quantitatively assessed in terms of functions and values, areas and vegetation type lost, potential effects on wildlife, and streams (bank stability, linear feet of impacts, and water quality). Measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project.

Any bridge removal and salvaging activities should be as least damaging to land and water resources as practicable. We recognize the potential for sedimentation and erosion during and after project abandonment activities. Therefore, we recommend the use of appropriate sedimentation and erosion control devices (e.g., silt fences, hay bales, erosion control netting, erosion bales, soil retention blankets, temporary sediment control basins) during and after salvage operations until the areas adjacent to streams, riparian areas, and wetlands are stabilized with a permanent cover of native vegetation. In addition, we also recommend that appropriate measures be taken in order to prevent sediment, debris, and pollutants from entering streams, riparian areas, and wetlands within the project area.

Thank you for the opportunity to review the proposed work. Please keep this office informed of any developments or decisions concerning this project. If you have any questions regarding this letter or your responsibilities under the Act, please contact Melissia Carter of my staff at the letterhead address or phone (307) 772-2374, extension 29.

Sincerely,



Brian T. Kelly
Field Supervisor
Wyoming Field Office



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

EXHIBIT 7

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@dc.bjllp.com

June 13, 2003

National Park Service
Recreational Resources Assistance Division
1849 C Street, NW
Washington, D.C. 20240-0001

**RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad
Company, Inc.--Abandonment Exemption--In Carbon County,
Wyoming**

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell
Attorney for:
Wyoming and Colorado Railroad Company, Inc.

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@dc.bjllp.com

June 13, 2003

Department of Environmental Quality
Herscheler Building 4-W
122 W. 25th Street
Cheyenne, WY 82002

**RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad
Company, Inc.--Abandonment Exemption--In Carbon County,
Wyoming**

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are 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.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell

Attorney for:

Wyoming and Colorado Railroad Company, Inc.

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@dc.bjllp.com

June 13, 2003

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

**RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad
Company, Inc.--Abandonment Exemption--In Carbon County,
Wyoming**

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are 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.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell

Attorney for:

Wyoming and Colorado Railroad Company, Inc.



The State
of Wyoming



Department of Environmental Quality

Dave Freudenthal, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMIN/OUTREACH (307)777-7758 FAX 777-3610	ABANDONED MINES (307)777-6145 FAX 777-6462	AIR QUALITY (307)777-7391 FAX 777-5616	INDUSTRIAL SITING (307)777-7369 FAX 777-6937	LAND QUALITY (307)777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307)777-7752 FAX 777-5973	WATER QUALITY (307)777-7781 FAX 777-5973
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June 23, 2003

EXHIBIT 9

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

re: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad Company,
Inc. - Abandonment Exemption - In Carbon County, Wyoming

Dear Mr. Morell:

I received the letter of June 13 asking for a review and comments for the Wyoming and Colorado Railroad Company Abandonment Project with respect to the Department of Environmental Quality Water Quality Division's concerns.

There are two Water Quality Division (WQD) permits that may apply to your project. Any or all of them may apply depending on the eventual scope of the project.

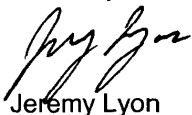
- ☐ Temporary Discharge Permit. Any discharges to "waters of the state" must be permitted under the National Pollutant Discharge Elimination System (NPDES) program. This program is part of the federal Clean Water Act, but is administered by the WQD. Coverage is required for discharges from cofferdam dewatering, discharges from hydrostatic pipeline testing, or discharge of other waste waters to waters of the state. For clarification waters of the state include rivers, streams, dry draws, wetlands, lakes, reservoirs and even stock ponds. The type of activity proposed can most likely be covered under the general permit for temporary discharges. This permit will require some sampling and will incorporate effluent limits for any constituents of concern. Roland Peterson (307-777-7090) can provide additional information.
- ☐ Storm Water Associated with Construction Activities. This permit is required any time a project results in clearing, grading, or otherwise disturbing one or more acres. The disturbed area does not need to be contiguous. The permit is required for surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpiling areas, equipment staging and maintenance areas and any other disturbed areas

associated with construction. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for filing a Notice of Intent (NOI) and complying with the provisions of the general permit. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact Barb Sahl at 307-777-7570.

- ☐ Section 404. While not a state permit, this project will require a section 404 permit from the US Army Corps of Engineers. Any time work occurs within waters of the US a 404 permit may be required. Please contact the Corps (307-772-2300) for specific information regarding jurisdiction and requirements.

These are the permits most likely to affect your project. Also, every effort to prevent erosion of any kind should be taken. Any sediment taken away due to runoff and collection by the storm drainage system can effect the water quality of the receiving water. If you have any questions please contact the persons listed above or myself at 307-777-7588.

Sincerely,



Jeremy Lyon
Environmental Senior Analyst
Water Quality Division

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@dc.bjllp.com

June 13, 2003

U.S. Army Engineer
Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009-4942

**RE: Docket No. AB-307 (Sub-No. 5X), Wyoming and Colorado Railroad
Company, Inc.--Abandonment Exemption--In Carbon County,
Wyoming**

Dear Sir/Madam:

Wyoming and Colorado Railroad Company, Inc. ("WYCO") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about July 18, 2003, for WYCO to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, WY, and milepost 24.28, at Saratoga, WY. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. WYCO does not believe any permits under Section 404 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



Karl Morell
Attorney for:
Wyoming and Colorado Railroad Company, Inc.



REPLY TO
ATTENTION OF:

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

EXHIBIT 11

June 17, 2003

Wyoming Regulatory Office

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

Dear Mr. Morell:

This is in response to your letter dated June 13, 2003, that we received on June 17th. In your letter you described the Wyoming and Colorado Railroad Company, Inc. (WYCO) plan to file a "Petition for Exemption" with the Surface Transportation Board (STB) to abandon its 23.71-mile rail line located between milepost 0.57, near Walcott, Wyoming and milepost 24.28, at Saratoga, Wyoming. You asked us to review the project relative to any concerns our agency may have over impacts to wetlands or 100-year floodplains.

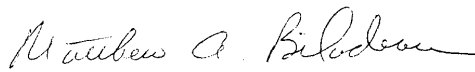
The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into wetlands and other waters of the United States in Wyoming as authorized primarily by Section 404 of the Clean Water Act (33 U.S.C. 1344). Information on Section 404 program requirements in Wyoming can be obtained by visiting our web site at <http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

Based on the information provided, the project does not involve the placement of dredged or fill material in wetlands or other waters of the United States. Therefore, Department of the Army authorization is not required for the project under Section 404 of the CWA.

Please note, in response to your inquiry, that it is not necessary to contact our office for projects that do not involve the placement of fill material in wetlands or other waters of the United States. You may wish to contact this office on future projects where the proposed action involves placement of fill into an area nearby, adjacent to, or in waterways and wetlands.

This determination does not eliminate the requirement to obtain any other applicable federal, state, tribal, or local permits that may be required. If you have any questions regarding this determination, please contact me at (307) 772-2300 and reference file No. 200340101. Thank you for your interest in complying with the requirements of the Corps regulatory program.

Sincerely,

A handwritten signature in cursive script, reading "Matthew A. Bilodeau".

Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office