

August 7, 2020

VIA EMAIL

Kathryn K. Floyd

T 202.344.4696

F 202.344.8300

KKFloyd@Venable.com

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

Re: Finance Docket No. 36284 - Seven County Infrastructure Coalition - Uinta Basin
Railway Project – Voluntary Mitigation Measures

Dear Ms. Rutson:

Please find enclosed the Seven County Infrastructure Coalition's proposed voluntary mitigation measures for the Uinta Basin Railway project. The Coalition submits these voluntary mitigation measures for consideration in the Draft Environmental Impact Statement that is currently being prepared by the Surface Transportation Board's Office of Environmental Analysis.

If there are any questions regarding the proposed voluntary mitigation measures, please do not hesitate to contact me.

Sincerely,



Kathryn K. Floyd

Encl.

cc: Joshua Wayland
Danielle Gosselin
Debra Rogers
Mike McKee
Kevin Keller
Eric Johnson

Introduction

This report presents the Seven County Infrastructure Coalition's (Coalition or Applicant) draft Voluntary Mitigation Measures (VMs) for the proposed Uinta Basin Railway. These VMs were developed based on the Coalition's understanding of the environmental and built environmental conditions within the alternative rail corridors and are based on feedback received during the environmental review process to date. These VMs may be carried out either by the Coalition or by its agents or its construction contractor(s) as appropriate.

Voluntary Mitigation Measures

The following sections provide the Applicant's VMs. They are presented by resource category.

VOLUNTARY MITIGATION MEASURES FOR CONSTRUCTION AND RAIL OPERATIONS SAFETY

- VM 1. The Applicant will follow all applicable federal Occupational Safety and Health Administration, Federal Railroad Administration (FRA), tribal and state construction and operational safety regulations to minimize the potential for accidents and incidents during construction and operation of the rail line.

VOLUNTARY MITIGATION MEASURES FOR GRADE CROSSING SAFETY

- VM 2. The Applicant will consult with appropriate federal, tribal, state, and local transportation agencies to determine the final design of the at-grade crossing warning devices. Implementation of all grade-crossing warning devices on public roadways will be subject to review and approval, depending on location, by the Ute Indian Tribe, the Utah Department of Transportation (UDOT), the U.S. Department of Agriculture (USDA) Forest Service, or Carbon, Duchesne, or Uintah Counties. The Applicant will follow standard safety designs for each at-grade crossing for proposed warning devices and signs. These designs will follow the Federal Highway Administration's *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD) as implemented by UDOT and the American Railway Engineering and Maintenance-of-Way Association (AREMA) standards for railroad warning devices. They will also comply with applicable UDOT, tribal, city, and county requirements.
- VM 3. For construction of road crossings, when reasonably practical, the Applicant will consult with tribal and local transportation officials regarding detours and associated signs, as appropriate, or maintain at least one open lane of traffic at all times to allow the quick passage of emergency and other vehicles.
- VM 4. The Applicant will develop a plan to consult with private landowners to determine the final details and reasonable signage for grade crossings on private roads.
- VM 5. Where practical, at-grade crossings for minor roads and private roads will be combined and consolidated into right-angle, at-grade crossings for safety, and in order to reduce the total the number of highway-rail at-grade crossings.

- VM 6. The Applicant will consult with affected communities regarding ways to improve visibility at highway-rail at-grade crossings, including by clearing vegetation or installing lights at the crossing during construction.

VOLUNTARY MITIGATION MEASURES FOR HAZARDOUS MATERIALS HANDLING AND SPILLS DURING CONSTRUCTION

- VM 7. Prior to initiating any project-related construction activities, the Applicant will develop a spill prevention, control, and countermeasures plan in consultation with federal, tribal, state and local governments. The plan shall specify measures to prevent the release of petroleum products or other hazardous materials during construction activities and contain such discharges if they occur.
- VM 8. In the event of a spill over the applicable reportable quantity, the Applicant will comply with its spill prevention, control, and countermeasures plan and applicable federal, state, local and tribal regulations pertaining to spill containment, appropriate clean-up, and notifications.
- VM 9. The Applicant will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous materials are encountered during construction. The Applicant will document all activities associated with hazardous material spill sites and hazardous waste sites and will notify the appropriate state, local, and tribal agencies according to applicable regulations. The goal of the measures is to ensure the proper handling and disposal of contaminated materials including contaminated soil, groundwater, and stormwater, if such materials are encountered. The Applicant will use disposal methods that comply with applicable solid and hazardous waste regulations.
- VM 10. The Applicant will ensure that gasoline, diesel fuel, oil, lubricants, and other petroleum products are handled and stored to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs in the project area as a result of rail construction, operation, or maintenance and exceeds specific quantities or enters a water body, the Applicant (or its agents) will be responsible for promptly cleaning up the spill and notifying responsible agencies in accordance with federal, state, and tribal regulations.

VOLUNTARY MITIGATION MEASURES FOR HAZARDOUS MATERIALS TRANSPORT AND EMERGENCY RESPONSE

- VM 11. The Applicant will prepare a hazardous materials emergency response plan to address potential derailments or spills. This plan will address the requirements of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and FRA requirements for comprehensive oil spill response plans. The Applicant will distribute the plan to federal, state, local, and tribal emergency response agencies. This plan shall include a roster of agencies and people to be contacted for specific types of emergencies during rail construction, operation and maintenance activities, procedures to be followed by particular rail employees, emergency routes for vehicles, and the location of emergency equipment.

- VM 12. The Applicant will work with the affected communities to facilitate the development of cooperative agreements with other emergency service providers to share service areas and emergency call response.
- VM 13. After construction is completed, the Applicant will implement a desktop simulation of its emergency response drill procedures with the voluntary participation of local emergency response organizations. If necessary, the Applicant will update the hazardous materials emergency response plan based on the findings and observations of the simulated emergency response.
- VM 14. In the event of a reportable hazardous materials release, the Applicant will notify appropriate federal, state, and tribal environmental agencies as required under federal, state, and tribal law.
- VM 15. The Applicant will comply with FRA, Pipeline and Hazardous Materials Safety Administration, Transportation Security Administration regulations and tribal ordinances or plans applicable to the safe and secure transportation of hazardous materials.

VOLUNTARY MITIGATION MEASURES FOR TOPOGRAPHY, GEOLOGY, AND SOILS

- VM 16. The Applicant will limit ground disturbance to only the areas necessary for project-related construction activities.
- VM 17. During project-related earth-moving activities, the Applicant will require the contractor to remove topsoil and segregate it from subsurface soils. Where practical, the contractor will also stockpile topsoil to be applied later during reclamation activities in disturbed areas along the right-of-way.
- VM 18. The Applicant will place the topsoil and other excavated soil stockpiles in areas away from environmentally or culturally sensitive areas and will use appropriate erosion-control measures on and around stockpiles to prevent or contain erosion.
- VM 19. The Applicant will submit a notice of intent to request permit coverage under Utah Pollutant Discharge Elimination System Construction General Permit UTRC00000 for construction stormwater management.
- VM 20. The Applicant will submit an application for coverage under the National Pollutant Discharge Elimination System stormwater construction permits pursuant to Section 402 of the Clean Water Act for construction stormwater management on tribal land.
- VM 21. The Applicant will develop a stormwater pollution prevention plan, which will include construction best management practices (BMPs) to control erosion and reduce the amount of sediment and pollutants entering surface waters, groundwater, and waters of the U.S. The Applicant will require its construction contractor(s) to follow all water quality control conditions identified in all permits, including the Section 404 permit from the U.S. Army Corps of Engineers (USACE) and the Section 401 Water Quality Certification from the Utah Department of Environmental Quality and the U.S. Environmental Protection Agency.

VM 22. The Applicant will revegetate disturbed areas, where practical and in consultation with the Ute Indian Tribe as applicable, when construction is completed. The goal of reclamation will be the rapid and permanent re-establishment of native ground cover on disturbed areas to prevent soil erosion, where feasible. If weather or seasonal conditions prevent vegetation from being quickly re-established, the Applicant will use measures such as mulching, erosion-control blankets, or dust-control palliatives to prevent erosion until vegetative cover is established. The Applicant will monitor reclaimed areas for 3 years. For areas where efforts to establish vegetative cover have been unsuccessful after 1 year, the Applicant will reseed annually for up to 3 years as needed.

VOLUNTARY MITIGATION MEASURES FOR AIR QUALITY

VM 23. Where practical and in consultation with the Ute Indian Tribe as applicable, the Applicant will implement appropriate fugitive-dust controls such as spraying water or other dust treatments in order to reduce fugitive-dust emissions created during project-related construction activities. The Applicant will require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

VM 24. The Applicant will work with its contractor(s) to make sure that construction equipment is properly maintained and that mufflers and other required pollution- control devices are in working condition in order to limit construction-related air pollutant emissions.

VOLUNTARY MITIGATION MEASURES FOR WATER RESOURCES

WETLANDS

VM 25. The Applicant will obtain a permit from USACE under Section 404 of the Clean Water Act before initiating project-related construction activities in wetlands and other jurisdictional waters of the United States. The Applicant will comply with all conditions of the Section 404 permit.

VM 26. The Applicant will obtain a Section 401 Water Quality Certification from the State of Utah and Environmental Protection Agency. The Applicant will incorporate the conditions of the Section 401 Water Quality Certification into its construction contract specifications and will monitor the project for compliance.

VM 27. The Applicant will minimize impacts to wetlands to the extent practicable in the final design of the selected alternative. After all practicable steps have been taken to minimize impacts to wetlands, the Applicant agrees to prepare a compensatory mitigation plan for any remaining wetland impacts in consultation with the Ute Indian Tribe where applicable. Compensatory mitigation may include any one or a combination of the following five methods: restoring a previously existing wetland or other aquatic site, enhancing an existing aquatic site's functions, establishing (that is, creating) a new aquatic site, preserving an existing aquatic site, and/or purchasing credits from an authorized wetland mitigation bank.

STREAMS AND PERENNIAL WASHES

- VM 28. Bridges at perennial streams will be designed to maintain a natural substrate.
- VM 29. The Applicant will obtain stream alteration permits from the Utah Division of Water Rights for crossing waters of the state, and any applicable tribal permits, and will comply with all conditions of the permits.
- VM 30. The Applicant will construct stream crossings during low-flow periods, when practical.
- VM 31. When practical and in consultation with the Ute Indian Tribe where applicable, the Applicant will relocate natural streams using bioengineering methods, where relocation is needed and is unavoidable.
- VM 32. For streams and rivers with a floodplain regulated by the Federal Emergency Management Agency (FEMA) or the Ute Indian Tribe, the Applicant will design the stream crossing with the goal of not impeding floodwaters and not raising water surface elevations to levels that would change the regulated floodplain boundary. If flood elevations change, the Applicant will coordinate with FEMA and/or tribal or local floodplain managers to obtain a Letter of Map Revision where construction of bridges, culverts, or embankments results in an unavoidable increase greater than 1 foot to the 100-year water surface elevations.

VOLUNTARY MITIGATION MEASURES FOR BIOLOGICAL RESOURCES

SENSITIVE SPECIES

- VM 33. The Applicant will comply with any conditions and mitigation commitments contained in a biological opinion for sensitive species that could potentially be impacted by the project.
- VM 34. The Applicant will require its contractor(s) to comply with the requirements of the Migratory Bird Treaty Act in consultation with the Ute Indian Tribe as applicable. The following measures will be conducted by the Applicant and/or its contractor(s):
- a. Where practical, any ground-disturbing, ground-clearing activities or vegetation treatments will be performed before migratory birds begin nesting or after all young have fledged.
 - b. If activities must be scheduled to start during the migratory bird breeding season, the Applicant will take steps to prevent migratory birds from establishing nests in the potential impact area. Birds can be hazed to prevent them from nesting until egg(s) are present in the nest. The Applicant or its agents will not haze or exclude nest access for migratory birds and other sensitive avian species.
 - c. If activities must be scheduled during the migratory bird breeding season, a qualified biologist will perform a site-specific survey for nesting birds starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young will not be hazed, and nests with eggs or young will not

be moved until the young are no longer dependent on the nest. A qualified biologist will confirm that all young have fledged.

- d. If nesting birds are found during the survey, the Applicant will establish appropriate seasonal or spatial buffers around nests. Vegetation treatments or ground-disturbing activities within the buffer areas will be postponed, where feasible, until the birds have left the nest. A qualified biologist will confirm that all young have fledged.

SAGE-GROUSE

- VM 35. The Applicant will execute a Mitigation Agreement with the Utah Division of Wildlife Resources (UDWR) to address impacts within the Carbon Sage-grouse Management Area (CSGMA). The Applicant has discussed several potential mitigation strategies with UDWR and other local, state, tribal and federal stakeholders during the EIS process. The final CSGMA Mitigation Agreement will define the appropriate mitigation ratio for the project type and its impacts and the final mitigation approach.
- VM 36. The Applicant shall comply with the Ute Indian Tribe's Greater Sage-Grouse Conservation Ordinance as applicable.
- VM 37. If the selected alternative impacts Bureau of Land Management (BLM) lands, the Applicant will request that BLM join as a signatory to the CSGMA Mitigation Agreement.

VEGETATION

- VM 38. The Applicant will prepare a noxious and invasive weed control plan in consultation with the Ute Indian Tribe where applicable. Where practical, the Applicant will include the policies and strategies in *Utah's Strategic Plan for Managing Noxious and Invasive Weeds* when designing response strategies for noxious and invasive weeds.
- VM 39. The Applicant will comply with any conditions and mitigation commitments contained in a biological opinion for sensitive plant species that could potentially be impacted by the project.

BIG GAME MOVEMENT

- VM 40. The Applicant will work with UDWR, the Ute Indian Tribe, and adjacent landowners to define areas of the right-of-way that can be left without fences to maintain big game migration corridors.
- VM 41. Where practical and necessary, the Applicant will install wildlife-safe fences to confine livestock within grazing allotments.

VOLUNTARY MITIGATION MEASURES FOR CULTURAL RESOURCES

- VM 42. The Applicant will work with the Ute Indian Tribe and others to develop training materials to educate construction supervisors about the importance of protecting cultural resources and the procedures for handling undocumented discoveries. The Applicant

will make reasonable efforts to include the Ute Indian Tribe in the presentation of these materials.

- VM 43. The Applicant will comply with the requirements of the Programmatic Agreement being developed by OEA, the Advisory Council on Historic Preservation (ACHP), Utah State Historic Preservation Office, the Ute Indian Tribe, and other federal and state agencies in consultation with federally recognized tribes and other consulting parties.

VOLUNTARY MITIGATION MEASURES FOR LAND USE

GENERAL LAND USE

- VM 44. If temporary construction easements on private property are needed, the Applicant will document the preconstruction conditions and, to the extent practical, will restore the land to its preconstruction condition after construction is complete.

GRAZING ALLOTMENTS

- VM 45. The Applicant will consult with landowners regarding grazing allotments and will install temporary fences during construction to allow continued grazing, where practicable. Once construction is complete, the Applicant will replace all permanent fences removed during construction.
- VM 46. Where practical, the Applicant will maintain livestock access to water sources or will relocate water sources, maintain vehicle and livestock access to grazing allotments, and install safety fences and signs for grazing allotment entrances and exits to enable continuance of livestock operations within grazing allotments.

UTILITIES AND FARMLAND IRRIGATION INFRASTRUCTURE

- VM 47. The Applicant will secure agreements with utilities to establish responsibility for protecting or relocating existing utilities, if impacted by construction.
- VM 48. The Applicant will coordinate with water districts to develop irrigation infrastructure protection or relocation plans, if irrigation infrastructure will be impacted by construction.

COMMUNITY OUTREACH

- VM 49. The Applicant will appoint a community liaison to consult with affected communities, businesses, and agencies and seek to develop cooperative solutions to local concerns regarding construction activities.
- VM 50. The Applicant will appoint a tribal community liaison to address the needs and concerns of the Ute Indian Tribe's members and communities and seek to develop cooperative solutions to concerns regarding construction activities and rail operations.
- VM 51. The Applicant will maintain a project website throughout the duration of construction to provide regular updates regarding construction progress and schedule.

VM 52. The Applicant will install construction warning and detour signs throughout the corridor and at recreation sites around the project area as needed.

NOISE AND VIBRATION

VM 53. The Applicant, in consultation with the Ute Indian Tribe, will comply with FRA regulations (49 Code of Federal Regulations Part 210) establishing decibel limits for train operation.

VM 54. The Applicant will work with its contractor(s) to make sure that project-related construction and maintenance vehicles are maintained in good working order with properly functioning mufflers to control noise.

VOLUNTARY MITIGATION MEASURES FOR RECREATION

VM 55. If needed for the selected alternative, the Applicant will obtain approval from the USDA Forest Service and will follow applicable conditions regarding access to, or temporary closure of, recreational features during construction.

VM 56. The Applicant will work with its construction contractor to maintain access to USDA Forest Service roads during construction, where feasible.