



SURFACE TRANSPORTATION BOARD

[Docket No. FD 36616]

Savage Tooele Railroad Company—Construction and Operation Exemption—Line of Railroad in Tooele County, Utah

On June 30, 2022, Savage Tooele Railroad Company (STR),¹ a noncarrier, filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate approximately 11 miles of rail line in Tooele County, Utah (the Line), connecting the Union Pacific Railroad Company (UP) Shafter Subdivision mainline at approximately milepost 897.94 near Burmester, Utah, to the new Lakeview Business Park in Grantsville, Utah (the Park). STR explains that the Line would reestablish the former Warner Branch connection to UP's Shafter Subdivision at Burmester, Utah, and that STR would provide common carrier service over the Line to enable tenants of the industrial park to ship and receive commodities and other products by rail. STR asked the Board to issue a preliminary decision addressing the transportation merits of the Line while the environmental review process was underway.

In a decision served on August 24, 2022, the Board instituted a proceeding under 49 U.S.C. 10502(b) and sought clarification on the plans for the right-of-way and track located between milepost 0.0 and milepost 1.04. *Savage Tooele R.R.—Const. & Operation Exemption—Line of R.R. in Tooele Cnty., Utah*, FD 36616, slip op. at 2 (STB served Aug. 24, 2022). Later, in a decision served on March 30, 2023, the Board denied STR's request for the Board to preliminarily address the transportation merits of the proposed Line prior to the completion of the environmental review process. *See Savage Tooele R.R.*, FD 36616 (STB served Mar. 30, 2023) (with Board Members Fuchs and

¹ STR is a wholly owned subsidiary of Savage Enterprises, LLC, and both are subsidiaries of Savage Companies. (Pet. 3.)

Schultz dissenting). The Board concluded that STR had not shown any “unique or compelling circumstances” to justify a conditional grant. *Id.* at 2-3. No comments opposing the transportation merits of STR’s petition were filed.

The Board’s Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (Draft EA) on September 29, 2023, analyzing the potential environmental impacts of the Line and requesting public comments, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370m-11. A Final Environmental Assessment (Final EA) containing additional environmental analysis and responding to the comments received on the Draft EA was issued on March 1, 2024. The Final EA recommends environmental conditions, including voluntary mitigation measures proposed by STR and mitigation developed by OEA, to avoid, minimize, or mitigate the potential environmental impacts of the proposed construction and operation of the Line.

After considering both the rail transportation merits and the potential environmental impacts, the Board will grant STR’s petition for exemption, authorizing STR to construct and operate over the Line, subject to the environmental mitigation measures set forth in the Final EA (attached as Appendix A).

BACKGROUND

According to STR, the Line would extend from the Park to an approximately 1.04-mile segment of track owned by UP connecting to UP’s Shafter Subdivision at Burmester, Utah.² (Pet. 4-5; STR Supp. 1-2, Sept. 20, 2022.) The Line comprises a portion of the former Warner Branch, which was owned and operated by UP’s predecessor, Western Pacific Railroad Company (WP). (Pet. 4.) WP sought and

² UP recently received an exemption from the Board to reinstitute common carrier service and operate over the 1.04-mile segment. *See Union Pac. R.R.—Operation Exemption—in Tooele Cnty., Utah*, FD 36741 (STB served Feb. 13, 2024).

received authority to abandon the Warner Branch in 1983. (*Id.* (citing *W. Pac. R.R.—Aban. Exemption—in Tooele Cnty., Utah*, FD 30208 (ICC served Aug. 9, 1983); *see also id.* at 2 n.1 (representing that due diligence by UP and STR indicated that the railroad line “had been formally abandoned by . . . 1983”).) STR then acquired UP’s rights and interests in the right-of-way and track between milepost 1.04 and milepost 6.94. (*Id.*) STR notes that the right-of-way and track of the Warner Branch have remained largely intact; however, in 2004 and 2015, UP deeded two parcels of the right-of-way—approximately 0.54 miles—to adjacent landowners. (*Id.* at 5.) STR states that these parcels will need to be reacquired and the track reconstructed, along with two at-grade rail crossings at State Highway 138 and Erda Way. (*Id.*) STR states that it plans to construct approximately five miles of new track extending the former Warner Branch into the Park, along with interchange and ancillary track within the Park, as well as approximately 2,500 feet of new interchange and ancillary track within the right-of-way near milepost 1.04. (*Id.* at 5-6.)

STR argues that construction and operation of the Line would provide common carrier freight service to and from the 1,700-acre Park through interchange with UP, thus providing tenant shippers with greater mode optionality, lower total emissions due to fewer truck movements, reduced overall truck traffic, improved road longevity, and greater business diversity within the Park itself. (*Id.* at 3-6; STR Supp. 1-2, Sept. 20, 2022.) The Board has received separate letters supporting STR’s petition from the State of Utah and the Utah Department of Transportation, the World Trade Center Utah, Congressman John Curtis, and Congressman Chris Stewart. (*See* State of Utah Ltr., July 20, 2022; Utah Dep’t of Transp. Ltr., July 15, 2022; World Trade Center Utah Ltr., July 15, 2022; Curtis Ltr., July 18, 2022; Stewart Ltr. July 27, 2022.) Following issuance of the Draft EA, the Board received a letter in support of the project, jointly signed by

Utah Congressmen Burgess Owens, Blake D. Moore, and John Curtis. (See Owens, Moore, Curtis Ltr., Oct. 24, 2023.)

On February 27, 2024, STR’s counsel filed a letter asking the Board issue a final decision on the merits of the petition no later than April 3, 2024. (See STR Ltr., Feb. 27, 2024.)

DISCUSSION

Rail Transportation Policy Analysis. The construction and operation of new railroad lines requires prior Board authorization, either through a certificate under 49 U.S.C. 10901 or—as requested here—an exemption under 49 U.S.C. 10502 from the prior approval requirements of section 10901. Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal “inconsistent with the public convenience and necessity.” *See Alaska R.R.—Constr. & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095, slip op. at 5 (STB served Nov. 21, 2011) (addressing the Board’s construction exemption process), *aff’d sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013).

Under section 10502(a), the Board shall, to the maximum extent permissible, exempt a proposal to construct and operate a new rail line from the prior approval requirements of section 10901 when the Board finds that: (1) application of those procedures is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (A) the proposal is of limited scope, or (B) the full application procedures are not necessary to protect shippers from an abuse of market power.

Based on the record, the proposed construction and operation—which was unopposed on the transportation merits—qualifies for an exemption under section 10502 from the formal application procedures of section 10901. The record shows that the Line, if constructed, would provide a rail transportation option to shippers and promote business diversity within the Park, as well as provide “greater mode optionality for

business park tenants, lower total emissions due to fewer truck movements, reduced overall truck traffic, and improved road longevity due to less wear and tear from trucks.” (Pet. 3-4.) There is currently no rail service at the Park, forcing the shippers to use trucks for their transportation needs and limiting the Park’s appeal to new businesses. (*Id.* at 3.) Moreover, no issues about the Line’s current or future financial viability have been raised.

For all of these reasons, construction and operation of the Line clearly supports the RTP. By providing the Park’s shippers with a freight rail option that does not currently exist, the Line would enhance the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers and other transportation modes, to meet the needs of the public. 49 U.S.C. 10101(4), (5). Introducing a new, competitive option to the truck-served park would also facilitate competition and the demand for service to establish reasonable rates for rail transportation. 49 U.S.C. 10101(1). Also, by supporting truck-to-rail diversions, the Line would increase overall energy efficiency, thereby encouraging and promoting energy conservations. 49 U.S.C. 10101(14). And as explained further below, because there would be no or de minimis environmental impacts with the final environmental mitigation recommended by OEA, exempting the proposed construction and operation would be consistent with 49 U.S.C. 10101(8). In addition, by exempting the proposed construction and operation from the requirements of section 10901, the Board would promote the RTP by minimizing the need for Federal regulatory control over the rail transportation system, reducing regulatory barriers to entry, and providing for the expeditious handling and resolution of regulatory proceedings. 49 U.S.C. 10101(1), (2), (15).

Consideration of the proposed construction and operation of the Line under section 10901 also is not necessary to protect shippers from an abuse of market power.³ As explained, the Line would enhance competition by providing rail service where it does not currently exist, thereby creating an alternative mode of transportation for current and future shippers at the Park.

Environmental Analysis. NEPA requires Federal agencies to examine the environmental impacts of proposed Federal actions and to inform the public concerning those effects. *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize the construction and operation of a new rail line as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). *Lone Star R.R.—Track Constr. & Operation Exemption—in Howard Cnty., Tex.*, FD 35874, slip op, at 4 (STB served Mar. 3, 2016). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Once the adverse environmental effects have been adequately identified and evaluated, the Board may conclude that other values outweigh the environmental costs. *Id.* at 350-51.

There has been a thorough environmental and historic review in this case. The Draft EA considered both STR's proposed action and the no-action alternative. The Draft EA explained that because the Line would be built on existing rail right-of-way, there would be fewer environmental impacts than would be the case with construction on an entirely new right-of-way. (Draft EA S-3.) The Draft EA concluded that STR's

³ Given this finding regarding the lack of need for shipper protection, the Board need not determine whether the transaction is limited in scope. 49 U.S.C. 10502(a)(2).

proposed action would have no or de minimis impacts in several environmental resource areas, including air quality, energy, land use, and historic resources. For resource areas that have the potential to be impacted, including noise and grade crossing safety and delay, OEA proposed preliminary mitigation, including both voluntary mitigation and mitigation developed by OEA, to minimize those impacts. (*Id.* at S-5 to S-10.) The Draft EA also explained that an Environmental Impact Statement (EIS) is unnecessary and that an EA is the appropriate level of environmental documentation for this case. (*Id.* at 1-6.)

OEA received 21 comments on the Draft EA. (*See* Final EA App. I.) The Final EA, issued on March 1, 2024, responded to all comments received on the Draft EA. (*Id.* at S-6.) In response to comments arguing that environmental impacts from development of the Park should be treated as indirect impacts from construction of the Line, the Final EA explained that the Park already exists, is operating and serving shippers by truck, and that local jurisdictions have been supporting the Park and other industrial development projects in the area regardless of whether the Line is built. (*See, e.g.*, Final EA 3-74 to 3-76; *id.*, App. I at S-18.; *see also* Final EA 3-77 (explaining that impacts from development of an inland port located adjacent to the northern end of the Line would not be indirect impacts from the Line because, among other things, STR “does not plan to serve the inland port development or any new or existing businesses outside the [Park]”).) In these circumstances, the Final EA considered reasonably foreseeable impacts from the Park and certain other projects located near the Line within its cumulative impacts analysis, and not as indirect impacts. (Final EA at 3-79.) The Final EA also recommended that any final decision by the Board authorizing the construction and operation of the Line be subject to the environmental mitigation conditions in the Final EA. (*Id.*)

The Board will adopt the analysis and conclusions made by OEA in both the Draft EA and Final EA, including OEA’s final recommended environmental mitigation

measures. (*See id.* at 4-1 to 4-12.) The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the proposed construction and operation of the Line and properly determined that with the recommended environmental mitigation in the Final EA, the proposed Line will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary.

CONCLUSION

Construction and operation of the Line will give shippers a new freight rail option, which will support business diversification within the Park and more competitive transportation rates. With OEA's final recommended mitigation, there will be no potential for significant environmental impacts; indeed, the Line will facilitate the diversion of traffic from truck to rail, thereby increasing overall energy efficiency and reducing emissions from trucks. After carefully considering the transportation merits and environmental issues, the Board, considering the entire record, finds that the petition for exemption to allow STR's construction and operation of the approximately 11-mile line of railroad in Tooele County assessed in the Draft and Final EAs should be granted, subject to compliance with the environmental mitigation measures in Appendix A.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts STR's construction and operation of the Line from the prior approval requirements of 49 U.S.C. 10901.
2. The Board adopts the environmental mitigation measures set forth in appendix A to this decision and imposes them as conditions to the exemption granted here.
3. Notice will be published in the **Federal Register**.
4. Petitions for reconsideration must be filed by April 22, 2024.
5. This decision is effective May 1, 2024.

Decided: April 1, 2024.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Board Member Schultz, joined by Board Member Fuchs, dissented in part with a separate expression.

BOARD MEMBER SCHULTZ, with whom BOARD MEMBER FUCHS joins, dissenting in part:

I join the majority's decision except for the last mitigation measure. In response to EPA's environmental comments, OEA proposed, and the Board now adopts, language stating that STR's climate change plan "shall use" certain CEQ guidance to achieve objectives in an executive order. I would not include that requirement as it is drafted. For one, it is vague in what it requires. Moreover, relatedly, and more importantly, its impacts are uncertain. I do not know whether guidance designed for Federal agencies should be wholesale applied to businesses; whether that guidance could be better tailored to the specifics of this particular project; or whether STR has the information that would be necessary to implement that guidance effectively. Absent more detail and more information about likely compliance strategies, including both their effectiveness and burden, I would not impose the condition in its current form.

Kenyatta Clay,

Clearance Clerk.

General Mitigation Measures

STR's Voluntary Mitigation Measures

VM-General-01. STR will follow all applicable Federal Occupational Safety and Health Administration, Federal Railroad Administration, and operational safety regulations to minimize the potential for accidents and incidents during project-related construction and operation.

VM-General-02. STR's contractor(s) will limit ground disturbance to only the areas necessary for project-related construction.

VM-General-03. STR's contractor(s) will stockpile excavated soil in areas away from environmentally or culturally sensitive areas and will use appropriate erosion control measures to prevent or contain erosion.

VM-General-04. STR's contractor(s) will perform finish grading and surface disturbed areas with appropriate best management practices, where practical and in consultation with the City of Erda when construction is completed.

VM-General-05. Prior to project-related construction, STR will secure agreements with utility owners to establish responsibility for protecting or relocating existing utilities, if impacted by construction.

VM-General-06. STR will appoint a liaison to consult with communities, businesses, agencies, tribal governments, educational institutions, and nonprofit organizations to provide general project information, progress on construction, information on rail operations and safety as needed and will seek to develop cooperative solutions to local concerns regarding project-related construction.

VM-General-07. STR and its contractor(s) will consult with appropriate adjacent landowners for coordination of construction schedules and temporary access during project- related construction.

VM-General-08. STR will install construction warning and detour signs throughout the corridor and at recreation sites around the project area as needed.

VM-General-09. During project-related construction activities, STR and its contractors will comply with speed limits and applicable laws and regulations when operating vehicles and equipment on public roadways.

VM-General-10. STR will design and construct any new temporary or permanent access roads and road realignments to comply with the reasonable requirements of the UDOT Roadway Design Manual (UDOT 2020), other applicable road construction guidance (e.g., county road right-of-way encroachment standards), and agency or landowner requirements regarding the establishment of safe roadway conditions.

OEA's Final Recommended Mitigation

MM-General-01. If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions, and upon petition by any party who demonstrates such material change, the Board shall consider revising its final mitigation, if warranted and appropriate.

Noise

STR's Voluntary Mitigation Measures

VM-Noise-01. STR will comply with Federal Railroad Administration regulations (49 CFR part 210) establishing decibel limits for train operation.

VM-Noise-02. STR 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.

VM-Noise-03. Prior to commencing construction activities STR will confer with the City of Erda, UDOT, and Tooele County about the establishment of Quiet Zones at Route 138 and Erda Way and will assist the City of Erda and Tooele County in identifying appropriate supplemental or alternative safety measures, practical operational methods, or technologies that lead to the establishment of Quiet Zones at those locations, in accordance with FRA's rules and procedures.

VM-Noise-04. During project-related construction, STR's daily construction schedule will adhere to time restrictions that limit construction noise prior to 7:00 a.m. or after 5:00 p.m. to the maximum extent practicable, with the exception of road crossing construction, which may occur on a 24/7 schedule to lessen traffic interruptions.

VM-Noise-05. Prior to project-related construction outside of local time restrictions within the city limits of the City of Erda, STR will consult with and comply with the reasonable requirements of the City of Erda for a special use permit to allow nighttime construction.

OEA's Final Recommended Mitigation

MM-Noise-01. STR shall employ reasonable and feasible noise mitigation, such as building sound insulation where OEA identified one receptor (receptor #6) that would experience noise impacts at or greater than the regulatory analytical threshold of 65 day-night average sound level (DNL)/+3 A-weighted decibels (dBA). STR shall implement the following in developing the building sound insulation:

- Using industry standard loudspeaker testing, the existing building sound insulation performance shall be determined in accordance with ASTM 966-90, *Standard Guide for Field Measurements of Airborne Sound Insulation of Building Facades and Façade Elements*.
- The design goal for the sound insulation shall be a 10 dBA noise reduction. The calculated Noise Level Reduction (NLR) improvement shall be at least 5 dBA. If the calculated NLR associated with acoustical replacement windows and doors is less than 5 dBA then no additional mitigation shall be required since the improvement would be minor and likely not noticeable. The overall goal of the required sound insulation analysis is to demonstrate that interior noise levels (with the Proposed Action) at receptor #6 would be 45 DNL or lower, and to implement sound insulation to result in an NLR improvement of 5 dBA or more, where feasible and reasonable based on the characteristics of the property.

MM-Noise-02. Because the modeled noise contour also comes close to adversely affecting several other receptors, STR shall measure train horn and wayside noise levels from actual train operations to verify the modeled noise contour location used in this Draft EA within one month of train operations reaching one roundtrip per day. STR shall take enough measurements of the actual train horn and wayside noise levels to demonstrate that Sound Exposure Level (SEL) values achieve a 90 percent confidence interval of 3 dBA or less. If the average measured SEL value is greater than the assumed 110 dBA for horn noise (measured at 100 feet), STR shall calculate the actual 65 DNL contour using the methodology in this Draft EA and comply with the mitigation in **MM-Noise-01** for any newly affected receptors.

MM-Noise-03. STR shall maintain rail and rail beds according to American Railway Engineering and Maintenance-of-Way Association (AREMA) standards.

MM-Noise-04. STR shall consider lubricating curves, where doing so would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors.

MM-Noise-05. STR shall employ safe and efficient operating procedures that, in lieu of or as a complement to other noise mitigation measures, can have the collateral benefit of effectively reducing noise from train operations. Specifically, STR shall inspect rail car wheels and maintain wheels in good working order to minimize the development of wheel flats, inspect new and existing rail for rough surfaces and, where appropriate, grind these surfaces to provide a smooth rail surface during operations, and regularly maintain locomotives.

Grade Crossing Safety and Delay

STR's Voluntary Mitigation Measures

VM-Grade Crossing-01. STR will consult with appropriate Federal, State, and local transportation agencies to determine the final design of the at-grade crossing warning devices. Warning devices on public roadways will be subject to review and approval, depending on location, by the Utah Department of Transportation, City of Erda, and Tooele County. STR 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 (2022) and the American Railway Engineering and Maintenance-of-Way Association's guidelines for railroad warning devices. STR will also comply with applicable UDOT and local requirements.

VM-Grade Crossing-02. Prior to construction of road crossings, when reasonably practical, STR and its contractor(s) will consult with local transportation officials regarding construction phasing and temporary traffic control. STR's contractor(s) will be responsible for local agency coordination of construction schedules, detours, and temporary traffic control, as well as obtainment of necessary temporary traffic control permits from the City of Erda and Tooele County. As appropriate, STR's contractor(s) will maintain egress or traffic routing to allow for passage of emergency and other vehicles.

VM-Grade Crossing-03. Prior to project-related construction, STR will consult with UDOT and other appropriate agency(s) to determine the final details and reasonable signage for private at-grade crossings along access roads.

VM-Grade Crossing-04. Prior to project-related construction, STR will consult with UDOT and applicable road authority regarding roadway safety and user expectations, which includes items such as pavement markings, signing, delineators, and active warning devices for vehicles, pedestrians, and bicyclists at proposed at-grade crossings.

VM-Grade Crossing-05. Prior to and during project-related construction, in accordance with project plans, specifications, and permits, STR's contractor(s) will install temporary traffic control, including pavement markings, signing, and detours, throughout the project limits and applicable work zones.

VM-Grade Crossing-06. Prior to and during construction and operation of the project, STR will work with local agencies to facilitate the development of cooperative agreements with emergency service providers to share services areas and emergency call response.

VM-Grade Crossing-07. STR 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.

M-Grade Crossing-08. STR will obtain and abide by the reasonable requirements of applicable permits and approvals for any project-related construction activities within UDOT rights-of way or State highways where UDOT has jurisdiction and off-system roads that are maintained by UDOT.

VM-Grade Crossing-09. For each of the public at-grade crossings on the proposed rail line, STR will provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration regulations (23 CFR part 655). The toll-free number will enable drivers to report promptly any accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions.

VM-Grade Crossing-10. STR will coordinate with Operation Lifesaver to provide educational programs available to communities, schools, and other organizations located along the proposed rail line. Operation Lifesaver is a nationwide, nonprofit organization that provides public education programs to help prevent collisions, injuries, and fatalities at highway/rail grade crossings.

OEA's Final Recommended Mitigation

MM-Grade Crossing-01. STR shall consult with and comply with reasonable UDOT requirements for creating new rail/roadway crossings at SR 138 and Erda Way.

Specifically, STR shall abide by UDOT's reasonable requirements for new crossings under Administrative Rule R930-5, and specifically R930-5-7.6.

MM- Grade Crossing-02. STR shall not block at-grade crossings for more than 10 minutes at a time, when reasonably practical, unless mechanical failure, an obstruction on the track, or a similar emergency condition prevents a train from being moved clear of the crossing.

MM- Grade Crossing-03. STR shall notify appropriate emergency services dispatching centers if grade crossings become blocked by trains that may be unable to move for a prolonged period.

Biological Resources

OEA's Final Recommended Mitigation

MM-Biological-01. STR shall use temporary barricades, fencing, and/or flagging in habitats to contain construction related impacts to the area within the construction right-of-way. To the extent possible, staging areas shall be located in previously disturbed sites and not in habitat areas.

MM-Biological-02. STR shall limit ground disturbance to only the areas necessary for construction.

MM-Biological-03. STR shall ensure that all disturbed soils are landscaped, seeded with a native seed mix, or otherwise permanently stabilized following project-related construction.

MM-Biological-04. Prior to any project-related construction, STR shall develop and implement a mitigation plan to address the spread and control of non-native invasive plants during the construction. This plan shall address the following: (a) planned seed mixes, (b) weed prevention and eradication procedures, (c) equipment cleaning protocols, (d) revegetation methods, and (e) protocols for monitoring revegetation.

MM-Biological-05. STR shall only use herbicides in right-of-way maintenance to control vegetation that are approved by EPA and are applied by trained individuals, following the instructions on the pesticide label, who will limit application to the extent necessary for safe rail operations and not use the pesticides near wetlands. Herbicides shall be applied to prevent or minimize drift off of the right-of-way into adjacent areas.

MM-Biological-06. STR shall review updated U.S. Fish and Wildlife Service and Utah species lists prior to the start of project-related construction to see if any special status species were added after issuance of the Final EA. If new species are identified, STR shall notify OEA so that appropriate action can be taken if warranted.

MM-Biological-07. STR shall clear vegetation in preparation for construction before or after the breeding bird nesting season to avoid inadvertent removal of active nests (nesting adults, young, or eggs) and to ensure compliance with the Migratory Bird Treaty Act. If clearing is required during nesting season, STR shall consult with OEA and the local office of the U.S. Fish and Wildlife Service (USFWS) on appropriate nest survey methods for that area.

Water Resources

STR's Voluntary Mitigation Measures

VM-Water-01. STR's contractor(s) will submit a Notice of Intent to request permit coverage under Utah Pollutant Discharge Elimination System (UPDES) Construction General Permit (CGP) or Common Plan Permit (CPP) for construction stormwater management.

VM-Water-02. STR's contractor(s) will submit an application for coverage under the National Pollutant Discharge Elimination System stormwater construction permit pursuant to Section 402 of the Clean Water Act for construction stormwater management.

VM-Water-03. STR will develop a stormwater pollution prevention plan, which will include construction BMPs to control erosion and reduce the amount of sediment and pollutants entering surface waters, groundwater, and waters of the United States. STR will require its construction contractor(s) to follow all water quality control conditions identified in all permits that might be required, including the Section 404 permit from the U.S. Army Corps of Engineers (Corps) and the Section 401 Water Quality Certification from the Utah Department of Environmental Quality and the U.S. Environmental Protection Agency.

VM-Water-04. STR's contractor(s) will construct stream crossings during low-flow periods, when practical.

OEA's Final Recommended Mitigation

MM-Water-01. STR shall design drainage crossing structures for a 100-year storm event. STR shall design culverts to maintain existing surface water drainage patterns to the extent practicable and not cause or exacerbate flooding.

MM-Water-02. STR shall coordinate with the Federal Emergency Management Agency (FEMA) if construction of the culverts would result in an unavoidable increase greater than 1 foot to the 100-year water surface elevations.

MM-Water-03. STR shall obtain a permit if applicable from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act before initiating project-related construction in wetlands and other jurisdictional waters of the United States. STR shall comply with all conditions of the Section 404 permit.

MM-Water-04. STR shall minimize impacts to wetlands to the extent practicable in the final design. After all practicable steps have been taken to minimize impacts to wetlands, STR shall prepare a mitigation plan for any remaining wetland impacts in consultation with the U.S. Army Corps of Engineers, if applicable.

MM-Water-05. STR shall compensate for the loss of any wetlands through any one, or a combination of, the following purchasing credits from an authorized wetland mitigation bank, restoring a previously existing wetland or other aquatic site, enhancing an existing aquatic site's function, preserving an existing aquatic site, and/or creating a new aquatic site.

MM-Water-06. STR shall obtain a Section 401 Water Quality Certification from the Utah Department of Environmental Quality. STR shall incorporate the conditions of the Section 401 Water Quality Certification into its construction contract specifications and shall monitor the project for compliance.

Hazardous Materials

STR's Voluntary Mitigation Measures

VM-HazMat-01. Prior to initiating any project-related construction, STR's contractor(s) will prepare a hazardous waste management plan detailing the manner in which hazardous wastes will be managed and describing the types and volumes of hazardous wastes anticipated to be managed. There will be no export of hazardous materials off-site other than used rail ties. The hazardous waste management plan will address both onsite and offsite hazardous waste management and include the following: description of the methods to be used to ensure accurate piece counts or weights of shipments; waste minimization methods; facilities to be used for treatment, storage, and disposal; onsite areas designated where hazardous wastes are to be handled; identify whether transfer

facilities are to be used, and if so, how the wastes will be tracked to ultimate disposal. Additionally, STR's contractor(s) will document hazardous waste inspections on a weekly basis.

VM-HazMat-02. In accordance with STR contractor(s)'s hazardous waste management plan and emergency management plan, and in the event of a spill over the applicable reportable quantity, each STR's contractor will comply with its spill prevention, control, and countermeasures plan and applicable Federal, State, and local regulations pertaining to spill containment, appropriate clean-up, and notifications.

VM-HazMat-03. STR will document all activities associated with hazardous material spill sites and hazardous waste sites and will notify the appropriate State and local 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. STR will use disposal methods that comply with applicable solid and hazardous water regulations.

VM-HazMat-04. STR's contractor(s) will responsibly handle and store gasoline, diesel fuel, oil, lubricants, and other petroleum products to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs in the project limits as a result of project-related construction, operation, or maintenance and exceeds specific quantities or enters a waterbody, STR's contractor(s) will be responsible for promptly cleaning the spill and notifying responsible agencies in accordance with Federal and State regulations.

VM-HazMat-05. STR's hazardous materials emergency response plan will address potential derailments or spills. This plan will address the requirements of the Pipeline and Hazardous Materials Safety Administration and Federal Railroad Administration requirements for comprehensive oil spill response plans. STR will distribute the plan to

Federal, State, and local emergency response agencies. This plan will include a roster of agencies and people to be contacted for specific types of emergencies during project-related construction, operation and maintenance activities, procedures to be followed by particular rail employees, emergency routes for vehicles, and the location of emergency equipment.

VM-HazMat-06. In the event of a reportable hazardous materials release, STR will notify appropriate Federal and State environmental agencies as required under Federal and State law.

VM-HazMat-07. STR will comply with applicable Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, and Transportation Security Administration regulations for the safe and secure transportation of hazardous materials.

OEA's Final Recommended Mitigation

MM-HazMat-01. If STR encounters contamination (or signs of potential contamination) during construction activities, STR shall perform a Phase 2 environmental following American Society of Testing and Materials E1527-05, Standard Practice for Environmental Site Assessments, in addition to the Phase 1 previously performed by STR. Should findings of a Phase 2 environmental investigation identify contamination in soil and/or groundwater, STR shall coordinate with relevant State agencies on regulatory obligations and comply with those agencies' reasonable requirements for avoiding impacts related to soil and/or groundwater contamination.

Cultural Resources

OEA's Final Recommended Mitigation

MM-Cultural-01. STR shall prepare and provide to OEA a construction monitoring plan no later than 30 days prior to the start of construction and shall abide by the provisions of the plan, including any revisions by OEA, during construction activities.

The plan shall address the following:

1. Training procedures to familiarize construction personnel with the identification and appropriate treatment of historic properties,
2. Monitoring of construction activities by a qualified professional archaeologist,
3. Provisions for the unanticipated discovery of archaeological sites or associated artifacts during construction activities, including procedures for notifying OEA and the Utah State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), pursuant to 36 CFR 800.13(b) in the event of an unanticipated discovery; and,
4. Provisions for complying with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013) and other applicable Federal, State, and local laws and regulations in the event of an unanticipated discovery of unmarked human remains during construction activities.

Air Quality

STR's Voluntary Mitigation Measures

VM-Air-01. In accordance with Utah or local agency dust control permitting requirements, STR's contractor(s) will implement appropriate dust control measures to reduce fugitive dust emissions created during project-related construction. STR will require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

VM-Air-02. STR 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.

Climate Change

OEA's Final Recommended Mitigation

MM-Climate-01. STR shall prepare a climate change plan documenting how the effects of climate change on rail infrastructure will be considered and addressed by STR in the final engineering design and construction of the rail line. The plan shall account for the extreme heat, drought, and wildfires that are anticipated in this region, which can cause track buckling, warping/melting, and electrical equipment disruptions. The plan shall also cover protective health and safety measures for rail personnel exposed to extreme heat. The plan shall use the Council on Environmental Quality's National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change to achieve the objectives laid out in Executive Order 14008, Tackling the Climate Crisis at Home and Abroad.

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