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Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
March 5, 2026
Part of
Public Record

COLORADO PACIFIC RIO GRANDE RAILROAD
– ABANDONMENT EXEMPTION –
IN RIO GRANDE COUNTY, CO
Docket No. AB 1344(X)

NOTICE OF INTENT TO PARTICIPATE
(with comment)
REQUEST FOR AN EXTENSION OF TIME

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

Respectfully submitted,

Eric S. Strohmeyer /s/

Eric S. Strohmeyer
Authorized representative

Denver and Rio Grande Railway
Historical Foundation

d/b/a **Denver and Rio Grande Railroad**

P.O. Box 1280

South Fork, CO 81154

Main Office: (970) 749-7575

Direct Line: (908) 361-2435

E.Strohmeyer@CNJRail.com

Now comes the Denver and Rio Grande Railway Historical Foundation (“DRGRHF” or “Foundation”), a Colorado Not-for-Profit organization, and a potentially affected party in the above captioned proceeding (to the extent this proceeding actually exists), through its authorized corporate official (“undersigned”), who herein respectfully submits these comments to the Surface Transportation Board (“Board”), and hereby serves notice, of its intent to participate in the above captioned proceeding.

The DRGRHF, a Class III rail carrier¹, owns and operates a 20-mile long, Board-regulated line of railroad which connects solely with Colorado Pacific Rio Grande’s (“CXRG”) line of railroad at milepost² 299.3, a point which has been described as at or near Derrick, CO. The DRGRHF lawfully acquired its line of railroad from the Union Pacific Railroad (“UP”) in 1999. See: *Union Pacific Railroad Company – Abandonment Exemption – In Rio Grande and Mineral Counties, CO* STB Docket No. AB-33 (Sub-No. 132X) served May 11, 1999

DRGRHF’s interest in this matter is straightforward. CXRG’s originally proposed³ abandonment (if it had been permitted to move forward) would have left the DRGRHF without a connection to the remainder of the national rail network and created an isolated, stranded segment of Board-regulated rail line. This outcome would have adversely impacted DRGRHF’s ability to fulfill its common carrier obligation. It also would have run directly counter to the Board’s long-standing policy of not permitting the creation of isolated, stranded segments. See: *Elk River R.R. – Aban. Exemption – In Kanawha & Clay Cntys., W. Va.*, AB 1314X, slip op. at

¹ The DRGRHF conducts its common-carrier rail operations under the trade-name **Denver and Rio Grande Railroad**.

² Historically, the railroad’s mileposts reflected the distance to and from Denver, CO.

³ Notwithstanding the fact that CXRG’s Notice of Exemption (“NOE”) is already void; on October 23rd, 2025, CXRG voluntarily filed to withdraw its fatally defective NOE. Their withdraw request was formally accepted into the record on November 13th, 2025, due to the US government shutdown.

3-4 served Mar. 25, 2022 (rejecting a verified notice of exemption because it would have stranded a segment) and the cases cited therein.

DRGRHF's official position regarding this proceeding is that CXRG's verified Notice of Exemption ("NOE") is **fatally defective** and has been **void *ab initio***. Therefore, it is the position of the DRGRHF that there is technically no proceeding currently pending before the Board. DRGRHF has been (and remains) utterly dumbfounded that this proceeding, which has been **void** since **July 30th, 2025**, has produced such a voluminous record (36 pleadings, and 11 Board decisions) and has somehow managed to continue to drag on this far.

Under most normal circumstances, CXRG's decision to voluntarily withdraw its fatally defective NOE and publicly reaffirm its common carrier obligation along the line segment should have effectively led to this matter being swiftly concluded months ago. To date, the Board has allowed this proceeding to drag on *ad infinitum*. While the DRGRHF does not oppose the Board issuing a decision which reaffirms CXRG's continuing common carrier obligation along the line segment and terminates the current proceeding, the Foundation's official position regarding why the Board should terminate this proceeding is **substantially different** from the positions of the other parties to this proceeding.

CXRG's NOE clearly contains both **false** and **misleading information**. As a result, and in accordance with the Board's clear regulations, the NOE is void *ab initio*. See: 49 C.F.R. § 1152.50 (d)(3). Most significantly, the NOE is **misleading by omission**.

CXRG's decision to not reveal to the Board the presence of DRGRHF's connection at Milepost 299.3 gives any party (including the Board) who reads the NOE the impression that CXRG's line is a stub-ended line of railroad completely

devoid of any connections to other Board regulated lines of railroad. Since the DRGRHF's line of railroad has only one connection to the national rail network (to CXRG at milepost 299.3), CXRG's claim that any overhead traffic could be rerouted over other rail lines is clearly false. Any traffic moving to and from points on the DRGRHF's line of railroad and any other point along the national rail network cannot be rerouted over other rail lines because no other lines exist.

The Board's failure to swiftly reject the fatally defective NOE has misled an additional party, Hayduk International, LLC, and its corporate affiliate (collectively referred to herein as "Hayduk"), into believing the Board's Offer of Financial Assistance ("OFA") procedures can be lawfully invoked in this non-existent proceeding. OFA remedies are only available in certain proceedings which are lawfully and properly before the agency. It is unclear exactly how the Board could grant any relief under the Board's OFA regulations in the absence of a lawful abandonment proceeding being brought and, more importantly, **legally maintained**, before the agency. A proceeding which is void *ab initio* is not lawfully before the Board. The Board needs to rectify this untenable situation by swiftly rejecting CXRG's NOE and immediately terminating the OFA process, which should never have been permitted to move forward like it has.

In addition, the Board's failure to swiftly reject CXRG's NOE may have directly led to two state governmental agencies (Colorado's Public Utilities Commission, and their Department of Transportation - Highway Department) prematurely removing a railroad crossing in the community of Del Norte, CO while this void proceeding was perceived by many as pending before the agency. While the action taken to remove the railroad grade crossing is a very serious concern, this long-since-void abandonment proceeding is not the proper forum to adjudicate the issue.

Any party who desires that the Board address the grade crossing removal issue should not be seeking to litigate that issue in this proceeding. An adversely effected party should file a **formal complaint** and bring a separate, **new proceeding** under 49 U.S.C. § 11701 (b) before the Board. The issue of the grade crossing removal requires a fully developed record which includes: 1. A proper procedural schedule; 2. A thorough investigation, discovery, and robust fact-finding period; 3. Appropriate briefing; and 4. The Board's thoughtful review of the entire record and a robust deliberation which can lead to an appropriate decision regarding the matter.

Furthermore, the Board has been clear that the use of agency's expedited, class exemption procedures are to be used only in routine and non-controversial matters. The former Denver and Rio Grande Western Railroad's Creede branch has generated many controversies since 1999. This now-controversial proceeding adds to the ever-growing list of controversies associated with this line. The use of the Board's expedited class exemption procedures is highly inappropriate in this matter.

ONE (pleading) and DONE

DRGRHF fully expected the Board to have ended this proceeding on its own motion months ago, without the need for the Foundation to take a public position regarding this proceeding. The Board's long-standing policy position, and the significant corresponding case law of swiftly rejecting abandonment applications for rail lines that would lead to the creation of a stranded segment, is very well settled.

But for **two highly unusual pleadings** recently submitted by Hayduk, combined with some recent **formal requests for rates**⁴ that the Denver & Rio Grande RR ("D&RG RR") recently received, the DRGRHF would have been

⁴ The rate requests were made in a manner which was consistent with the provisions of the Board's regulation found in 49 C.F.R. § 1300.1-5

perfectly content with allowing the Board to make a decision based on the **public** record that was submitted by the parties thus far without the need to publicly weigh in on this now-void proceeding. Based on the recent rate requests the D&RG RR received, the DRGRHF fully expects that formal demands for rail freight service will soon be forthcoming. The D&RG RR views all the recently quoted movements as a **reasonable demand for service**.⁵ It is the DRGRHF's belief that the Union Pacific Railroad⁶ will likely agree that the proposed shipments are reasonable as well.

DRGRHF's need to file a formal response

Since a number of parties to this proceeding have previously attempted to make arguments or otherwise proffer suggestions as to what the DRGRHF's position on certain subjects may or may not be, the Foundation will respectfully submit a single, solitary reply in this proceeding, addressing Hayduk's March 2, 2026 pleading, which will be done in accordance with 49 C.F.R. § 1104.13. The reply pleading will provide the Board with an official response from the DRGRHF, include appropriate background information, and will also include a Verified Statement⁷ from Donald H. Shank, DRGRHF's president.

⁵ Based on its understanding of how the proposed traffic will develop, the DRGRHF / D&RG RR is not going to challenge the shipper(s) regarding whether their shipment(s) constitute a reasonable demand for service. We have determined that the demands are reasonable from our own perspective.

⁶ Given the **nature** of some of the **proposed traffic**, combined with their current efforts to acquire Norfolk Southern, and to not undercut the impact of one highly publicized donation they recently made towards a project located in Washington, DC, the DRGRHF is confident that the Union Pacific too will not challenge the shipper's claim of a reasonable demand. The DRGRHF will be entering into negotiations with the Union Pacific and CXRG regarding how best to handle this traffic soon.

⁷ An additional Verified Statement from Donald Shank is attached to this Notice and Request. The attached verified statement simply provides evidence that the DRGRHF has authorized the undersigned to file pleadings on behalf of the DRGRHF. In addition, the Board can further confirm some of the claims in Mr. Shank's verified statement regarding the undersigned's long-time involvement with the DRGRHF by reviewing the record in *Denver & Rio Grande Railway Historical Foundation – Petition for a Declaratory Order* STB Docket No. FD 35496 and in particular, the Board's March 20, 2015 decision in the matter, as well as its own docket over the past three decades.

The DRGRHF has been closely monitoring this proceeding since its inception. As stated previously, the Foundation fully expected the Board to reject the NOE *sua sponte* months ago. However, the two recent pleadings by the Hayduk organization, and the appearance of an escalating feud between Hayduk and the Concern Citizens of the San Luis Valley, have begun to cause the DRGRHF some concern.

On March 2, 2026, Hayduk filed some sort of pleading(s) apparently marked highly confidential. It appears only the cover letter, and the Certificate of Service, was placed into the public record. This is the second time that Hayduk has filed a pleading in this proceeding which has been redacted in its entirety. On January 30, 2026, in response to the Board's January 28, 2026 Order, Hayduk filed a completely redacted pleading with the Board as well.

In *Consolidated Rail Corporation – Abandonment Exemption – Hudson County, NJ* STB Docket No. AB 167 (Sub No. 1189) X, (“Conrail Abandonment”) served November 2, 2015 (and clarified in a decision served on November 10, 2015 in the same docket), the Board made clear that **totally redacted** documents were not appropriate in abandonment proceedings before the agency. Since one of the two pleadings will undoubtedly be accepted into the record (because it was a reply made at the direction of the Board itself), the DRGRHF feels it must raise a strong objection regarding the issue of the total redaction of the pleadings. If the Board felt that parties in *Conrail Abandonment* were not entitled to completely redact their documents in support of a pending OFA, the DRGRHF cannot fathom why all the arguments and exhibits in Hayduk's pleadings would nevertheless be entitled to such extensive redactions in this proceeding in direct contradiction of the Board's decision in *Conrail Abandonment*.

The undersigned will be executing the appropriate undertakings and requesting that Hayduk provide a copy of the material submitted under seal for the

DRGRHF to review and respond to. Since the Hayduk organization is entitled to take their full 20 days to respond to this pleading, the DRGRHF will respectfully request an extension of time to file its response to their March 2, 2026 pleading.

REQUEST FOR AN EXTENSION OF TIME

In a normal proceeding before the Board, the DRGRHF would have sought an Extension of Time pursuant to 49 C.F.R. § 1104.7(b). However, since this proceeding is void *ab initio*, there is technically no proceeding before the Board. Nevertheless, for reasons unknown, the Board has permitted this proceeding to move forward *ad libitum*. For the following reasons, the DRGRHF respectfully requests an extension of time to file a response to the Hayduk parties March 2, 2026 pleading(s).

Pursuant to 49 C.F.R. § 1104.13 responses to their March 2 pleading are currently due on Monday, March 23, 2026. It is currently unknown how the Hayduk parties will respond to the challenge to their extensive redactions. Hayduk has a number of options available to them. The DRGRHF does not want to speculate on what Hayduk, could, or should do. What the Foundation does know is that pursuant to 49 C.F.R. § 1104.13, the Hayduk parties have 20 days to respond to this pleading, unless the Board directs them otherwise.

On or before March 9, 2026 the undersigned will execute the requisite undertakings and transmit them to Hayduk. If the Hayduk parties respond, are agreeable, and offer no objection to DRGRHF's request to see the unredacted material, then the Foundation would respectfully request a one-week extension until March 30, 2026 to respond to their pleading. If however, the Hayduk parties do not timely respond, or offer significant objection to the DRGRHF's request, then the

Foundation respectfully requests a two-week extension of time calculated from the day the Board issues a decision resolving Hayduk's objection.

The Board has granted limited extensions of time from time to time in abandonment proceedings, and other proceedings before the agency where a party was deprived of an adequate period of time to respond to a specific pleading. See: *San Pedro Railroad Operating Company, LLC – Abandonment Exemption – in Cochise County, AZ* STB Docket No. AB-1081X decided November 23, 2005, *Vermont Railway, Inc. – Petition for Declaratory Order* STB Finance Docket No. 34364, decided July 23, 2003. The DRGRHF's request is thus consistent with prior Board decisions.

For all the foregoing reasons, the DRGRHF respectfully requests a short extension of time to respond to Hayduk's March 2, 2026 pleading.

VERIFICATION

I, Eric S. Strohmeyer, do solemnly swear under penalty of perjury that I am authorized to file this **Notice of Intent to Participate** and **Request for an Extension of Time**; and, that all the foregoing statements contained herein are true and accurate to the best of my knowledge and belief.

On behalf of the

**Denver and Rio Grande
Railway Historical Foundation,**

Respectfully submitted,

Eric S. Strohmeyer /s/
Authorized representative

Dated: March 5, 2026

CERTIFICATE of SERVICE

I, Eric S. Strohmeyer, do hereby solemnly swear that, on March 5, 2026, I served, via electronic mail, a copy of the Denver and Rio Grande Railway Historical Foundation's **Notice of Intent to Participate**, and a **Request for an Extension of Time**, upon the following parties of record:

Colorado Pacific Rio Grande Railroad

c/o Thomas W. Wilcox, Esq.
1629 K Street, NW, Suite 300
Washington, DC 20006
Tel: (202) 508-1065
tom@twilcoxlaw.com

Hayduk International, LLC

c/o Michael J. Hayduk
102 Ansley Court
Greer, SC 29650
Tel: (864) 607-8163
MasterSergeantHayduk@gmail.com

OFA Offeror

Matthew J. Hayduk
PO Box 21
Rockhill Furnace, PA 17249
Tel: (864) 561-5769
matthew.hayduk@gmail.com

Concerned Citizens San Luis Valley

Ronald M. Johnson, Esq.
4909 Scarsdale Road
Bethesda, MD 20816
Tel: (301) 767-5105
rmjohnson@rmjohnsonlaw.com

Respectfully Submitted,

Eric S. Strohmeyer / s /

E X H I B I T No. 1

VERIFIED STATEMENT

Of

Mr. DONALD H. SHANK

President

Denver and Rio Grande Railway Historical Foundation

Dated: September 9, 2025

VERIFIED STATEMENT
of
DONALD H. SHANK

STB Docket AB 1344 (Sub No. 0) X

I, Donald H. Shank, state for the record in the above cited docket, that I am the President and Executive Director of the Denver and Rio Grande Railway Historical Foundation ("DRGRHF"), a private not-for-profit foundation organized under laws of the State of Colorado, and formally recognized by the Internal Revenue Service as a tax-exempt organization. I am over the age of 18, and I am qualified and authorized to make this statement.

Pursuant to the DRGRHF's by-laws, I am authorized to delegate certain responsibilities and grant certain authorities to other officers and directors in our organization. I have exercised that delegation authority in this matter.

I have expressly delegated to Mr. Eric S. Strohmeyer, a former corporate officer, still-active part-time director, and long-time volunteer in our organization, the authority to file pleadings with the Surface Transportation Board ("Board") and speak on behalf of the DRGRHF in this proceeding.

Mr. Strohmeyer serves as the current Director of Government Affairs and Regulatory Compliance for the DRGRHF. In addition, Mr. Strohmeyer remains active within our rail freight and industrial development departments. He has been involved with the DRGRHF for well over a decade.

DRGRHF's main concern in this proceeding is the serious threat that Colorado Pacific Rio Grande's requested relief poses to our ability to remain connected to the national rail network. Our organization vigorously opposes any effort that would lead to our Board-regulated rail line becoming isolated from the remainder of the national network.

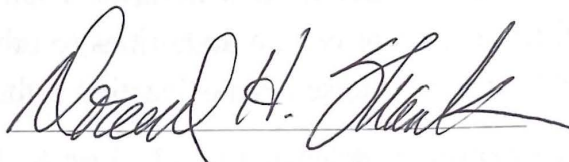
Mr. Strohmeyer is well-known to the Board, including all the current members. He has been active in the railroad and transportation industry since the late 1980's. He is well-versed in the Board's procedures and case law. He filed his

first comments with the Board's predecessor agency, the Interstate Commerce Commission back in 1995 in the Union Pacific / Southern Pacific / Denver and Rio Grande Western merger proceeding three decades ago. He has participated in numerous proceedings before the Board over the decades. DRGRHF has full confidence in his ability to adequately advocate on our behalf.

If the Board should have any further questions or concerns regarding this delegation, I will be happy to provide further clarification if requested.

VERIFICATION

I, Donald H. Shank, do solemnly swear, under penalty of perjury, that the statements of fact contained in the Verified Statement above are true and accurate, based on all known information, and my belief and understanding of that information.

A handwritten signature in black ink, appearing to read "Donald H. Shank", written over a horizontal line.

Donald H. Shank

Dated: September 9, 2025