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Office of Proceedings
December 12, 2017
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THOMAS F. McFARLAND

December 12, 2017

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 36157, *City and County of Denver -- Acquisition Exemption*
-- Western Stock Show Association in the City and County of Denver, Colorado

Dear Ms. Brown:

Hereby transmitted are Comments on a Notice of Exemption and Motion to Dismiss filed by the City and County of Denver, Colorado on November 28, 2017 for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Denver Rock
Island Railroad

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cc: Charles A. Spitulnik, *cspitulnik@kaplankirsch.com*
Allison I. Fultz, *afultz@kaplankirsch.com*

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY AND COUNTY OF DENVER --	)	
ACQUISITION EXEMPTION --	)	FINANCE DOCKET
WESTERN STOCK SHOW	)	NO. 36157
ASSOCIATION IN THE CITY AND	)	
COUNTY OF DENVER, COLORADO	)	

COMMENTS

DENVER ROCK ISLAND RAILROAD
3400 East 56th Avenue
Commerce City, CO 80022

Commentor

THOMAS F. McFARLAND
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Attorney for Commentor

DATE FILED: December 12, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY AND COUNTY OF DENVER --	)	
ACQUISITION EXEMPTION --	)	FINANCE DOCKET
WESTERN STOCK SHOW	)	NO. 36157
ASSOCIATION IN THE CITY AND	)	
COUNTY OF DENVER, COLORADO	)	

COMMENTS

Pursuant to 49 C.F.R. § 1117.1, DENVER ROCK ISLAND RAILROAD (DRIR), a Class III rail carrier, hereby files Comments on a Notice of Exemption and Motion to Dismiss filed by the City and County of Denver, Colorado (CCD) on November 28, 2017.

CCD's Notice of Exemption seeks authority for CCD to acquire land beneath approximately 1.2 miles of rail line consisting of the National Western Drive Corridor from the south right-of-way line of East 47th Avenue extending northeast and then north to the northeastern right-of-way line of Race Court, and the River Corridor, a section of line adjacent to the east bank of the South Platte River, from the intersection of the line with the National Western Drive Corridor at a point just north of the south endpoint of the National Western Drive Corridor, extending north and then northeast to an intersection with the National Western Drive Corridor (the Rail Line). CCD's Motion to Dismiss seeks a determination that Board authorization or exemption is not required for CCD's land acquisition under *State of Maine, DOT -- Acq. & Oper. Exempt. -- Maine Central R. Co.*, 8 ICC 2d 835 (1991).

DRIR owns the track materials in the Rail Line and is authorized by the Board to provide common carrier transportation over the Rail Line. *See Denver Terminal R. Co. -- Acq. & Oper.*

Exempt. -- Denver Railway, Inc., Docket No. FD 32356 (decision served September 29, 1993).

DRIR is the successor of Denver Terminal R. Co.

DRIR hereby provides limited comments on CCD's Notice and Motion in the interest of accuracy and clarification of DRIR's rights in the subject matter.

COMMENTS

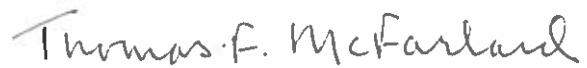
- I. DRIR does not concede that the Western Stock Show Association (WSSA), who would grant the land to CCD, has valid title to all of the land identified in the Notice of Exemption. The Notice of Exemption does not contain an accurate description of the property covered by the National Western Center. The Notice inaccurately contends that the entire National Western Center equates with WSSA's ownership. It is likely that DRIR owns one or more parcels of such land at its northerly end as a result of a conveyance from Union Pacific Railroad Company (UP). WSSA cannot lawfully convey to CCD that which WSSA does not own.
- II. DRIR does not concede that the only rights that it has to operate the Rail Line are derived from the Easement Deed that is Attachment 2 to CCD's Notice of Exemption. There are one or more parcels that are not covered by that Easement or any other written agreement over which DRIR has exercised operating rights for many years. There are also one or more parcels that are covered by a different easement that was assigned by UP to DRIR in 1995.

III. CCD has stated that “there are no shippers on the footprint of the National Western Center.” (Notice of Exemption at 6). That statement is not true. McDonald Farms and Crystal Packaging are shippers located on that footprint. That statement is also quite misleading. Two other shippers, International Paper Company and Rocky Mountain Colby Pipe, have moved away from the South Stockyards as a direct result of the imminent development of the National Western Center, and Crystal Packaging is in the process of moving for that same reason. It may be that McDonald Farms will move as well. The four identified shippers provided DRIR with \$293,236 in revenue in 2014. It may well be that development of the National Western Center will result in loss of all of that DRIR revenue. Even if McDonald Farms stays, DRIR will have lost 54 percent of its South Stockyards revenue as a direct result of the National Western Center development. Notwithstanding the clear causal relationship between development of the National Western Center and loss of DRIR revenue from relocated shippers, CCD is unjustly refusing to compensate DRIR for loss of the going concern value of the traffic of those shippers.

Respectfully submitted,

DENVER ROCK ISLAND RAILROAD
3400 East 56th Avenue
Commerce City, CO 80022

Commentor

A handwritten signature in cursive script that reads "Thomas F. McFarland".

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Attorney for Commentor

DATE FILED: December 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2017, I served a copy of the foregoing Comments on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036, by e-mail to cspitulnik@kaplankirsch.com, and on Allison I. Fultz, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036, by e-mail to afultz@kaplankirsch.com.



Thomas F. McFarland