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ENTERED
Office of Proceedings
February 4, 2019
Part of
Public Record

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February 4, 2019

VIA HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001



Re: The Denver Rock Island Railroad Company v. The City and County of Denver,
Colorado, NOR 42162

Dear Ms. Brown:

Per the Surface Transportation Board's procedures for filing a formal complaint, 49 C.F.R. Part 1111, please find enclosed an original and eleven copies of The Denver Rock Island Railroad Company's Verified Complaint Against The City and County of Denver, Colorado. We have also enclosed a check in the amount of \$350 for the applicable filing fee. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com. Alternatively, you can contact Thomas F. McFarland, either by telephone: (312) 236-0204 or by e-mail: mcfarland@aol.com.

Sincerely,

Thomas F. McFarland

Thomas F. McFarland
Attorney for The Denver Rock Island
Railroad Company

William A. Mullins

William A. Mullins
Attorney for The Denver Rock Island
Railroad Company

FEE RECEIVED
February 4, 2019
SURFACE TRANSPORTATION BOARD

FILED
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BEFORE THE
SURFACE TRANSPORTATION BOARD

THE DENVER ROCK ISLAND
RAILROAD COMPANY,

Complainant,

v.

THE CITY AND COUNTY OF DENVER,
COLORADO,

Defendant.

NOR 42162



VERIFIED COMPLAINT

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

Complainant

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Attorneys for Complainant

February 4, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE DENVER ROCK ISLAND	)	
RAILROAD COMPANY,	)	
	)	
<i>Complainant,</i>	)	NOR 42162
v.	)	
	)	
THE CITY AND COUNTY OF DENVER,	)	
COLORADO,	)	
	)	
<i>Defendant.</i>	)	



VERIFIED COMPLAINT

Pursuant 49 C.F.R. Parts 1111, The Denver Rock Island Railroad Company (“DRIR”), Complainant, hereby brings this Verified Complaint against Defendant, The City and County of Denver, Colorado (“CCD”) for violating 49 U.S.C. §10903(d), §10906, and 10501(b)(2) by seeking to remove tracks and railroad maintenance and operations facilities owned and operated by DRIR in a 250-acre property known as the Denver Stockyards Area (collectively the tracks are referred to as the “Stockyard Lines”) (described further below and as shown in Exhibit A) without the consent of DRIR and without first obtaining an adverse abandonment finding (or a declaratory order with respect to Section 10906 operations) by the Surface Transportation Board (“STB” or “Board”) that the public convenience and necessity require or permit the removal of STB’s jurisdiction over the tracks. In support of this verified complaint, Complainant states the following:

THE PARTIES

1. DRIR is a Class III common carrier by rail subject to the jurisdiction Board under the Interstate Commerce Act, as amended, 49 U.S.C. 10101, et seq. Under its present

ownership, DRIR has been providing rail service to shippers and receivers at the Stockyards area of Denver, Colorado for nearly 26 years.

2. CCD is a Class III common carrier by rail subject to the jurisdiction of the Board under the Interstate Commerce Act, as amended, 49 U.S.C. 10101, et seq. CCD's authority to provide rail service at the Stockyards Area is residual and secondary to DRIR's primary operating authority.

BACKGROUND

3. Since 1993, DRIR or its predecessor, the Denver Terminal Railroad Company ("DTRC"), has been authorized to provide common carrier rail transportation and related Section 10906 operations over the Stockyard Lines pursuant to the Interstate Commerce Act, as amended, 49 U.S.C. § 10101, et. seq. See Denver Terminal R.R. – Acquisition And Operation Exemption – Denver Ry., ICC FD 32356 (September 29, 1993) ("DTRC Acquisition").
4. DRIR has Section 10901 common carrier rights to operate over the Stockyard Lines pursuant to DTRC Acquisition.
5. Any Section 10906 tracks owned and/or operated by DRIR and constitute part of the Stockyard Lines are subject to the exclusive jurisdiction of the STB.
6. Mr. Thomas Z. Mars acquired all of the stock of DRIR's predecessor in December, 1993. Mr. Mars continues to control that stock, individually or through a trust.
7. Under the ownership of Mr. Mars, DRIR's rail traffic has increased from 158 cars in 1994 to over 3,000 cars in 2018. DRIR currently provides rail service to nine shippers and/or receivers of rail traffic on the Stockyards Line.
8. DRIR also operates over two rail lines that connect the Stockyard Lines to shippers and

tracks located in DRIR's North Washington terminal complex ("NSO Facilities"). See Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad – Acquisition and Operation Exemption – Rail Lines of Union Pacific Railroad Company, FD 34692 (STB served June 14, 2005). DRIR uses the Stockyard Lines to serve the shippers and customers located in the NSO Facilities. Prior to acquiring ownership of the NSO Facilities, DRIR leased them from UP. See Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad – Lease and Operation Exemption – Rail Line of Union Pacific Railroad Company, FD 34637 (STB served Jan. 12, 2005).

9. The Stockyard Lines consists of the National Western Drive Corridor that is adjacent to National Western Drive, and the River Corridor that is adjacent to the east bank of the South Platte River. The proposed project ("Project") calls for the removal of approximately 21,000 feet of common carrier and ancillary (Section 10901 and 10906) track and railroad maintenance and office facilities located on or adjacent to the Stockyard Lines. The removal of such a significant amount of track pursuant to the Project will significantly adversely impact service to shippers and preclude DRIR from expanding service to its shippers in the future.
10. DRIR's maintenance and operations facility located on the Stockyard Lines has supported DRIR's service to shippers on both the Stockyard Lines and connecting NSO Facilities, since 2006. In 1996, the Western Stock Show Association ("WSSA"), the predecessor to CCD, filed three adverse discontinuance applications asking the ICC to remove its jurisdiction over rail operations conducted over the Stockyard Lines by finding that the public convenience and necessity require or permit the discontinuance of the rail operations of BNSF Railway Company ("BNSF") (BNSF's predecessor was the "BN" and

became the BNSF in 1995 through a merger), Union Pacific Railroad Company ("UP"), and DTRC. WSSA also sought authority to abandon and remove the tracks once BNSF, UP, and DTRC operations were authorized for discontinuance. Western Stock Show Assn. -- Abandonment Exemption -- Denver, CO, 1 S.T.B. 113, 114-115, 144-145 (STB served July 3, 1996) ("1996 Adverse Discontinuances").

11. In 1996 Adverse Discontinuances, the Board denied WSSA's adverse discontinuance applications for both DTRC's operating authority over the Stockyard Lines and BNSF's trackage rights over the River Corridor, and denied WSSA's request to abandon its common carrier operations as well. *Id.* at 141. The Board granted the discontinuances of BNSF's trackage rights over a portion of the National Western Drive Corridor and UP's trackage rights over the Stockyard Lines because neither party objected to the adverse discontinuance and abandonment for those tracks, but according to CCD and DRIR, neither railroad consummated the discontinuances granted and still hold trackage rights over the Stockyard Lines. See City & County of Denver -- Acq. Exempt. -- Western Stock Show Assn. in the City & County of Denver, Colo., FD. 36157 (STB served August 9, 2018) ("Aug 9 Decision").
12. After the Board in the 1996 Adverse Discontinuances refused to grant abandonment and/or discontinuance authority for the Stockyards Line, WSSA and DRIR came to an agreement in 1997 for both the National Western Drive Corridor and the River Corridor, whereby WSSA (1) retained ownership of the real property underlying the Stockyard Lines; (2) sold to DRIR the rail, ties, ballast, spikes, tie plates, bolts, and angle irons (collectively, the Tracks); and (3) granted to DRIR a non-exclusive easement to operate over the Stockyard

Lines. See Aug 9 Decision. The easement deed was dated July 10, 1997 and is referred to herein as "Easement Deed".

13. In 2018, WSSA sold the real estate underlying the right-of-way of the Stockyards Line to CCD. The Board found that as a result of that sale, the residual common carrier authority and obligation of WSSA to provide rail service over the Stockyards Line was transferred to CCD. See Aug 9 Decision.
14. For the past several years, CCD has been developing a plan to reconfigure and redevelop the Stockyard Lines and create what will be known as the National Western Center pursuant to the Project.
15. The Project is further discussed in CCD's Verified Petition for Declaratory Order filed December 21, 2018 in FD 36262.
16. As part of the Project, CCD seeks to remove approximately 21,000 feet of Section 10901 track(used by DRIR to perform common carrier service) and Section 10906 track (also used by DRIR to provide common carrier service) without fully replacing such track and without providing DRIR the financial resources necessary to build equivalent Section 10906 replacement tracks elsewhere.
17. The Project will adversely impact service to DRIR's shippers. Exhibit B is a collection of letters from DRIR's shippers expressing concerns about the impacts the Project will have on DRIR's provision of common carrier service.
18. The Project will result in a material adverse effect on DRIR and on the shippers that it serves via the Stockyards Line by:
 - (1) drastically impeding DRIR's ability to stage cars for efficient delivery to Stockyards shippers;

(2) preventing DRIR from providing rail-truck and truck-rail transloading on the Stockyards Line; and

(3) preventing revenue storage of railcars on the Stockyards Line.

19. CCD has also already begun removing what its claims are shipper owned sidetracks over which DRIR has operated and threatens to remove more tracks that were used by relocated shippers. The legality of whether CCD could remove these tracks without first obtaining a declaratory order from the STB is currently pending before the Board and in state court. See Denver Rock Island Railroad Company v. The City and County of Denver, Colorado, FD 36240, NOR 42160 (pending before the Board) and City and County of Denver v. Denver Rock Island Railroad, District Court, City and County of Denver, State of Colorado, Case No. 2019CV34300.

JURISDICTION

20. Both the Section 10901 and Section 10906 tracks owned and operated by DRIR are subject to the exclusive jurisdiction of the STB. See 49 U.S.C. §10501(b).
21. The Board has exclusive and plenary jurisdiction over abandonments and discontinuances of rail service over jurisdictional track, including Section 10901 and 10906 tracks owned and operated by DRIR. See Chi. & Nw. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981).
22. It is well settled that Section 10901 track may not be removed by a third party without first removing the Board's jurisdiction through the filing of adverse abandonment application before invoking state law or eminent domain rights. See Thompson v Texas Mexican Ry. Co., 328 U.S. 134 (1946); Modern Handcraft, Inc., 363 I.C.C. 969 (1981); Howard v Surface Transportation Board, 389 F.3d 259 (1st. Cir. 2004); Consolidated Rail Corp. v

Interstate Commerce Commission, 29 F.3d 706 (D.C. Cir. 1994); see also 1996 Adverse Discontinuances.

23. It is well settled that Section 10906 track may not be removed by a third party without first removing the Board's jurisdiction through the filing of a petition for declaratory order before invoking state law or eminent domain rights. Pinelawn Cemetery--Pet. for Declaratory Order, FD 35468, 2017 STB LEXIS 43 (STB served Apr. 21, 2015).
24. It is well settled that Board has a statutory duty to preserve and promote continued rail service, particularly where, as here, non-rail development would adversely impact service to shippers and DRIR desires to continue service. New York Cross Harbor RR v. STB, 374 F.3d 1177 (D.C. Cir. 2004).

COMPLAINT COUNT I

CCD IS PROPOSING TO REMOVE AND RELOCATE DRIR'S SECTION 10901 TRACKS WITHOUT FILING AN ADVERSE ABANDONMENT APPLICATION AND IN VIOLATION OF 49 U.S.C. §10903

25. Complainant re-alleges and incorporates by reference the statements and allegations in the foregoing paragraphs.
26. The Project seeks to remove some of DRIR's Section 10901 tracks and relocate other DRIR Section 10901 track and railroad maintenance and operations facilities.
27. CCD has not obtained DRIR's consent to remove or relocate DRIR's Section 10901 common carrier tracks constituting part of the Stockyard Lines.
28. A person other than DRIR cannot lawfully cause abandonment, removal, and discontinuance of rail service over 10901 track being used by DRIR in rail operations except by means an application for adverse abandonment and/or discontinuance of service granted by the Board pursuant to 49 U.S.C. 10903(d).

29. CCD has not filed an adverse abandonment petition requesting the STB to remove its jurisdiction over DRIR's Section 10901 tracks.
30. Having failed to obtain DRIR's consent to the Project, CCD would be in violation of 49 U.S.C. §10903(d) if it seeks to remove and relocate DRIR's tracks and railroad facilities without first obtaining an adverse abandonment finding that the public convenience and necessity require or permit the removal of STB's jurisdiction over the tracks.

COMPLAINT COUNT II

CCD IS PROPOSING TO REMOVE AND RELOCATE DRIR'S SECTION 10906 TRACKS WITHOUT FILING A PETITION FOR DECLARATORY ORDER SEEKING TO REMOVE THE BOARD'S JURISDICTION OVER THE SECTION 10906 TRACKS

31. Complainant re-alleges and incorporates by reference the statements and allegations in the foregoing paragraphs.
32. The Project seeks to remove some of DRIR's Section 10906 tracks and railroad maintenance and operations facilities that are part of the Stockyard Lines and over which DRIR conducts Section 10906 operations.
33. CCD has not obtained DRIR's consent to remove DRIR's Section 10906 tracks or to terminate DRIR's Section 10906 operations.
34. A person other than DRIR cannot lawfully cause abandonment, removal, and discontinuance of rail service over 10906 track and railroad facilities being used by DRIR in rail operations without first obtaining a declaratory order that such 10906 tracks and operations are no longer subject to the exclusive jurisdiction of the STB.
35. CCD has not filed a petition for declaratory order seeking the removal of the STB's jurisdiction over DRIR's Section 10901 tracks and operations.

36. Having failed to obtain DRIR's consent to the termination of its Section 10906 operations and/or the removal of DRIR's Section 10906 tracks and railroad facilities or a declaration from the STB that such operations and tracks are no longer subject to the jurisdiction of the STB, such tracks and operations remain subject to the exclusive jurisdiction of the STB.
37. Such Section 10906 tracks and operations being subject to the exclusive jurisdiction of the STB, any effort by CCD to cause the abandonment, removal, and discontinuance of DRIR's rail service over such Section 10906 tracks and railroad facilities would be preempted by application of ICCTA.

REQUESTED RELIEF

38. Complainant re-alleges and incorporates by reference the statements and allegations in the foregoing paragraphs.
39. Complainant seeks the above findings and an award for any and all damages that DRIR has incurred to date and for any future damages DRIR may incur by virtue of CCD's unlawful actions to cause the abandonment, removal, and discontinuance of DRIR's rail transportation services and to unlawfully manage and regulate DRIR's operations, practices, routes, services, and facilities contrary to ICCTA.
40. If CCD begins to undertake further efforts during the pendency of this proceeding to abandon, remove, or discontinue DRIR's rail transportation services over the Stockyard Lines or to unlawfully manage and regulate DRIR's operations, practices, routes, services, and facilities contrary to ICCTA, DRIR will seek a request for injunctive relief pursuant to 49 U.S.C. §§ 1321(b)(4) and 49 C.F.R. § 1117.1.

Respectfully submitted,



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Attorneys for Complainant

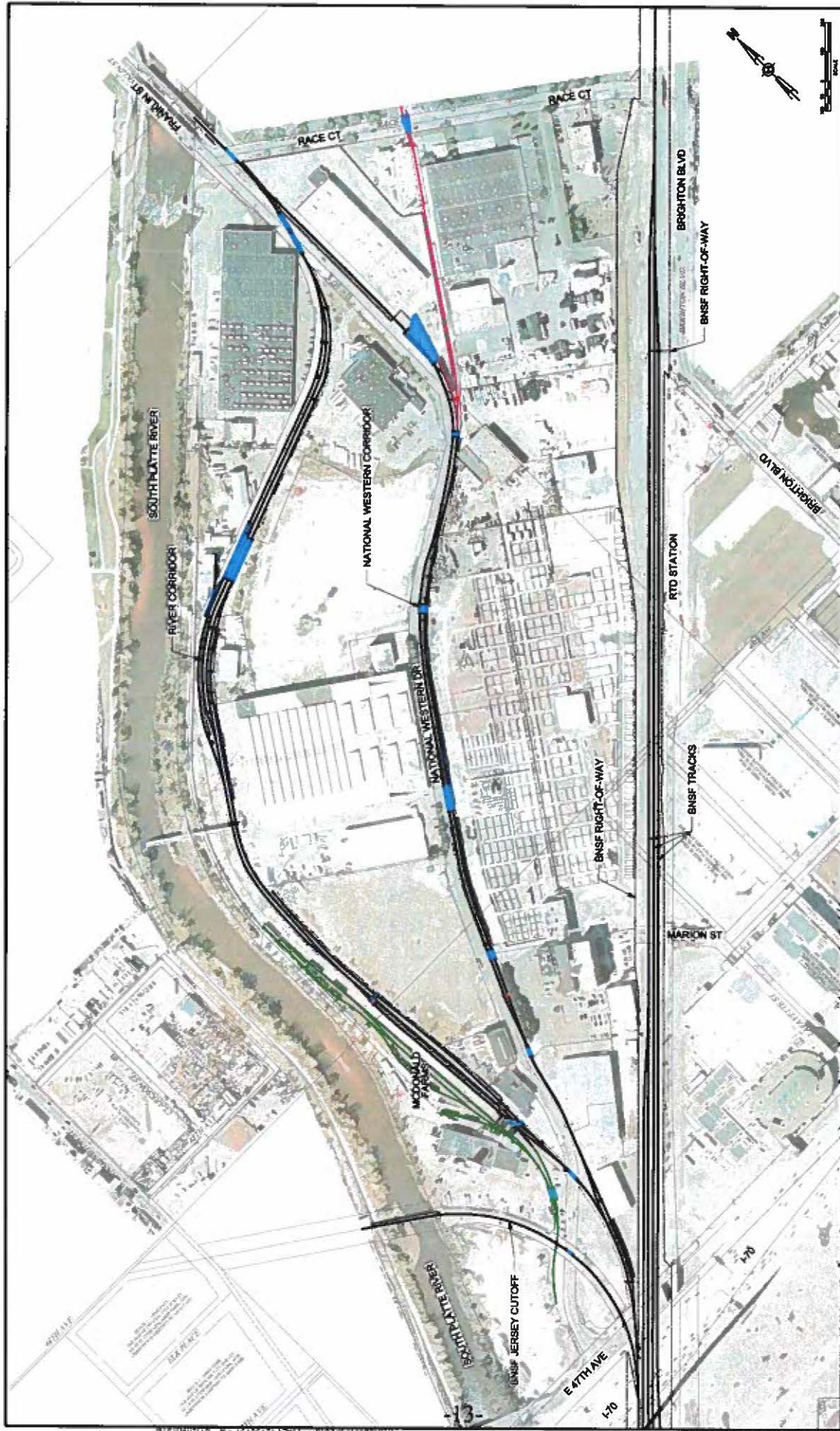
DATE FILED: February 4, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE DENVER ROCK ISLAND	)	
RAILROAD COMPANY,	)	
	)	
<i>Complainant,</i>	)	NOR 42162
	)	
v.	)	
	)	
THE CITY AND COUNTY OF DENVER,	)	
COLORADO,	)	
	)	
<i>Defendant.</i>		

VERIFIED COMPLAINT

EXHIBIT A - MAP



DATE: 11/17/2011 TIME: 1:12:18 PM BY: JLM/MLM

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE DENVER ROCK ISLAND	)	
RAILROAD COMPANY,	)	
	)	
<i>Complainant,</i>	)	NOR 42162
	)	
v.	)	
	)	
THE CITY AND COUNTY OF DENVER,	)	
COLORADO,	)	
	)	
<i>Defendant.</i>		

VERIFIED COMPLAINT

EXHIBIT B – SHIPPER LETTERS

January 25, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

**Re: City and County of Denver – Verified Petition for Declaratory Order,
FD 36263**

Dear Ms. Brown:

Colorado Petroleum ("CP") is writing this letter in opposition to certain statements made by The City and County of Denver (the "City") in its December 21, 2018 Petition for Declaratory Order ("Petition"). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to shippers. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, CP, a rail shipper stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. For these reasons, CP respectfully requests that the Board deny the City's request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

CP's new state of the art facility is now the company's worldwide headquarters. The facility includes 235,000 square feet of warehouse space, 30,000-gallon blending tanks, six packaging lines, QC laboratory, tank farm that holds in excess of 1,000,000 gallons as well a concrete based tank truck and rail car receiving and shipping depot. As you can imagine, CP has invested heavily in its operations, which has tripled in size since 1960.¹ Because rail operations are important to CP's success, CP has invested in and built trackage in the Denver Stockyards that directly connects to the DRIR. CP long ago established its operations in Denver, Colorado because it afforded CP direct access to BNSF, UP, and DRIR. In addition to interchanging traffic with BNSF, UP, and DRIR, DRIR assists with car storage in nearby yards located on the main line. CP is dependent on all of its rail partners for interchange purposes, staging, and storage all of which ensure the efficiency of our operations. The plan currently proposed by the City would adversely impact our service, our operations, and our relationships with our railroad partners.

CP was consulted about how the expansion of the National Western Center would impact our operations. Regardless, as of the date of this letter **no agreement has been reached for either CP to relocate its operations, or to preserve CP's rail access to the three carriers** that currently serve CP. As such, abandonment and relocation of the track will harm shippers, including CP, absent adequate protections. It is imperative that the Board not allow the City to move forward with its plans, without fully considering the needs of the rail shippers that depend on the main lines and

¹ CP was originally founded in 1927, and has been under current ownership since 1971.

side tracks that comprise the Denver Stockyards. CP and other shippers' economic vitality depend on maintaining the status quo of rail operations.

While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side tracks to the relocation/reconfiguration. It should be required to do so in order to ensure us, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is in the interest of all stakeholders that the Board carefully scrutinizes this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings many years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards. CP suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR, and CP or else CP's rail service will be adversely impacted. Without such agreements, it is difficult for CP to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to CP that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, without requiring the City to reach an agreement with DRIR, the only railroad providing local service.

Without the consent of CP and DRIR, CP stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact CP or other rail users in the Denver Stockyards. For the reasons explained herein, CP respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,

Colorado Petroleum Prod. Co.



Clark Thompson
President

cc: Parties of Record



January 23, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

Re: City and County of Denver – Verified Petition for Declaratory Order, FD 36263

Dear Ms. Brown:

Evraz Recycling Denver ("Evraz") is writing this letter in opposition to certain statements made by The City and County of Denver (the "City") in its December 21, 2018 Petition for Declaratory Order ("Petition"). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to shippers. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, Evraz, a rail-dependent shipper stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. As explained herein, Evraz respectfully requests that the Board deny the City's request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

While Evraz is the largest metal scrap recycler in western Canada, it also operates three facilities in the United States - one in North Dakota and two in Colorado. Evraz buys, processes and sells a wide range of ferrous and non-ferrous materials, and offers a variety of metal recycling and other services including auto wrecking yards that provide a great selection of low-cost parts on a self-serve basis. Evraz's Denver Stockyard facility supports customers throughout the region. Because staging is critical for our operations, we built trackage in the Denver Stockyards that directly connects to the DRIR. In 2018, 97% of long-distance traffic was interchanged to BNSF Railway ("BNSF") over the main line and side tracks in the Southern Denver Stockyard (406, 408, and 410) that the City wants to relocate/reconfigure. We also use Tracks 301 and 305 in the Northern Denver Stockyard when interchanging with Union Pacific Railroad Company ("UP"). We intentionally established our operations in Denver, Colorado because it afforded us direct access to BNSF, UP, and DRIR. We have continued to invest heavily in our Denver operations. In addition to interchanging traffic with BNSF, UP, and DRIR, DRIR assists with car storage in nearby yards located on the main line. We are dependent on all of our rail partners for interchange purposes, staging, and storage all of which ensure the efficiency of our operations. The plan currently proposed by the City would adversely impact our service, our operations, and our relationships with our railroad partners.

Evraz was/ was not consulted about how the expansion of the National Western Center would impact our operations. Moreover, as of the date of this letter no agreement has been reached for either Evraz to relocate its operations, or to preserve Evraz's rail access to the three carriers that currently serve Evraz. As such, abandonment and relocation of the track will harm shippers, such as Evraz, absent adequate protections. It is imperative that the Board not allow the City to move forward with its plans, without fully considering the needs of the rail-dependent shippers that depend on the main lines and side tracks that comprise the Denver Stockyards. Evraz and other shippers' economic vitality depends on maintaining the status quo of rail operations.

While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail dependent shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side

tracks to the relocation/reconfiguration. It should be required to do so in order to ensure us, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is in the interest of all stakeholders that the Board carefully scrutinize this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings many years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards. Evraz suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR, and Evraz or else Evraz's rail service will be adversely impacted. Without such agreements, it is difficult for Evraz to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to Evraz that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, without requiring the City to reach an agreement with DRIR, the only railroad providing local service.

Without the consent of Evraz and DRIR, Evraz stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact Evraz or other rail users in the Denver Stockyards. For the reasons explained herein, Evraz respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,



Evraz Recycling Denver

cc: Parties of Record

January 22, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

**Re: City and County of Denver – Verified Petition for Declaratory Order,
FD 36263**

Dear Ms. Brown:

Iron and Metals, Inc. ("IMI") is writing this letter in opposition to certain statements made by The City and County of Denver (the "City") in its December 21, 2018 Petition for Declaratory Order ("Petition"). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to shippers. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, IMI, a rail shipper, stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. For these reasons, IMI respectfully requests that the Board deny the City's request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

IMI is a family owned business located north of the Denver Stockyard tracks. IMI has been located at its current location for almost 45 years. IMI needs daily track service to efficiently operate its scrap metal facility. Without this service, IMI will suffer significant and irreparable economic damage that will threaten its economic viability. Rail operations as opposed to more expensive trucking services are critical to IMI's successful operations. In 1975, IMI invested in and built trackage in the Denver Stockyards that directly connects to the DRIR. IMI established its operations in Denver, Colorado because it afforded IMI direct access to BNSF, UP, and DRIR. In addition to interchanging traffic with BNSF, UP, and DRIR, DRIR assists with car storage in nearby yards located on the main line. IMI is dependent on all of its rail partners for interchange purposes, staging and storage, all of which ensure the efficiency of its operations. The plan currently proposed by the City would adversely impact our service, our operations, and our relationships with our railroad partners.

IMI was not consulted accurately about how the expansion of the National Western Center would impact our operations. Regardless, as of the date of this letter **no agreement has been reached for either IMI to relocate its operations, or to preserve IMI's rail access to the three carriers** that currently serve IMI. As such, abandonment and relocation of the track will harm shippers, including IMI, absent adequate protections. It is imperative that the Board not allow the City to move forward with its plans without fully considering the needs of the rail shippers that depend on the main lines and side tracks that comprise the Denver Stockyards. IMI and other shippers' economic vitality depend on maintaining the status quo of rail operations.

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While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side tracks to the relocation/reconfiguration. It should be required to do so in order to ensure us, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is in the interest of all stakeholders that the Board carefully scrutinizes this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings many years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards. IMI suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR and IMI, or else IMI's rail service will be adversely impacted. Without such agreements, it is difficult for IMI to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to IMI that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, without requiring the City to reach an agreement with DRIR, the only railroad providing local service.

Without the consent of IMI and DRIR, IMI stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact IMI or other rail users in the Denver Stockyards. For the reasons explained herein, IMI respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,



Iron and Metals Inc.

Michael Cohen, President

cc: Parties of Record



7440 East I-25 Frontage Rd. • Frederick, CO 80516
(303) 772-4577 • (303) 442-6829 • Fax (303) 442-5706

January 28, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

**Re: City and County of Denver – Verified Petition for Declaratory Order,
FD 36263**

Dear Ms. Brown:

National Western Properties, LLC, a subsidiary of McDonald Farms Enterprises, Inc. ("MFEI") is writing this letter in opposition to certain statements made by The City and County of Denver (the "City") in its December 21, 2018 Petition for Declaratory Order ("Petition"). In its Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to MFEI. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, MFEI stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. For the reasons explained herein, MFEI therefore respectfully requests that the Board deny the City's request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

For over 52 years, MFEI has offered clients an economical solution to a wide range of industrial needs, including the safe transportation, recycling, resource recovery and/or disposal of common waste commodities and industrial by-products. The central location of our Denver facility, which is located at 4647 National Western Drive, in Denver, CO, near the Denver Stockyards complex, allows for the immediate provision and direct deployment of trans-loading and weighing services, along with other specialized services quickly as a local provider in the Denver area. The transload rail operations housed at this facility are currently conducted by

BNSF Railway ("BNSF"), Union Pacific Railroad Company ("UP"), and DRIR. We have invested heavily in our Denver operations, including purchasing and establishing four rail yards (Tracks 461-464), which connect to the main line (on National Western Drive) to support MFEI's operations. In addition to interchanging traffic with BNSF, UP, and DRIR, we look to DRIR to assist with car storage in nearby yards located on the same rail line. We are dependent on our rail partners for interchange purposes, staging, storage, and transloading, all of which ensure the efficiency of our operations. The plan currently proposed by the City would adversely impact our service, our operations, and our relationships with our railroad partners.

MFEI was first approached about the expansion of the National Western Center several years ago. While we have engaged in conversations with the City concerning its development plans, to be clear, as of the date of this letter no agreement has been reached to preserve MFEI's rail access to the three carriers that currently serve MFEI. Abandonment and relocation of the track will harm shippers, including MFEI, absent adequate protections. As such, it is imperative that the Board not give the City a blank check to move forward with its plans, without fully considering the needs of the rail-dependent shippers that depend on the main lines and side tracks that comprise the Denver Stockyards. MFEI and other shippers' economic vitality depends on maintaining the status quo of rail operations.

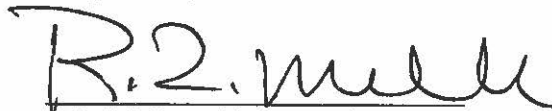
While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail dependent shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side tracks to the relocation/reconfiguration. It should be required to do so in order to ensure us, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is the interest of all stakeholders that the Board carefully scrutinize this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards, MFEI suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR, and MFEI or else MFEI's rail service will be adversely impacted. Without such agreements, it is difficult for MFEI to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all of the parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to MFEI that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, and especially not without requiring the City to reach an agreement with the main railroad providing local service, DRIR.

In summary, without the consent of MFEI or DRIR, MFEI stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact MFEI or other rail users in the Denver Stockyards. For the reasons explained herein, MFEI respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.L. McDonald", written over a horizontal line.

R.L. McDonald, General Manager
National Western Properties, LLC, a subsidiary of
McDonald Farms Enterprises

cc: Parties of Record
Don Ostrander
Marjorie McDonald
Douglas McDonald

Truck-Rail Handling, inc.

CORPORATE OFFICE • 4605 I INDUSTRIAL DRIVE • FREMONT, CA 94538-6436 • (510) 657-4267 • CSR-(FAX) (510) 657-5083 • ADM-(FAX) (510) 354-3941

January 18, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

Re: City and County of Denver – Verified Petition for Declaratory Order, FD 36263

Dear Ms. Brown:

Truck Rail Handling, Inc. ("TRH") is writing this letter in opposition to certain statements made by The City and County of Denver (the "City") in its December 21, 2018 Petition for Declaratory Order ("Petition"). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to shippers. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, TRH, a rail dependent shipper stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. As explained herein, TRH respectfully requests that the Board deny the City's request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

TRH provides service from and to plant sites of rail cars, silos, surge bins and most any type of container. We help our clients protect their bottom line by streamlining the transportation process by handling everything from food grade products to a variety of chemicals with perfection and precision. We provide break-bulk, warehousing, and bulk shipping of dry & liquid, hazardous and non-hazardous materials. We currently use DRIR's tracks 450 and 410, both of which the City seeks to eliminate, in support of our operations. Our transload rail operations are currently handled in conjunction with the BNSF Railway ("BNSF"), Union Pacific Railroad Company ("UP"), and DRIR. We have invested heavily in our Denver operations. In addition to interchanging traffic with BNSF, UP, and DRIR, we look to DRIR to assist with car storage in nearby yards located on the main line. TRH is dependent on our rail partners for interchange purposes, staging, storage, and transloading, all of which ensure the efficiency of our operations. The plan currently proposed by the City would adversely impact our service, our operations, our relationships with our railroad partners and ultimately our customers who require our services for their manufacturing processes.

TRH was not consulted about how the expansion of the National Western Center would impact our operations. However, as of the date of this letter no agreement has been reached for either TRH to relocate its operations, or to preserve TRH's rail access to the three carriers that currently serve TRH tracks. Abandonment and relocation of the track will harm shippers, including TRH, absent adequate protections. As such, it is imperative that the Board not allow the City to move forward with its plans, without fully considering the needs of the rail-dependent shippers that depend on the main lines and side tracks that comprise the Denver Stockyards. TRH and other shippers' economic vitality depends on maintaining the status quo of rail operations.

While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail dependent

shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side tracks to the relocation/reconfiguration. It should be required to do so in order to ensure TRH, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is in the interest of all stakeholders that the Board carefully scrutinize this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards. TRH suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR, and TRH or else TRH's rail service will be adversely impacted. Without such agreements, it is difficult for TRH to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to TRH that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, without requiring the City to reach an agreement with DRIR, the only railroad providing local service.

In summary, without the consent of TRH and DRIR, TRH stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact TRH or other rail users in the Denver Stockyards. For the reasons explained herein, TRH respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,



Lee Schorno - President

Truck Rail Handling, Inc.

cc: B. Hitner & B Meeker

January __, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

**Re: City and County of Denver – Verified Petition for Declaratory Order,
FD 36263**

Dear Ms. Brown:

Viper Railcar Storage (“Viper”) is writing this letter in opposition to certain statements made by The City and County of Denver (the “City”) in its December 21, 2018 Petition for Declaratory Order (“Petition”). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad (“DRIR”) and to significantly change DRIR’s operations in the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR’s service to shippers. This is untrue. Unless a voluntary agreement is reached, and there is no such agreement at this time, Viper, a rail dependent shipper stands to be adversely affected by the proposed relocation/reconfiguration of the DRIR tracks and operations. As explained herein, Viper respectfully requests that the Board deny the City’s request, exercise jurisdiction over the proposed transactions, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

Viper provides hazardous and non-hazardous railcar storage predominantly to the petrochemical and coal industry for any type of privately marked, empty, or loaded railcar. To maximize efficiency of operations for our clientele, we strategically locate our facilities in areas that offer interchange with multiple Class I railroads and short line rail carriers. Our Denver Stockyard facility support customers throughout the Southwest (Region 2). We currently use DRIR’s tracks 408 and 441, both of which are in the Denver Stockyard area that the City proposes to relocate/reconfigure, in support of our operations. Our rail operations are currently conducted by BNSF Railway (“BNSF”), Union Pacific Railroad Company (“UP”), and DRIR. We have invested heavily in our Denver operations. In addition to interchanging traffic with BNSF, UP, and DRIR, DRIR assists with car storage in nearby yards located on the main line. We are dependent on our rail partners for interchange purposes, staging, and storage all of which ensure the efficiency of our operations. The plan currently proposed by the City would adversely impact our service, our operations, and our relationships with our railroad partners.

Viper [REDACTED] was not consulted about how the expansion of the National Western Center would impact our operations. Most important, as of the date of this letter no agreement has been reached for either Viper to relocate its operations, or to preserve Viper’s rail access to the three carriers that currently serve Viper. Abandonment and relocation of the track will harm shippers, including Viper, absent adequate protections. As such, it is imperative that the Board not allow

the City to move forward with its plans, without fully considering the needs of the rail-dependent shippers that depend on the main lines and side tracks that comprise the Denver Stockyards. Viper and other shippers' economic vitality depends on maintaining the status quo of rail operations.

While the City wants the Board to view its relocation/reconfiguration as a routine transaction, the truth is there is nothing routine about its plans to substantially reconfigure rail operations in the Denver Stockyards. Rail dependent shippers and other users of the DRIR's stockyard tracks have legitimate reasons to be concerned. The City has not obtained the consent of DRIR, the only rail carrier providing local service, over the main lines and side tracks to the relocation/reconfiguration. It should be required to do so in order to ensure us, and others, that our rail service would not be impacted by the relocation/reconfiguration.

It is in the interest of all stakeholders that the Board carefully scrutinize this complicated transaction. Indeed, this is not the first time that the City or its predecessors have attempted to terminate rail operations over the stockyard operations. In 1996, the Board found in an adverse abandonment proceeding that the entity seeking to terminate rail service over the stockyard rail operations had failed to establish that the future public convenience and necessity require or permit the abandonment of rail service. Nothing has really changed since those findings many years ago. While some shippers have relocated, BNSF, UP, and DRIR all continue to operate in the yards. Viper suspects the City may be trying to avoid having to file another adverse abandonment in this proceeding because it is afraid the result would be the same.

The City must obtain the consent of BNSF, UP, DRIR, and Viper or else Viper's rail service will be adversely impacted. Without such agreements, it is difficult for Viper to entrust a public entity that does not operate freight rail service with ensuring the continued provision of rail service during and post-relocation/reconfiguration. Without the consent of all parties, which the City does not have, the current plan does not make sense and provides little, if any, assurance to Viper that its rail service will be adequately protected. Put simply, it would be a mistake to allow the City's relocation/reconfiguration project to move forward at this time, without requiring the City to reach an agreement with DRIR, the only railroad providing local service.

In summary, without the consent of Viper and DRIR, Viper stands to be adversely affected by the proposed relocation/reconfiguration. It is inaccurate that the City's current plan as set forth in its Petition would not adversely impact Viper or other rail users in the Denver Stockyards. For the reasons explained herein, Viper respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in FD 36263.

Respectfully submitted,


Viper Railcar Storage

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE DENVER ROCK ISLAND	)	
RAILROAD COMPANY,	)	
	)	
<i>Complainant,</i>	)	NOR 42162
	)	
v.	)	
	)	
THE CITY AND COUNTY OF DENVER,	)	
COLORADO,	)	
	)	
<i>Defendant.</i>		

VERIFIED COMPLAINT

VERIFICATION

Verification

I, Jason Travers, General Manager of The Denver Rock Island Railroad Company ("DRIR") hereby verify under penalty of perjury that to the best of my knowledge the foregoing Verified Complaint is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of DRIR in connection with DRIR's Verified Complaint Against The City and County of Denver, Colorado, which is being filed with the Surface Transportation Board.

Executed this 4th day of February, 2019

A handwritten signature in blue ink, appearing to read 'J. Travers', is written over a horizontal line.

Jason Travers
General Manager
The Denver Rock Island Railroad Company

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. §1111.3, I hereby certify that on February 4, 2019, I served a copy of the foregoing Verified Complaint by email or Fedex overnight delivery on representatives of The City and County of Denver, Colorado:

Matthew J. Mulbarger, Esq.
Assistant Director, Litigation
Municipal Operations Section
Denver City Attorneys Office
201 W. Colfax Ave., Dept. 1207
Denver, CO 80202

Jennifer Welborn, Esq.
Assistant City Attorney
Municipal Operations Section
Denver City Attorneys Office
201 W. Colfax Ave., Dept. 1207
Denver, CO 80202

Joshua L. Roberts, Esq.
Municipal Operations Section
Denver City Attorneys Office
201 W. Colfax Ave., Dept. 1207
Denver, CO 80202

Allison Fultz, Esq.
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036


William A. Mullins