

EI-16734

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April 3, 2009

VIA HAND DELIVERY

Victoria Rutson
Chief, Section on Environmental Analysis
Surface Transportation Board
395 E Street SW, Room 1106
Washington, D.C. 20423

Re: Docket No. AB-1014, Denver & Rio Grande Railway Historical
Foundation—Adverse Abandonment—In Mineral County, Co

Dear Ms. Rutson:

The Board granted the application for adverse abandonment of the City of Creede, CO in the above docket in a decision served May 23, 2008. The application was for the abandonment of about one mile of track in the city limits of Creede. The Board's decision contained the standard requirement for consultation pursuant to section 106 of the National Historic Preservation Act. The City of Creede has since consulted with the Colorado State Historic Preservation Officer ("SHPO") and Creede Historical Society. It was determined by the SHPO that the removal of track in town would impact a portion of the Creede Branch of the former Denver & Rio Grande Western Railroad, which has been listed as a historic site in the National Register of Historic Places. The City entered into a memorandum of agreement with the SHPO, which addresses this impact by the City's agreement to erect and maintain a historic marker in or adjacent to the railroad right of way. A copy of the memorandum of agreement, which has been executed by the City of Creede, the Colorado SHPO, and, as an invited party, the Creede Historical Society, is enclosed for the Board's review and signature.

Can you please have this agreement executed by the appropriate representative of the Board and send a signed copy to myself as representative of the City of Creede and to Edward C. Nichols, State Historic Preservation Officer and President, Colorado Historical Society, Office of Archeology and Historic Preservation, 1300 Broadway, Denver, CO 80203?

The City would like for the condition in the Board's decision that track salvage cannot occur until after completion of the historic preservation consultation be removed such that track can be removed beginning as soon as possible this Spring.

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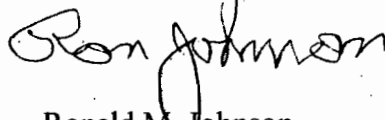
Victoria Ruston

April 3, 2009

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If you have any questions, feel free to contact me.

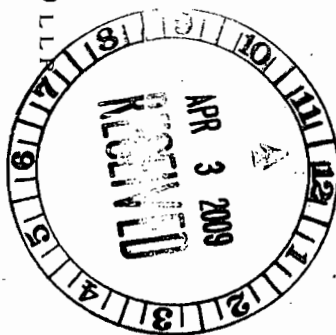
Sincerely yours,

A handwritten signature in black ink, appearing to read "Ron Johnson". The signature is fluid and cursive, with the first name "Ron" and last name "Johnson" clearly distinguishable.

Ronald M. Johnson

Attorney for the City of Creede

cc: Edward C. Nichols, Colorado SHPO
Clyde Dooley, City Manager, City of Creede



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VICTORIA RUTSON
CHIEF, SECTION ON ENVIRONMENTAL ANALYSIS
SURFACE TRANSPORTATION BOARD
395 E ST SW, ROOM 1106
WASHINGTON, D.C. 20423

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF CREEDE, COLORADO
COLORADO STATE HISTORIC PRESERVATION OFFICER
SURFACE TRANSPORTATION BOARD
CREEDE HISTORICAL SOCIETY

REGARDING ABANDONMENT OF RAILROAD TRACK IN CREEDE

WHEREAS, the U.S. Surface Transportation Board ("STB") approved the application of the City of Creede, Mineral County, Colorado for the adverse abandonment of track of the Denver & Rio Grande Railway Historical Foundation the city limits, in STB Finance Docket No. AB-1014, Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment-In Mineral County, CO (served May 23, 2007);

WHEREAS, the STB's decision required that the City consult with the Colorado State Historic Preservation Officer ("SHPO"), pursuant to the section 106 process in the National Historic Preservation Act, 16 U.S.C. § 470f, before the track can be salvaged;

WHEREAS, the City consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing section 106 of the National Historic Preservation Act, to determine whether there were any buildings or sites listed or eligible for listing in the National Register of Historic Places, which might be affected by the removal of the track in town:

WHEREAS, the SHPO found that the railroad line of the former Denver & Rio Grande Western Railroad Company between South Fork and Creede, CO (the "Creede Branch") had been listed as a historic site in the National Register of Historic Places (Site No. 5ML.273) (hereinafter "Historic Site") and that the removal of the track would have an adverse effect on the segment of this Historic Site located in the city limits;

WHEREAS, the SHPO found that the implementation of the abandonment would not have an adverse effect on any other building or site eligible for listing or listed in the National Register of Historic Places;

NOW, THEREFORE, the City of Creede, SHPO, Creede Historical Society, and STB enter into this Memorandum of Agreement ("MOA") that the Undertaking described below shall be implemented with the following stipulations in order to take into account the effect of the abandonment on the Historic Site.

STIPULATIONS

The City shall ensure that the following measures are carried out:

I. UNDERTAKING

The City will work with the Creede Historical Society to erect a permanent historic marker in or adjacent to the former railroad right-of-way in the city limits. The historic marker will explain that the Creede Branch once ran through the town and was important to the early development of Creede. The City will be responsible for the repair, maintenance, and, if, necessary, replacement of the marker. The type, size and placement and text of the marker are subject to approval by the SHPO as described in Section II below.

II. SHPO APPROVAL

A. The City will provide the SHPO a description of the planned historic marker, including its size, text, and location prior to its installation.

B. The SHPO shall provide the City written comments on the City's proposal for a historic within 30 days of its receipt of the proposal. Failure by the SHPO to provide the City written comments within that time period shall constitute approval of the City's proposal.

C. If the SHPO makes timely objection to the City's proposal, the City and the SHPO shall consult expeditiously in an effort to resolve the objection.

D. If the SHPO and the City cannot resolve the SHPO's objection, then either party may submit the dispute to the dispute resolution procedures in Section V. below.

III. DURATION

This MOA shall be null and void if its terms are not carried out within two years from the removal of all track in town.

IV. MONITORING AND REPORTING

The City will provide a report, including a photograph or digital picture, to the SHPO when the historic marker has been installed.

V. DISPUTE RESOLUTION

Should any party to this MOA object at any time to any actions proposed or the manner in which the terms of the MOA are implemented, the STB shall consult with the objecting party or parties to resolve the objection. If the STB determines within 30 days that such objection(s) cannot be resolved, the STB will:

A. Forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation ("Council") in accordance with 36 CFR § 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the STB on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by the STB in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the STB may render a decision regarding the dispute.

In reaching its decision, the STB will take into account all comments regarding the dispute from the parties to the MOA.

VI. NOTICES

For purposes of notices and consultation pursuant to this MOA, the following addresses and contact information should be used:

For City of Creede:

City Manager
City of Creede
P.O. Box 457
Creede, CO 81130

For SHPO:

Edward C. Nichols
State Historic Preservation Officer and Pres. Colorado Historical Society
Office of Archeology and Historic Preservation
1300 Broadway
Denver, CO 80203

For Creede Historical Society:

Creede Historical Society
P.O. Box 608
Creede, CO 81130
Attn: President

For the Surface Transportation Board:

U.S. Surface Transportation Board
Section of Environmental Analysis
395 E St. SW
Washington, DC 20423-0001
Attn: Docket No. AB-1014

VII. TERMINATION

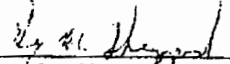
This MOA shall terminate 30 days after submission of the report to the SHPO pursuant to Section IV, unless a party to this MOA raises an objection(s) before the end of that 30-day period

that the terms of the MOA have not been complied with. In the event of such objection (s), the MOA shall terminate upon the resolution of the objection(s).

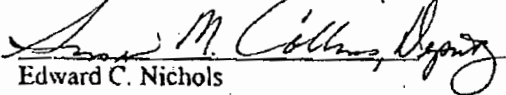
This MOA is effective March 12, 2009.

SIGNATORIES:

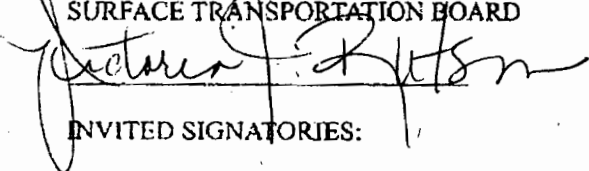
City of Creede


Rex M. Sheppard, Mayor

State Historic Preservation Officer

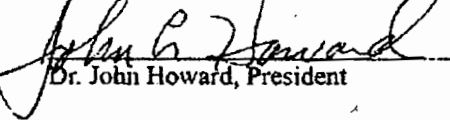

Edward C. Nichols

SURFACE TRANSPORTATION BOARD



INVITED SIGNATORIES:

Creede Historical Society


Dr. John Howard, President