



Davis Graham & Stubbs LLP

February 14, 2002

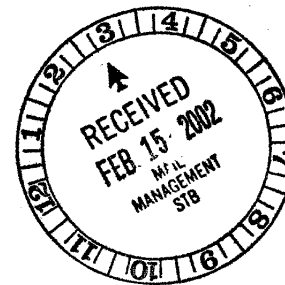
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VIA FEDERAL EXPRESS
SECOND DAY DELIVERY

FEE RECEIVED

FEB 15 2002

**SURFACE
TRANSPORTATION BOARD**



Vernon Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001

**ENTERED
Office of the Secretary**

FEB 15 2002

**Part of
Public Record**

Re: Finance Docket No. FD-34171

Dear Mr. Vernon:

This letter transmits the original and 10 copies of the Verified Notice of Exemption for an Acquisition Exemption of the Butte Hill and Missoula Gulch Line in Silver Bow County, Montana for filing in Finance Docket No. FD-34171, on behalf of Butte-Silver Bow County. Also enclosed is a check in the amount of \$1,300.00 for the filing fee.

I am submitting the filing fee so that the Notice may be processed as expeditiously as possible. However, the applicant for this proceeding is a small local government body, Butte-Silver Bow County, who respectfully requests that the Board waive the filing fee for this proceeding as provided for in 49 CFR § 1002.2(e)(1) based on the applicant's status as a local government entity.

I have also enclosed an extra copy of the Notice to be date-stamped and returned to me in the enclosed self-addressed, stamped envelope. Please do not hesitate to contact me with any questions or if you need anything further.

Sincerely,

Susan J. Geer

SJG/amg
Enclosures

cc: Jon Sesso, BSB
Eileen Joyce, BSB
D. Henry Elsen, EPA
Sara Sparks, EPA
Mary Capdeville, MDEQ
Phillis Johnson-Ball, SEA

FILED

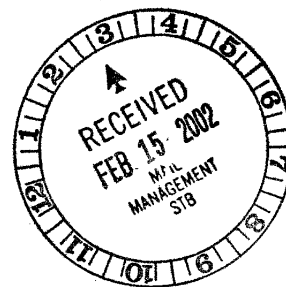
FEB 15 2002

**SURFACE
TRANSPORTATION BOARD**

Vernon Williams, Secretary
Surface Transportation Board
February 14, 2002
Page 2

cc: (con't) Leo Berry, Esq. RR PRPs
 Chuck Soule, RR PRPs
 Gary Honeyman, Union Pacific
 Mike Green, Montana Western
 Dave Smith, BNSF
 Mark Reavis, as representative of former BAHPR

204776



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD-34171

BUTTE-SILVER BOW COUNTY
ACQUISITION EXEMPTION
SILVER BOW COUNTY, MONTANA

ENTERED
Office of the Secretary

FEB 15 2002

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

BUTTE-SILVER BOW COUNTY

By Its Representative,

Susan J. Geer, Esq.
Davis Graham & Stubbs, LLP
1550 17th Street, Suite 500
Denver, Colorado 80202
(303) 892-7367

FILED

FEB 15 2002

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

FEB 15 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD-34171

BUTTE-SILVER BOW COUNTY -
ACQUISITION EXEMPTION IN
SILVER BOW COUNTY, MONTANA

VERIFIED NOTICE OF EXEMPTION

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.2(d)(1) and § 1150.31, Butte-Silver Bow County ("BSB") files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 11323, for the acquisition of approximately 11 miles of railroad known as the Missoula Gulch and Butte Hill Line ("MGBH") in and near Butte, in Silver Bow County, Montana. The Missoula Gulch Line extends from milepost 0.0 at Rocker, west of Butte, to milepost 4.40 at the Butte Hill Yard. The Butte Hill Line extends north and east from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine. A map of the MGBH is attached to this Notice as Exhibit A.

The MGBH was most recently owned and operated by a non-profit corporation, the Butte/Anaconda Historic Park and Railroad Corporation ("BAHPR"). The BAHPR operated a tourist train over the portion of the MGBH between Rocker and the former Butte Hill Yard under a lease from the State of Montana from 1988 to 1991. In 1991, the BAHPR acquired the MGBH from the State of Montana. See Exhibit B, Finance Docket No. 31982, Butte/Anaconda Historic Park and Railroad Corporation - Acquisition Exemption - State of Montana, Department of Commerce.

In 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State's Office for failing to maintain its filings. See Exhibit C, Notice of Dissolution. The BAHPR

continued to operate a tourist train intermittently over the line through 1996. The BAHPR did not seek reinstatement, and never distributed its assets following its 1994 involuntary dissolution. On May 31, 2001, BSB filed a petition with the Montana district court in Silver Bow County seeking judicial dissolution and distribution of the corporate assets of the BAHPR. See Exhibit D, Verified Petition for Judicial Dissolution and Distribution of Corporate Assets, Cause No. DV-01-100. On October 29, 2001, the court ordered the assets of the BAHPR to be distributed to BSB. See Exhibit E, Findings of Fact/Conclusions of Law, Cause No. DV-01-100. BSB is seeking Board approval to consummate the acquisition of the railroad assets of the BAHPR.

Concurrently, BSB is seeking abandonment of the MGBH (Docket No. AB-597) to facilitate environmental cleanup activities in and around Butte, Montana required by the U.S. Environmental Protection Agency ("EPA") under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("CERCLA," more commonly known as "Superfund"). EPA has issued an order requiring the cleanup of railroad beds in and around Butte, Montana, including the MGBH. As part of and in conjunction with the CERCLA environmental cleanup of the MGBH, BSB will file a trail use request in the abandonment proceeding for the Missoula Gulch portion of the Line extending from Rocker to the Butte Hill or Kelley Mine Yard. BSB also will file a public use request in the abandonment proceeding for the Butte Hill portion of the Line so that the right-of-way between the Butte Hill or Kelley Mine Yard to a point near the Badger Mine may be used as one or more public roads.

In accordance with the Board's regulations at sections 1180.2(d) and 1180.4(g), BSB provides the following:

1. Information required in 49 C.F.R. § 1180.6(a)(1)(i). The proposed transaction is the acquisition of the assets of the dissolved BAHPR by BSB. The name, address and telephone number of the applicant is:

Butte-Silver Bow County
c/o Jon Sesso, Planner
155 Granite
Butte, Montana 59701
(406) 497-6200

The name, address and telephone number of counsel to whom questions may be addressed:

Susan J. Geer, Esq.
c/o Davis Graham & Stubbs LLP
1550-17th Street, Suite 500
Denver, Colorado 80202
(303) 892-7367
susan.geer@dgsllaw.com

2. Information required in 49 C.F.R. § 1180.6(a)(1)(ii). Pursuant to court order, the assets of the BAHPR have been ordered to be distributed to BSB. A deed and bill of sale will be executed immediately upon the Board's approval of this acquisition.

3. Information required in 49 C.F.R. § 1180.6(a)(1)(iii). As described above, BSB is seeking the assets of the BAHPR including the MGBH in order to facilitate the abandonment, environmental cleanup, and conversion to trail and public use of the MGBH railroad bed.

4. Information required in 49 C.F.R. § 1180.6(a)(5). The subject property is located in the State of Montana.

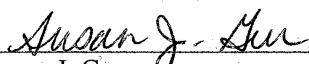
5. Information required in 49 C.F.R. § 1180.6(a)(6). The subject property is depicted on a map attached as Exhibit A to this Notice. The applicant does not own any other railroad property.

6. Information required in 49 C.F.R. § 1180.6(a)(7)(ii). The Order of the District Court in Cause No. DV-01-100 (Findings of Fact and Conclusions of Law) requiring the assets of the BAHPR to be distributed to BSB is attached as Exhibit E to this Notice.

7. Employee Protection. Neither BSB nor BAHPR have any railroad employees, therefore no employees will be adversely affected as a result of this transaction.

I, Susan Geer, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Notice of Exempt Acquisition.

Executed on February 14, 2002.


Susan J. Geer
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202
(303) 892-7367

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Verified Notice of Exemption** was served on February 14, 2002 on the parties listed below via Federal Express, Second Day Delivery:

D. Henry Elsen, Esq.
US EPA Region 8 Montana Office
Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59626

Dave Smith
The Burlington Northern and
Santa Fe Railway Company
8200 E. Park Meadows Dr.
Lone Tree, CO 80124

Sara Sparks
U.S. EPA - Butte Office
155 W. Granite
Butte, MT 59701

Robin Bullock
Atlantic Richfield Company
307 E. Park Street, Suite 400
Anaconda, MT 59711

Mary Capdeville
Montana Department of Environmental
Quality
2209 Phoenix
Helena, MT 59620

Mark Reavis
Representative of BAHPR
Butte-Silver Bow County
155 W. Granite Street
Butte, MT 59701

Leo Berry, Esq.
Browning, Kaleczyc, Berry & Hoven, P.C.
139 North Last Chance Gulch
Helena, MT 59601

Chuck Soule
Kennedy/Jenks Consultants
530 S. 336th Street
Federal Way, WA 98003

Gary Honeyman
Union Pacific Railroad Company
221 Hodgeman
Laramie, WY 82072

Mike Green
Montana Western Railway Company
700-1/2 Railroad St.
Butte, MT 59701



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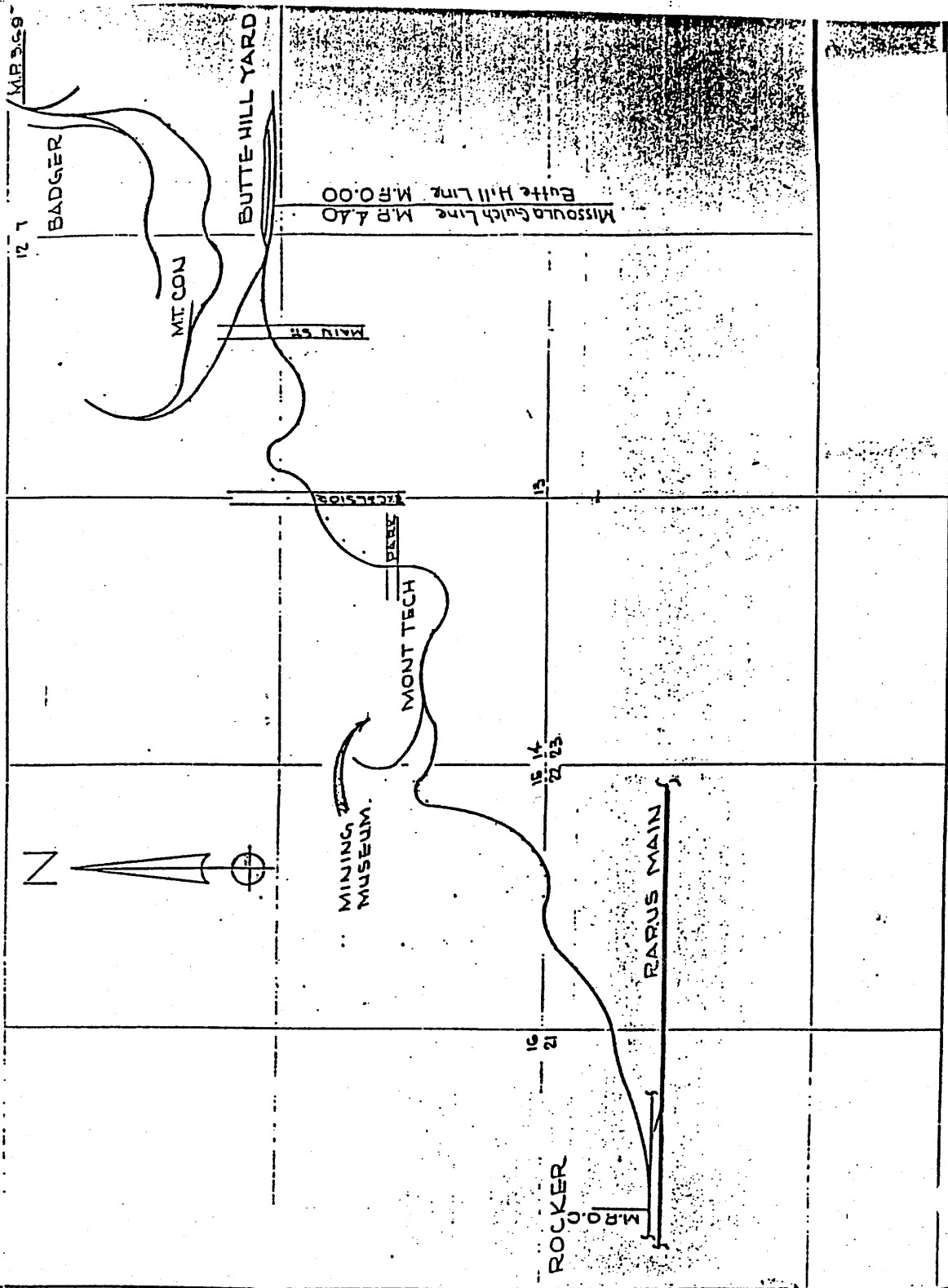


EXHIBIT A

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✓

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Citation Search Result
Slip Copy
1992 WL 21147 (I.C.C.)

Rank 1 of 1

Database
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(Publication page references are not available for this document.)

BUTTE/ANACONDA HISTORIC PARK AND RAILROAD CORPORATION
--ACQUISITION EXEMPTION--
STATE OF MONTANA, DEPARTMENT OF COMMERCE

Decided: February 5, 1992

INTERSTATE COMMERCE COMMISSION
NOTICE OF EXEMPTION
Finance Docket No. 31982

By the Commission, David M. Konschnik, Director, Office of Proceedings.

The Butte/Anaconda Historic Park and Railroad Corporation (BAHP), a non-carrier, has filed a notice of exemption to acquire 11.76 miles of rail line located in Silver Bow County, MT [FN1] and owned by the State of Montana, Department of Commerce. The main line consists of two segments: (1) the Missoula Gulch line, between milepost 0.00 at Rocker and milepost 4.40, at the Butte Hill Yard; and, (2) the Butte Hill line, between milepost 0.00 at the Butte Hill Yard and milepost 3.69, near the Badger Mine. In addition, there are approximately 3.67 miles of yard tracks, sidings and turnouts. The transaction was expected to be consummated on or before December 6, 1991. [FN2]

Any comments must be filed with the Commission and served on Rick Griffith, Butte/Anaconda Historic Park and Railroad Corporation, Inc., 305 West Mercury, Butte MT 59701.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Sidney L. Strickland, Jr.

Secretary
(SEAL)

FN1 As pointed out by BAHP in its verified notice, the entire line is located in a designated Environmental Protection Agency (EPA) superfund site (an area contaminated with hazardous materials as a result of previous mining operations). EPA has assumed the responsibility for the clean-up of the affected properties and, as long as the railroad complies with EPA's clean-up requirements, the commission is not involved.

FN2 BAHP states that, upon consummation, it has in place a trackage rights agreement whereby the Rarus Railway Company will lease and operate the line. As a separate entity, Rarus must obtain the necessary authority to lease and operate the line prior to commencing operations.

I.C.C.

Copr. © West 2000 No Claim to Orig. U.S. Govt. Works

EXHIBIT B

Slip Copy

(Publication page references are not available for this document.)

1992 WL 21147 (I.C.C.)

END OF DOCUMENT

**SECRETARY OF STATE
STATE OF MONTANA
Mike Cooney**

Business Services Bureau
Louise Ross, Chief
Phone: (406) 444-3665



Montana State Capitol
P.O. Box 202801
Helena, MT 59620-2801

December 02, 1994

INVOLUNTARY DISSOLUTION NOTICE

BUTTE/ANADIRGA HISTORICAL PARK AND RAILROAD CORPORATION

CHARLES D BROWN
305 W MERCURY ST
BUTTE MT 59701-1659

Folder: D-851962
Corp Type: 51
Date Last Report: 07/87/93
Fees & Penalty: \$30.00

Dear Corporate Official:

On September 02, 1994, the above named corporation was notified that it would be dissolved unless the legally required annual reports and fees were submitted to the Secretary of State within 90 days. Since this was not done, the Secretary of State has ordered that this corporation be involuntarily dissolved according to Section 85-6-104, Montana Code Annotated.

Upon mailing of this notice, dissolution proceedings against the corporation have been completed. This means that the corporation has forfeited all its rights to carry on business within the state of Montana.

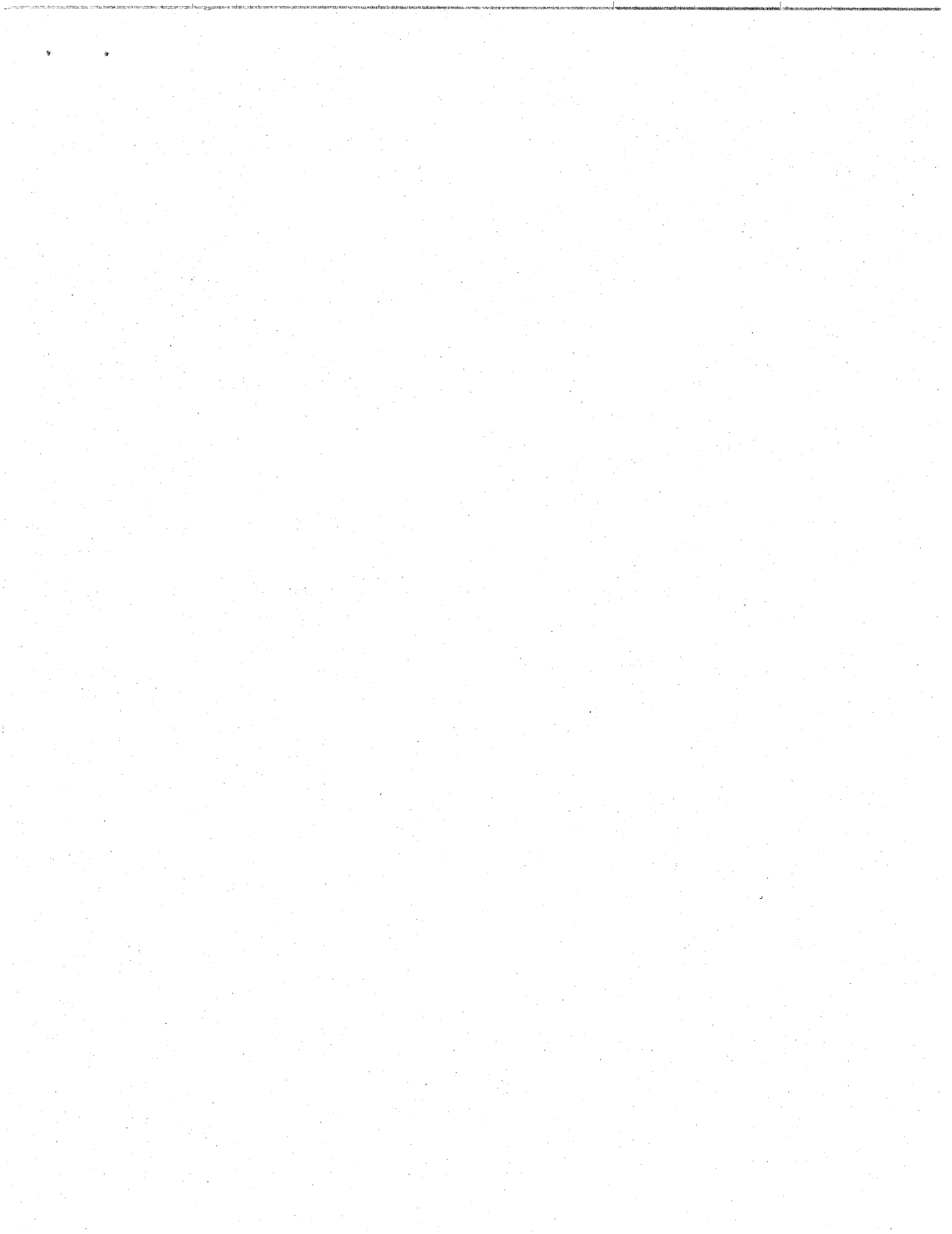
If you have any questions concerning this action, please don't hesitate to contact our office at the phone number listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louise Ross".

Louise Ross
Chief, Business Services Bureau

EXHIBIT C



J. RICHARD ORIZOTTI, ESQ.
JOHN P. DAVIS, ESQ.
POORE, ROTH & ROBINSON, P.C.
1341 Harrison Avenue
Butte, Montana 59701-4898
Tel: (406) 497-1200
Fax: (406) 782-0043

Attorneys for Petitioner

FILED
MAY 31 2001
By LORI MALONEY, CLERK
Deputy Clerk

JOHN W. WHELAN
JUDGE, Dept. II

**MONTANA SECOND JUDICIAL DISTRICT
SILVER BOW COUNTY**

IN THE MATTER OF:)

THE DISSOLUTION OF BUTTE/
ANACONDA HISTORICAL PARK AND
RAILROAD CORPORATION, an)
involuntarily dissolved Montana non-profit)
corporation.)

CAUSE NO. DV-01-100

**VERIFIED PETITION FOR JUDICIAL DISSOLUTION
AND DISTRIBUTION OF CORPORATE ASSETS**

COMES NOW Mark A. Reavis ("Petitioner"), as a member of the Board of Directors of the Butte/Anaconda Historical Park and Railroad Corporation (the "BAHPR"), an involuntarily dissolved Montana non-profit corporation, and respectfully submits this Verified Petition ("Petition") for judicial dissolution of the BAHPR and distribution of its assets by alleging as follows:

1. **VERIFIED PETITION FOR JUDICIAL DISSOLUTION
AND DISTRIBUTION OF CORPORATE ASSETS**

EXHIBIT D

I.

The BAHPR was incorporated as a Montana non-profit corporation on February 25, 1981, and was then known as The Montana Union Railroad Company. A copy of the Articles of Incorporation is attached, marked Exhibit A and incorporated herein. The corporation's name was changed to Butte/Anaconda Historical Park and Railroad Corporation when Articles of Amendment were filed with the Montana Secretary of State on August 29, 1986. A copy of the Articles of Amendment is attached, marked Exhibit B and incorporated herein.

II.

The BAHPR operated a tourist train during the summer season between Rocker, Montana, and the Kelley Mine Yard on the Missoula Gulch and Butte Hill Line from approximately 1988 through 1996. In 1988, the BAHPR leased the Missoula Gulch and Butte Hill Line from the State of Montana. In 1991, the BAHPR purchased the Missoula Gulch and Butte Hill Line from the State of Montana.

III.

On December 2, 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State for failure to maintain its annual filings. A copy of the Involuntary Dissolution Notice is attached, marked Exhibit C and incorporated herein.

IV.

The assets of the BAHPR have never been distributed.

2. VERIFIED PETITION FOR JUDICIAL DISSOLUTION
AND DISTRIBUTION OF CORPORATE ASSETS

V.

Pursuant to § 35-6-104(5), Mont. Code Ann., in the case of involuntary dissolution, all of the property and assets of the BAHPR have been held in trust by the directors of the corporation and § 35-2-729, Mont. Code. Ann., is applicable to distribute the property and assets.

VI.

Pursuant to § 35-2-729, Mont. Code Ann., venue for this proceeding is proper in this Judicial District since the corporation's last principal office was located in Butte-Silver Bow, Montana.

VII.

Petitioner, as a member of the last Board of Directors of the BAHPR at the time of its involuntary dissolution, is a proper party to file this Petition under § 35-2-728(1)(b), Mont. Code Ann. Since the involuntary dissolution of the corporation, the Board of Directors of the BAHPR was disbanded and may not effectuate a transfer of the corporate assets.

VIII.

The BAHPR has been involuntarily dissolved and is no longer able to carry out its purposes. The railroad right-of-way that the BAHPR acquired from the State of Montana is located in a Superfund Site, the Silver Bow Creek/Butte Area Superfund Site. Pursuant to the authority of the United States Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9606, response actions to protect human health and the environment are required on portions of the right-of-way. In conjunction with the required response actions, the rails and ties will be removed from the right-of-way.

3. VERIFIED PETITION FOR JUDICIAL DISSOLUTION
AND DISTRIBUTION OF CORPORATE ASSETS

IX.

To Petitioner's knowledge, the BAHPR has no receivables or claims against third parties, and the BAHPR has no creditors and there are no claims pending or threatened against the BAHPR.

X.

The Articles of Incorporation provide that in the event of dissolution of the BAHPR, no director or officer, nor any private individual, shall be entitled to share in the distribution of its assets. Rather, in the event of dissolution, all assets of the BAHPR remaining after discharge of liabilities shall be divided between the City-County governments of Butte-Silver Bow ("BSB") and Anaconda-Deer Lodge ("ADL") in proportion to the respective monetary contributions made by each government to the BAHPR. The Articles of Incorporation further provide that in the event that neither City-County government has made any monetary contribution to the BAHPR, then the assets of the corporation shall be disposed of by the Board of Directors or the Second Judicial District Court to an exempt organization for promotion and development of the history of the Butte, Anaconda and Deer Lodge area.

XI.

ADL has not made any monetary or non-monetary contribution to the BAHPR.

XII.

Upon information and belief, BSB is interested in receiving the assets of the BAHPR. BSB has made monetary contributions to the BAHPR in the form of paying for transport of a steam locomotive from Billings, Montana, to Butte, Montana. BSB also provided non-monetary assistance to the BAHPR, in the form of City-County services associated with and in support of

the former tourist railroad operation. Additionally, BSB will seek necessary approvals and funding for development of a trail within the BAHPR right-of-way that will preserve and highlight the history of the railroad and mining activities in the area.

XIII.

Based upon information and belief, the assets of the BAHPR include, but are not limited to: (i) the railroad right-of-way known as the Missoula Gulch and Butte Hill Line which extends between Rocker and the former Badger Mine on Butte Hill in Silver Bow County; (ii) the Rocker depot and the land it occupies, the rail bridge north of the Rocker depot, the parking lot north of the depot and the "Y" turn around rail and right-of-way; (iii) one diesel locomotive; (iv) three converted smelter cars; (v) a large handicap car; (vi) a motor car; and (vii) a steam locomotive, (viii) a wheeled road advertising sign; and (ix) miscellaneous maps and records .

XIV.

BSB is a governmental entity that is deeply involved in the promotion and development of the history of Butte, Anaconda, and Deer Lodge area, and will use the BAHPR assets to such end.

XV.

The Court is requested to direct the liquidation of the BAHPR assets by distribution of those assets to BSB.

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

1. That the Court find that the BAHPR is no longer able to carry out its purposes and therefore grounds for judicial dissolution of the BAHPR exist;

2. That the Court direct that the assets of the BAHPR be transferred to BSB as provided in and authorized by the Articles of Incorporation of the BAHPR; and

3. Such other and further relief as the Court deems just and proper.

DATED this 31st day of May, 2001

POORE, ROTH & ROBINSON, P.C.

By *Rich Orizotti*
J. Richard Orizotti
Attorneys for Petitioner
1341 Harrison Avenue
Butte, Montana 59701

VERIFICATION

STATE OF MONTANA

)

:ss

County of Silver Bow

)

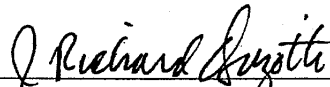
Mark A. Reavis, being first duly sworn, upon his oath deposes and says:

That he has read the above and foregoing Verified Petition for Judicial Dissolution and Liquidation of Corporate Assets; that he knows the contents thereof; and that the statements set forth in the Verified Petition for Judicial Dissolution and Liquidation of Corporate Assets are true and correct to the best of his knowledge and belief.



MARK A. REAVIS

Subscribed and sworn to before me this 31st day of May, 2001.



Notary Public for the State of Montana

Residing at Butte

My Commission Expires: 11/10/01

W/8950.12/DOC/010510.A/OPR52

7. **VERIFIED PETITION FOR JUDICIAL DISSOLUTION
AND DISTRIBUTION OF CORPORATE ASSETS**

ARTICLES OF INCORPORATION

OF

THE MONTANA UNION RAILROAD COMPANY

FILED

FEB 25 1981

JIM WALTERS
SECRETARY OF STATE

Jim Walters

The undersigned, acting as incorporators of a corporation under the Montana Nonprofit Corporation Act, adopt the following Articles of Incorporation: 2

- FIRST: The name of the corporation is:
The Montana Union Railroad Company
- SECOND: The period of its duration is perpetual.
- THIRD: The purposes for which the corporation is organized are to memorialize, and to encourage, promote and foster an interest in, awareness and understanding of and appreciation for the history, lore, culture and heritage of Montana and the West, and in particular the Cities of Butte, Anaconda and Deer Lodge and the surrounding areas, with emphasis on the history and lore of the mining, smelting, ranching and railroading industries; to locate, acquire, organize, develop, finance and maintain artifacts, writings and historical objects and items of any and all kinds, and to make them available for inspection, utilization and enjoyment by students and the general public; to acquire, organize, develop, finance and operate museums, exhibits and dynamic and operating historical displays and facilities of any and all kinds. This corporation is organized exclusively for chari-

EXHIBIT "A"

table, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

FOURTH: No part of the income, profits, or net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors or officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Laws) or (b) by a corporation, contributions to which

are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

FIFTH:

In the event of dissolution of the corporation, no director or officer thereof, nor any private individual, shall be entitled to share in the distribution of any of its corporate assets. In the event of such dissolution, all assets of the corporation remaining after discharge of all its liabilities shall be divided between the City-County Governments of Butte and Anaconda, Montana. Such division will be in proportion to the respective amounts of monetary contributions made by each government to the corporation during the life of the corporation. In the event that neither of these Governments shall have made any monetary contribution to the corporation, then the Board of Directors of the Corporation shall dispose of all of the assets of the Corporation in such manner or to such organization or organizations organized and operated exclusively for promotion and development of the history of the Butte, Anaconda and Deer Lodge area, as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of

by the Court of the Second Judicial District of the State of Montana, exclusively for such purposes, or to such organization or organizations organized and operated exclusively for such purposes, as said Court shall determine.

SIXTH: The address of the initial registered office of the corporation is c/o The Montana Energy and MHD Research and Development Institute, Inc., 225 South Idaho, Butte, Montana 59701, and the name of its initial registered agent at such address is John C. Podobnik.

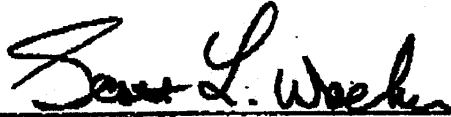
SEVENTH: The number of directors constituting the initial Board of Directors is seven. Thereafter, the number of directors shall be as set forth in the By-Laws, and changes in the number of directors may be made by amendments of the By-Laws, provided that no decrease in the number of directors shall have the effect of shortening the term of any incumbent director. The names and addresses of the persons who are to serve as the initial directors are as follows:

<u>Name</u>	<u>Address</u>
Donald L. Peoples	3440 St. Ann Street Butte, Montana 59701
David C. Johns	3017 Howard Avenue Butte, Montana 59701
Dan J. Worsdell	607 Cherry Street Anaconda, Montana 59711
David M. McLean	2004 Hamburg Avenue Anaconda, Montana 59711
Leo V. Kelly	533 Hickory Street Anaconda, Montana 59711
Scott L. Walker	Southern Cross Anaconda, Montana 59711
John C. Podobnik	105 Fleecer Drive Butte, Montana 59701

EIGHTH: The name and address of each incorporator are as follows:

<u>Name</u>	<u>Address</u>
Scott L. Walker	Southern Cross Anaconda, Montana 59711
John C. Podobnik	105 Fleecer Drive Butte, Montana 59701

IN WITNESS WHEREOF, we have hereunto set our hands this 23rd
day of February, 1981.



Scott L. Walker

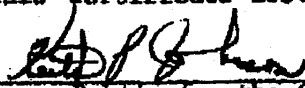


John C. Podobnik

STATE OF MONTANA)
) ss.
COUNTY OF BUTTE-SILVER BOW)

On this 23rd day of February, 1981, before me, Keith P. Johnson, a Notary Public for the State of Montana, personally appeared Scott L. Walker and John C. Podobnik, known to me to be the persons whose names are subscribed to the within instrument, and severally acknowledged to me that they individually executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate above written.



Notary Public for the State of Montana
Residing at Butte-Silver Bow, Montana
My commission expires June 25, 1981

STATE OF MONT
FILE

AUG 29 1986

JIM WALTERMIRE
SECRETARY OF STATE
Jim Waltermire

ARTICLES OF AMENDMENT
THE MONTANA UNION RAILROAD COMPANY
July 10, 1986

WHEREAS, a special meeting of the Board of Directors of The Montana Union Railroad Company, a Montana corporation, was duly called and held at Anaconda, Montana, at 3:00 P.M., on Thursday, July 10, 1986, pursuant to actual notice thereof given to all members of the Board of Directors in accordance with law and the By-Laws of the corporation, at which meeting a quorum was present and participated; and, whereas, at such meeting a certain amendment of the Articles of Incorporation, as hereinafter set forth, was duly proposed and was passed and adopted by receiving the vote of a majority of the directors in office;

NOW, THEREFORE, these Articles of Amendment are hereby executed by the corporation as follows:

- (a) The name of the corporation is The Montana Union Railroad Company.
- (b) The amendment so adopted is as follows:

Article First is amended to change the name of the corporation, and to read as follows:

"First: The name of the corporation is:
Butte/Anaconda Historical Park
and Railroad Corporation"

- (c) There are no members of the corporation. The date of the meeting of the Board of Directors at which the amendment was adopted was July 10, 1986. A quorum was present at such meeting, and such amendment received the vote of a majority of the Directors in office.

IN WITNESS WHEREOF, the Articles of Amendment have been duly executed by the corporation by its duly authorized president and secretary, this 29th day of August, 1986.

THE MONTANA UNION RAILROAD COMPANY

BY *John Pollock*

PRESIDENT

BY *Linda R. O'Neill*

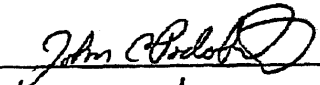
SECRETARY

EXHIBIT "B"

STATE OF MONTANA)
)
) ss:
COUNTY OF BUTTE-SILVER BOW)

John C. Podobnik, being first duly sworn, deposes and says:

That he is president of The Montana Union Railroad Company, a Montana corporation; that he has read the foregoing Articles of Amendment and knows the contents thereof, and that the same are true of his own knowledge.


Subscribed and sworn to before me this 4th day of August,
1986.


Notary Public for the State of Montana
Residing at Butte-Silver Bow, Montana
My commission expires: June 25, 1987

SECRETARY OF STATE

STATE OF MONTANA

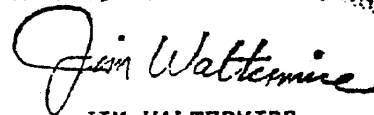
CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION

I, JIM WALTERMIRE, Secretary of State of the State of Montana, do hereby certify that the Articles of Amendment to the Articles of Incorporation of THE MONTANA UNION RAILROAD COMPANY, a Montana corporation, duly executed pursuant to the provisions of Section 35-2-209, Montana Code Annotated, have been received in my office and conform to law.

NOW, THEREFORE, I, JIM WALTERMIRE, as such Secretary of State, by virtue of the authority vested in me by law, hereby issue this Certificate of Amendment to the Certificate of Incorporation of THE MONTANA UNION RAILROAD COMPANY changing its name to BUTTE/ANACONDA HISTORICAL PARK AND RAILROAD CORPORATION, a Montana corporation, and attach hereto a copy of the Articles of Amendment to the Articles of Incorporation.

(GREAT SEAL)

IN WITNESS WHEREOF, I
have hereunto set my hand and
affixed the Great Seal of the
State of Montana, at Helena,
the Capital, this August 29,
A.D. 1986.



JIM WALTERMIRE
Secretary of State

**SECRETARY OF STATE
STATE OF MONTANA
Mike Cooney**

Business Services Bureau
Louise Ross, Chief
Phone: (406) 444-3665



Montana State Capitol
P.O. Box 202801
Helena, MT 59620-2801

December 02, 1994

INVOLUNTARY DISSOLUTION NOTICE

BUTTE/AMALINDA HISTORICAL PARK AND RAILROAD CORPORATION

CHARLES D BROWN
305 W MERCURY ST
BUTTE MT 59701-1459

Folder: D-051962
Corp Type: 51
Date Last Report: 07/07/93
Fees & Penalty: \$30.00

Dear Corporate Official:

On September 02, 1994, the above named corporation was notified that it would be dissolved unless the legally required annual reports and fees were submitted to the Secretary of State within 90 days. Since this was not done, the Secretary of State has ordered that this corporation be involuntarily dissolved according to Section 85-6-104, Montana Code Annotated.

Upon mailing of this notice, dissolution proceedings against the corporation have been completed. This means that the corporation has forfeited all its rights to carry on business within the state of Montana.

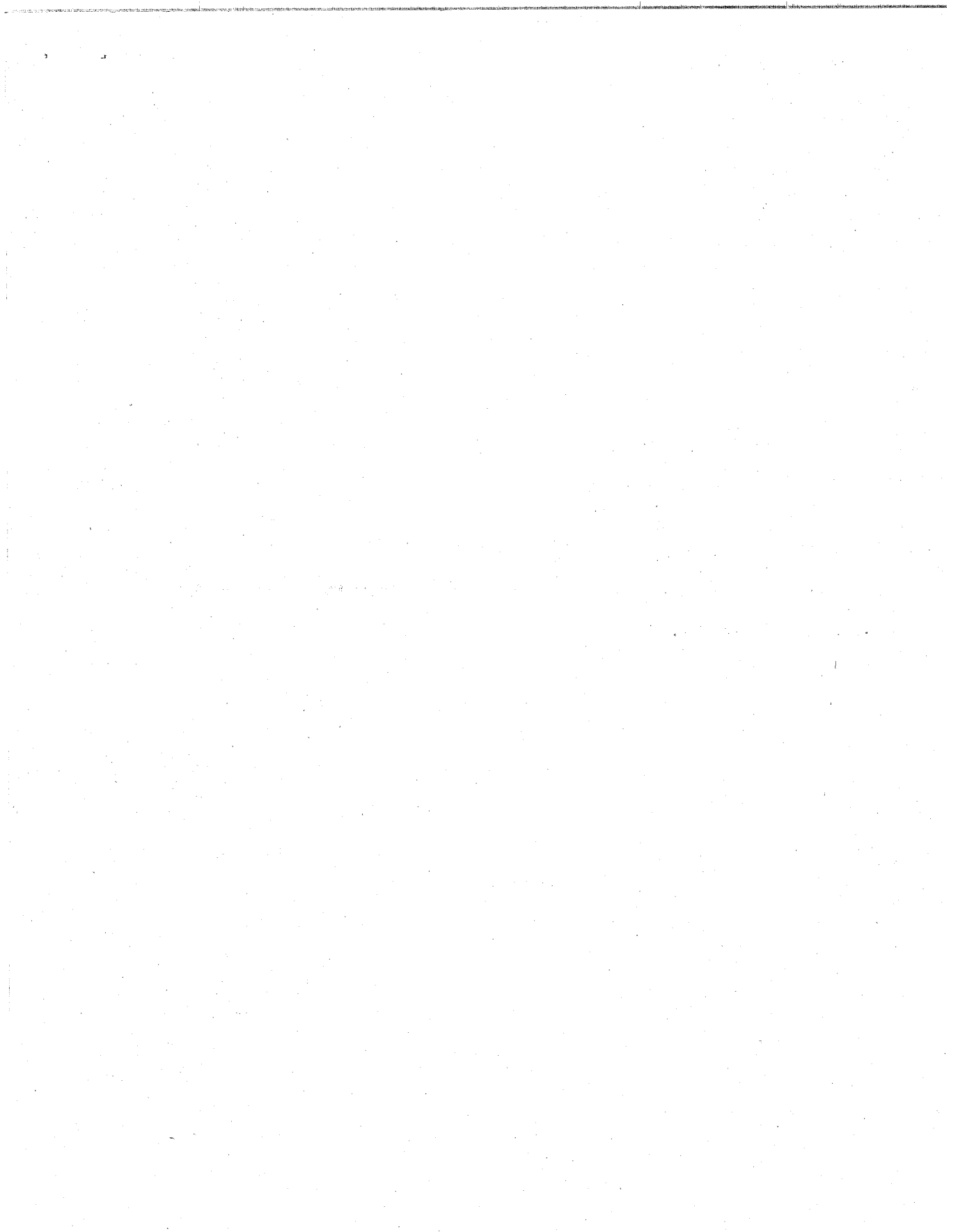
If you have any questions concerning this action, please don't hesitate to contact our office at the phone number listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louise Ross".

Louise Ross
Chief, Business Services Bureau

EXHIBIT "C"



COPY

John W. Whelan
District Judge, Department No. II
Silver Bow County Courthouse
155 West Granite Street
Butte, MT 59701
(406) 497-6420

FILED

OCT 29 2001

LORI MALONEY, CLERK

By _____ Deputy Clerk

MONTANA SECOND JUDICIAL DISTRICT SILVER BOW COUNTY

IN THE MATTER OF:)
) CAUSE NO. DV-01-100
THE DISSOLUTION OF BUTTE/)
ANACONDA HISTORICAL PARK AND)
RAILROAD CORPORATION, an)
involuntarily dissolved Montana non-profit)
corporation.)
_____)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER, having come before the Court upon the Verified Petition for Judicial Dissolution and Distribution of Corporate Assets submitted by Mark A. Reavis, as a member of the Board of Directors of the Butte/Anaconda Historical Park and Railroad Corporation (the "BAHPR"), and the Court having conducted a hearing on Friday, October 26, 2001, at which the Court heard testimony, received exhibits and heard the arguments of counsel, makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT:

A. Findings Concerning the BAHPR and its Corporate Status

1. The BAHPR was incorporated as a Montana non-profit corporation on February 25, 1981 under the name "The Montana Union Railroad Company." (Exhibit 1) Articles of Amendment were filed with the Montana Secretary of State on August 29, 1986

1. FINDINGS OF FACT AND CONCLUSIONS OF LAW

EXHIBIT E

changing the corporation's name to the BAHPR. (Exhibit 2)

2. Among the assets owned by the BAHPR is the railroad right-of-way formerly belonging to the Butte, Anaconda & Pacific Railway Company ("BA&P") extending from Rocker, Montana, up Butte Hill to the Kelley Mine Yard and on up to a point near the Badger Mine. The line was known as the Missoula Gulch and Butte Hill Line, and is hereinafter referred to as the "Butte Hill Rail Line." The BAHPR first leased the Butte Hill Rail Line in 1988, then acquired the right-of-way in 1991.

3. During the summer months, the BAHPR operated a tourist train over the Butte Hill Rail Line between Rocker and the Kelley Mine Yard on and off between approximately 1988 and 1996.

4. During the course of the BAHPR's existence, the BAHPR acquired other assets in addition to the Butte Hill Rail Line right-of-way, including the following: (i) the Rocker depot and the land it occupies; the rail bridge north of the Rocker depot, the parking lot north of the depot and the "Y" turn around rail and right-of-way; (ii) one diesel locomotive; (iii) three converted smelter cars; (iv) a large handicap car; (v) a motor car; and (vi) a steam locomotive.

5. In 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State's Office for failure to maintain its annual filings. (Exhibit 4)

6. The assets of the BAHPR have never been distributed.

7. The last known Board of Directors for the BAHPR consisted of the following individuals: Mark A. Reavis, Pamela Haxby-Cote; Charles Brown, Aleta Richardson, and Rick Griffith. After the involuntary dissolution of the BAHPR, the Board of directors was disbanded.

8. The Articles of Incorporation of the BAHPR provide that in the event of

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

dissolution of the BAHPR, no director or officer, nor any private individual, shall be entitled to share in the distribution of its assets. Rather, in the event of dissolution, all assets of the BAHPR remaining after discharge of liabilities shall be divided between the City-County governments of Butte-Silver Bow ("BSB") and Anaconda-Deer Lodge ("ADL") in proportion to the respective monetary contributions made by each government to the BAHPR.

9. Petitioner filed its Verified Petition on May 31, 2001, asking this Court to distribute the assets of the BAHPR in accordance with the Articles of Incorporation and Montana law.

10. The BAHPR has no receivables or claims against third parties. The BAHPR has no creditors and there are no claims pending or threatened against the BAHPR.

11. ADL has not made any monetary or non-monetary contribution to the BAHPR and has no interest in receiving any assets of the BAHPR, as evidenced by the Response to Petition for Judicial Dissolution and Distribution of Corporate Assets and attached Affidavit of Peter J. Boyce filed with the Court by ADL.

12. BSB has requested that the assets of the BAHPR be transferred to it.

B. Findings Concerning the Superfund Action

13. The entire Butte Hill Rail Line lies within the boundaries of a "Superfund" or Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," 42 U.S.C. §§ 9601 et seq.) site, the Silver Bow Creek/Butte Area Superfund Site ("Superfund Site"). This Superfund Site was established by the United States Environmental Protection Agency ("EPA") to address contamination related to mining and mining-related activities in and around Butte. The Site was initially listed on the National Priorities List of Superfund sites in 1983.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. On January 12, 2000, EPA issued a Unilateral Administrative Order ("UAO"), EPA Docket No. CERCLA-8-2000-2 ("Railbed UAO"), under Section 106(a) of CERCLA requiring certain named parties to perform a removal action on and near railroad beds. (Exhibit 8) EPA determined that mining-related materials on and near railbeds in the Butte area posed a risk to human health or the environment which required the issuance of the UAO.

15. EPA is requiring the environmental clean-up of the railbeds in and around Butte, including the Butte Hill Rail Line right-of-way. (Exhibits 8 and 9)

16. The current cleanup plan for the Butte Hill Rail Line requires removal of all or portions of the track structures, and the cleanup of substantial portions of the railbed. The railbed cleanup entails the excavation and grading of materials on portions of the railbed with levels of contamination in excess of the amounts designated as acceptable by EPA in the Railbed UAO, followed by the capping of portions of the railbed with clean material.

17. The proposed end use for the portion of railbed between Rocker and the Kelley Mine Yard is a pedestrian trail. Much of the track structure on the portion of the Butte Hill Rail Line above the Kelley Mine Yard already has been removed and portions of the right-of-way currently are being used as roads.

C. Findings Concerning Butte-Silver Bow

18. BSB is a statutory combined city-county governmental entity, authorized under Montana law.

19. BSB has made contributions to the BAHPR in the form of numerous City-County services associated with and in support of the former tourist railroad operation, including: performing repair work necessitated by stormwater runoff from the Butte Hill Rail Line railbed

4. FINDINGS OF FACT AND CONCLUSIONS OF LAW

onto adjacent yards, streets and other areas; repairing railroad crossings; clearing storm sewers blocked by debris washed off of the Butte Hill Rail Line; and providing storage for railroad equipment belonging to the BAHPR free of charge.

20. The BSB Commissioners began considering options for the future use of the Butte Hill Rail Line right-of-way in October 1999, particularly the portion of the Line between Rocker and the Kelley Mine Yard, when it became apparent that EPA planned to require the environmental cleanup of the railbeds in and around Butte, including the Butte Hill Rail Line railbed under CERCLA.

21. The three primary options for the future use of the portion of the Butte Hill Rail Line between Rocker and the Kelley Mine Yard discussed by the BSB Commissioners were: (1) removal of the track structures and conversion of the right-of-way to a pedestrian trail (the "Rails-to-Trails" Option); (2) leaving the railbed as is, with a defunct owner; and (3) options that adopted a middle-ground approach by leaving the track structures in place and providing for a pedestrian trail.

22. Presentation and discussion of these options were included on the agenda of several Commission meetings and public hearings between October 1999 and February 2001. These meetings were open to the public, and public input on the options was invited and received at these meetings.

23. After considerable discussion and debate, in February 2001, the Commissioners acted to adopt the Rails-to-Trails Option for the future use of the portion of the Butte Hill Rail Line between Rocker and the Kelley Mine Yard and directed Jon Sesso, BSB Planning Director, to proceed with plans for implementing the Rails-to-Trails Option.

5. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. In the course of developing the Rails-to-Trails Option, Mr. Sesso directed the BSB Community Historic Preservation Office ("CHPO") to develop a plan that met the requirements of federal, state and local historic preservation requirements. The BSB CHPO produced the "Butte Hill Mitigation Plan" (Exhibit 7) in response to the request.

25. The Butte Hill Rail Line had been addressed in prior historic preservation documentation that was generated as part of the Superfund activities in the Butte-Anaconda area. A "Regional Historic Preservation Plan" ("RHPP") was published in 1993 (Exhibit 5), followed by the execution of the "Second Programmatic Agreement Among the Environmental Protection Agency Region VIII Montana Office, the Advisory Council on Historic Preservation, the Montana State Historic Preservation Office, Montana Department of Health and Environmental Sciences, Local Governments of Butte/Silver Bow and Anaconda/Deer Lodge, and Walkerville, and ARCO Regarding Implementation of the CERCLA Related Elements of the Upper Clark Fork River Basin Regional Historic Preservation Plan" ("Second Programmatic Agreement") in 1994 (Exhibit 6). The Second Programmatic Agreement implemented the RHPP. At the time the RHPP and the Second Programmatic Agreement were written, the BAHPR was operating a tourist train over the Butte Hill Rail Line. As such, the RHPP contemplated the continued operation and existence of a tourist train over the Line. Also at the time the RHPP was written, EPA did not anticipate requiring the cleanup of railbeds.

26. The Butte Hill Mitigation Plan calls for the conversion of the Rocker-Kelley Mine Yard portion of the Butte Hill Rail Line right-of-way to a pedestrian trail, with historic interpretive features including interpretive signage, as well as amenities such as benches, shelters and trash receptacles.

6. FINDINGS OF FACT AND CONCLUSIONS OF LAW

27. The Butte Hill Mitigation Plan complies with the National Historic Preservation Act and has been approved by the State of Montana Historic Preservation Office and the Butte-Silver Bow Historic Preservation Office.

28. BSB has sought and received the necessary approvals and funding for development of a trail within the BAHPR right-of-way that will preserve and highlight the history of the railroad and mining activities in the area.

29. In March 2001, BSB executed a funding agreement with ARCO Environmental Remediation LLC ("AERL") by which AERL agreed to fund and construct the gravel trail base between Rocker and the Kelley Mine Yard. AERL also agreed to contribute \$45,950 toward design and construction of the interpretive stations to be constructed by BSB. (Exhibit 11)

30. After executing the March 19, 2001 Agreement with AERL, BSB applied and received approval for grant funding under the Montana Community Transportation Enhancement Project to provide additional funding for the conversion of the Butte Hill Line to a pedestrian trail, and to construct the historic interpretive features along the trail. (Exhibits 13 and 14).

D. Findings Concerning the Abandonment of the Butte Hill Rail Line

31. The Butte Hill Rail Line currently is regulated by the federal Surface Transportation Board, which has jurisdiction over certain surface transportation economic regulatory matters pursuant to 49 U.S.C. § 10501.

32. Because the Butte Hill Rail Line is a regulated line, the track structures cannot be removed and the cleanup cannot be conducted without first obtaining permission from the Surface Transportation Board. The Surface Transportation Board has adopted regulations governing the abandonment and the conversion of rail lines that are no longer in use to trails or

7. FINDINGS OF FACT AND CONCLUSIONS OF LAW

other public use. Those regulations appear in Title 49, Part 1152 of the Code of Federal Regulations. The program authorizing the conversion of inactive rail lines into trails was enacted by Congress as part of the National Trails System Act, codified at 16 U.S.C. § 1247(d) and is known as the "Rails-to-Trails" program.

33. BSB has taken the initial steps to begin the process for seeking permission to convert the portion of the Butte Hill Rail Line between Rocker and the Kelley Mine Yard from rail use to trail use, and to convert the upper portion of the Line to public use as one or more public roads.

II. CONCLUSIONS OF LAW:

1. Pursuant to § 35-2-729, venue for this proceeding is proper in this Judicial District since the BAHPR's last principal office was located in Butte-Silver Bow, Montana.

2. Petitioner, as a member of the last Board of Directors of the BAHPR at the time of its involuntary dissolution, is a proper party to file this Petition under § 35-2-728(1)(b), Mont. Code Ann.

3. The BAHPR was involuntarily dissolved on December 2, 1994, and is no longer able to carry out its purposes.

4. The BAHPR failed to reinstate within the five-year statutory time period as required by § 35-6-201(5), Mont. Code Ann. and no longer may do so.

5. The incorporation of a new Montana non-profit corporation with the name the "Butte/Anaconda Historical Park & Railroad Corporation" by Larry Hoffman on June 11, 2001 did not reinstate the original BAHPR because more than five years had passed since the involuntary dissolution of the original BAHPR.

8. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Pursuant to § 35-6-104(5), Mont. Code Ann., in the case of involuntary dissolution, all of the property and assets of the BAHPR are held in trust by the directors of the corporation.

7. Section 35-2-729, Mont. Code Ann., governs the distribution of the property and assets of Montana non-profit corporations that have been involuntarily dissolved. Although a dissolved corporation continues its corporate existence, it is not permitted to carry on any activities except those appropriate to wind up and liquidate its affairs, including transferring its assets as provided in or authorized by its Articles of Incorporation. § 35-2-725(1)(e), Mont. Code Ann.

8. Because the last Board of Directors of the BAHPR disbanded some time ago, the BAHPR may not effectuate a transfer of the corporate assets, and the assets must be transferred by court order.

9. The Articles of Incorporation for the BAHPR provide that in the event of dissolution of the BAHPR, no director or officer, nor any private individual, shall be entitled to share in the distribution of its assets. Rather, in the event of dissolution, all assets of the BAHPR remaining after discharge of liabilities shall be divided between the City-County governments of Butte-Silver Bow ("BSB") and Anaconda-Deer Lodge ("ADL") in proportion to the respective monetary contributions made by each government to the BAHPR.

10. ADL made no contributions to the BAHPR during its existence and does not claim any right, title or interest in or to any of the assets of the BAHPR.

11. BSB made a number of contributions to the BAHPR including performing repair work necessitated by the BAHPR's failure to adequately maintain the railbed and crossings and

9. FINDINGS OF FACT AND CONCLUSIONS OF LAW

storing railroad equipment owned by the BAHPR. These contributions meet the spirit and intent of the Articles of Incorporation of the BAHPR relating to the distribution of assets of the BAHPR upon dissolution.

12. BSB has developed and obtained funding for the use of the assets of the BAHPR in a manner consistent with the original purpose of the BAHPR, the promotion and development of the history of the Butte, Anaconda and Deer Lodge area. The conversion of the existing railbed into a pedestrian trail, with historic interpretive features will protect and preserve the history of the BA&P and of Butte more generally.

DATED this 29th day of October, 2001.


DISTRICT JUDGE

10. FINDINGS OF FACT AND CONCLUSIONS OF LAW

COPY

FILED

John W. Whelan
District Judge, Department No. II
Silver Bow County Courthouse
155 West Granite Street
Butte, MT 59701
(406) 497-6420

OCT 29 2001

LORI MALONEY, CLERK

By _____ Deputy Clerk

MONTANA SECOND JUDICIAL DISTRICT SILVER BOW COUNTY

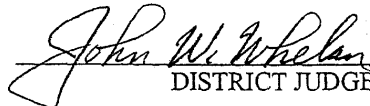
IN THE MATTER OF:)
) CAUSE NO. DV-01-100
THE DISSOLUTION OF BUTTE/)
ANACONDA HISTORICAL PARK AND)
RAILROAD CORPORATION, an)
involuntarily dissolved Montana non-profit)
corporation.)

ORDER

Based upon the Findings of Fact and Conclusions of Law entered by this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that as a result of the involuntary dissolution of the Butte/Anaconda Historical Park and Railroad Corporation ("BAHPR") on December 2, 1994, and the failure of the BAHPR to be reinstated within the five-year statutory time period as required by § 35-6-201(5), Mont. Code Ann., the assets of the BAHPR shall be liquidated and transferred to the Consolidated City-County Government, Butte-Silver Bow, Montana, as provided in and authorized by the Articles of Incorporation of the BAHPR. By this Order, all assets of the BAHPR are hereby transferred to the Consolidated City-County Government, Butte-Silver Bow, Montana.

DATED this 29th day of October, 2001.


DISTRICT JUDGE

1. **ORDER**