



DIID # 0101948001

Davis Graham & Stubbs LLP

TRANSPORTATION BOARD
SURFACE

May 16, 2002



FILED

VIA FEDERAL EXPRESS

205411

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

ENTERED
Office of the Secretary

MAY 17 2002

Part of
Public Record

Re: Docket No. AB-597X

Dear Mr. Williams:

This letter transmits the original and 10 copies of the Petition for Exemption for an Abandonment Exemption for the Butte Hill and Missoula Gulch Line in Silver Bow County, Montana for filing in Docket No. AB-597X, on behalf of Butte-Silver Bow County. Also enclosed is a check in the amount of \$4,700.00 for the filing fee, and a diskette with the Federal Register notice of the Petition for Exemption for an Abandonment Exemption in Word Perfect, as required by 49 CFR § 1152.60(c).

I am submitting the filing fee so that the Petition may be processed as expeditiously as possible. However, the petitioner 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.

Also, for your information we will be filing requests for trail use for a portion of the line, and for a public use condition for the remainder of the line shortly. Also for your information, we have been working with Phillis Johnson-Ball in the Section of Environmental Analysis to develop an Environmental Assessment for the abandonment. That document should be ready to be made available for public comment very shortly.

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

FEE RECEIVED

FILED

MAY 17 2002

MAY 17 2002

Susan J. Geer, Esq. • 303 892 7367 • susan.geer@dgsllaw.com

SURFACE
TRANSPORTATION BOARD

1501 Seventeenth Street • Suite 500 • Denver, Colorado 80202 • 303 892 9400 • fax 303 893 1379
www.dgsllaw.com

SURFACE
TRANSPORTATION BOARD

Vernon Williams, Secretary
Surface Transportation Board
May 16, 2002
Page 2

that I will be out of the office from May 20 to June 10. If you have any questions during that time period, please contact my colleague, Bill Duffy, at (303) 892-7372.

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
Leo Berry, Esq. RR PRPs
Chuck Soule, RR PRPs
Gary Honeyman, Union Pacific
Mike Green, Montana Western
Dave Smith, BNSF
Mark Reavis, BSB Historic Preservation Officer

DIO# 0101948001

205411



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-597X

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

FILED

MAY 17 2002

SURFACE
TRANSPORTATION BOARD

PETITION FOR 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

ENTERED
Office of the Secretary

MAY 17 2002

Part of
Public Record

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MAY 17 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-597X

BUTTE-SILVER BOW COUNTY –
ABANDONMENT EXEMPTION
SILVER BOW COUNTY, MONTANA

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. §§ 1121 and 1152.60, Butte-Silver Bow County ("BSB") hereby petitions the Board for an exemption from the prior approval requirements of 49 U.S.C. §§ 10903-10904, for the abandonment 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. Butte-Silver Bow County is a consolidated city-county government authorized under Montana law.

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 traverses the following zip code: 59701. A draft *Federal Register* notice in the form prescribed by 49 C.F.R. § 1152.60(c) is attached hereto as Exhibit B.

The MGBH was constructed in the early 1890s, and was part of a larger system that was operated by the Butte, Anaconda and Pacific Railway Company (BA&P) that included a line extending from Butte to a point west of Anaconda, Montana. The MGBH intersects with the Butte-Anaconda Line in Rocker, Montana. 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 C, 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 D, 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, the Montana district court in Silver Bow County was petitioned to judicially dissolve and distribute the corporate assets of the BAHPR. On October 29, 2001, the court ordered the assets of the BAHPR distributed to BSB. See Exhibit E, Findings of Fact/Conclusions of Law, Cause No. DV-01-100. Because ownership of the MGBH has changed, BSB also filed a Verified Notice of Exempt Acquisition pursuant to 49 C.F.R. §§ 1180.2(d)(1) and 1150.31, Finance Docket No. FD-34171. On March 15, 2002, the Board issued the Acquisition Exemption in Finance Docket No. FD-34171. See Finance Docket No. 34171, Butte-Silver Bow County–Acquisition Exemption–Silver Bow County, MT.

Abandonment of the MGBH is being sought 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. See

Exhibit F, Unilateral Administrative Order Docket No. CERCLA-8-2000-2. As part of and in conjunction with the CERCLA environmental cleanup of the MGBH, BSB will file a trail use request in this proceeding for the Missoula Gulch portion of the Line extending from Rocker to the Butte Hill/Kelley Mine Yard. BSB also will file a public use request in this 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 further support of its Petition for Exemption, BSB states as follows.

1. Under 49 U.S.C. § 10903, a rail line cannot be abandoned without the prior approval of the Board. However, under 49 U.S.C. § 10502, the Board must exempt a rail transaction from regulation when it finds that application of those requirements is not necessary to carry out the transportation policy of Section 10101 of Title 49 and either: (1) the transaction or service is of limited scope; or (2) the requirement is not needed to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a). In this case, the "transaction" (the abandonment of the MGBH) qualifies under either provision. It is of limited scope because it entails only the abandonment of approximately 11 miles of Line that is currently unused. And, because the MGBH is currently unused and has not been used for shipping for over 20 years, there are no shippers to be protected from any possible abuse of market power. Further, requiring abandonment of the MGBH to comply with the requirements of 49 U.S.C. §§ 10903-10904 is not necessary to carry out the transportation policy of Section 10101 of Title 49. In fact, that policy supports granting the requested exemption. Section 10101(2) states as one of the several policies of the United States Government, "to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when

regulation is required[.]” and Section 10101(15), “to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part[.]”

2. In fact, the MGBH would qualify for the class exemption for abandonment of lines that have been out of service for at least two years, established in 49 C.F.R. § 1152.50(b), if it were not for the recent change in ownership of the Line. The MGBH has been out of service for over five years, and there are no potential customers along the Line. In fact, for the last several years that the Line was in service, it was operated seasonally only as a tourist train.

3. Granting this Petition will serve a number of purposes and should prejudice no one. The primary purpose that will be served is the expeditious abandonment, salvage and environmental cleanup of the MGBH. As referenced above, the Line lies within the boundaries of a Superfund Site, the Silver Bow Creek/Butte Area Superfund Site (Site), which in turn is divided into several operable units for operational and technical reasons. On January 12, 2000, the EPA issued a Unilateral Administrative Order (UAO), EPA Docket No. CERCLA-8-2000-2 (“Railbed UAO,” attached as Exhibit F), under CERCLA requiring certain named parties to perform cleanup work on and near railroad beds within the Butte area of Silver Bow County, Montana, including the MGBH. The Railbed UAO requires the removal action because the bed and ballast of portions of the MGBH contain concentrations of heavy metals in excess of EPA risk levels resulting primarily from the use of mine wastes during construction of the railroad beds. The current cleanup plan, as overseen by EPA, in consultation with the State of Montana’s Department of Environmental Quality (MDEQ) and supported by BSB, contemplates removal of all or portions of the track structures and cleanup of railbed on the existing portion of the

MGBH.¹ To be able to conduct the work required by EPA in the Railbed UAO, the Board's approval for abandonment of the MGBH first must be granted.

4. In addition to expediting the process that is a necessary prerequisite to the cleanup of the MGBH, granting this Petition will allow the parties involved, including but not limited to BSB, a small local government unit, to reduce costs associated with the abandonment of the MGBH and to focus those resources on the salvage, environmental cleanup and historic mitigation measures instead.

5. The MGBH is suitable for use for other public purposes, and BSB will file requests for trail use and for public use for the Line. BSB will request a Notice of Trail Use for the Missoula Gulch portion of the Line (the portion of the Line extending from Rocker to the Butte Hill or Kelley Mine Yard). BSB will request a Notice of Public Use for the Butte Hill portion of the Line (the portion of the Line extending from the Butte Hill or Kelley Mine Yard northeast to near the Badger Mine) to use the right-of-way for one or more public roads. Based on the information in our possession, the Line does not contain federally granted rights-of-way.

6. All communications relating to this Petition should be directed to:

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

7. Environmental and Historic Reports. BSB obtained approval from Victoria Rutson of the Board's Section of Environmental Analysis ("SEA") to provide a draft Preliminary

¹ The environmental issues relating to the MGBH and its abandonment are discussed in detail in the Environmental Assessment to be issued shortly by the Board's Section of Environmental Analysis.

Draft Environmental Assessment to the Board in lieu of the environmental and historic reports otherwise required. See Letter from Victoria Rutson attached as Exhibit G. BSB has submitted a draft Preliminary Draft Environmental Assessment to the SEA from which the SEA is developing the Board's Environmental Assessment.

10. Employee Protection. BSB has no railroad employees, and the entire Line is addressed by this Petition for Exempt Abandonment. No employees will be adversely affected as a result of the abandonment.

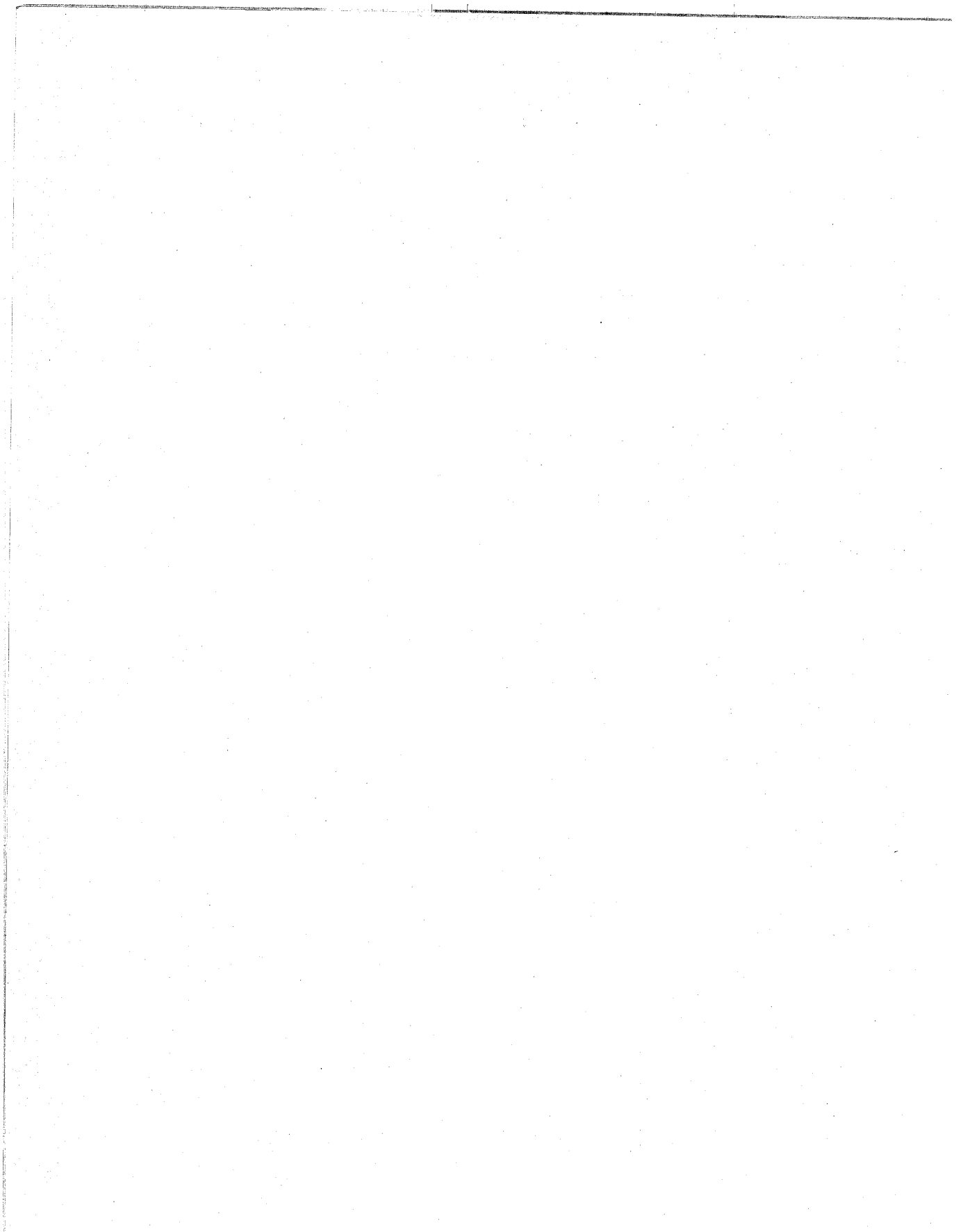
11. Notice Requirements. The newspaper notice required by 49 C.F.R. § 1105.12 was published on February 13, 2002. See Verification of Publication, Exhibit H hereto. At the time the notice was published, BSB understood that it would be able to utilize the class exemption procedure for abandonment of out-of-service lines and the notice reflects this fact. BSB subsequently learned that it would not be able to seek abandonment under the class exemption. Because the relevant facts in the newspaper notice were accurate, no additional notice was published. The certification that the notice required by 49 C.F.R. § 1105.11 has been properly given is attached as Exhibit I to this Petition.

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 Petition for Exempt Abandonment.

Executed on May 16, 2002.


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



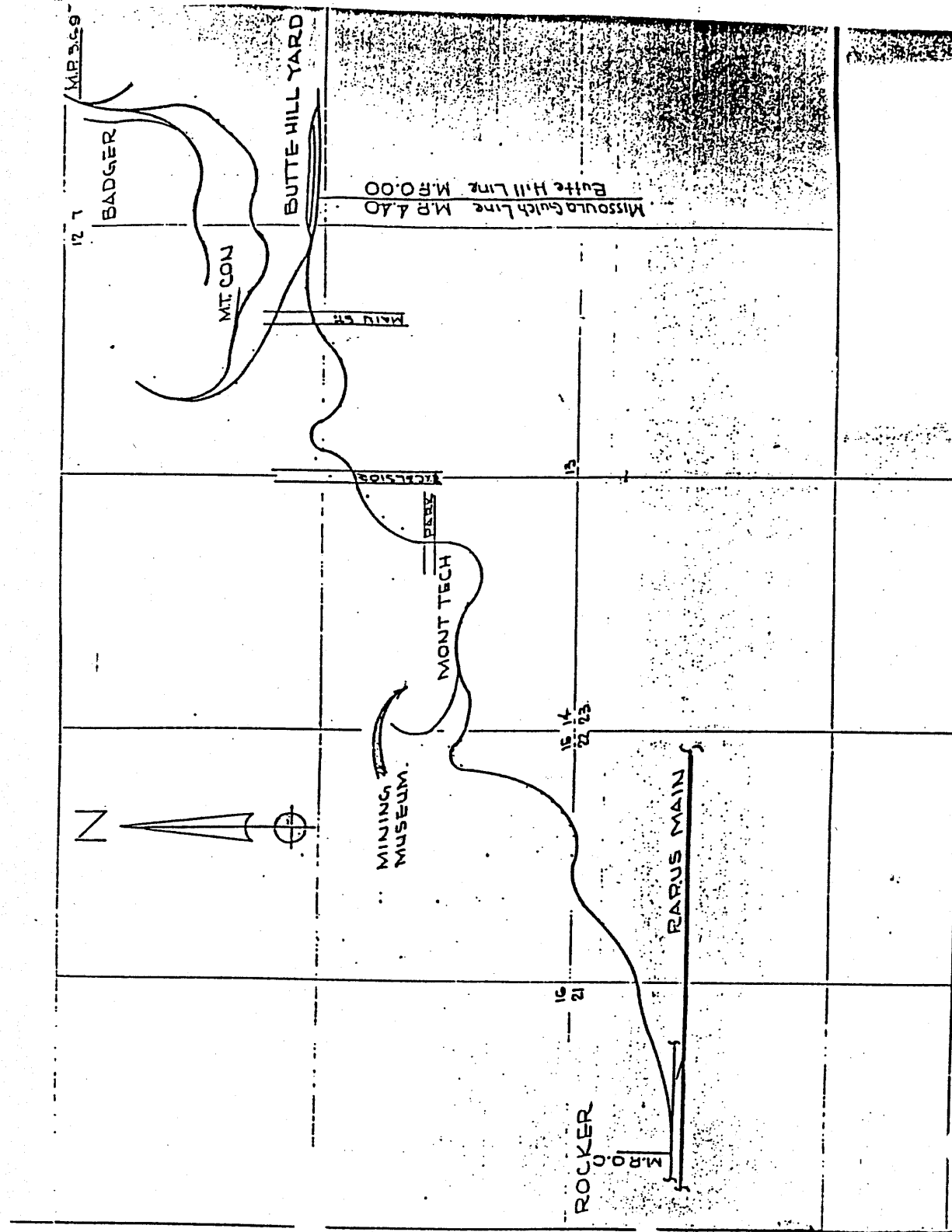


EXHIBIT A

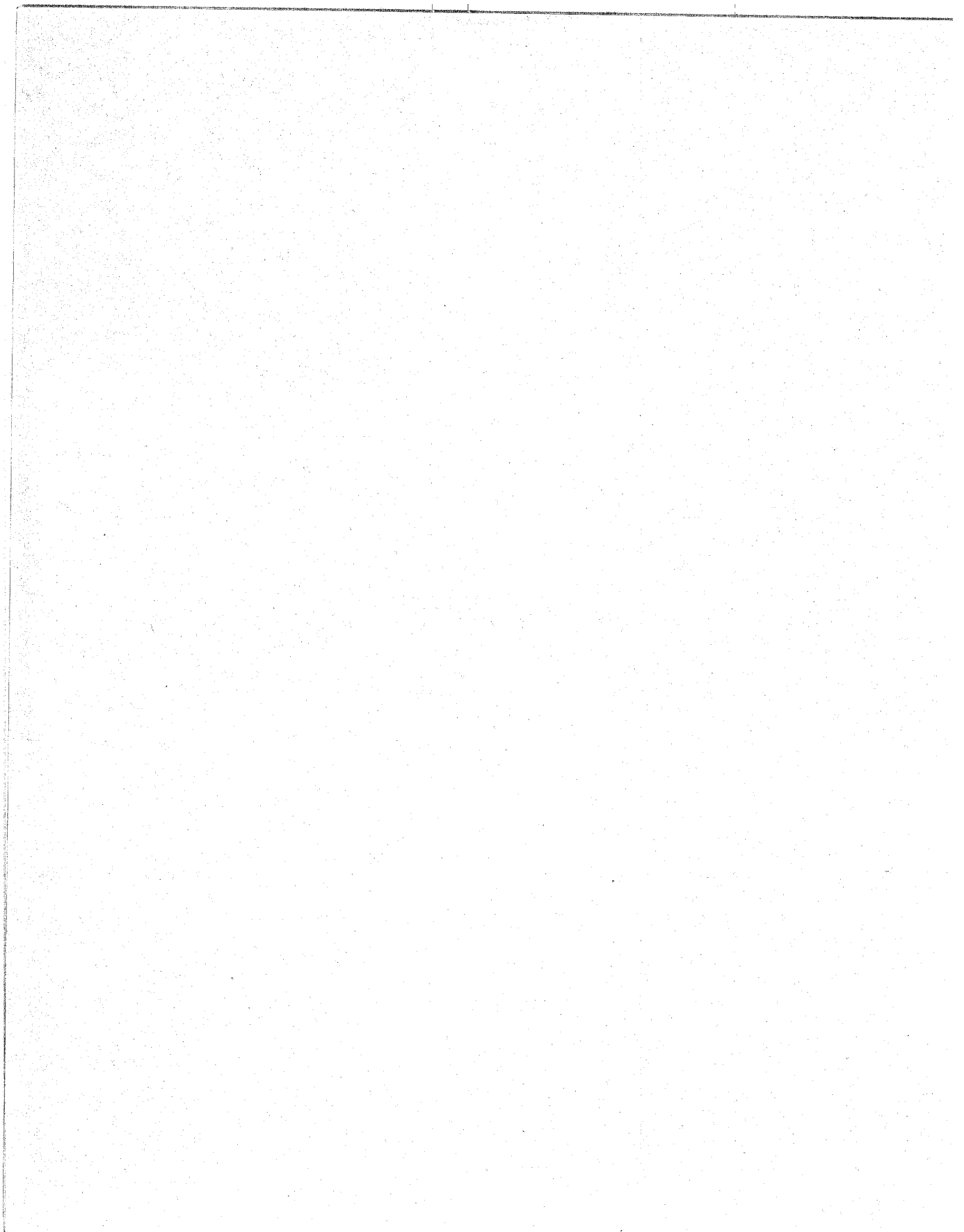


EXHIBIT B

STB No. AB-597X

Notice of Petition for Exemption To Abandon or to Discontinue Service

On May 17, 2002, Butte-Silver Bow County filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a line of railroad known as the Missoula Gulch and Butte Hill Line. The Missoula Gulch portion of the line extends from milepost 0.0 at Rocker to milepost 4.40 at the Butte Hill Yard (commonly referred to as the Kelley Mine Yard). The Butte Hill portion of the line extends from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine. The total distance of the Missoula Gulch and Butte Hill Line is approximately 11 miles and it is located entirely within Silver Bow County, Montana. The line includes no stations and traverses through United States Postal Service ZIP Code 59701.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

There are no railroad employees.

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the FEDERAL REGISTER.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), with 45 days after the application is filed.



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

Search Result

Rank 1 of 1

Database
FTRAN-STB

(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

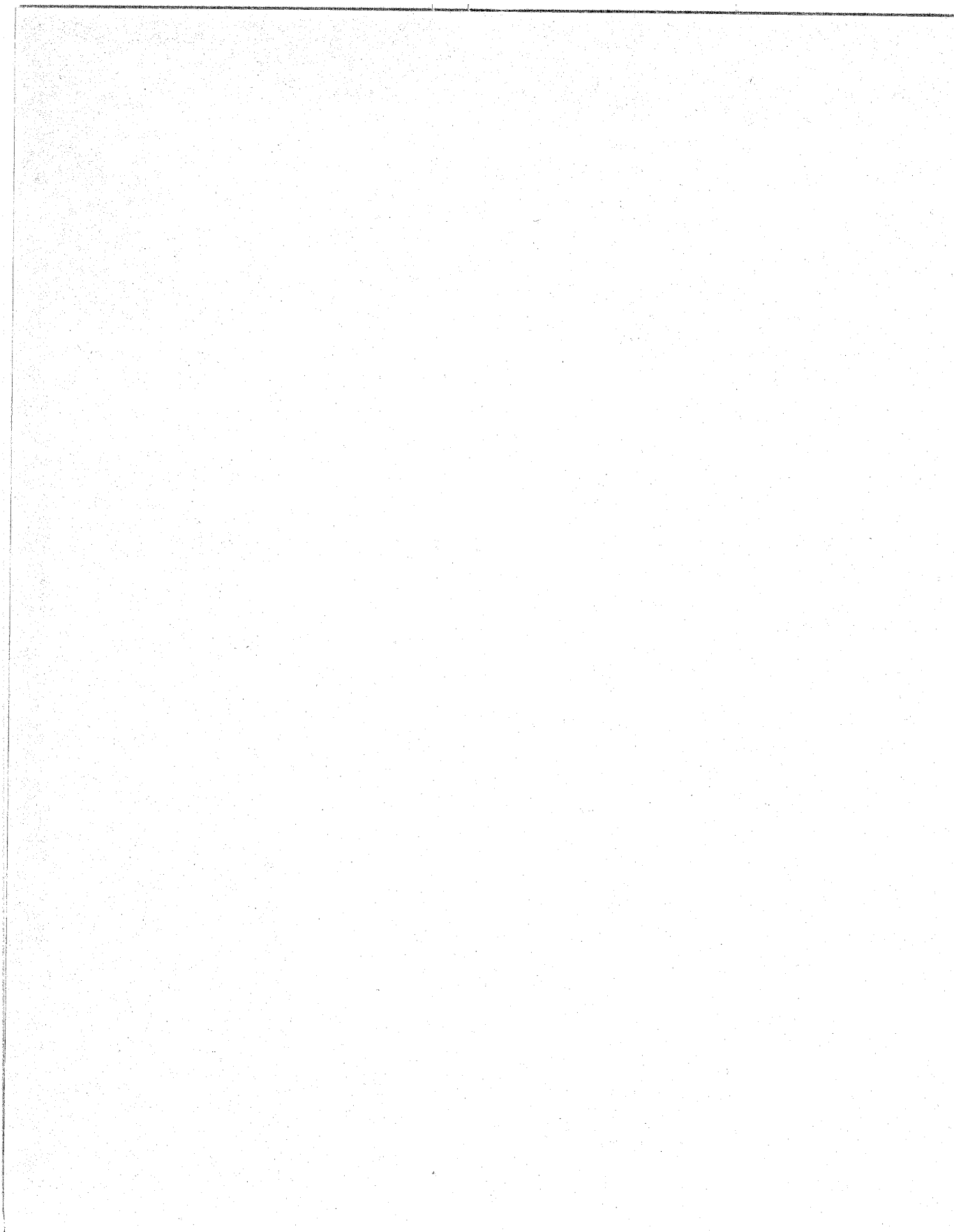
EXHIBIT C

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) 444-3885



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 59701-1659

Folder: D-851962
Corp Type: 51
Date Last Report: 87/87/93
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.

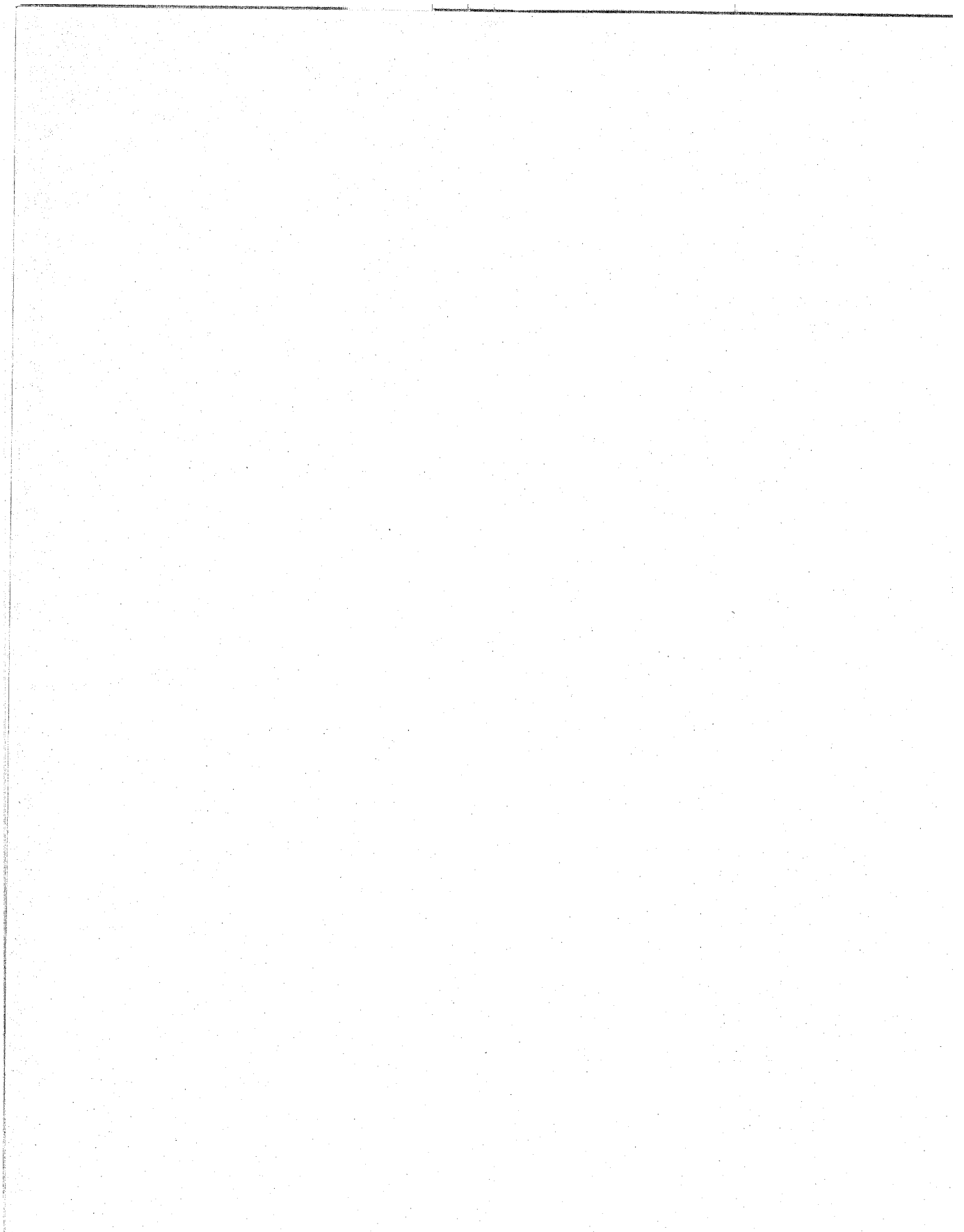
If you have any questions concerning this action, please don't hesitate to contact our office at the phone number listed above.

Sincerely,

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

Louise Ross
Chief, Business Services Bureau

EXHIBIT D



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

I. 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.

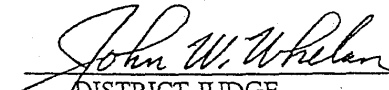
11. BSB made a number of contributions to the BAHPR including performing repair work necessitated by the BAHPR's failure to adequately maintain the railbed and crossings and

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

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

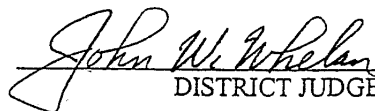
IN THE MATTER OF:)
) CAUSE NO. DV-01-100
THE DISSOLUTION OF BUTTE/)
ANACONDA HISTORICAL PARK AND)
RAILROAD CORPORATION, an)
involuntarily dissolved Montana non-profit)
corporation.)

ORDER

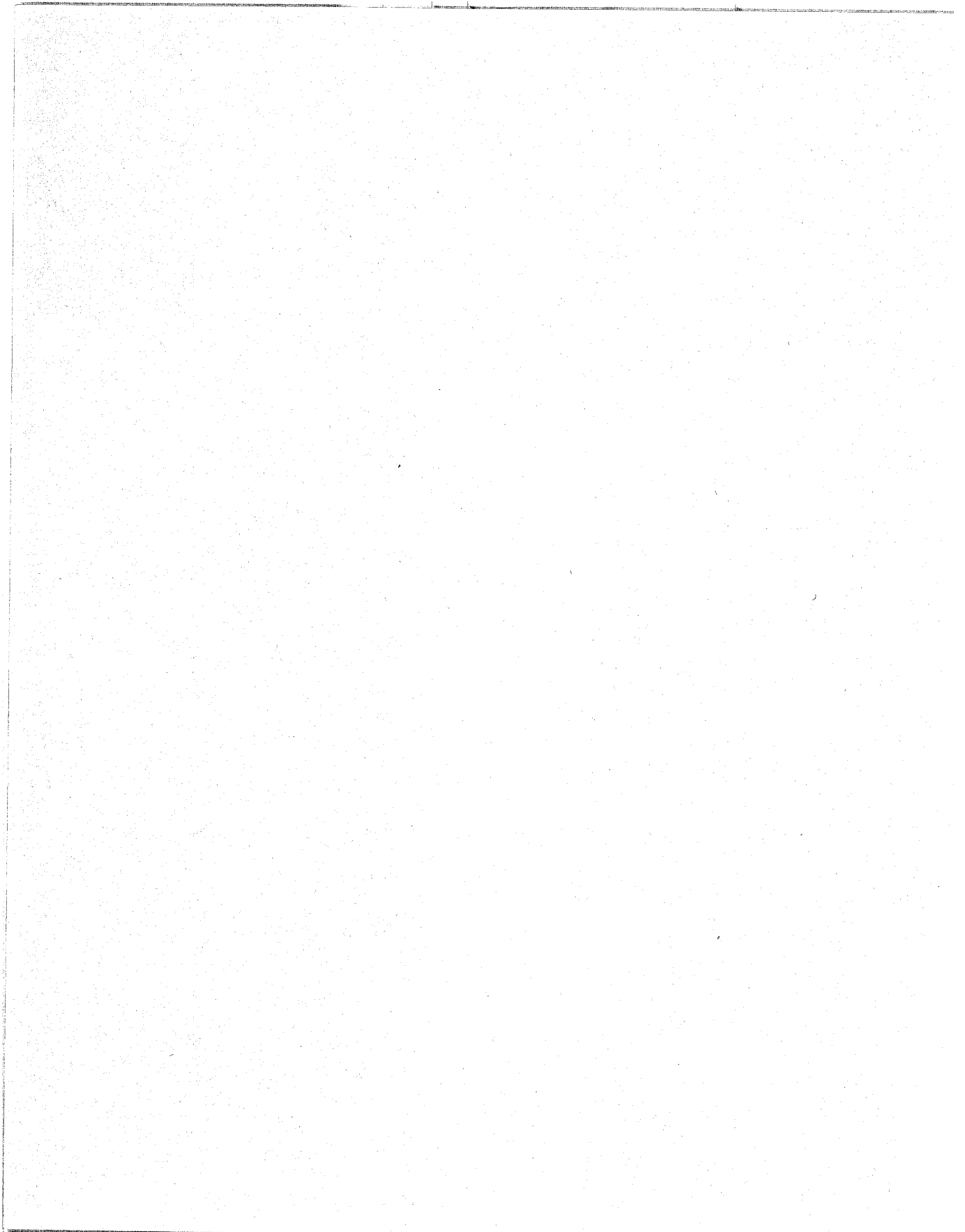
Based upon the Findings of Fact and Conclusions of Law entered by this Court,

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



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
UNILATERAL ADMINISTRATIVE)
ORDER FOR REMOVAL)
RESPONSE ACTIVITIES)
)
Butte Railroad Beds)
Time Critical Removal Action - OU OI)
)
Atlantic Richfield Company, Union Pacific)
Railroad Company, Burlington Northern/Santa Fe)
Railroad Company, Montana Western Railroad)
Company, RARUS Railroad Company, BGM)
Limited Liability Corporation,)
Universal Royal Apex Limited,)
Montana Mining Properties Incorporated, and)
Montana Resources Incorporated.)
Respondents)
)
Proceeding Under Section)
106(a) of the Comprehensive)
Environmental Response,)
Compensation, and Liability)
Act. as amended, 42 U.S.C. Section 9606(a))
)
)

Docket No. CERCLA-8-2000-02

EXHIBIT F

I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order (UAO or Order) is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, and further delegated to the EPA Region 8 Montana Office Director by Regional Directive.

2. This UAO pertains to properties located in or near the city of Butte, Montana. The properties consist of railroad beds and residential, commercial, or recreational properties in proximity to the railroad beds, and they collectively comprise "the Butte Railroad Beds TCRA Site" or the "Site". This UAO requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Montana Department of Environmental Quality (the State) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

II. PARTIES BOUND

4. This UAO applies to and is binding upon Respondents and Respondents' successors and assigns, and upon Respondent Atlantic Richfield Company's implementing agent, ARCO Environmental Remediation, L.L.C. (AERL), a wholly owned subsidiary of the Atlantic Richfield Company (ARCO). Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this UAO. Respondents are jointly and severally liable for carrying out all activities required by this UAO. Compliance or noncompliance by one or more Respondents with any provision of this UAO shall not excuse or justify noncompliance by any other Respondents.

5. Respondents and respondents' implementing agents shall ensure that their contractors, subcontractors, employees, and representatives who perform activities under this UAO receive a copy of this UAO and comply with this UAO. Respondents shall be responsible for any noncompliance with this UAO.

III. DEFINITIONS

6. Unless otherwise expressly provided in the UAO, terms used in this UAO which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this UAO or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Action Memorandum" is the EPA Action Memorandum for the Railroad Bed Time Critical Removal Action dated May, 1999, and supplemented by an Addendum regarding ARARs dated October, 1999.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this UAO, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor department or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300, and any future amendments thereto.

"Respondents" are the Atlantic Richfield Company (hereinafter ARCO), Burlington Northern/Santa Fe Railroad Company, Union Pacific Railroad Company, Montana Mining Properties Inc., RARUS Railroad Company, BGM Limited Liability Corporation (BGM LLC), Montana Western Railroad Company, Universal Royal Apex Limited, and Montana Resources Incorporated.

"Site" is the railroad beds within the Butte Priority Soils Operable Unit of the Silver Bow Creek/Butte Area NPL Site which are contaminated with arsenic and metals from mining waste or mine waste or product spillage and associated properties which are secondarily contaminated from the railroad beds, as further described in the Action Memorandum.

"State" shall mean the State of Montana, acting through the Department of Environmental Quality and any successor agencies or departments.

IV. FINDINGS OF FACT

7. The Respondent ARCO is a corporation doing business in the State of Montana. ARCO is the successor in interest to the Anaconda Company and its predecessors and the Butte, Anaconda, and Pacific Railroad Company (for the properties at issue here), which constructed and operated railroad lines and beds in and near Butte, Montana. Respondent Burlington Northern/Santa Fe Railroad Company is a corporation doing business in the State of Montana, and the successor to various railroad companies which constructed and operated railroad lines and beds in and near Butte, Montana, and is the current owner and operator of some of those railroad line beds. Respondent Union Pacific Railroad Company is a corporation doing business

in the State of Montana, and the successor to various railroad companies which constructed and operated railroad lines and beds in and near Butte, Montana, and is the current owner and operator of some of those railroad line beds. Respondents Universal Royal Apex Company, RARUS Railroad Company, BGM LLC, Montana Western Railroad Company, Montana Mining Properties Incorporated, Montana Resources Incorporated and Butte and Anaconda Historic Railroad Company (BAHRC) are current owners and/or operators of contaminated railroad beds.

8. The Site is an area located in and near Butte, Montana, and more fully described in the Action Memorandum. The Site is contaminated with elevated levels of arsenic, cadmium, copper, lead, and zinc, among other hazardous substances.

9. Hazardous metals contamination found at the Site originated from mining operations in Butte for a period of time from approximately 1880 to the present. In the 1880's, mining, milling and smelting operations grew in Butte, as copper deposits were extensively mined, primarily by the Anaconda Mining Company and its predecessors in interest. These operations required extensive railroad lines which connected various mines, mills, and smelters. Utah and Northern Railroad Company, a former subsidiary of the Union Pacific Railroad Company, built some initial railroad lines. Within the next few years the Northern Pacific Railroad Company joined with the Utah and Northern to provide service as the Montana Union Railway. The Montana Central also constructed additional railroad lines. The Northern Pacific and Montana Central eventually became part of the Burlington Northern and Santa Fe Railroad Company. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company constructed tracks through Butte and began railroad service in 1909. This company later became the Old Milwaukee Railroad Company, whose assets in Butte were subsequently transferred to Universal Royal Apex Limited. Additionally, the Anaconda Copper Mining Company formed a subsidiary, the Butte, Anaconda and Pacific (B,A and P) Railroad Company, which built extensive railines throughout Butte, which connected the Anaconda Copper Mining mines on Butte Hill to the smelter worked in Anaconda, Montana. In some cases, existing mine waste, such as tailings or concentrator waste, was used to construct the railbeds. By 1910, the Butte district produced over 284 million pounds of copper, making it the largest producer of copper in North America. The Anaconda Company and its various predecessors operated mills and concentrators whose aerial emissions contributed to the contamination at the Site. The construction, maintenance, and use of the railroad lines by their owners and AMC resulted in further, substantial contamination of the railroad beds with hazardous substances.

10. Through a series of transactions beginning in 1985, some of the railines in Butte were sold and otherwise transferred to several smaller companies. Larger companies, such as Burlington Northern RR Co. and Santa Fe RR Co. merged together. Today, current ownership and/or operatorship of the Butte railines within the Site rests with, among others, Union Pacific Railroad Company, the Burlington Northern/Santa Fe Railroad Company, Montana Resources Incorporated, Montana Western Railroad Company, Universal Royal Apex Limited, Montana Mining Properties Inc., RARUS Railroad Company, BGM LLC, and BAHRC.

11. Pursuant to Section 105 of CERCLA, EPA listed the Silver Bow Creek Superfund Site on the National Priorities List on September 8, 1983 at 48 Fed.Reg. 40658. The listing was

expanded to include the Butte Area on July 22, 1987, at 52 Fed. Reg. 27627, and the Superfund site became known as the Silver Bow Creek/Butte Area Superfund site.

12. EPA has conducted several time critical and non-time critical removal actions at the Butte Area portion of the SBCB site from 1985 through the present. EPA has also initiated a remedial investigation and feasibility study (RI/FS) for the Butte Priority Soils remedial operable unit (BPSOU) of the Butte Area, which is ongoing. The BPSOU RI/FS will result in the selection of a remedial action for the BPSOU.

13. In 1989, EPA conducted a preliminary ecological risk assessment, which determined that mine waste contamination from the Butte area into Silver Bow Creek presented unacceptable risks to the environment (Lower Area One Preliminary Risk Assessment, EPA 1991). As part of the ongoing BPSOU RI/FS, EPA evaluated human health risks from arsenic contamination in the BPSOU. As part of the BPSOU RI/FS, EPA issued a Final Baseline Human Health Risk Assessment for Arsenic dated April 29, 1997; and an addendum to this report found at Attachment A of the Action Memorandum. Those reports documented unacceptable risks from arsenic contamination in soils in certain areas of the BPSOU. In 1997, EPA issued an action memorandum and UAO for the conduct of a removal action to address stormwater in Butte, to ameliorate environmental risks from run-off of contaminated source areas. In the spring of 1999, as the RI/FS process for the BPSOU continued and as the stormwater TCRA was nearing completion, EPA determined that further immediate action was necessary to address some of the remaining arsenic contamination associated with railroad beds and associated properties, and mine waste contamination run-off from railroad beds. At the same time, data from the railroad beds and nearby areas was compiled, and these reports showed high levels of arsenic contamination in and around residential and commercial areas associated with the railroad beds. The various data reports are referenced in the Action Memorandum, and additional sampling has been conducted following issuance of the Action Memorandum which confirms the levels of concern. Data reports from the ongoing RI/FS data collection indicate continued high levels of contaminants in stormwater runoff, partially from railroad beds. Accordingly, EPA issued the Action Memorandum, and immediately began working with associated liable parties for the conduct of additional sampling and the cleanup actions specified by the Action Memorandum.

14. Arsenic in elevated concentrations can cause cancerous and non-cancerous health risks to human receptors. These risks are more fully explained in the Arsenic Human Health Risk Assessment (EPA, 1997). Lead in elevated concentrations can cause non-cancerous health risks to human receptors. These risks are more fully explained in the Lead Human Health Risk Assessment (EPA, 1994). Other mine waste contaminants, especially copper and zinc, can cause adverse effects on aquatic invertebrates, aquatic plants, and riparian habitat vertebrates including fish. These effects are more fully explained in the 1991 LAO Preliminary Baseline Risk Assessment and the Streamside Tailings Ecological Risk Assessment. EPA's Action Memorandum determined that conditions at the Site may constitute an imminent and substantial endangerment to human health and the environment. EPA's Action Memorandum selected an action level of 250 parts per million (ppm) for arsenic in residential areas, 500 ppm for arsenic in commercial areas, and an action level of 1000 ppm for recreational areas, and required cleanup action in the form of removal, capping, and/or stabilization and revegetation at both source and

receptor areas associated with railroad beds in the BPSOU which exceeded these levels. The Action Memorandum also adopted EPA's prior selection of lead action levels to apply to the Site, and required cleanup action to address exceedances. EPA's Action Memorandum also identified obvious storm water runoff and sedimentation from railroad beds as within the scope of this removal action, and required action to cleanup actions to address these problems.

15. All of the Respondents named in this order have previously received notice of general liability for the Butte Priority Soils Operable Unit and associated removal actions.

V. CONCLUSION OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

16. The sources of contamination at and to the Site are "facilities" as defined by section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

17. The contaminants found at the Site, as identified in the Findings of Fact above, are "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

18. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

19. Each Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), as a past and/or present owners of the source facilities.

20. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facilities as defined by sections 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

21. The conditions present at the Site require a removal action for the Site. Factors in making this determination are found at 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (this factor is present at the Site due to the existence of residences and commercial areas upon land contaminated with elevated levels of arsenic);

b. actual or potential contamination of sensitive ecosystems (this factor is present at the Site due to Silver Bow Creek, which is currently the subject of a multi-million dollar cleanup, being directly adjacent to the facilities and the recipient of runoff from the facilities. Silver Bow Creek is designated as critical habitat for the bull trout, a listed threatened species under the Endangered Species Act);

c. High levels of hazardous substances in soils largely at or near the surface, that may migrate (this factor is present at the Site due to the existence of high contaminant levels and slopes at railbeds which are susceptible to erosion);

d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released (this factor is present at the Site due to the existence of unvegetated areas and sometimes severe weather conditions such as wind and rain at the Site);

e. the unavailability of other appropriate federal or state response mechanisms to respond to the release (this factor supports the actions required by this UAO at the Site because no other governmental agency has clear authority over this type of contamination and situation);

22. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

23. The removal actions required by this UAO are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

VI. ORDER

24. Work to Be Performed Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the Site, EPA hereby orders that Respondents comply with the following provisions, including but not limited to all attachments to this UAO, all documents incorporated by reference into this Order including the Action Memorandum, and all schedules and deadlines in this Order and attached to this Order (see Exhibit 1), and perform the following actions:

This removal action involves the removal, capping, stabilization, yard removal, revegetation, sedimentation control, routing, and other appropriate methods of raillines and railbeds and adjacent or downhill receptor areas such as yards in and around Butte, Montana which are above action levels or exhibit stormwater runoff or sedimentation runoff of a sufficient nature to require action.

25. Notice of Intent to Comply Each respondent shall notify EPA in writing within 5 days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent. **EPA encourages the Respondents to work together to submit a joint statement of intent.**

26. Designation of Contractor Respondents shall perform the removal action themselves or retain contractors to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the names and qualifications of such contractor(s) within 5 days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal

action under this Order at least 10 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of a selected contractor or Respondents, Respondents shall retain a different contractor or notify EPA that they will perform the removal action itself within 10 days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents' name and qualifications within 5 business days of EPA's disapproval.

27. Project Coordinator Within 5 days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within 5 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

28. EPA Project Director EPA hereby designates Sara Weinstock Sparks of the EPA Region 8 Montana Office as its Project Director (PD). Respondents shall direct all submissions required by this Order to the PD at EPA Region 8 Butte Office, 155 West Granite Street, Butte, Montana, 59701; with a copy to Henry Elsen at EPA Region 8 Montana Office, 301 South Park Street, Drawer 10096 Federal Building, Helena, Montana 59624 (for EPA); and to the Kevin Kirley, State Project Officer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620.

29. Work Plans Respondents shall perform, at a minimum, the removal action described in the Action Memorandum, and as further described in paragraph 24 above. To accomplish this Work, Respondents shall comply with and/or perform the following:

The Respondents have submitted to EPA for approval a Work Plan and cover letter, dated October 12, 1999. The Work Plan is the subject of a conditional approval letter by EPA dated November 5, 1999. The Work Plan schedule is modified by the schedule attached to this Order. The Work Plan and approval letter require the submission of subsequent Design Plans. In addition, Respondents shall submit the following subsequent plan:

A draft short term Operation and Maintenance Plan, following substantial completion of the Work Plans activities.

EPA may approve, disapprove, require revisions to, or modify the plans described above. If EPA requires revisions, Respondents shall submit a revised draft plan within 30 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan, any related Sampling and Analysis Plans, subsequent Work Plans and Design Plans, and the Short Term Operation and Maintenance Plan as approved by EPA in accordance with the schedule

approved by EPA. Once approved, or approved with modifications, the Work Plans and other plans, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

30. Notice Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to any EPA approved plans. Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

31. Health and Safety Plan Within 10 days prior to beginning field work under this Order, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations: Hazardous Waste Operations and Emergency Response: found at 29 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

32. Quality Assurance and Sampling All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and applicable guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis, as appropriate. Upon request by EPA, Respondents shall allow EPA, the State, or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA and the State not less than 5 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

33. Reporting Respondents shall submit a written progress report to EPA and the State concerning actions undertaken pursuant to this Order every 20th day after the Effective Date of the UAO until termination of this Order, unless otherwise directed by the PC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

34. Notice Upon Conveyance Respondents and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA and DEQ of the proposed conveyance, including the name and address of the transferee.

35. Final Report Within 30 days after completion of all removal actions required under this Order, except for short term Operation and Maintenance, the Respondents shall submit to EPA and the State for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed or addressed in completion of this Order, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a description of how Respondents complied with ARARs identified for this removal, and a presentation of the analytical results of all sampling and analyses performed. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. Access to Property and Information Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Any access agreement used by Respondents to secure such access must be submitted to EPA for review and approval, and shall not shift liability to persons not named as Respondents under this UAO. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Montana representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or its contractor(s), or on the Respondents' behalf during implementation of this Order. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use its best efforts to obtain all necessary access agreements within 30 days prior to field work, or as otherwise specified in writing by the PC. Respondents shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondents shall describe in writing its efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for, inter alia, all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

37. Record Retention, Documentation, Availability of Information Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year period and

30 days before any document or information is destroyed. Respondents shall notify EPA that such documents, with the exception of privileged documents, and information are available to EPA for inspection, and upon request and subject to the privileges described below, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. Section 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents. Respondents shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g. attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondents shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

38. Off-Site Shipments All hazardous substances, pollutants or contaminants removed off-site (meaning outside of the contiguous Clark Fork Basin Superfund Sites) pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. Section 9621(d)(3) and applicable EPA guidance. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and applicable guidance. Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07. In addition, Respondents shall, no later than ten (10) days prior to any off-site shipment of hazardous substances from the site to an out-of-state waste management facility, provide written notification of such shipment of hazardous substances to the appropriate state environmental official in the receiving state and to EPA and DEQ.

- a. The notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which hazardous substances are to be shipped; (2) the type and quantity of hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method and route of transportation. Respondent shall notify EPA, DEQ, and the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- b. The identity of the receiving facility will be determined by Respondents at the earliest possible time. Respondents shall provide all relevant

information, including the information noted above, as soon as practicable after a decision is reached, but in no event later than the time specified in this paragraph.

39. Compliance With Other Laws Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. Section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws identified in the Action Memorandum Addendum.

40. Emergency Response and Notification of Release If any incidents, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the PD or, in the event of her unavailability, shall notify the Regional Duty Officer, EPA Region 8, and the EPA Regional Emergency 24-hour telephone number of the incident or site conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA's PD and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent to reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VII. AUTHORITY OF THE EPA PROJECT DIRECTOR

41. The PD shall be responsible for overseeing the proper and complete implementation of this Order. The PD shall have the appropriate authority vested in an On Scene Coordinator by the NCP, 40 CFR § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the PD from the Site shall not be cause for stoppage of work unless specifically directed by the PD.

42. EPA and Respondents and the State shall have the right to change their designated PD or Project Coordinator or Project Officer. EPA and the State shall notify the Respondents, and Respondent shall notify EPA and the State within thirty days, after such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

43. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. Section 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. Section 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. Section 9606.

IX. RESERVATION OF RIGHTS

44. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site or the BPSOU. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

X. OTHER CLAIMS

45. By issuance of this Order, the United States, the State, the Department of Environmental Quality (DEQ) and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States, the State, DEQ, or EPA shall not be deemed a party to any contract entered into by the Respondents or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

46. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2).

47. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

XI. MODIFICATIONS

48. Modifications to any plan or schedule may be made in writing by the PD or at the PD's oral direction. If the PD makes an oral modification, it will be memorialized in writing within 10 days; provided, however, that the effective date of the modification shall be the date of the PD's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the Montana Office Director, EPA Region 8.

49. If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

50. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

51. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including short term operation and maintenance, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the appropriate Work Plans to correct such deficiencies. The Respondents shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plans shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

52. The Administrative Record supporting these removal actions is available for review at EPA offices in Helena, Montana. Key documents contained in the administrative record are placed in public repositories in Butte, Montana; and the full AR is also placed in appropriate field repositories periodically.

XIV. OPPORTUNITY TO CONFER

53. Within 10 days after issuance and receipt of this Order, Respondents may request a conference with EPA. Any such conference shall be held within 10 days following the request, unless an extension of time is agreed to by EPA. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

54. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may

submit any information, arguments or comments in writing to EPA within 2 days following the conference, or within 10 days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Henry Elsen, Attorney, Legal Enforcement Program, at 406 441-1150, extension 266 or the address given above. **If a conference is desired, EPA encourages the Respondents to collectively request the conference for a single time and date.**

XV. INSURANCE

55. Respondent shall demonstrate adequate insurance or the ability to self insure for appropriate coverage regarding this action.

XVI. ADDITIONAL REMOVAL ACTIONS

56. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of sections VI of this Order. Upon EPA's approval of the plan pursuant to Section VI, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the PD's authority to make oral modifications to any plan or schedule pursuant to Section XII.

XVII. SEVERABILITY

57. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XVIII. EFFECTIVE DATE

58. This Order shall be effective 30 days after the Order is signed by the Montana Office Director, EPA Region 8, unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the 5th day following the day of the conference unless modified in writing by EPA.

IT IS SO ORDERED

DATE:

11/2/77

BY:

John F. Wardell

JOHN F. WARDELL
DIRECTOR
MONTANA OFFICE
EPA REGION 8

Exhibit 1

Response Action Schedule*

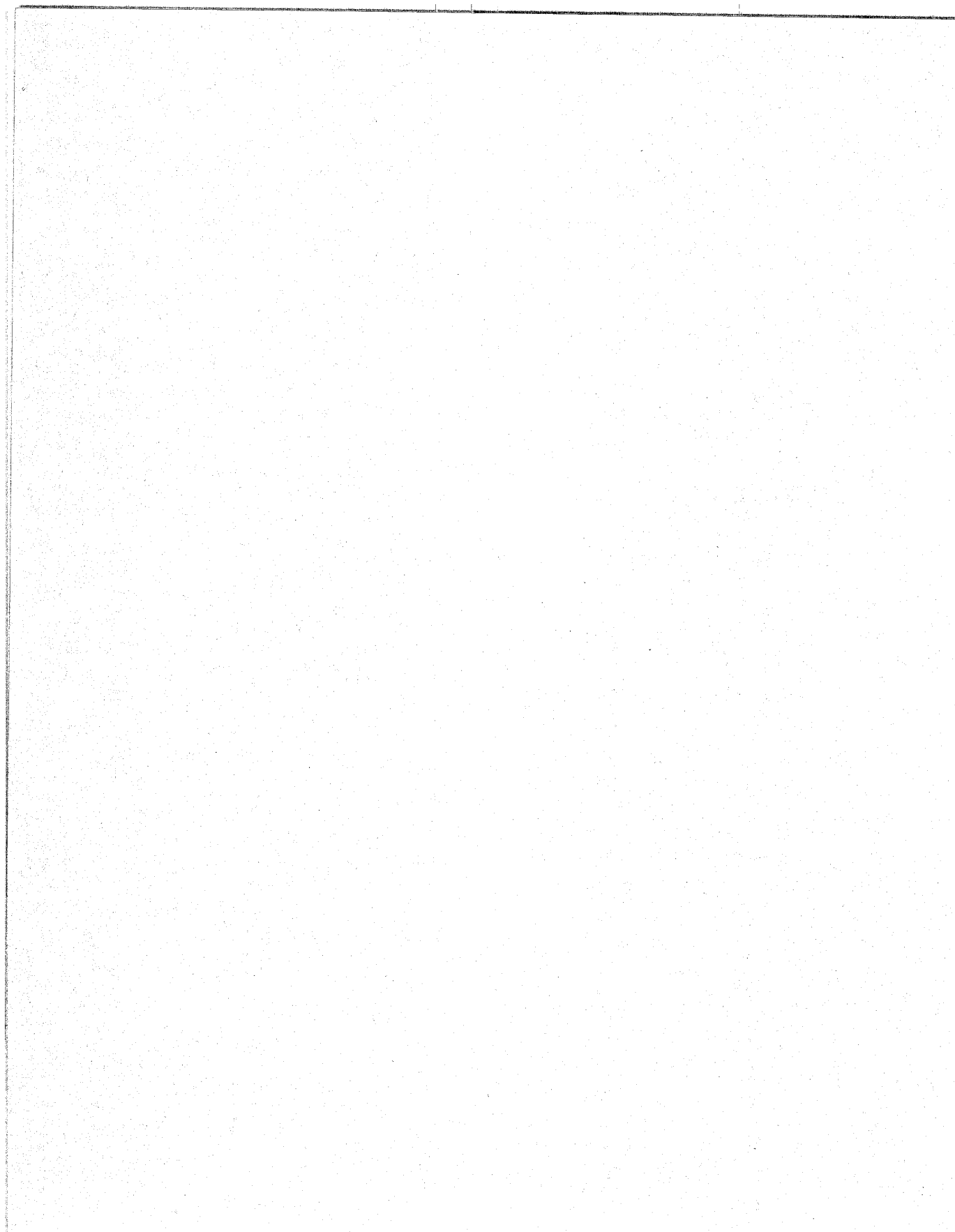
Action	Responsible Party	Preliminary Date
Draft Phase I Work Plan	PRP Group	July 22, 1999
Draft Phase I Work Plan/Phase II Conceptual Design Meeting	PRP Group/EPA	July 27, 1999
Draft Phase II Conceptual Design	PRP Group	August 6, 1999
Written Draft Phase I Work Plan Comments	EPA	August 13, 1999
Written Draft Phase II Conceptual Design Comments	EPA	August 17, 1999
Draft Work Plan Meeting	PRP Group/EPA	August 19, 1999
Draft Final Work Plan	PRP Group	September 3, 1999
Draft Final Work Plan Comments or Approval	EPA	September 15, 1999
Draft Final Work Plan Comments Meeting, if necessary	PRP Group/EPA	September 22, 1999
Final Work Plan	PRP Group	October 12, 1999
Construction Preparation	PRP Group	August 1999-March 2000
Order	EPA	January 14, 2000
Draft Data Summary Report	PRP Group	January 31, 2000
PRP Group/EPA Order Conference	EPA	February 8, 2000
**Draft Design Package A	PRP Group	February 14, 2000
EPA Written Comments	EPA	21 days from submittal of Draft Design
Meeting on Draft Design and EPA Comments	EPA/PRP Group	5-7 days from submittal of written Draft Design Comments
Final Design	PRP Group	28 days from Draft Design Meeting
Final Design Approval	EPA	21 days from submittal of Final Design
Construction Bid	PRP Group	April/May 2000
Commence Construction Activities	PRP Group	June 2000

* The design schedule and construction commencement are approximate and subject to EPA, ADEQ, and BSA approval of appropriate portions of the design and construction scheduling.
 ** Design Package A and Design Package B are each anticipated to contain approximately half of the AS Best TCEA work identified in the Work Plan.

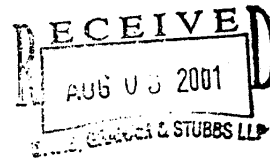
Response Action Schedule continued*

**Draft Design Package B	PRP Group	March 17, 2000
EPA Written Comments and Meeting on Draft Design	EPA	21 days from submittal of Draft Design
Meeting on Draft Design and EPA Comments	EPA/PRP Group	5-7 days from submittal of written Draft Design Comments
Final Design	PRP Group	28 days from Draft Design Meeting
Final Design Approval	EPA	14 days from submittal of Final Design
Construction Bid	PRP Group	April/May 2000
Commence Construction Activities	PRP Group	June 2000

Agency comments will include DEQ comments to the extent practicable. DEQ may submit comments to the PRPs separately on any document or deliverable. EPA approval shall be in consultation with DEQ. The time periods in the schedule indicated for EPA deliverables, review, comment, and approval are estimated, and are not binding or enforceable dates.



*SURFACE TRANSPORTATION BOARD
Washington, DC 20423*



Section of Environmental Analysis

July 30, 20001

Ms. Susan J. Geer
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Dear Ms. Geer:

This letter responds to your letter in which you propose an alternative environmental review process for a proposed adverse abandonment¹ of the Missoula Gulch and Butte Hill Rail Line (MGBH) in Silver Bow County, Montana. Specifically, you request that the Section of Environmental Analysis (SEA) permit Applicant Butte-Silver Bow County (BSB) to submit to SEA a Preliminary Draft Environmental Assessment (PDEA) in lieu of the environmental and historic report required under 49 CFR 1105.7 and 1105.8 when filing an application for an adverse abandonment. You further request that SEA plan to prepare an Environmental Assessment (EA) rather than an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of this proposed adverse abandonment.

Based on our discussions and the supporting documentation submitted with your proposal, SEA concurs with your request to submit a PDEA² in lieu of the environmental and historic report for the proposed adverse abandonment. The PDEA will serve as an administrative draft to SEA in preparing its Environmental Assessment. To allow SEA time to adequately review the PDEA, BSB has agreed to submit the PDEA to SEA at least two months prior to formally filing the application for adverse abandonment with the Board.

SEA will review the PDEA and determine whether SEA requires a third-party contractor to be retained, at Applicant's expense, to assist us in an independent review and verification of the PDEA. SEA will notify you promptly of our decision regarding the possible need for a third-party contractor.

¹You have explained that Applicant is facilitating the abandonment of MGBH because there is no active operator or owner of the line. When abandonment authority is sought by a party other than the railroad itself, the abandonment is termed an "adverse" abandonment.

²CEQ regulations at 40 CFR 1506.5(b) permits Applicants to prepare EAs. The PDEA must include the information required by the Board's regulations at 49 CFR 1105.7 and 1105.8.

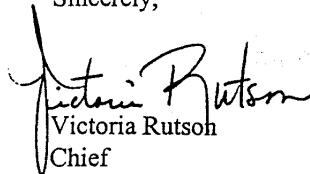
EXHIBIT G

The environmental review process you propose should avoid duplicative efforts by the Applicant and SEA. Accordingly, the process that you describe is appropriate. However, as you are aware, these efforts toward efficiency are not in lieu of SEA's ultimate responsibility and authority for the environmental document. Therefore, the extent to which the PDEA will be adopted as the Draft EA that is put out for public review and comment will be determined after the PDEA is submitted to and reviewed by SEA.

Finally, based on the environmental information available to date concerning this project, SEA has determined that an EA appears appropriate. That approach is consistent with the Board's environmental rules, which contemplate that an EA and not a full EIS typically will be adequate in rail abandonment cases. Nevertheless, the Board could decide to prepare an EIS. SEA will make this determination after the PDEA or EA has been completed, or earlier if it becomes clear that potentially significant adverse environmental effects would result from the project and could not be adequately mitigated.

If you have any questions or concerns, please feel free to contact me or Ms. Phillis Johnson-Ball at 202-565-1530.

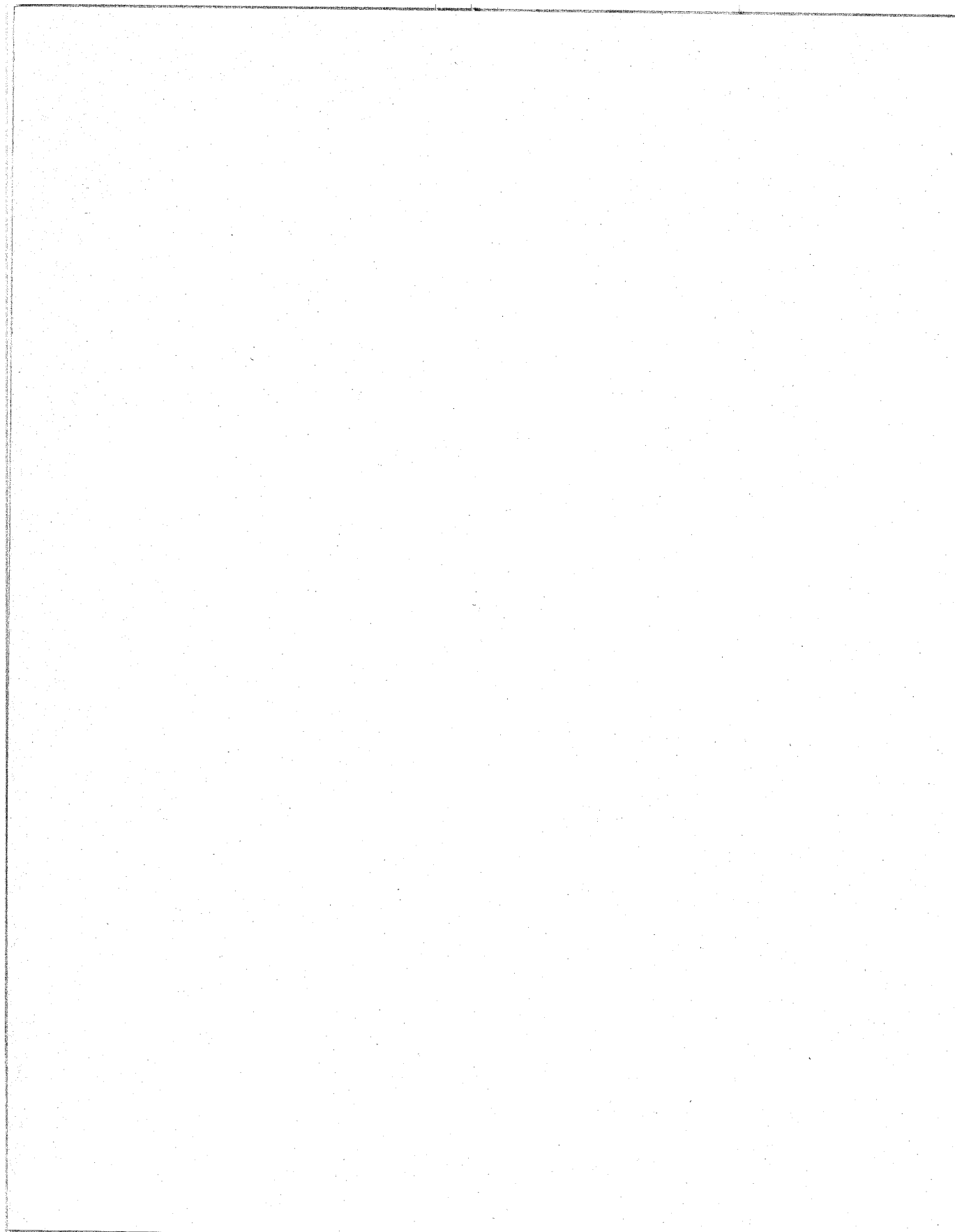
Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V".

Victoria Rutson

Chief

Section of Environmental Analysis



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Ad Information	
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Publications:	The Montana Standard
<i>Kelly Hawery</i>	
Start Date:	02-13-02
Stop Date:	02-13-02
Insertions:	1
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Ad Type:	Liner
Taken By:	Kelly Hawery
Size:	1x106.000
Bill Size:	106.00 x 7pt lines

Gross Price: \$ 165.00
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Total Payments: \$ 0.00

Amount Due: \$ 165.00

Ad Copy:

NEWSPAPER NOTICE
FOR ABANDONMENT OF
THE MISSOULA GULCH
AND BUTTE HILL
RAILROAD LINE
A/K/A "TOURIST LINE"

Butte-Silver Bow County gives notice that on or about February 18, 2002, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart B Exempt Abandonments permitting the abandonment and salvage of an approximately 11-mile line of railroad, the Missoula Gulch and Butte Hill Line, more recently referred to as the "Tourist Line." The Missoula Gulch portion of the Line extends from milepost 0.0 at Rocker to milepost 4.40 at the Butte Hill Yard (commonly referred to as the Kelley Mine Yard). The Butte Hill portion of the Line extends from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine. The Missoula Gulch and Butte Hill Line traverses through United States Postal Service ZIP Code 59701 in Silver Bow County, Montana. The proceeding will be docketed as No. AB-597.

The Board's Section of Environmental Analysis (SEA) will prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-565-1526.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed

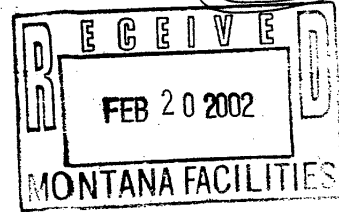


EXHIBIT H

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with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, NW, Washington, DC 20423 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at (202) 565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative: Susan J. Geer, c/o Davis Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, Colorado 80202, (303) 892-7367.
February 13, 2002

William A. Fester
NOTARY PUBLIC for the State of Montana
Residing at Butte, Montana
My Commission Expires: *Dec 16, 2002*

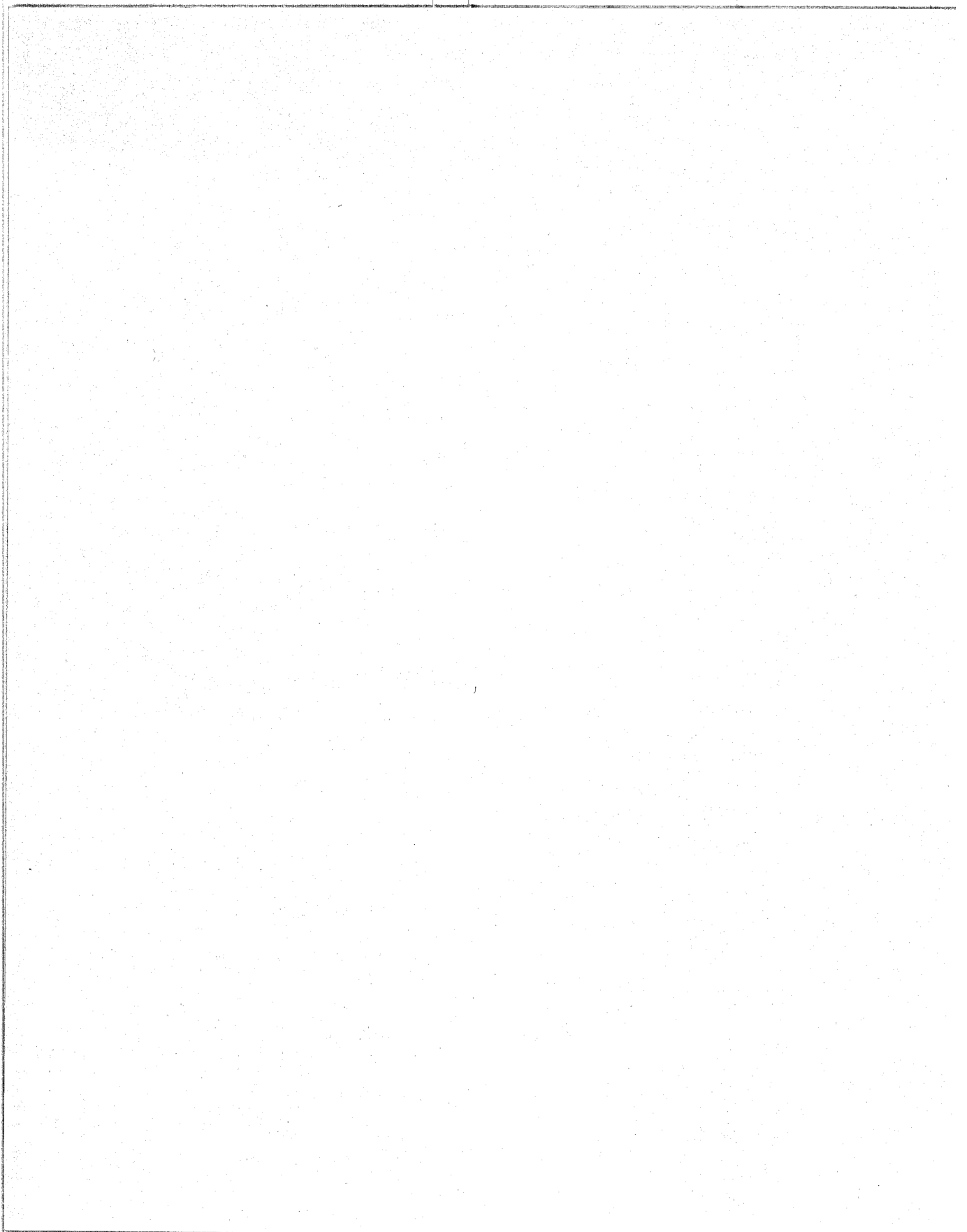


EXHIBIT I

CERTIFICATION OF COMPLIANCE
WITH NOTICE REQUIREMENTS

In accordance with 49 C.F.R. §§ 1105.7(c) and 1105.11, I hereby certify that on January 28, 2002, copies of the draft Preliminary Draft Environmental Assessment were transmitted with the notice letter specified in 49 C.F.R. § 1105.11 to the agencies identified in 49 C.F.R. § 1105.7(b) with the exception of the Montana State Historic Preservation Office. The Montana State Historic Preservation Office has been involved in discussions concerning the abandonment of the MGBH and historic mitigation related thereto, and has been provided with a copy of the proposed historic mitigation plan, which is an attachment to the preliminary Draft Environmental Assessment.

I, Susan Geer, certify under penalty of perjury that the foregoing is true and correct.

Executed on May 16, 2002.



Susan J. Geer, Esq.
Davis Graham & Stubbs, LLP
1550-17th St., Suite 500
Denver, Colorado 80202
as representative for Butte-Silver Bow County