



DID # 0101951001

Davis Graham & Stubbs LLP

May 17, 2002

VIA FEDERAL EXPRESS
SECOND DAY DELIVERY

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

205438

ENTERED
Office of the Secretary

MAY 21 2002

Part of
Public Record



Re: Docket No. AB-597X

Dear Mr. Vernon:

This letter transmits the original and 10 copies each of the Request for Public Use Condition and the Request for Trail Use Condition and for Issuance of a Notice of Interim Trail Use relating to the Petition for Abandonment Exemption in Docket No. AB-597X. I am transmitting these Requests on behalf of Butte-Silver Bow County, who is the abandonment petitioner as well as the trail use proponent and public use proponent. Also enclosed is a check in the amount of \$150.00 for the filing fee for the Request for Trail Use Condition and for Issuance of a Notice of Interim Trail Use.

I have also enclosed an extra copy of each of the Requests to be date-stamped and returned to me in the enclosed self-addressed, stamped envelope. Please do not hesitate to contact me with any questions or if you need anything further. However, please note that I will be out of the office from May 20 through June 9, returning on June 10. If you have any questions or need anything further 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, as representative of former BAHPR

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BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-597X

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

REQUEST FOR TRAIL USE CONDITION AND FOR
ISSUANCE OF A NOTICE OF INTERIM TRAIL USE

MAY 21 2002

SURFACE
TRANSPORTATION BOARD

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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-597X

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

REQUEST FOR TRAIL USE CONDITION AND FOR
ISSUANCE OF A NOTICE OF INTERIM TRAIL USE

Pursuant to 16 U.S.C. § 1247(d) and the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1152.29, Butte-Silver Bow County ("BSB") hereby petitions the Board for a trail use condition for a portion of the railroad known as the Missoula Gulch and Butte Hill line ("MGBH") in and near Butte, in Silver Bow County, Montana. On May 17, 2002, BSB filed a Petition for Exempt Abandonment of the entire MGBH Line. 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. In that Petition, BSB stated its intent to seek a public use condition 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. Also in that Petition, BSB expressed its intent to seek a trail use condition for the Missoula Gulch portion of the Line, extending from Rocker to the Butte Hill/Kelley Mine Yard. A map of the MGBH is attached to this Notice as Exhibit A.

As described in greater detail in the Petition for Exempt Abandonment and the attendant Environmental Assessment, 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, along with the larger system operated by the BA&P, played a key role in mining and smelting operations in and near Butte and Anaconda, Montana for the better part of a century. In the 1980s, when mining operations slowed and the smelters in Anaconda were closed, the BA&P sold the Butte to Anaconda line to a small railroad, RARUS Railway Corporation, and conveyed the MGBH to the State of Montana.

A non-profit corporation, the Butte/Anaconda Historic Park and Railroad Corporation ("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, then in 1991, the BAHPR acquired the MGBH from the State of Montana. In 1994, the BAHPR was involuntarily dissolved by the Montana Secretary of State's Office for failing to maintain its filings, but continued to operate a tourist train seasonally through 1996. Although the BAHPR was administratively dissolved, it never distributed its corporate assets. On October 29, 2001, the state district court in Butte ordered the assets of the BAHPR distributed to BSB. BSB filed a Verified Notice of Exempt Acquisition concerning this transfer of ownership pursuant to 49 C.F.R. §§ 1180.2(d)(1) and 1150.31, in 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.

BSB sought abandonment of the MGBH 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.

Local, state and federal governmental bodies involved with the CERCLA cleanup activities in and around Butte, with the input of the local community, have determined that the preferred future use for the Missoula Gulch portion of the MGBH is to develop a pedestrian and bicycle trail with historic interpretive features. If approved by the Board, the trail would tie into a larger trail system in the area also developed in conjunction with the CERCLA cleanup activities. Preservation of the right-of-way as a trail, coupled with the historic interpretive features should mitigate any loss of historic resources that might occur if the Line were abandoned.

Statement of Willingness to Assume Financial Responsibility

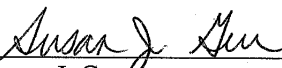
In support of its Petition for a Trail Use Condition, BSB provides the following Statement of Willingness to Assume Financial Responsibility: In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 CFR § 1152.29, BSB is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by BSB. The property is known as the Missoula Gulch and Butte Hill Line. 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. The Missoula Gulch and Butte Hill Line extends approximately 11 miles in Silver Bow County, Montana. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-597X.

A map of the property depicting the right-of-way is attached as Exhibit A, a Vicinity Map of the MGBH is attached as Exhibit B, and more detailed maps depicting the Missoula Gulch portion of the Line are attached as Exhibits C1 and C2.

BSB acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. Because BSB owns the MGBH, and therefore effectively is the railroad, there is no separate railroad entity upon whom to serve a copy of this statement. Also, because BSB is both the railroad and the trail use proponent, there will be no need to execute any agreement between the railroad and the trail use proponent. As such, BSB respectfully requests the Board to issue a Notice of Interim Trail Use for the Missoula Gulch portion of the MGBH. BSB also requests the Board's permission to begin salvage of the track structures on the Missoula Gulch portion of the Line so that the cleanup work required by EPA under CERCLA may begin.

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 Request for Trail Use Condition and issuance of a Notice of Interim Trail Use.

Executed on May 17, 2002.



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

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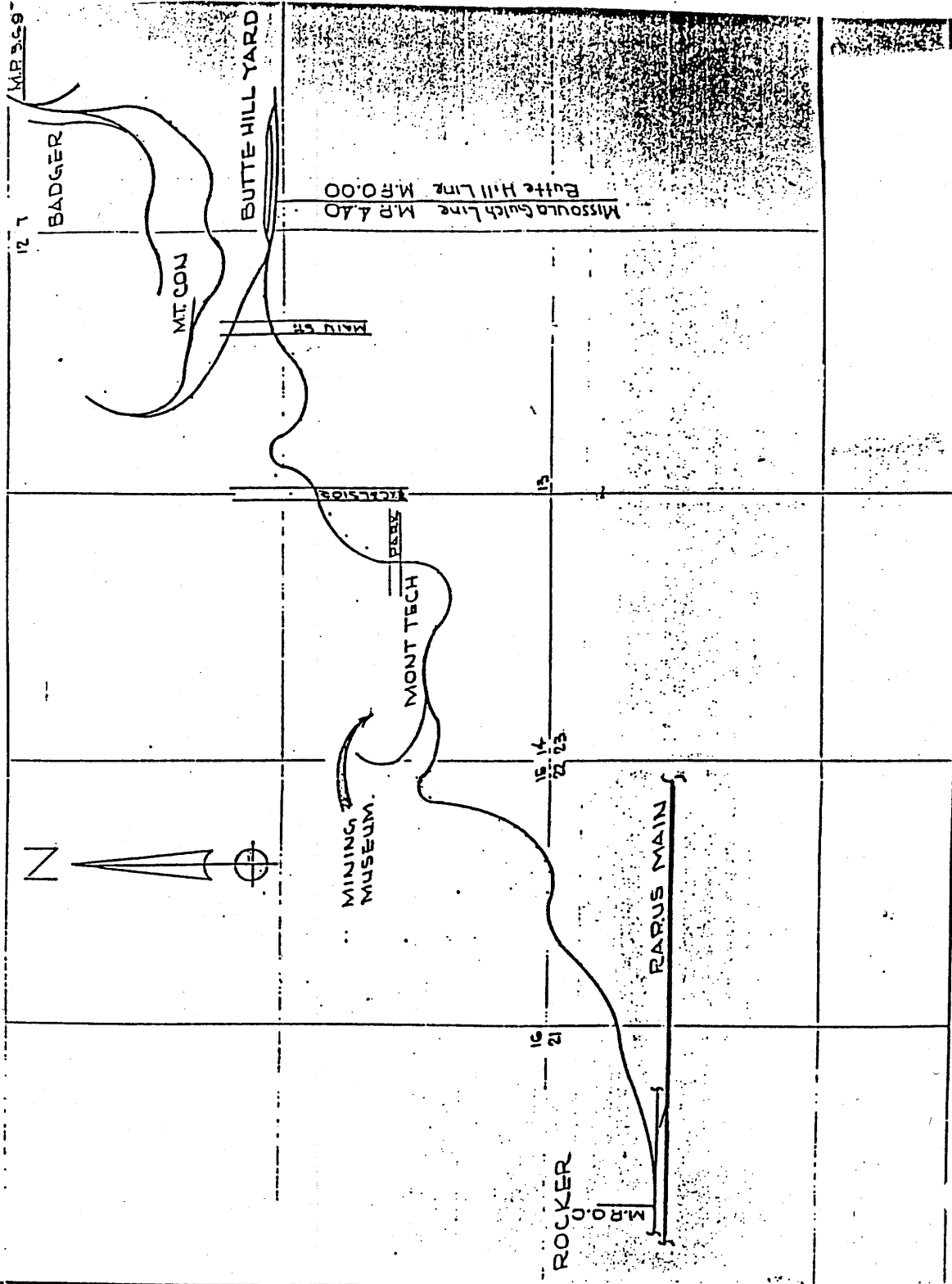


EXHIBIT A

**MAP WILL BE SCANNED
AT A LATER DATE**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-597X

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

REQUEST FOR A PUBLIC USE CONDITION

BUTTE-SILVER BOW COUNTY

By Its Representative,

Susan J. Geer, Esq.
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1550 17th Street, Suite 500
Denver, Colorado 80202
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-597X

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

REQUEST FOR A PUBLIC USE CONDITION

Pursuant to 49 U.S.C. § 10905 and the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. §§ 1152.28, Butte-Silver Bow County ("BSB") hereby requests a public use condition for a portion of the railroad known as the Missoula Gulch and Butte Hill line ("MGBH") in and near Butte, in Silver Bow County, Montana. On May 17, 2002, BSB filed a Petition for Exempt Abandonment of the entire MGBH. Line. 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. In that Petition, BSB stated its intent to seek a public use condition 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 that Petition, BSB also stated its intent to seek a trail use condition for the Missoula Gulch portion of the Line, extending from Rocker to the Butte Hill/Kelley Mine Yard.

As described in greater detail in the Petition for Exempt Abandonment, and in the Verified Notice of Exempt Acquisition, filed earlier this year by BSB (see Finance Docket No. 34171, Butte-Silver Bow County-Acquisition Exemption-Silver Bow County, MT.), until

recently, the MGBH was 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 from approximately 1988 through 1996. The BAHPR was dissolved involuntarily by the Montana Secretary of State's Office in 1994, but the BAHPR never distributed its assets. In October 2001, the state district court in Butte, Montana judicially dissolved the BAHPR and ordered that its assets be distributed to BSB. BSB then petitioned the Board for an Acquisition Exemption, which was issued on March 15, 2002 in Finance Docket No. 34171, Butte-Silver Bow County-Acquisition Exemption-Silver Bow County, MT.

At some time during the BAHPR's operation of the MGBH (or possibly earlier), a portion of the track structures was removed from the Butte Hill segment of the Line, and parts of the right-of-way began to be used as one or more public roads. By this Request for Public Use Condition, BSB seeks the Board's approval to use the Butte Hill portion of the MGBH for one or more public roads indefinitely. BSB also requests the Board's permission to begin salvage of the remaining track structures on the Butte Hill portion of the Line so that the cleanup work required by EPA under CERCLA may begin.

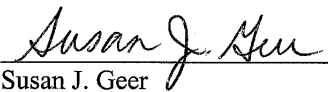
Public Importance: The condition is publicly important because the Butte Hill right-of-way provides much-needed access to the upper portions of Butte. This part of Butte is situated on the side of a hill, with limited potential access routes, as depicted on Figure 2a, Location and Condition Map, appended hereto as Exhibit A.

For the Board's reference, a map of the MGBH is attached to this Request as Exhibit B.

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 Request for Public Use Condition.

Executed on May 17, 2002.


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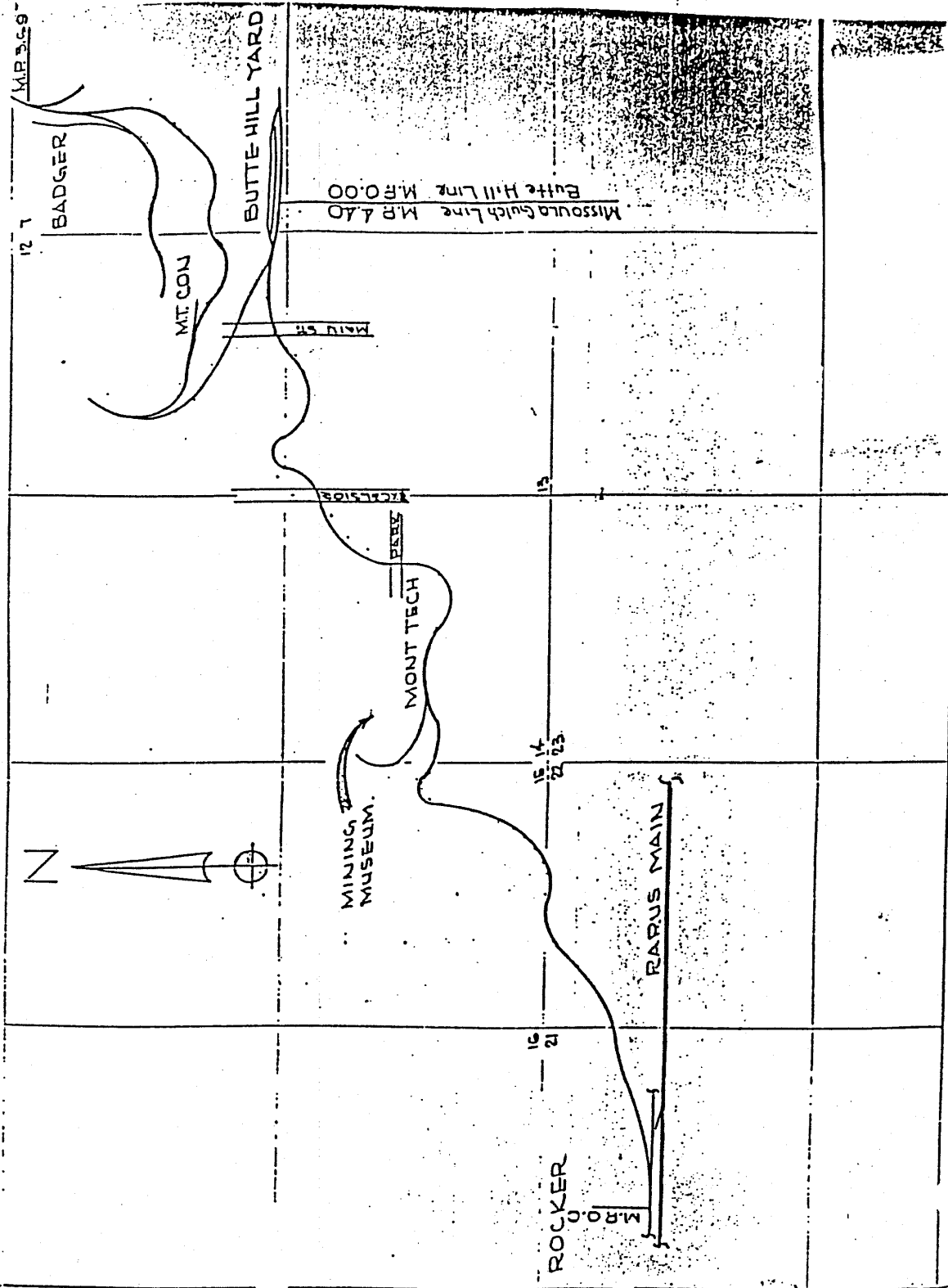


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