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Telluride, Colorado
September 5, 2003

Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington DC 20423-0001

Re: City of Creede
Finance Docket No. 34376

ENTERED
Office of Proceedings
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Public Record

Dear Secretary Williams:

This transmits ten copies of a Motion For Enlargement Of Time Within Which To File Materials With The Surface Transportation Board in *City of Creede v. Denver & Rio Grande Railway Historical Foundation, et al.*, Civil Action No. 01-RB-0318(CBS), the original U.S. District Court action from which this matter was referred pursuant to 28 U.S.C. §1336(b). Please file these materials in connection with this matter and note that we have requested that the District Court enlarge the Petitioner's filing deadline to October 6, 2003.

Yours very truly,


George M. Allen

cc: Thomas F. MacFarland, Esq.

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Honorable Robert Blackburn
United States District Judge

Honorable Craig B. Shaffer
United States Magistrate Judge

CIVIL ACTION NO. 01-RB-0318

CITY OF CREEDE,
a Colorado Municipal Corporation,

Plaintiff,

-vs-

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION,
a Colorado Not-For-Profit Corporation
and DONALD H. SHANK,

Defendants.

**PLAINTIFF'S SECOND AND FINAL MOTION FOR ENLARGEMENT
OF TIME WITHIN WHICH TO FILE MATERIALS
WITH THE SURFACE TRANSPORTATION BOARD**

Local Rule 7.1 Compliance

The undersigned telephoned opposing counsel, Raymond Micklewright, on September 4, 2003, to learn of his position as to the filing of supplemental materials. Mr. Micklewright stated that he opposes the filing.

Motion To Enlarge Time

Plaintiff hereby moves that the time for filing of materials from the record of this Court with

the Surface Transportation Board be enlarged from September 5, 2003 to October 6, 2003. Grounds for this motion are set forth below:

1. The complex bankruptcy reorganization matter, referenced in paragraph 3 of our initial motion to enlarge time has continued to occupy of huge amount of my time. As stated in the prior motion, the bankruptcy reorganization is extremely complex and involves millions of dollars worth of mineral resources in a marble mine near Carbondale, Colorado. As previously stated to this Court in our initial motion to enlarge time, I have been committed to another very complex litigation/administrative matter which has precluded having enough time to complete review of all records in this matter prior to making the final record submission to the STB. That matter involves my acting as referring counsel with respect to a Chapter 11 bankruptcy court reorganization of a producing mine near Carbondale, Colorado. The bankruptcy proceeding of the mine operator, Robert L. Congdon, in U.S. Bankruptcy Court Case No. 03-11462, has directly impacted my professional obligations to the minority interest holders of the mine (two trusts for minors established in 1994), whose interests I have represented in state court litigation in Garfield County over the past three years. The Chapter 11 reorganization has required most of my available professional time over the past month and has continued to require numerous trips to Carbondale from my home in Telluride. Under the proposed plan filed with the Bankruptcy Court, my client, the former wife of the debtor-in-possession, is the primary provider of post-petition financing and is

also obligated to protect her children's interests. Since the mine involves proven deposits with values running well into eight figures, the pressure to go forward has been enormous and that pressure has diminished the time I might devote to this matter.

2. I have continued to remain in contact with the Office of Proceedings of the Surface Transportation Board. The Board is at present considerably behind on processing of 28 U.S.C. §1336(b) referrals and has not yet even begun to process this matter. For example, I am advised the Board's staff has not yet even reviewed our request to treat the STB referral as exempt from the Board's \$1,000 filing fee (which has been tendered to the Board) and may not reach even that very preliminary issue for another several months. I am advised that the Board would be unlikely to object to further time for submission of additional record materials. The Board is being furnished with ten copies of this motion so that if it wishes to take a position with this Court, it can do so.
3. After initial research and consultation with the Board staff and Washington, D.C. counsel specializing in rail regulatory matters, I have concluded that to complete the legal briefing needed to be submitted with our filing, it will be necessary for me to travel to Washington, D.C., where research materials are readily available (they are not on either the Colorado Western Slope or elsewhere in Colorado). The earliest dates I can clear for a Washington, D.C. trip are September 23-28, 2003, given my other professional commitments. I have booked airline space for those dates in

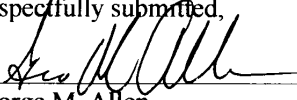
Washington.

4. The attached news article recently appearing in the *Mineral County Miner*, published in Creede, Colorado, quoted Donald Shank, one of the defendants in this action, as stating that the target date for initiation of rail service by his Foundation (also a defendant) is May, 2005, some 32 months from now. Thus an additional delay of 30 days in our filing will not prejudice either Mr. Shank or the STB in their dealing with this matter.

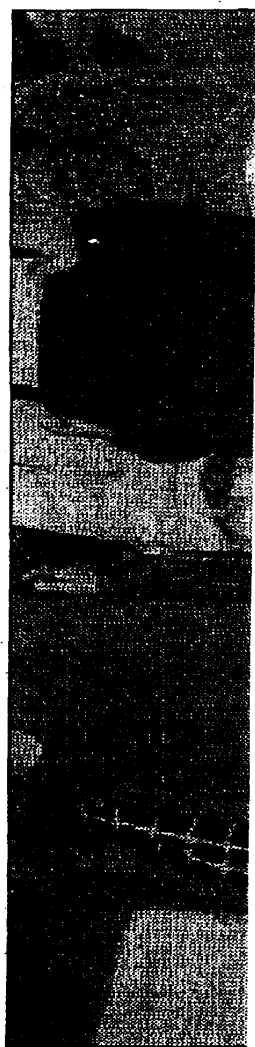
Conclusion

For the reasons set forth above, we respectfully move that the time for filing of record materials from the files of this Court with the Surface Transportation Board be enlarged to and including Monday, October 6, 2003.

Respectfully submitted,



George M. Allen,
Counsel for Plaintiff City of Creede



Students returned to school this week in Creede ready to tackle the rigors of academia and extracurricular activities.

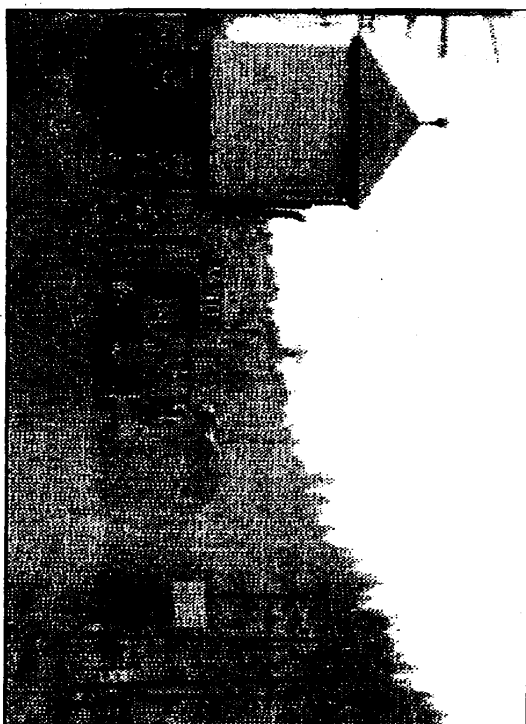
Staff Photo by Mary Johnson

Walsenburg to South Fork rails sold

By THOMAS PHILLIPS

SOUTH FORK — Train service in the San Luis Valley might be in for a change.

Rail America Inc., a conglomerate of short line railroads found throughout the world, recently announced the company's purchase of railroad tracks stretching across the San Luis Valley. The tracks run from Walsenburg in the east to South Fork in the west, and pass through



Staff Photo by Thomas Phillips

Denver & Rio Grande Railway Historical Foundation equipment.

Alamosa, Monte Vista and Del Norte. A separate sidetrack San Luis & Rio Grande Railroad obtained in the purchase connects Antonito and Alamosa.

Please see *RAILS* on Page 5A

capital reserve of \$57,000 to pay for the new suburban for the school. He said he had put up bids for the sale of the white suburban but got nothing in return, so they decided to keep it for school use.

There was no BOCS report as they would meet later in the week.

Boydston also gave an update on the Forest Service project. It seems there will only be 30 acres on the deal for the land and possibly no new survey will be needed.

The new book-keeper hired is Lori Small and so far seems to be doing a good job.

The elementary school principal gave a very interesting report that will be in the Miner's Drift. An update was given that Kim Fairchild had taken the volleyball girls to summer camp and did a good job. Jackson had the Leadership Camp Conference at Villa Grove. Five coaches were present.

Boydston gave the first reading of the new policies and last he gave his farewell talk. He thanked the school board for the pleasure of working with them. Thanked everyone connected with the school and how proud he was to work them for ten years. He also thanked Mary Johnson for her reporting of school news and board meetings. He also told the new Supt. Buck Stroth that he would have all reports done and help him in any way.

meeting and a great program

The Creede Historical meeting was held Thursday, Aug. 21 at the Community Church. President John

program last month on the slides she had until, Mary

RAILS

Continued from Page 1A

Company, a subsidiary of Rail America. Union Pacific sold the railroad to Rail America for an undisclosed sum of money.

SL&RG spokesperson Bill Hudran said that since the recent acquisition, Rail America is still in the process of evaluating the business and identifying any changes the company feels should be made. He said potatoes and other agricultural products are just a few of the goods the company will look at shipping by rail through the Valley.

"Essentially, we're operating the line five days a week, and we're just looking to build the business," Hudran said. "We're aggressively exploring any type of business opportunity that anybody mentions or can bring up [and] thinks might be viable."

The Denver & Rio Grande Railway Historical Foundation owns cars and equipment that sit idle on the tracks in Alamosa and South Fork. For the past few years, foundation organizers, led by executive director Don Shank, have been working to begin passenger rail service from South Fork to Creede, all the while accumulating the railroad equipment. As of yet, the train doesn't run on that route, but Shank has said the foundation plans on beginning service in May of 2005. Hudran said Rail America

has made no decision about relocating the D&RG equipment.

"Right now, they're (Rail America) in the process of working through that with him on what all is going to go on," Hudran said. "We're still getting things sorted out from the start up."

Similarly, Shank was unsure about how the purchase would affect the D&RG, a non-profit



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Similarly, Shank was unsure about how the purchase would affect the D&RG, a non-profit foundation.

"At this moment we don't know how it's going to affect us," Shank said.

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CERTIFICATE OF SERVICE

I hereby certify that I have, at Telluride, Colorado this 5th day of September, served a true copy of the documents denominated below on the parties and/or counsel listed below by the means of service shown below:

Documents Served

PLAINTIFF'S SECOND AND FINAL MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE MATERIALS WITH THE SURFACE TRANSPORTATION BOARD

Means of Service

- ☐ facsimile
- ☒ Email to Messrs. Micklewright, McFarland and Barnhart and Mayor Myers
- ☒ U.S. Mail, Postage Prepaid to the Surface Transportation Board
- ☐ Overnight Courier
- ☐ Hand Delivery

Counsel Served

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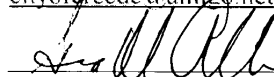
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