

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

219474

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JUN 07 2007
SURFACE
TRANSPORTATION BOARD

RONALD M. JOHNSON
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June 7, 2007

VIA HAND DELIVERY

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

FEE RECEIVED

JUN 07 2007

SURFACE
TRANSPORTATION BOARD

Re: STB Docket No. AB-1014, Request for Waiver of Filing Fee

Dear Secretary Williams:

The City of Creede, Colorado intends to file an application for adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation in the city limits. The common practice at the Board for adverse abandonment application is for a non-carrier like the City to file a petition for waiver from certain statutory and Board filing requirements normally required to accompany an application for abandonment. See, e.g., Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN, STB Docket No. AB-290 (Sub-No. 286)(served Oct. 26, (2006)). The Board prefers, but does not require, that such a petition be filed before the application is filed.

On May 29, 2007, the City of Creede filed a letter (mistakenly dated April 29, 2007) seeking waiver of the filing fee for a petition for waiver from certain filing requirements for abandonment applications and waiver of the filing fee for an application for adverse abandonment. The request was made pursuant to 49 CFR § 1002.2(e)(1), which provides that the Board waives filing fees for local governmental entities. The City of Creede is a local governmental entity. At that time, the City had not yet filed its petition for waiver. The City filed its petition yesterday, June 6, 2007.

I now understand that the Board will not process a request for waiver of fees unless the request is accompanied both by the filing with which the fee is associated and by the fee to be waived. If the fee is waived, the payment is refunded by the Board.

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

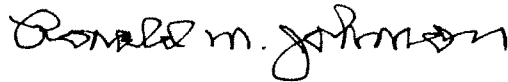
Vernon A. Williams, Secretary

June 7, 2007

Page 2

The City requests, pursuant to 49 CFR § 1002.2(e)(1), that the Board waive the filing fee for its petition for waiver. Enclosed please find a check in the amount of \$1500.00, which is the fee for a petition for waiver of filing requirements for abandonment applications. 49 CFR § 1002.2(f)(24).

Sincerely yours,

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

Counsel for the City of Creede, Colorado

219474

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION—ADVERSE
ABANDONMENT—IN MINERAL COUNTY, CO

PETITION OF THE CITY OF CREEDE, COLORADO FOR EXEMPTION FROM CERTAIN
STATUTORY REQUIREMENTS AND WAIVER OF RELATED BOARD REGULATIONS IN
CONNECTION WITH APPLICATION FOR ADVERSE ABANDONMENT

The City of Creede, Colorado (the “City” or “Creede”) intends to file an application for adverse abandonment of all of the track of the Denver & Rio Grande Railway Historical Foundation (“Foundation”) located within the city limits. The City submits this petition, pursuant to 49 C.F.R. § 1150.10, for exemption from certain statutory provisions and waiver of related Board regulations in order to facilitate the filing of the City’s application. The exemptions and waivers sought by the City are similar to those which the Board has customarily granted relating to adverse abandonment applications. See, e.g., Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN., STB Docket No. AB-290 (Sub-No. 286), 2006 STB LEXIS 630 (served Oct. 26, 2006); East St. Louis Junction Railroad Co.—Adverse Abandonment—In St. Clair County, IL, STB Docket No. AB-838, 2003 STB LEXIS 362 (served June 30, 2003); Salt Lake City Corp.—Adverse Abandonment—In Salt Lake City, UT, STB Docket No. AB-33 (Sub-No. 183), 2001 STB LEXIS 855 (served Oct. 5, 2001); Napa Valley Wine Train, Inc.—Adverse Abandonment—In Napa Valley, CA, STB Docket No. AB-582, 2001 STB LEXIS 327 (served March 30, 2001).

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The City would like to file its Notice of Intent around June 27, 2007 and its application around July 12, 2007. The City respectfully asks that the Board act on this Petition to allow that schedule.

I. Background

The former Denver & Rio Grande Western Railroad Company (“D&RGW”) built a 21.6-mile line of railroad from South Fork, Colorado to Creede, Colorado around 1892. This line, the “Creede Branch,” was originally constructed as a narrow gauge line. It was converted to standard gauge in 1902.

The Creede Branch was extended to Creede when it was one of Colorado’s booming mining towns. The boom did not last long. At its peak, Creede had a population of more than 10,000. However, after mining activity dropped off in the early 1900’s, the population plummeted. Today, the permanent population of Creede is about 417.

The Creede Branch has been out of service for many years. Passenger service to Creede ceased around 1945. Regular freight service to Creede ceased around 1969. All freight service on the Creede Branch had ceased by 1983 if not earlier. There are no shippers or persons who utilize rail freight service in Creede.

The Interstate Commerce Commission approved the common control of the D&RGW and Southern Pacific Transportation Company in 1988.¹ The Union Pacific Railroad Company (“UP”) subsequently acquired control of the Southern Pacific in 1996.² Neither of these control transactions had any impact on the Creede Branch, which remained out of service.

¹ Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver & R.G.W.R.Co.—Control—Southern Pacific Transp. Co., 4 I.C.C.2d 834 (1988), 1988 ICC LEXIS 267.

² Union Pacific Corp., Union Pacific R. Co. and Missouri P.R.Co.—Control and Merger—Southern Pacific Rail Corp., Southern P. T.Co., St. Louis S.W.Ry. Co., SPCSL Corp.,

The UP filed a notice of exemption to abandon the Creede Branch in December 1998. Union Pacific Railroad Co.—Abandonment—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (served Feb. 23, 1999). The Branch was not abandoned, because several parties indicated an intent to file offers of financial assistance (“OFA”) to acquire the Branch, pursuant to 49 U.S.C. §10904. The Board eventually approved the OFA of the Foundation and dismissed the abandonment exemption. See Union Pacific Railroad Co.—Abandonment—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (served May 11, 1999). The Foundation purports to be a Section 501(c)(3) charitable foundation. Originally formed to establish a museum, it had never before operated a railroad.

The City and others subsequently opposed the acquisition of the Branch by the Foundation, arguing that the Foundation was not financially responsible and there was no demand for the restoration of freight service on the Branch. The Board rejected the various challenges to the Foundation’s OFA, and the UP closed the sale of the Branch to the Foundation in May 2000. Thereafter, the City and others continued to protest that the Foundation did not have the intention or ability to rehabilitate the Branch and restore freight service. These challenges were also rejected by the Board. However, the Board indicated that, if the City continued to have concerns about the impact of the Foundation’s acquisition of the Branch on the local community, it could file an application for adverse abandonment. See Union Pacific

and The Denver & R.G.W.R. Co., Finance Docket No. 32760, Decision No. 44 (served Aug. 12, 1996).

Railroad Co.—Abandonment—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) at 8-9 (served June 22, 2004).³

The UP filed its petition for exemption, because the Creede Branch has been out of service for many years and there were no prospects for freight service. In more than seven years since the Foundation acquired the Branch, it has not been able to rehabilitate the Branch or restore freight service. The Foundation has not been able to identify any shippers. No trains have operated on the Branch.

Creede is at the very end of the Creede Branch. The track in the City is about one mile in length and is between approximately Mile Post 319.9 and Mile Post 320.9.⁴ The track in the city limits includes the main line, a runaround track and a spur track. The land under the railroad right of way in the City has never been owned by the railroad. The land was originally owned by the State of Colorado and the United States Government. A predecessor to the D&RGW obtained a right of way grant from the State in 1892 and from the United States about the same time pursuant to the Right of Way Act of March 3, 1875. The United States deeded its land to the City in 1902. The Colorado State Land Board deeded the State land to the City in 1965. In each case, the City took the land subject to the pre-existing right of way.

In the 38 years that the track in the city limits has been out of service, much of the track has been covered over, paved over, torn up, or simply disappeared. For many years, some of the

³ A further challenge to the Foundation's OFA by a citizen group was rejected in Union Pacific Railroad Co.—Abandonment—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (served May 3, 2005).

⁴ At one time, the track in Creede extended about a mile further north of Mile Post 320.9. The former D&RGW sought and obtained authorization from the Interstate Commerce Commission in 1969 to abandon about one mile of main line track and a side track. Denver & R.G.W. R. Co.—Abandonment at Creede, CO, ICC Finance Docket No. 25728 (served Sept. 16, 1969).

City-owned land under the right of way has been put to various public uses, including for public parking, a children's playground, and as the location for an annual festival celebrating Colorado's mining heritage, the "Days of 92." In addition, in 1971, the City installed water and sewer infrastructure on City-owned land within the right of way. The City is a small town. The publicly owned land under the rights of way accounts for about 25 percent of the land in the city limits. The City would like to see this land put to uses that benefit the development of Creede. However, as long as the City's land is burdened by the State and Federal rights of way, it cannot make provision for the utilization of this land which best serves the public interest.

The Foundation is unlikely ever to restore any kind of railroad service to the Creede Branch. Even if some day it could restore freight service, it does not need any tracks in the City for freight service, as will be explained in the City's application.

The Foundation's right of way over land deeded to the City by the Land Board will be extinguished by operation of the terms of a 1969 right of way issued by the Colorado State Land Board, which replaced the 1892 grant. Section 16 of the 1969 right of way provides that it ceases "should said [railroad] facilities be abandoned or discontinued for a period of twelve (12) consecutive months." The Foundation's federal right of way over City-owned land will be similarly extinguished. Federal law provides that, once a rail line has been declared abandoned, full use of the land under the federal right of way reverts to the land owner. See, e.g., 43 U.S.C. § 912; City of Aberdeen v. Chicago & N.W.T.Co., 602 F. Supp. 589, 593 (D. S.D. 1984).

Thus, the City intends to file an application for adverse abandonment to remove Board jurisdiction from the track in the City in order that the Foundation's rights of way may be extinguished. With the removal of these burdens from the land, the City will be free to plan for uses of this land, which best serve the public interest.

II. Requested Exemptions and Waivers

Filing Fees

The City is a town as defined by Colorado statute. Pursuant to 49 C.F.R. § 1002.2(e), the City, as a local governmental entity, is eligible for a waiver of filing fees. The City applied to the Board's Secretary, by letter of May 29, 2007, for waiver of the filing fee for the abandonment application (\$18,900) and the filing fee for the instant waiver petition (\$1500).⁵

Text of Notice of Intent

The City seeks a limited waiver to allow certain deviations from the required text for the Notice of Intent set out in 49 C.F.R. § 1152.21. These deviations simply reflect the fact that the application is by a third person and not the carrier and that, because the application is one for adverse abandonment, the requirements relating to offers of financial assistance (49 U.S.C. § 10904), public use conditions (49 U.S.C. § 10905), interim trail use, and feeder line (49 U.S.C. § 10907) do not apply. In addition, reference to environmental reporting has been modified to reflect the fact that the Section of Environmental Analysis prepared an Environmental Assessment, which included the track in the City, in STB Docket No. AB-33 (Sub-No. 132X). A draft of the proposed Notice of Intent showing the proposed deviations is attached hereto as Attachment A.

Service of Notice of Intent

The City seeks waiver from the requirement to serve its Notice of Intent on the entities listed in 49 C.F.R. § 1152.20(a)(2) (i), (ix), (x) and (xii).

⁵ These are the fee amounts shown in the schedule of fees in 49 C.F.R. § 1002.(f)(21)(i) and (24). The City's letter was erroneously dated April 29, 2007, when it should have been May 29, 2007.

The City seeks waiver of the requirement in 49 U.S.C. § 10903(a)(3)(D) and 49 C.F.R. § 1152.20(a)(2)(i) to serve the Notice on significant users of the track, because the Creede Branch has been out of service for many years and there are no shippers or users of rail service in the City or on the Creede Branch.

The City asks for waiver of the requirement in 49 C.F.R. § 1152.20(a)(2)(x) to serve notice on Amtrak, because passenger service to Creede ceased around 1945 and Amtrak has not, of course, ever served Creede.

The City seeks waiver of the requirement in 49 C.F.R. § 1152.20(a)(2)(xii) to serve notice on labor organizations, because there are no known employees who have worked on this track. Because, as explained, the track in the City has been out of service since 1969 and the Creede Branch has been out of service since around 1983, there have not been any employees working on the line for a long, long time. Any employees represented by railway labor organizations who might have been affected by the cessation of operations in the City would have been employed by the former D&RGW.

The City is not aware that the Foundation has any employees, certainly none who would be affected by abandonment of track in the city limits. Since no employees have worked on the track in the city limits for more than 38 years, there also does not seem any point to serving a copy of the Notice on the Railroad Retirement Board.

The City will, of course, serve the Notice of Intent on the Foundation.

Posting of Notice of Intent

The City seeks exemption from of the requirements of 49 U.S.C. § 10903(a)(3)(B) and waiver of 49 C.F.R. § 1152.20(a)(3), which require posting of the Notice of Intent at each agency station and terminal located on the line or, if there is not one, then at nearest agency

station through which business on the line is conducted. This requirement only has relevance in the context of a railroad that is filing to abandon one of its lines. These requirements are not applicable to a third person seeking adverse abandonment. See, e.g., East St. Louis Junction Railroad Co.—Adverse Abandonment—In St. Clair County, IL, STB Docket No. AB-838, 2003 STB LEXIS 362 (served June 30, 2003). The City would also note that, because the Creede Branch has been out of service for many years and the Foundation has never performed railroad operations on the Branch (or anywhere else), there are no terminals or agency stations at which to post a notice.

System Diagram Map

The City seeks an exemption from the requirements of 49 U.S.C. § 10903(c) and waiver of the related regulation in 49 C.F.R. § 1152.22(a)(5), relating to identification of the track that is the subject of the application on the carrier's system diagram map. Since the City is not a carrier, it does not have such a map.

Condition of Properties

The City asks waiver from the requirement in 49 C.F.R. § 1152.22(b) to provide detailed information on the physical condition of the line, including the costs of deferred maintenance and the costs to rehabilitate the line. The City does not have this kind of detailed information. The City notes that this kind of information may have been provided by the UP in connection with the OFA process and may be available in Docket No. AB-33 (Sub-No. 132X). The City will be submitting photographs of the track in the City, which show its physical condition. Those photographs show that the track in the city limits, which has not been paved or covered over or removed, is in very poor condition.

Revenue and Cost Data

The City seeks waiver from the requirements of 49 C.F.R. § 1152.22(d). This kind of information would be in the possession of the Foundation, if it exists at all. As explained, there are no shippers on the Creede Branch or in the City.

Environmental and Historic Reporting Requirements

The City seeks waiver from the environmental and historic reporting requirements in 49 C.F.R. § § 1105.7 and -.8 and 49 C.F.R. § § 1150.20 (c) and 1152.22(f). The track has been out of service in the City for at least 38 years. It is obvious that formal action by the Board granting adverse abandonment of track in the City will have no environmental impact. The City is aware that the Board has declined to waive environmental and historical reporting requirements in prior adverse abandonment proceedings. However, the Board's Section of Environmental Analysis already prepared an environmental assessment covering the entire Creede Branch in STB Docket No. AB-33 (Sub-No. 132X) (served Jan. 29, 1999). The Section found that abandonment of the Creede Branch would not have any adverse environmental impact.

There is only one railroad related structure in the City and that is the train depot of the former D&RGW. The D&RGW sold its depot to Mineral County in 1965. The County subsequently transferred the depot to the Creede Historical Society, which uses the depot as a museum.⁶ The City's adverse abandonment application will have no impact on the ownership or use of the depot.

Federal Register Notice

The City asks for a limited waiver from the requirements of 49 C.F.R. §1152.22(i) for the form of the Federal Register notice to better reflect the circumstances of the adverse

⁶ See www.museumtrail.org/creedehistoricmuseum.asp.

abandonment. Many of the revisions reflect the fact that the offer of financial assistance, federal line, and public use procedures will not apply if the City's application is granted. The Board has suggested that an applicant submit a draft Federal Register Notice showing the proposed changes from the standard form. See, e.g., East St. Louis Junction Railroad Co.—Adverse Abandonment—In St. Clair County, IL, STB Docket No. AB-838, 2003 STB LEXIS 362, * 15 n. 12 (served June 30, 2003). The City has attached its proposed form of Federal Register Notice highlighting proposed modifications and deletions as Attachment B to this Petition.

Abandonment Consummation Notice and One Year Authorization

The City seeks waiver from the requirements in 49 C.F.R. §1152.24(f) and 49 C.F.R. §1152.29(e)(2), because the City may not be able to control when the abandonment is consummated. The City may need to resort to state or federal law to require that the Foundation vacate the premises in the City. See, e.g., Napa Valley Wine Train, STB Docket No. AB-582, 2001 STB LEXIS 327, * 8.

Offer of Financial Assistance, Public Use and Feeder Line

The City asks for exemption from the requirements of 49 U.S.C. § § 10904, 10905 and 10907 and waiver of related regulations relating to, respectively, offers of financial assistance, public use, and feeder lines.

The Board grants requests for exemption from 49 U.S.C. § 10904 and waiver of related regulations in 49 C.F.R. § 1152.27 in adverse abandonments, because the OFA process is inconsistent with the Board's finding that the public convenience and necessity permit removal of Board jurisdiction from the track in question. For example, the Board recently explained as follows in Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN., STB Docket No. AB-290 (Sub-No. 286), 2006 STB LEXIS 630, * 12-13 (served Oct. 26, 2006):

The petition for exemption from 49 U.S.C. § 10904 and waiver of related regulations at 49 C.F.R. § 1152.27 will be granted. In a third party abandonment proceeding, the Board withdraws its primary jurisdiction to permit state. Local or other federal law to apply where there is no overriding federal interest in interstate commerce. . . . Absent an exemption, section 10904 could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate. If the Board ultimately finds that that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent to provide for further Board regulation under section 10904, and thereby negate the Board's decision.

See also, e.g., East St. Louis Junction Railroad Co. – Adverse Abandonment – In St. Clair

County, IL, STB Docket No. AB-838, 2003 STB LEXIS 362, at * 7-8 (served June 30, 2003).

In addition, this track has already been subject to the OFA process. The fact that the Foundation has not been able to identify any shippers in the City shows that the purposes of the OFA process will not be served by subjecting the track in the City to this process again.

The Board has found that exemption from the public use procedures in 49 U.S.C. § 10905 and waiver of related regulations in 49 C.F.R. § 1152.28 should be granted for the same reason as the exemption from the offer of financial assistance procedures. Imposition of a public use condition would also be inconsistent with the Board's withdrawal of its authority from the track in question. Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN., STB Docket No. AB-290 (Sub-No. 286), 2006 STB LEXIS 630, * 14 (served Oct. 26, 2006). In addition, the City, as the owner of the land under the right of way, is in the best position to decide the public uses for this land.

To the extent that it might be applicable, the City similarly seeks exemption from the provisions of 49 U.S.C. § 10907 and related Board regulations.

Interim Trail Use

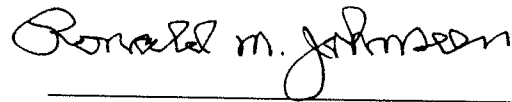
Finally, the City asks for waiver from the interim trail use provisions of 49 C.F.R. § 1152.29. The Board apparently has not fully addressed this issue. See, e.g., Norfolk Southern

Ry. Co.—Adverse Abandonment—St. Joseph County, IN., STB Docket No. AB-290 (Sub-No. 286), 2006 STB LEXIS 630, * 14. The City submits that its Petition presents an appropriate case for waiver, because the land in question is within the city limits and is owned by the City.

Conclusion

For the reasons stated in this petition, the City asks that the Board exempt it from the statutory provisions and waive related Board regulation described in this Petition.

Respectfully submitted,



Ronald M. Johnson
Heidi Gunst
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
202-887-4114

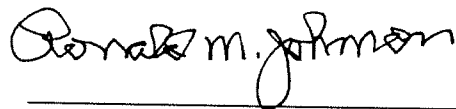
Counsel for City of Creede, Colorado

Dated: June 6, 2007

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing Petition for Exemption and Waiver has been sent via Overnight mail to: Donald H. Shank, President, Denver and Rio Grande Railway Historical Foundation, 20 N. Broadway St., Monte Vista, CO 81144-1166, this 6th day of June 2007.

By:



Ronald M. Johnson
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
202-887-4114

Counsel for City of Creede, Colorado

ATTACHMENT A

DRAFT NOTICE OF INTENT

STB Docket No. AB-1014

Notice of Intent to Abandon or to Discontinue Service

The City of Creede, Colorado ("City" or "Creede") gives notice that on or July 12, 2007 it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for adverse abandonment of all of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located within the city limits of Creede. This track consists of a main line track approximately one mile in length extending from near mile post 320.9 to near mile post 319.9, a run around track, and a spur track, all in Mineral County, Colorado. The track in question traverses through United States Postal Service ZIP Code 81130. There are no stations on this track, which has been out of service since approximately 1969.

A portion of the track is on a federally issued right-of-way. According to the City, the land under the right-of-way in the city limits was deeded to the City by the United States government in 1902, subject to the pre-existing right-of-way.

The reason for the proposed abandonment is that the City desires to utilize the land under the track in the city limits in ways that best benefits the public interest. The Foundation and its predecessors have never owned the land under the track in the City, but have only had rights of way issued by the federal government and the Colorado State Land Board. The land under the right of way is owned by the City. However, even though this track has been out of service for many years, the City's ownership is burdened by the railroad rights of way, which continue until abandonment of the track has been approved by the Board. The Foundation acquired this track when it acquired the 21.6 mile "Creede Branch" with an offer of financial assistance approved in STB Docket No. AB-33 (Sub-No. 132X) in 2000. The City does not believe that the Foundation will ever be able to rehabilitate and restore rail freight service on the Creede Branch. Even in the unlikely event it could, it does not need the track in the city limits to provide freight service. Once the Board lifts its jurisdiction from the track in the city limits, the Foundation's rights of way will be extinguished by operation of state and federal law. The City will then have full use of its land.

The application will include the applicant's entire case for abandonment (case in chief). Any interested person, after the application is filed on July 12, 2007, may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filing are due 45 days from the date of filing of the application.

If the application is granted, under Board precedent, the Board's jurisdiction will be removed and the track that is the subject of the application will not be subject to offers of financial assistance under 49 U.S.C. 10904, public use conditions under 49 U.S.C. 10905, feeder line under 49 U.S.C. 10907, or interim trail use. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Person opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

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Deleted: The interest of railroad employees will be protected by (specify the appropriate conditions).¶

Deleted: 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 under 49 U.S.C. 10905 (§1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules) must be also filed within 45 days from the date of filing of the application.

Deleted: Persons interested only in seeking public use or trail use conditions should also file comments.

Protests must contain that party's entire case in opposition (case in chief) including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].
- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Impact on rural and community development;

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation STB No. AB-1014 and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than 45 days after the date application is filed. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant: Ronald M. Johnson, Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Ave., NW, Washington, DC 20036 [(202) 887-4114] and Clyde Dooley, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130 [(719) 658-2276]. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

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

A copy of the application will be available for public inspection during normal business hours of the City of Creede, 8:00 AM to 5:00 PM, Mountain Standard Time, Monday through

Deleted: <#>Intent to offer financial assistance pursuant to 49 U.S.C. 10904;¶
<#>Environmental impact;¶

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Deleted: <#>Recommended provisions for protection of the interests of employees;¶
<#>Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and¶
<#>Prospective use of the right-of-way for interim trial use and rail banking under 16 U.S.C. 1247(d) and §1152.29.¶

Deleted: A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.¶

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Deleted: The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).¶

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| Friday, 2223 North Main Street, Creede, and Co 81130, on or after July 12, 2007. The City will furnish a copy to any interested person proposing to file a protest or comment, upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other person who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 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. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

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ATTACHMENT B

DRAFT FEDERAL REGISTER NOTICE

STB Docket No. AB-1014

Notice of Application for Adverse Abandonment

On July 12, 2007, the City of Creede, Colorado ("City" or "Creede") filed with the Surface Transportation Board, Washington, D.C. 20423, an application for adverse abandonment of all of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located within the city limits of Creede. This track consists of a main line track approximately one mile in length extending from near mile post 320.9 to near mile post 319.9, a run around track, and a spur track, all in Mineral, County, Colorado. The track in question traverses through United States Postal Service ZIP Code 81130. There are no stations on this track, which has been out of service since approximately 1969.

A portion of the track is on a federally issued right-of-way. According to the City, the land underlying the federal right of way in the city limits was deeded to the City by the United States in 1902 subject to the right of way grant. The applicant's entire case for abandonment (case in chief) was filed with the application.

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), within 45 days after the application is filed. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified evidence should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests must indicate the proceeding designation STB. No. AB-1014 and should be filed with the Secretary, Surface Transportation Board (Board), Washington, DC 20423, no later than 45 days after the application was filed. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representatives of the applicant: Ronald M. Johnson, Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Ave., NW, Washington, DC 20036 [(202) 887-4114] and Clyde Dooley, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130 [(719) 658-2276]. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Deleted: This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since (insert date).¶

Deleted: The interest of railroad employees will be protected by (specify appropriate conditions).¶

Deleted: 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 under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed.

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¶
(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner).¶

¶
(ii) Recommended provisions for protection of the interests of employees.¶

¶
(iii) A request for a public use condition under 49 U.S.C. 10905; and¶

¶
(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.¶

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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) (or environmental impact statement (EIS), if necessary) 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 (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 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. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Deleted: The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment in accordance with applicable laws and regulations. (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address). ¶