

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law



November 16, 2007

VIA MESSENGER

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

NOV 16 2007

Part of
Public Record

Re: Denver & Rio Grande Railway Historical Foundation -- Adverse Abandonment --
In Mineral County, CO, Docket No. AB-1014

Dear Secretary Williams:

Enclosed for filing are the original and 10 copies of the Notice of Publication of Notice of Intent and related attachments of the Concerned Citizens of Creede and Mineral County, Colorado.

Please time and date stamp the additional copy of the Motion and Reply and return it with the messenger. Thank you for your assistance with this filing.

Sincerely,

Heidi L. Gunst

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014



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

NOTICE OF PUBLICATION OF NOTICE OF INTENT

The City of Creede, in satisfaction of 49 C.F.R. § 1152.20(b)(3), hereby files its Notice of Intent, whose publication is beginning this week in two area newspapers, *The Mineral County Miner* and the *Valley Courier*. The *Mineral County Miner* is the local paper for Creede, Colorado, however, because it is published weekly, the City has also published the Notice of Intent in a daily newspaper for which Creede is also within the publication area, the *Valley Courier*. Copies of the Notice of Intent as published in each newspaper are also attached.

This Notice was previously approved by the Board's Decision served October 18, 2007.

Respectfully submitted,

ENTERED
Office of Proceedings

NOV 16 2007

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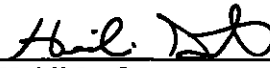
Dated: November 16, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document and related attachments to be served upon the following parties by United Parcel Service 2-day delivery, this 16th Day of November, 2007.

Thomas McFarland
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1112
For the Denver & Rio Grande Railway
Historical Foundation

Donald Shank
Denver & Rio Grande Railway
Historical Foundation
20 North Broadway
Monte Vista, CO 81144



Heidi L. Gunst

STB Docket No. AB-1014

Notice of Intent to Abandon

The City of Creede, Colorado ("City" or "Creede") gives notice that on or about December 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 milepost 320.9 to near milepost 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 federal 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 remainder of the track is on a State-granted right-of-way. The City also owns the land under the State 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 benefit 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 or about December 12, 2007, may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for interim trail use. Any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 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, or feeder line under 49 U.S.C. § 10907. The Board has reserved decision on the issue of whether, if

abandonment is granted, the track in the City would be appropriate for 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. Persons interested only in seeking trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

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) Environmental impact;
- (ii) Impact on rural and community development;
- (iii) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.29.

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, including all requests for trail use conditions, should indicate the proceeding designation STB Docket 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 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, 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 Friday, 2223 North Main Street, Creede, CO 81130, on or after December 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.

Notice of Intent to Abandon

The City of Creede, Colorado ("City" or "Creede") gives notice that on or about December 12, 2007 it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for adverse abandonment of the entire 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 milepost 920 9 to near milepost 319 6, 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 1960.

A portion of the track is on a federally issued right-of-way. According to the City, the land under the federal 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 remainder of the track is on a State-granted right-of-way. The land under the State right-of-way was also deeded to the City.

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 benefit 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 right-of-way, which continues until abandonment of the track has been approved by the Board. The Foundation acquired this track when it acquired the 21.5 mile "Creede Branch" with an offer of financial assistance approved in STB Docket No. AB-93 (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 or about December 12, 2007, may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for interim trail use. Any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.25 of the Board's rules) must also be filed within 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. § 10805, or feeder line under 49 U.S.C. § 10807. The Board has reserved decision on the issue of whether, if abandonment is granted, the track in the City would be appropriate for 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. Persons interested only in seeking trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

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

- (1) Protester's name, address and business;
- (2) A statement describing protester's interest in the proceeding including:
 - (i) A description of protester's use of the line,
 - (ii) If protester does not use the line, information concerning the group or public interest it represents, and
 - (iii) If protester'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 protester'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 protester opposes the application including information regarding protester's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the facts];
- (4) Any refusal of material submitted by applicant.

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

- (i) Environmental impact,
- (ii) Impact on rural and community development,
- (iii) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.25.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protester 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, including all requests for trail use conditions, should indicate the proceeding designation STB Docket No. AD-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 representatives of the applicant: Ronald M. Johnson, Akin Gump Strauss Hauer & Field LLP, 1535 New Hampshire Ave NW, Washington, DC 20036 [(202) 697-4114] and Cyndi Dooley, City Manager, City of Creede, P.O. Box 467, Creede, CO 81130 [(719) 698-2276]. 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 1162, 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 1162. 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 Friday, 8228 North Main Street, Creede, CO 81130, on or after December 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) for 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 90 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.

NOF1401

Published in the Valley Courier on November 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, December 1, 4, 5, 6, 7, 8, 11, 12, 13, 2007.

Notice of Intent to Abandon

The City of Creede, Colorado ("City" or "Creede") gives notice that on or about December 12, 2007 it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for adverse abandonment of the entire track of the Durango & Rio Grande Railway Historical Foundation ("Foundation") located within the city limits of Creede. That track consists of a main line track approximately one mile in length extending from near milepost 320.0 to near milepost 319.0, a run around track, and a spur track, all in Mineral County, Colorado. The track in question covers 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 federal right-of-way in the city limits was decided to the City by the United States government in 1902, subject to the pre-existing right-of-way. The remainder of the track is on a State-granted right-of-way. The land under the State right-of-way was also decided to the City.

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 benefit 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 leased 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 right-of-way, which contains total 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-13 (Sub-No. 13250) 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 (see in chart). Any interested person, after the application is filed on or about December 12, 2007, may file with the Surface Transportation Board written comments concerning the proposed abandonment (as discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for interim trail use. Any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 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, or federal lien under 49 U.S.C. § 10907. The Board has reserved discretion on the issue of whether, if abandonment is granted, the track in the City would be appropriate for 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. Persons interested only in seeking trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

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 - (c) If protester'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 protester'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 investments for those operations.
- (3) Specific reasons why protester opposes the application including information regarding protester's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the facts];
- (4) Any rebuttal of material submitted by applicant.

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

- (a) Environmental impact;
- (b) Impact on rural and community development;
- (c) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.29.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protester 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, including all requests for trail use conditions, should indicate the preceding designation STB Docket No. AB-1014 and must be filed with the "creede, 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, Alan Gump Strimling, Durango & Rio Grande, 1333 New Hampshire Ave., NW, Washington, DC 20036 (202) 897-4114 and Clyde Dooty, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130 (719) 659-2276. 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 Friday, 2223 North Main Street, Creede, CO 81130, on or after December 12, 2007. The City will furnish a copy, at 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 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.

Nr. 5792 Published in the Mineral County Miner, Thursday, November 15, 22, 29, December 6 and 13, 2007