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**AKIN GUMP
STRAUSS HAUER & FELD LLP**
Attorneys at Law

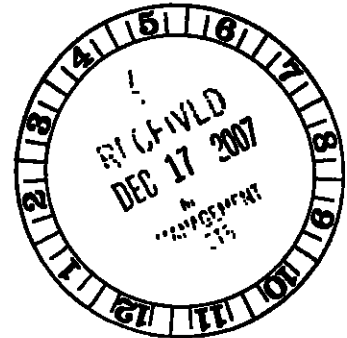
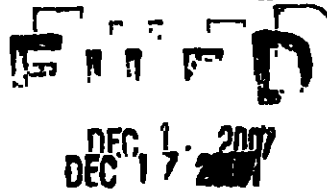
FILING FEE WAIVED

RONALD M. JOHNSON
202 887 4114 Max 202 887 4288
rmjohnson@akingump.com

December 17, 2007

VIA MESSENGER

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



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

Dear Secretary Williams:

Enclosed for filing please find the original and 10 copies of the Application of the City of Creede, Colorado for Adverse Abandonment, along with the related attachments, as well as the original and 10 copies of the City of Creede's Combined Environmental and Historical Report and related attachments. Enclosed also are 3 compact disks containing electronic copies of the City's Application for Adverse Abandonment.

The Secretary previously waived the filing fee for the City's application, as noted in the Board's decision in this Docket served October 18, 2007.

Please time and date stamp the additional copies of the Application for Adverse Abandonment and the Combined Environmental and Historical Report and return them with the messenger. Thank you for your assistance with this filing.

Sincerely,

Ronald M. Johnson

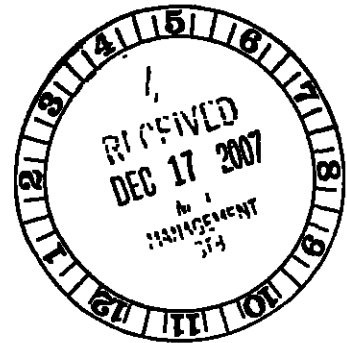
Enclosures

cc. Thomas McFarland, Esq.
Donald H. Shank

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014



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

APPLICATION OF THE CITY OF CREEDE, COLORADO
FOR ADVERSE ABANDONMENT

ORIGINAL

Ronald M. Johnson

Heidi L. 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: December 17, 2007

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014

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

APPLICATION OF THE CITY OF CREEDE, COLORADO
FOR ADVERSE ABANDONMENT

The City of Creede, Mineral County, Colorado (“City” or “Creede”) submits this Application, pursuant to 49 U.S.C. § 10903 and 49 C.F.R. § 1152.24, for adverse abandonment of all of the track of the Denver and Rio Grande Railway Historical Foundation (hereinafter “Foundation”) located within its city limits.¹ The track that is the subject of this Application is about one mile in length and is at the end of the “Creede Branch.”²

The City of Creede owns the property that underlies the track in the city limits. The City also owns land adjacent to the rights of way. The City needs to plan for how

¹ The Board, by decision served October 18, 2007, granted in part, and denied in part, the City’s Petition for Exemption and Waiver from certain statutory and regulatory provisions. The Board has also waived the filing fee for the City’s Application.

² The Foundation’s President and Executive Director, Donald H. Shank, claims that the City is opposed to all efforts to re-establish train operations on the Creede Branch. This is not true. The City is only interested in gaining control over the publicly owned land in the city limits underlying the right of way for the reasons explained in this Application. The granting of the City’s Application will not prevent the Foundation from continuing to try to re-establish freight operations on the Branch, because it does not need track in the City to do so. If the City were truly opposed to any train operations, it would have been just as easy to file an application covering the entire Branch and not just its very end in town. Although a strong case can be made for abandonment of the entire Branch, the City has limited its application to the track within the city limits.

this publicly owned land can best be used, improved, and developed for the long-term benefit of the town and its residents and businesses. The City cannot presently do so, because its land is burdened by those railroad rights of way, *i.e.*, easements, to which the Foundation succeeded when it acquired the Creede Branch through an offer of financial assistance approved in Union Pacific R.R. Co. Abandonment Exemption—In Rio Grande and Mineral Counties, CO. STB Docket No. AB-33 (Sub-No. 132X). Once Board jurisdiction over this track is lifted, the Foundation's rights of way will be extinguished according to, respectively, the terms of a state right of way agreement and federal law governing federal railroad rights of way. In addition, the City's zoning, permitting, and land use planning authority will fully apply to this land.

The City also desires to put an end to the controversies engendered by the Foundation over the uses to which the publicly owned land under the rights of way have been put for the last several decades.

Adverse abandonment as requested by the City is clearly permitted by the present and future public convenience and necessity for purposes of 49 U.S.C. § 10903(d). The track in the city limits has been out of service since approximately 1970. In the more than seven years since the Foundation acquired the Branch, it has not identified any actual shippers in Creede or operated any trains. The only "operations" that have been conducted on the Branch is that the Foundation on infrequent occasion has begun to allow enthusiasts of motor cars, also known as "speeders" or "putt-putts," to run their restored motor cars over the Branch for a fee. Even if the Foundation were able to identify firm shippers and rehabilitate the Branch, neither of which it has been able to do,

the Foundation, like its predecessors, does not need the track in Creede for rail freight service.

Finally, the Foundation cannot show that the present and future public convenience and necessity preclude abandonment, because it hopes one day to operate a intrastate tourist train, which has always been its true objective.

I BACKGROUND

A. 1892 to 1998

The Creede Branch was originally built by an affiliate of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). The Branch was first built from South Fork, Colorado to Wagon Wheel Gap in 1883 and extended another 14 miles into Creede in 1892. The D&RGW already had a line that extended west from Walsenburg, Colorado through Alamosa, Colorado to South Fork. At that time, Creede was one of the booming mining towns in Colorado. Because of the discovery of silver, Creede and immediate adjacent areas had a population of more than 10,000 around 1890.¹ The Creede Branch was built to serve the mining industry in and around Creede. The Branch was originally constructed as a narrow gauge railroad, but was converted to standard gauge in 1902. Exhibit No. 2 is a map of the Branch. Exhibit No. 3 is a map of the City showing the location of the track within the city limits. Exhibit No. 4 is a map showing the Creede Branch's location in relation to other area railroads.

Mining activity began to decline sharply in the 1890s and had completely disappeared by 1985, when the last area mine closed. Declaration of Clyde Dooley, City Manager ¶ 3 (hereinafter "Dooley Decl.") (Exhibit No. 5). The need for rail service also

¹ "Celebrating 115 Years of Creede," Creede Magazine 59 (Summer 2007), "The Creede Branch" by Russ Collman, Trails Among the Columbine 32 (1988).

dwindled away. The last passenger service into Creede ceased around 1939. With the end of mining, the demand for rail freight service also dried up. Scheduled freight service ended in the late 1940s, with freight trains operating infrequently on the Branch only on an as-needed basis.⁴

The D&RGW abandoned .8 miles of track at the end of the Branch in Creede in 1969. Denver & Rio Grande Western R.R. Co. Abandonment at Creede, Co., Finance Docket No. 25728 (served Sept. 16, 1969). Exhibit No. 10. All freight service into Creede itself ceased at about this same time.⁵ After 1970, when trains came up the Branch at all, they only operated as far as Wason, about two miles south of Creede. Dooley Decl. ¶ 6.⁶ The D&RGW sold its train station in Creede to Mineral County in 1965. The train station has since housed the Creede Historical Society. Thus, for all intents and purposes, the railroad had entirely pulled out of Creede by 1970. All freight service on the rest of the Branch ceased in the mid 1980s. Dooley Decl. ¶ 16.

Subsequently, the D&RGW acquired the Southern Pacific Transportation Company ("SP") in 1988.⁷ The Union Pacific Railroad Company ("UP") later acquired control of the SP and D&RGW in 1996.⁸ These railroad consolidations had no impact on the Creede Branch, which remained out of service.

⁴ "The Creede Branch" by Russ Collman, Trails Among the Columbine 71 (1988).

⁵ The June 2004 Decision states that service on the Branch ceased in 1969. Actually, this was when service into Creede ceased.

⁶ "Creede," by C. W. Hauck 218, published in Colorado Rail Annual No. 14 (1979).

⁷ Rio Grande Industries, Inc., SPTC Holdings, Inc. – and Southern Pacific Transportation Co., 41 C.C. 2d 834, 1988 ICC LEXIS 267.

⁸ Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co.—Control and Merger—Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry. Co., SPCSL Corp., and The Denver and Rio Grande Western Railroad Co., STB Finance Docket No. 32760, Decision No. 44 (served Aug. 12, 1996).

B. 1998 to 2005

In December 1998, the UP filed a notice of exemption in STB Docket No. AB-33 (Sub-No. 132X) to abandon the Creede Branch, including the track in Creede. Three parties filed notices of intent to submit offers of financial assistance ("OFA"), the Foundation, an investor group known as the Rio Grande & San Juan Railroad Company ("RG&SJ"), and the South Fork-Creede Railway Corridor Preservation Group, Inc. See Union Pacific R R Co —Abandonment Exemption—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (served Feb. 23, 1999)

Earlier in 1998, the Foundation had been founded as a 501(c)(3) tax exempt charitable foundation by Donald Shank. The Foundation described its mission as follows in its application to the Internal Revenue Service for tax exempt status:

The Denver & Rio Grande Railway Historical Foundation was formed for the following purposes: 1. The main function of the Foundation is the acquisition, restoration and preservation of historical railroad equipment, artifacts and memorabilia native to Colorado, New Mexico and Utah. 2. Our ultimate goal is to acquire either through purchase or donation, a parcel of land suitable to construct a restoration facility and museum/display facility for the restored artifacts/equipment As donations permit and as the membership grows, the officers and directors of the Foundation will dedicate more and more time to the goal of completing each facet of our plan to create the Durango Railroad Museum Complex. We are committed to this preservation of Durango's rich rail history that dates back to 1881.

Application at 2 (Exhibit No. 11).

Mr. Shank, after learning of the planned abandonment of the Creede Branch, apparently decided to take his Foundation in a different direction altogether by acquiring the branch through the OFA process and starting a new steam tourist train. Ultimately, the UP selected the Foundation as the entity to which it would sell the Branch. Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO,

STB Docket No. AB-33 (Sub-No. 132X) (served April 6, 1999) (hereinafter "April 6, 1999 Decision") UP and the Foundation reached agreement on a purchase price of \$624,616. The Director of the Office of Proceedings approved the sale to the Foundation and dismissed the UP's notice of exemption to abandon the Branch. Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO. STB Docket No. AB-33 (Sub-No. 132X) (served May 11, 1999) (hereinafter "May 1999 Decision").

Meanwhile, on November 26, 1999, the City of Creede filed a letter objecting to the Branch's acquisition by the Foundation. The City expressed concern about, among other things, the impact of the Foundation's acquisition upon longstanding uses of the public land under the rights of way in the City for public parking, public events, and a playground. The City also questioned whether the Foundation had the financial ability to rehabilitate the Branch and restore freight service, especially when there was no demand for such restoration. While the City's letter was filed six months after the May 1999 Decision, the Foundation had still been unable to close the acquisition with UP at that time. The Board treated this letter as a petition to reopen, which it denied. See Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO. STB Docket No. AB-33 (Sub-No. 132X) at 2 (served May 24, 2000) (hereinafter "May 2000 Decision") UP and the Foundation finally consummated the sale on May 24, 2000.

The City filed what the Board treated as a second petition to reopen on October 14, 2003. Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO. STB Docket No. AB-33 (Sub-No. 132X) (served Nov. 26, 2003).

The City argued that additional evidence, which it had obtained in court proceedings against the Foundation, showed that the Foundation was not financially responsible, that Mr. Shank had no intention of restoring freight service, and that he would use the acquisition to try and force residents and businesses to pay him rents for allegedly encroaching on the railroad rights of way. The City's petition was also supported by landowners outside of the City, who owned property adjoining the right of way. The petition was opposed by the Foundation and UP. While "troubled by apparent inconsistencies raised by the City regarding Mr. Shank's financial documents . . .," the Board found that the City had failed its burden to show that the sale should be unwound four years after the OFA had been approved. Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) at 6 (served June 22, 2004)(hereinafter "2004 Decision"). The Board suggested that the proper avenue for the City to pursue its concerns would be an application for adverse abandonment. Id. at 8

Subsequently, a group of citizens who live in Creede and Mineral County, the "Concerned Citizens," filed a petition to reopen the 2004 Decision. They submitted what they characterized as new evidence also showing that the Foundation was not financially responsible and that its OFA did not meet the requirements of 49 U.S.C. § 10904 and Board precedent. The Board adhered to its prior rulings and denied this petition too. However, the Board there similarly stated that, to the extent that the City or others were concerned about the impact of the Foundation's acquisition of the line on local communities, they could file an application for adverse abandonment, stating that "[s]hould such a party succeed in demonstrating that the public convenience and

necessity permit abandonment, the Board would withdraw the shield of its primary jurisdiction over the rail property " Union Pacific R.R.Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO. STB Docket No AB-33 (Sub-No 1332X) at 7 (served May 3, 2005) (hereinafter "2005 Decision")

C. 2005 to July 2007

The Foundation still has not been able to complete rehabilitation of the Branch. In a recent interrogatory response, the Foundation admitted that even now "the Foundation cannot at this time definitively set a date for the beginning of rail freight service." Exhibit No 12 (Response to Interrogatory No. 6)

In the Board proceedings in Docket No. AB-33 (Sub-No 132X), Mr. Shank alleged that the Foundation had opened the Branch all the way to the Creede city limits, but no further, because the City was not living up to its supposed obligations. This was an untrue statement then and now. The Branch crosses Colorado Highway 149 several times. The Colorado Department of Transportation ("CDOT") paved over two of these crossings, one between Creede and South Fork and one at the southern end of town, years ago. The crossing of Highway 149 in town is the first crossing of a public street that the Branch encounters as it comes into town. Both of these crossings of Highway 149 were paved over at the time Mr. Shank claimed in 2004 that it was the City's fault that he had not been able to open up the Branch into town. For example, Exhibit No. 6 (Photo No. 10a) is a photograph taken in 2005, which shows that the crossing outside of town was

paved over when Mr Shank was making this allegation. It is still paved over today.

Dooley Decl ¶ 25 ⁹

It is also physically impossible for the Foundation to conduct train operations, even if it had any trains or train operations, because for the past several years, the San Luis and Rio Grande Railroad Company ("SLRG"), the Foundation's only connection to the interstate rail system at South Fork, has been using its main line west of Monte Vista, Colorado to South Fork to store hundreds of out-of-service flatcars.¹⁰ The flatcars stretch for more than twenty-five miles, with the occasional break for roads or animal crossings. Pictures of some of these out-of-service flat cars on the SLRG's main line are in Exhibit No. 9. There has been no train service or operations by the SLRG west of Monte Vista for at least the last five years, because there are simply no rail shippers in this part of Colorado

The Foundation, which relies primarily on volunteers, had done little in the way of rehabilitation work after the Board's May 2005 Decision. However, after the City filed its Petition for Exemption and Waiver on June 6, 2007, the Foundation was apparently prompted to make it appear as though it were still actively trying to rehabilitate the Branch. The Foundation argued to the Colorado Public Utilities Commission ("CPUC") and CDOT at a July 16, 2007 meeting that, because the Foundation was a federal railroad, CDOT should spend thousands of tax dollars to open

⁹ The grooves in the highway shown in the photograph were apparently made by the Foundation by pushing motor cars across the highway

¹⁰ The SLRG is a short line formed by RailAmerica to purchase the former D&RGW rail lines in the San Luis Valley from the UP in 2001. RailAmerica subsequently sold the SLRG to Permian Basin Railways in 2005 Permian Basin Railways, Inc.—Acquisition of Control Exemption - San Luis & Rio Grande R.R. Co., STB Finance Docket No. 34799 (served Jan. 12, 2006)

the two paved over crossings on Highway 149 Dooley Decl ¶ 23 (Exhibit No. 5). The Foundation erected cross bucks and painted warnings symbols on Highway 149 at one crossing outside of town. CDOT also opened the crossing of Highway 149 in town, but not the crossing outside of town where the Foundation erected cross bucks. So, Highway 149 to this day remains paved over the Branch between South Fork and Creede.

D. October 25, 2007 to Present

There was another recent flurry of activity by the Foundation after the Board served its decision on October 18, 2007 granting the City's Petition for Exemption and Waiver (hereinafter "Waiver Decision"). Mr. Shank has been saying that he was coming to town to open street crossings, remove the children's park and events center, and clear his right of way no matter what the City thought, because he was a federal railroad and no one could stop him. The City countered by requesting that he wait until next spring, by which time the Board may have ruled, before storming into town to tear up public property. The City also explained that it did not have money in its budget for this year to pay to redo crossings, but would allow for such an expense in its budget for 2008.¹¹ The City reasoned that waiting for a Board ruling would not prejudice the Foundation, because it has no train operations and certainly will not for several years, if ever. See Dooley Decl. ¶ 23-24 and Attachment 2 thereto (at 102-03).

Mr. Shank then had the Sheriff of Mineral County contact the Board's Office of Compliance and Consumer Assistance ("OCCA") on October 23, 2007 and ask about the status of the City's Application and Mr. Shank's rights in view of the Board's October 18 Waiver Decision. The Sheriff asked the OCCA to confirm their phone call, which the

¹¹ Creede is a town of very modest means. Its entire budget for 2007 was \$330,000. It was near year end, and the remaining monies were already committed.

OCCA did by e-mail dated October 24, 2007. In that e-mail, the OCCA advised the Sheriff that the application had not yet been filed and that "the rail property in question still belongs to the Denver and Rio Grande Railway Historical Foundation and they are free to work on it as needed." Exhibit No. 13. The Sheriff, in a memo he wrote to his file after receiving OCCA's e-mail, interpreted OCCA's advice to mean that the Foundation "can do what they want with their property." No one, including OCCA, advised the City of this rather odd inquiry.

Mr. Shank apparently put the Sheriff in contact with the Board, because the Sheriff, who is not a city official, is the only local law enforcement in Mineral County. The City does not have a police department and would have contacted the Sheriff if someone started tearing up city streets and property. Within 24 hours of the e-mail from the OCCA to the Sheriff, the Sheriff advised the City Manager on the morning of October 25, 2007 that Mr. Shank was coming to town to work on his track and the Board had advised the Sheriff that Mr. Shank would be within his rights to tear up city streets. Dooley Decl. ¶ 26. Even as the Sheriff was meeting with the City Manager, Mr. Shank and a crew came into town without notice to the City and tore up the asphalt from two city streets that had been paved over the tracks for two decades. He also uncovered tracks that had been covered over for the public parking area, cut through the city's only park, damaging the sprinkler system, and tore up part of the children's playground. He also caused the owner of the grandstand and bleachers that constitute the events center to remove them from the right of way, even though they were on publicly owned land. He left piles of asphalt and debris and has not been back to town since. Photos of the damage are in Exhibit No. 7. The City will not be able to repair the damage to the city

streets and facilities until next spring. By late October, it is already winter in the mountains (Creede's elevation is 8,890 feet) and too cold to apply asphalt. Dooley Decl.

¶ 27-29

The reason for all of this sudden activity is transparent. In the more than seven years since the Foundation acquired the Branch, the Foundation had never before done any rehabilitation in the city limits. There was no reason to. Then, the Foundation suddenly shows up a week after the Board's October 18 Waiver Decision? The Foundation is obviously trying to create the illusion of activity and punish the City for pursuing this proceeding. The City notes that CDOT also failed to follow Mr. Shank's timetable and open both crossings of Highway 149. It only opened the one in town, leaving the one outside of town paved over. Yet, the Foundation did not tear up Colorado Highway 149 when the State did not heed Mr. Shank's demands. Why does the Foundation tear up City streets and not a State Highway? As explained in this Application, Mr. Shank's rehabilitation efforts in the City, whether for real, show or retribution, are irrelevant to the City's case for adverse abandonment. The Foundation's actions do not alter the central facts that there are no shippers in Creede who desire rail freight service, the Foundation does not need the track in the City to provide freight service, and, therefore, abandonment is permitted by the public convenience and necessity.

II. INFORMATION REQUIRED BY SECTION 1152.22

General 1152.22(a)(1)-(2)

The applicant is the City of Creede, Colorado. Creede is the only town in Mineral County, Colorado and is the county seat. The permanent population of Creede is about 417. The City is not a common carrier by railroad.

Relief Sought 1152.22(a)(3)

The City is seeking the adverse abandonment of all track located in the city limits. This track consists of a main line approximately one mile in length, which runs the length of the City, north and south, approximately in the middle of town, a runaround track, and a short spur. The track runs from approximately MP 321 at the north end of town, and the end of the Branch, to about MP 319, at the southern edge of town.

Map of the Subject Track 1152.22(a)(4)

A map showing the location of the tracks in the city limits is Exhibit No. 3.¹²

Reasons for Filing the Application 1152 (a)(6)

The City is pursuing adverse abandonment to gain control over the publicly owned land under the railroad rights of way in the city limits. The City desires to continue the public uses to which this land has been put for more than 15 years and to plan for the orderly develop of this and other public lands in the City. The City also desires to put an end to controversies over the uses to which this land has been put, which have resulted from actions and claims of the Foundation.

¹² The Board waived Section 1152.22 (a)(5)'s requirement of a system diagram map.

1. Improvement of Existing Public Uses, Facilities
and Infrastructure and Planning for Future Development

As explained in more detail in Part III C of this Application, the Foundation succeeded to a 1969 right of way agreement between the former D&RGW and Colorado State Land Board (which replaced a 1892 agreement) covering the right of way in Section 36 of the City and a federal right of way obtained by the former D&RGW from the federal government pursuant to the Right of Way Act of 1875 covering the right of way in Section 36 in the City. Sections 25 and 36 are shown on the map of the track in the City, which is Exhibit No. 3. The Land Board and United States deeded the land under the respective rights of way to the City in, respectively, 1965 and 1901, but subject to the pre-existing rights of way. Thus, the City actually owns the land under the rights of way in the City. The City needs to make improvements to public facilities on this land and plan for how this land and other adjacent city-owned land can best be used or developed for the benefit of Creede. It is hampered in its ability to do so, because its land is burdened by the rights of way to which the Foundation succeeded. Once abandonment of the track is authorized by the Board, these rights of way terminate pursuant to federal and state law. The City's zoning, permitting, and land use authority will also then fully apply to this property.

The land under the rights of way varies from 200 to 100 feet in width. While the land under the rights of way is only about eleven acres, Creede is a small town. This land is strategically located, runs down the middle of town, and is adjacent to the main downtown business area and residential areas. The track in the city limits has been out of service for more than 30 years. As mentioned, given that the rights of way have not been

used for railroad purposes for many years. over the years, portions of the rights of way have been put to various public uses.

As explained in the Dooley Declaration, at the north end of town, the former D&RGW agreed in 1989 that the City could remove the track from the then northern end of the track at MP 320.88 south across North First Street and the track that ran behind the buildings behind the west side of the main down town retail area. The City and County wanted to use the land under the right of way to the west of the County Office Building and Court House for public parking. The City wanted to remove the track from behind the buildings, because the track made it difficult for the City to plow snow from what is a public alley. Snow would accumulate behind the buildings and cause water damage. The track was removed from these areas except that the rail was not removed from under where North First Street crossed the track. Exhibit No. 6 (Photo No. 7) is a picture showing the area west of the County Offices and Courthouse where the track was removed. Exhibit No. 6 (Photo No. 6) is a picture looking down the public alley where the track was removed

Further south in town, a portion of the main line and runaround tracks were covered over with dirt years ago and is used for public parking. This parking is critical because, even though Creede only has a permanent population of about 417, during the spring and summer months, hundreds of tourists, visitors, and summer residents come to town every day. On Creede's busiest week of the year, July 4th week, as many as 10,000 people are in town for July 4th related festivities, including a parade, the "Days of 92" festival, and a fireworks display. Dooley Decl. ¶ 15. This parking area accounts for

about one half of the public parking in the downtown area. This parking area is shown in the pictures in Exhibit No. 6 (Photo Nos. 2-4).

In conjunction with July 4, Creede hosts the "Days of '92," which is an annual festival celebrating the mining heritage of Colorado. A portion of the right of way is used as an events center where the "Days of '92" activities take place. There are (or were until the Foundation caused them to be removed) a grandstand and bleachers where spectators can observe various contests between miners and attendees. The area around the events center, some of which is also on the right of way, is where vendors of arts and crafts, souvenirs, and food and confections set up. Pictures of the Days of '92 from this past July 4 are in Exhibit No. 6 (Photo Nos. 9-10).

The City constructed a children's playground on the right of way many years ago. A picture of the playground is in Exhibit No. 6 (Photo No. 4). The City has also constructed public streets and water and sewer infrastructure on and under the right of way.

The City would like to continue these various public uses and improve these public facilities.

The City also desires to plan for the use and development of other land under the right of way that best serves the needs and public interest in Creede. There are several possible uses for this land, which would contribute to the growth and development of the City also as explained in the Dooley Declaration. For example, the City might expand the city park, expand the children's playground, and improve the public parking area. The City could sell or lease some of the land to adjacent landowners or others for development. The City's day care center is currently located about a mile outside of

town. It would obviously be more convenient if it were in town. But, the City cannot make improvements to existing public facilities on the land or consider or plan for other uses until the Board's jurisdiction is lifted from this track. Once the mantle of Board jurisdiction is removed by adverse abandonment, the Foundation's easements over the City's land will terminate as a matter of law, and the City's use and control of this land will no longer be burdened by such easements. Indeed, but for the Board's jurisdiction, these rights of way would have terminated many years ago when rail operations in Creede ceased.

2 Resolution of Threats by Foundation to Existing Public Uses

The City is also concerned that the Foundation will interfere with the longstanding public uses of the publicly owned land under the rights of way described above. These fears have unfortunately been borne out by recent actions of Mr. Shank and his Foundation.

Ever since the Foundation acquired the Creede Branch, Mr. Shank has been threatening to have the public playground and events center removed from the right of way and uncover the track under the public parking area. As explained, Mr. Shank has finally acted on his threats when he tore up streets, uncovered the area used for public parking, cut off part of the children's playground, damaged the city park, and had the events center grand stand and bleachers removed. Photos of the damage are in Exhibit No. 7.

While the City understands that Mr. Shank has informed the owner of the grandstand and bleachers, and who puts on the Days of '92 festival, that he will be allowed to set up in time for next year's Days of '92 festival, there is no guarantee that

Mr. Shank will allow him to do so. In the meantime, there is uncertainty whether the festival will be able to be held. This uncertainty will affect whether vendors, who must make their plans months in advance, will be willing to come to Creede for that week. There is no assurance that Mr. Shank will not try to deny them permission to set up or try to collect rents from them. The City does not believe that Mr. Shank has the right to prevent the City from licensing the vendors to be there or to demand rents from them or the City. But, the uncertainty will hamper planning for next year's event. Normally, the City would issue permits to such vendors for the 2008 Days of '92 Festival in January 2008. The Days of '92 Festival is important to the City and it would be an economic blow to town businesses if the event could not be held. Dooley Decl. ¶ 15.

Even though the Foundation has not been able to operate any trains, and has no shippers in Creede or anywhere on the Creede Branch, the Foundation has also been demanding that the City open railroad crossings in city streets and incur the costs for doing so, all because the Foundation is a "federal railroad." Dooley Decl. ¶ 23. For example, Mr. Shank claims that the City is required by a crossing agreement with the former D&RGW to open a crossing at Loma Street. The City disagrees that the crossing agreement has the meaning that Mr. Shank gives it. It was after the City balked at his demands that Mr. Shank came into town and tore up Loma Street as well as removing the surface on two other streets where the pavement crosses the tracks. Mr. Shank will argue, as he has, that he was within his rights to take these actions because he is a federal railroad and federal regulation trumps state or local regulation. Whether he is correct or

not in this case.¹³ adverse abandonment of the track in the city will put an end to these disputes and allow the City to develop public land and be able to exercise its planning, zoning, and permitting authority over land in the middle of town.

3. End Efforts By Shank To Collect Rents For Public Lands

The City also wants to put a stop to Mr. Shank's attempts to collect rents from businesses and residents, whose buildings allegedly encroach upon the right-of-way. The land in question belongs to the City, and the City has not authorized Mr. Shank to collect such rents. Because these rents are not connected to the operation of a railroad, they are also not authorized by the terms of the rights of way to which the Foundation succeeded.

Not long after the Foundation acquired the Creede Branch in 2000, Mr. Shank began writing to businesses and residents, some elderly and with low incomes, demanding that they pay rent to the Foundation or face ejection from their businesses or homes. A few paid these rents for a while. In the litigation at the Board over the OFA in Docket No. AB-33 (Sub-No. 132X), Mr. Shank claimed that the Foundation had the right to collect these rents and was only doing what prior railroads had done. Although there was absolutely nothing in the record to support his claim, the Board's June 2004 Decision stated that "it appears that D&RGHF's [Foundation] practice of leasing land in the ROW rail operations is much the same as that of its predecessor owners." Decision at 8. However, the Foundation had already been ordered in 2000 by the Colorado Attorney General to cease trying to collect rents from land that was subject to the 1969 state right-of-way agreement. By letter dated June 21, 2000, the Attorney General's Office, on

¹³ An argument can be made that, because the Foundation has no freight operations, really no railroad operations of any kind, and is only planning for an intrastate tourist train, the Board does not have jurisdiction over the Foundation. See Part III.B.4 *infra*.

behalf of the Colorado State Land Board, advised Mr. Shank that the lease of publicly owned property for other than railroad purposes without the permission of the Land Board violated that right of way agreement. Exhibit No. 14. The Attorney General also directed Mr. Shank to terminate the leases into which he had entered or to which he had succeeded, because they had not been authorized by the Land Board. Mr. Shank subsequently complied.¹⁴

More recently, Mr. Shank relied on this Board's June 2004 and May 2005 Decisions in Docket No. AB-33 (Sub-No. 132X) to justify new efforts by him to collect rents, this time from businesses located on the west side of Main Street, whose buildings allegedly encroach on the federally granted right of way. The Colorado Attorney General's proscription only covered the land subject the state right of way agreement (in Section 36); it did not cover the land subject to the federal right of way (in Section 25). For example, Mr. Shank wrote to the town's only hardware store on December 13, 2006 as follows

This action is taken in view of the recent decision from the United States Surface Transportation Board (STB) last year, which, among other positive findings, included their position that D&RGHF's leasing activities in Creede are not inconsistent with those of our predecessors and we possess legal authority as an easement holder to collect rent for permitted uses within our right-of-way.

Mr. Shank went on to state that since the hardware store "benefit[s] directly from the availability and use of our property," it is only appropriate that the store enter into a lease with the Foundation. He stated that, if the hardware store paid about \$10,000 in back rent and agreed to pay monthly rent going forward, he would forgive another \$10,000 in back

¹⁴ The Land Board also entered into a settlement with the UP, in which the UP agreed to return amounts that it had collected in rents.

rent. If the hardware store did not agree to his terms, he threatened that "WE WILL NOT HESITATE TO SEEK YOUR EJECTMENT FOR NON-PAYMENT OF RENTAL UNDER COLORADO LAW " Exhibit No. 15 (letter at 2). Similar letters were sent to other property owners. The Foundation gave persons 15 days to comply.

Shortly thereafter, a fire severely damaged three businesses on the west side of Main Street in Creede on December 2, 2006. These businesses were the town's only bank, a café, and a retail store. These businesses are also located in Section 25. Mr. Shank wrote the City on December 28, 2006 and insisted that, before these businesses could rebuild, they first had to enter into commercial leases with the Foundation, because these buildings had encroached on the right of way. Dooley Decl., Attachment 3 (Exhibit No. 5). Mr. Shank also made clear that he was demanding these leases before any rebuilding could commence in part in revenge for the City's prior opposition to his OFA. He stated:

Though the necessity of a Lease to legally support squatters on the railroad may be distasteful to some, I can assure you that the tens of thousands of dollars DRGHF wasted to defend our purchase of the railroad was quite distasteful to many, and no more than myself. Please do not fail to remember that the multi-year legal quagmire was initiated by the former mayor of Creede, B. J. Myers, and cost everyone dearly.

One of the businesses targeted by Mr. Shank is owned by a former mayor. He also contended that "DRGF enjoys legal authority as an easement-holder to collect rent for permitted uses within our right-of-way." In making his new demands for rents, Mr. Shank again claimed that this Board had validated his right to such rents, stating, for example, as follows:

During the multi-year ordeal, the United States Surface Transportation Board (STB) and the U. S. District Court validated and re-validated our railroad. Additionally, it was determined that our leasing efforts were not

inconsistent with those of our predecessors . The STB regards the Creede Branch as a 'Class III, Common Carrier, Interchange Railroad, an active railroad in rehabilitation with all rights and powers attendant thereto'...

With one exception, the City is not aware that any one receiving these newer demand letters from Mr. Shank has complied. So, he sent a second round of letters. An example is Exhibit No. 17. In that letter, dated January 22, 2007, he threatened again to take action to have the building removed from railroad property. In his letter, he warned that refusal to respond to his demands "has now placed your building in serious jeopardy" and "[t]his letter shall now serve as formal 'NOTICE' that we intend to move forward with the legal process to eject those businesses from railroad property as provided under Colorado law." All-in-all, hardly charitable actions for an organization that holds itself out as a "charitable" organization.

Mr. Shank repeated his claimed right to collect rents in what he described as "an aggressive proposal to remedy the encroachment issues that have plagued the City of Creede . . ."¹⁵ Exhibit No. 18 at 222. This proposal was presented to the City's Board of Trustees at a regular meeting of the Trustees on February 22, 2007. As part of an effort by him to persuade the City not file this Application for Adverse Abandonment, he offered that "DRGHF is willing to waive all claims for delinquent back rent from each and every business, resident, the City of Creede and Mineral County, subject to the City of Creede's acceptance of the terms and conditions as defined in part 2 of this proposal. Those back rents total well in excess of \$ 200,000.00 " The rent forgiveness was a part of what Mr. Shank described as a settlement under which the Foundation would

¹⁵ Actually, these kinds of encroachment issues did not engender such controversy until Mr. Shank purchased the Creede Branch.

relinquish part of the width of its right of way if: (1) the City agreed to sell to the Foundation for one dollar the City's fee interest in the land under the right of way in Sections 25 and 36; (2) neither the City nor anyone else would "move forward with any legal action against DRGHF, including, but not limited to the proposed 'Petition for Adverse Abandonment';" and (3) an agreement by all parties to "waive any and all pending or future claims against the railroad for noise, dirt/dust, smoke and/or exhaust fumes." Mr. Shank also threatened that, if the settlement had to be rescinded because of any one of these contingencies, "DRGHF would vigorously defend its right-of-way as it existed prior to this proposal and would immediately file in County Court the 'Demand(s) for Compliance or Right to Possession Notice(s)'"

The Foundation's proposal was clearly a non-starter. It was incompatible with the basic goals of the City to gain control over its land and be able to plan for the development of land in the middle of town. Notwithstanding Mr. Shank's threats to go after town residents and businesses for alleged rents if his proposal was not accepted, the Board of Trustless voted to proceed with this Application.

There are numerous misstatements in Mr. Shank's various letters demanding rents. He has repeatedly misrepresented this Board's decisions. The Board has made no finding whether the Foundation has any legal right to collect rents. The Board normally leaves disputes under contracts to be determined under state or federal law in courts or other tribunals. The Board has also not "validated" the Foundation's rehabilitation plans. As the Board has explained, it simply approved the Foundation's OIA on a limited record. The building owners are not "squatters" on "railroad" property. These buildings have been there for more than one hundred years. The land, moreover, is not, and has

never been railroad “property;” the land in question belongs to the City. And, as explained previously, the former D&RGW already relinquished in 1989 its federal right of way behind the buildings on the west side of Main Street, for which Mr. Shank is trying to collect rent. The buildings for which Mr. Shank is now trying to collect rents are those buildings. More recently, to help clear up title issues in town, the City deeded its land at the back of these buildings to these property owners. Dooley Decl. ¶ 23. Thus, the City disagrees that Mr. Shank has any legal basis to keep trying to collect rents from building owners for being on their own land.

Just as Mr. Shank was wrong that he had the right to collect rents in Section 36, it is the City’s position that he is in error that he has a legal right to collect such rents in Section 25. The federal statute under which the Foundation’s predecessor obtained the right of way in Section 25 does not state that the grantee has the right to collect rents for non-railroad purposes. A dispute over the right to collect rents from land under the federal right of way would be a federal question requiring interpretation of the federal right of way grant.¹⁶ The dispute over the Foundation’s rights, if any, to collect rents from building owners in Section 25 simply goes away, however, upon a grant of abandonment of the track in Section 25. The Foundation’s easement rights, and any claimed right to collect rents based thereon, would be terminated.

Representatives of the City 1152 22(a)(7)

Any correspondence, comments or protests relating to this Application should be sent to the following representatives of the Applicant:

¹⁶ See, e.g., Nicodemus v. Union Pac. Corp., 440 F.3d 1227 (10th Cir. 2006).

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

Clyde Dooley
City Manager
P.O. Box 457
Creede, CO 81130
(719) 658-2276

Zip Codes 1152.22 (a)(8)

The only Zip Code in which the track that is the subject of this Application is located is 81130.

Condition of Properties 1152.22(b)

The City had asked that the Board waive the requirement that the applicant provide a description of the physical condition of the track and the costs of deferred maintenance. The City sought this waiver because such waivers are routinely sought, and granted, in adverse abandonments.¹⁷ The Board declined to waive this requirement, stating that “The City asserts that D&RGHF has not been able to rehabilitate the Line and thus is unlikely ever to restore rail service to the Line. Because the Line’s physical condition is relevant to that determination, this requirement should not be waived.” Waiver Decision at 3. The City has complied with Section 1152.22(b) to the best of its ability in its Application. While the City believes that the track in the City is in poor condition, the City’s application for adverse abandonment is not, however, based on the track’s condition or the cost of rehabilitation and deferred maintenance. An applicant for

¹⁷ See, e.g., East St. Louis Jct. R. Co.—Adverse Abandonment—in St. Clair County, Ill., Union Pacific R. Co.—Adverse Discontinuance in St. Clair County, Ill., STB Docket No. AB-838, STB Docket No. AB-33 (Sub No. 199), 2003 STB LEXIS 362 at * 12.

abandonment does not have to demonstrate that the track is in poor condition to show that the public convenience and necessity allow abandonment. Here, the City is making its case for abandonment on the fact that there are no shippers in Creede and that the Foundation does not need any track in the City to re-establish rail freight service. The City's Application should be granted even if the track were in good condition.

In any event, the condition of the track in the City is clearly very poor. The track is not even excepted track under the track standards of the Federal Railroad Administration ("FRA"). The FRA track regulations require that, in order to operate passenger trains, the Foundation must bring all of its track at least up to class 1 standards.¹⁸

No maintenance has been performed on the track in Creede since 1970 and probably years earlier than that. As explained, the Foundation recently uncovered the track that has been grown over and was under the public parking area and some city streets. The City Manager has walked the length of the track in town, both before and after the Foundation's recent activities. Photographs representative of the track's condition taken by the City Manager in October 2007 are in Exhibit No. 8. The photographs show that all of the ties have rotted and many would have to be replaced in order to meet the FRA's track standards for Class 1 track. See 49 C.F.R. § 213.109(d). The rail is spiked directly to the ties; there are no tie plates. There are not enough unbroken or ties that have not rotted to meet minimum FRA standards. The track also cannot meet FRA standards which require that the track be ballasted, unless there is other

¹⁸ The FRA track safety regulations apply to intrastate tourist train operations which are not "insular." The Foundation's tourist operations, if and when it has any, would not be insular, because the Foundation's track crosses public highways. FRA, Part 240 Questions and Answers, www.fra.dot.gov/us/content/1632

structural support 49 C.F.R. § 213.334. Ballast is necessary to provide support for the track and for proper drainage. The ballast is completely gone from the track in the City and there is no other structural support. In addition, the rail is very light weight, primarily 65-lb, and, because it was rolled in the 1880's, would be subject to cracking under stresses. There are gaps in the rail and the head and sides of the rail are pitted and cracked. The rail is also clearly out of gauge in places. The track is below the level of the land around it, which will also create drainage issues.

The track would have to be raised in order to add ballast. Because all of the ties have rotted, more new ties would have to be added than otherwise necessary to meet Class 1 standards. Otherwise, the track could not be lifted without many of the ties falling off. Thus, the Foundation would have to replace most of the ties, re-ballast the roadbed, and replace rail. The one bridge in town would probably have to be reinforced, which would be very costly.

As also explained, the track behind the west side of Main Street between Wall and First Streets was removed in 1989 with the permission of the former D&RGW. Consequently, the Foundation has neither track nor a right of way in this part of town. The track that was removed was part of the runaround track. This means that the Foundation would have no means to run a locomotive around its train with the track it does have in town, unless it adds a new turnout.

The rail for the track north of First Street to the end of the Branch was also removed many years ago and this part of the right of way is used for public parking.

Service Provided 1152.22(c)

No rail service has been provided in Creede since about 1970.

No trains have operated into Creede and no carloads of freight have been shipped from or received at Creede in more than 35 years

Traffic declined and disappeared, because the Creede Branch was built to service the mining industry around Creede, and all mining had ceased by 1985.

Revenue And Cost Data 1152.22(d)¹⁹

There is no revenue attributable to the track in Creede.

Rural and Community Impact 1152.22(e)

The abandonment of the track in the City will not have an adverse impact on the community. To the contrary, abandonment will benefit the community by allowing the Foundation's rights of way to terminate.

There have been no significant users as defined in Section 1152.2(1) of rail service in Creede or on the Branch during calendar years 2005 and 2006 (or since before 1970).

Because there are no users of rail service in Creede, there are no shippers which would need alternate sources of transportation if the track in Creede were abandoned. In any event, the area is amply served by all-weather highways. As shown on the map in Exhibit No. 2, Colorado State Highway 149 runs through Creede and parallels the entire Creede Branch. Colorado 149 joins US Highway 160 at South Fork, which is about 21 miles south and east of Creede. US 160 is a major east-west artery across southern Colorado.²⁰

¹⁹ The Board granted the City's request for waiver of the requirement to provide this information.

²⁰ The map that is Exhibit No. 2 erroneously shows Highway 160 as Highway 169.

In addition, abandonment of the track will not affect the transportation options currently available in the area. There is still rail service to Monte Vista, Colorado on the SLRG. Monte Vista is about 50 miles from Creede via US 160 and Colorado 149. Actually, rail service could be available to South Fork on the SLRG, which is only 21 miles from Creede. Rail service is not currently available on the SLRG west of Monte Vista, because, as explained, the SLRG is using its main line west of there to store surplus intermodal cars.

Finally, if there ever were to be shippers that would again use rail service, and if the Foundation were to rehabilitate the Creede Branch, two highly improbable assumptions, freight could be shipped by rail to and from Wason on the Creede Branch and transferred to and from trucks. As explained, for the last 15 years or so, when there were some users of freight service on the Branch, this was how the freight was handled.

Environmental Impact 1152.22(f)

The City's Combined Environmental and Historic Report has been filed contemporaneously with this Application. The City does not believe that the grant of its Application will have any adverse effect on land use, air or water quality, or biological resources. Therefore, there is no need for any environmental conditions.

The Board's Section of Environmental Analysis prepared an Environmental Assessment in Docket No. AB-33 (Sub-No. 132X) (served Jan. 29, 1999) in which it concluded that there would be no adverse environmental effect from abandonment of the entire Creede Branch. Nothing has occurred since then which would alter this conclusion with respect to the track in the City.

The City did not receive comments from any agency served pursuant to Section 1105.7 indicating that abandonment of the track in the City would have any adverse effect on land use, air or water quality, or on biological resources.

The grant of the Application also will not affect any historical resources.

Passenger Service 1152.22(g)

There has been no passenger service on the Creede Branch since 1939.

Draft Federal Register Notice Section 1152.22(i)

A draft Federal Register Notice is attached as Exhibit No. 1 to the Application. A diskette containing the Notice is also provided with this Application.

III ABANDONMENT IS PERMITTED BY THE PRESENT
AND FUTURE PUBLIC CONVENIENCE AND NECESSITY

A. The Applicable Standard

The standard governing abandonment, including adverse abandonment, "is whether the present or future [public and convenience and necessity] require or permit the proposed abandonment " See, e.g., The Western Stock Show Ass'n—Abandonment Exemption—In Denver, CO, STB Docket No. AB-452 (Sub-No. 1X) 1 S T B. 113 (served July 3, 1996), 1996 STB LEXIS 251. It is well settled that an interested third party can file a petition for abandonment, in which case the petition is considered "adverse," because the carrier usually opposes the abandonment. See, e.g., Chelsea Property Owners-Abandonment-Portion of the Consolidated Rail Corp.'s West 30th St. Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094), 8 I.C.C.2d 773 (1992), 1992 WL 233599 (I.C.C.) (hereinafter "Chelsea II"), Modern Handcraft, Inc.—Abandonment in Jackson County, MO, Finance Docket No. 29330, 363 I.C.C. 969 (1981), 1981 ICC LEXIS 37 at *5 (hereinafter "Modern Handcraft"). The Board has

explained in its decisions that, in applying this standard, it balances the interests of the carrier, the owner and/or public shippers, and interstate commerce and the interstate rail system. See, e.g., Western Stock Show, 1996 STB LEXIS 251 at *131. The burden is on the non-carrier petitioner when the carrier opposes the abandonment. Salt Lake City Corp.—Adverse Abandonment in Salt Lake City, UT, STB Docket No. AB-33 (Sub-No. 183), 2002 STB LEXIS 150 at *11. However, the Board “will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law where no overriding Federal interest exists.” Id. at *12.

The circumstances described in the City’s petition are like those in decisions granting adverse abandonment where, as here, the line had been out of service for a lengthy time and there had been a “de facto abandonment.” See, e.g., Chelsea II (out of service 7 years); Modern Handicraft (10 years). Indeed, the City’s Application is even more compelling, because the track in the City has been out of service for nearly 30 years, and the City owns the land under the rights of way.

B. The Present and Future Public Convenience and Necessity Permit Adverse Abandonment Of Tracks in Creede

A balancing of the various interests shows that abandonment of the track within the City is permitted by the present and future public convenience and necessity.

1. There Are No Shippers

Abandonment will not adversely affect any shippers in Creede, because there are none.

The D&RGW stopped rail service into Creede because there were no shippers.

The UP filed its notice of exemption to abandon the Creede Branch because there were no shippers on the Creede Branch or in Creede. The UP could find a buyer for

other former D&RGW lines in south central Colorado, the SLRG, but not the Creede Branch, because there are no shippers. But for the sale of the Branch to the Foundation pursuant to the OFA process, this line, including the track in the City, would have been officially abandoned in 1999.

The Foundation's Notice of Intent to submit an OFA, which was filed December 18, 1998 in Docket No AB-33 (Sub-No 132X), stated that "within the text of our OFA will be a detailed description of our plan to rehabilitate the 21.6 mile line and operate a tourist train between South Fork and Creede, Colorado." Exhibit No 19 (emphasis added) No mention was made of freight

When the Foundation subsequently submitted its OFA, it mentioned freight for the first time, because, by then, someone presumably advised the Foundation that the OFA process could not be used just to establish a new tourist train. The Foundation's OFA stated that "[t]he Foundation intends to acquire the line for rail freight and passenger use." Exhibit No 20 (OFA at 4). The Foundation did not identify any shippers or provide the "detailed" plan or letters of support promised by its Notice of Intent

The Foundation was well aware that there were no shippers, or potential for shippers, as shown by its unsuccessful argument, early in the OFA process, that Section 10904 did not require that a person acquiring a line under that process do so for the purpose of continuing freight service. The Board rejected that argument. See April 22, 1999 Decision at 3 n.2.

Mr. Shank later admitted to the Board that there was no demand for freight service on the Creede Branch and likely never would be. Mr. Shank was clear that the

intent of his Foundation in acquiring the Branch was to try and establish a historic tourist railroad. For example, in 2004, after his OFA had been approved, he stated as follows in his Verified Statement submitted in Docket No. AB-33 (Sub-No. 132X):

We knew all along that there hasn't been any need for freight rail service for a long time. The STB knew we were going to rehab the line, then initiate a tourist-based operation with the hopes of some freight business.

Exh. 21 (Appdx. DHS-8 to Verified Statement of Donald H. Shank at p.2 (filed Jan. 20, 2004) (emphasis added)). See also id. at p. 7 ("We knew going into this purchase that nothing existed in the form of freight business on the line. . . We felt that a tourist-based passenger operation augmented by freight rail service might have a good chance of success. Our initial plan was to get some form of limited passenger operation going and continue to identify any potential need for freight.") (emphasis added)). Mr. Shank stated that "we would be ready, willing and able to haul freight, if any presented itself." Id. at Appdx. DHS-8 at 1) (emphasis added).

Indeed, the Foundation did not put forward any indication of alleged shipper interest until 2004, after the City of Creede and others sought to reopen the Board's approval of the Foundation's OFA. The Board's 2005 Decision stated that the Foundation had submitted letters "from three area proponents of rail service," Id. at *18. However, Mr. Shank's Verified Statement explained that the three letters submitted by the Foundation really represented only one supposed potential shipper, GMCO Corporation. See Exhibit No. 21 at 237 and 246D (Appdx. 8 at p.7 to Shank VS (filed Jan. 20, 2004)) ("Through my efforts I fortunately identified a shipper and two recipients requesting product delivery in Creede. . .") (emphasis added)). One of the three letters referenced by the Board was from GMCO indicating that it might ship about 25 carloads

annually of product to Creede. A service provided by GMCO to local governments in Colorado is to spread magnesium chloride on roads as a dust suppressant. The other two letters were from the road supervisors of Mineral and Hinsdale Counties, Colorado, indicating that they would like the ability to receive magnesium chloride by rail in Creede.

At that time, GMCO received magnesium chloride by railroad tank car in Monte Vista, Colorado, on the SLRG. Monte Vista is only about 50 miles southeast from Creede, as shown on the map, which is Exhibit No. 4. The magnesium chloride was transferred into GMCO trucks at Monte Vista, which then drove to Mineral County and applied it to the surface of dirt roads. Generally, dust suppressant is applied in the early summer.

The Foundation was apparently suggesting that, instead of being transloaded to trucks in Monte Vista on the SLRG, these rail tank cars could be moved by the SLRG to the end of its line at South Fork and interchanged with the Foundation, which would then take them to Creede, where the product would there be transloaded to trucks. The supposed shipments to Creede by GMCO, which never made any kind of commitment, were highly speculative and de minimis. It would also not be economically practical to move these few tank cars another 50 miles by rail to the Creede area from Monte Vista. Today, this is physically impossible because of the flatcars stored on SLRG's main line between Monte Vista and South Fork. But, even if those were not a barrier, the SLRG is going to charge a fee for moving the tank cars once a year from Monte Vista to South Fork. Since these few tank cars would be the only rail traffic moving over this 30 miles of the SLRG, the SLRG would need to set the charge high enough to justify maintaining

this track, which it is not doing today And, then, there will be the Foundation's charge for moving these tank cars from South Fork to Creede Since these few cars would be the only freight moving over the Foundation's track, what kind of a charge does it have to set to recover its rehabilitation, capital, equipment and operating costs? Whatever it would be would be astronomical

The Foundation, in its Reply Statement (p.6), also filed in 2004 in Finance Docket No 34376, City of Creede, CO -- Petition for Declaratory Order, stated that "the Foundation currently is in discussion with a significant potential rail user who could require construction of sidetrack facilities for transloading commodities from truck to rail." The Foundation never identified this potential rail user, and it never materialized

Most recently, the Foundation claimed to have identified three shippers in its November 11, 2007 letter to the Creede City Attorney occasioned by the Foundation's damages to City streets and property. Mr Shank there stated as follows:

With respect to your assertion that our activities in Creede have no relation to the interstate transportation of freight or passengers, I can assure you that you are sadly mistaken. The railroad has to date identified three separate shippers, one of which is located east of the Mississippi River requesting the delivery of material into the City of Creede. Last time I checked, east of the Mississippi would be considered interstate. Given the City of Creede's propensity for creating roadblocks, the identity of said shipper will become known to the SIB during our response to your ridiculously absurd adverse abandonment action.

Exhibit No 22 at 2-3. After receiving this letter, the City served discovery requests on the Foundation to find out just who these shippers were. The Foundation's discovery responses revealed that the Foundation has really identified only two potential shippers

One shipper was GMCO. The Foundation is relying on the same letters from 2003 where GMCO would ship a few tank cars of magnesium chloride to Creede instead

of Monte Vista, for use by Mineral County and Hinsdale County, which the Foundation had previously submitted in Docket No AB-33 (Sub-No. 132X). Now, the Foundation projects 12-15 carloads annually for use each by Mineral County and Hinsdale County instead of 25 total Exhibit No 12 (Interrogatory Response No. 1 and Appendices 2-4).²¹ These letters were never a reliable indication of shipper interest More than four years later, they are even less so. Neither of the 2003 letters from the road supervisors of Mineral County and Hinsdale County stated any particular number of carloads that they would receive from GMCO In fact, Mineral County uses less than one tank car of magnesium chloride per year Dooley Decl. ¶ 8

Since 2003, Hinsdale County has switched contractors and does not use GMCO for its dust suppression needs. Instead, Hinsdale County uses Enviro Tech Services of Glenwood Springs, Colorado The magnesium chloride is shipped by rail from Utah to Glenwood Springs, where it is transferred to Enviro Tech Services trucks. Enviro Tech then delivers it to Hinsdale County and applies the mag chloride to the road surfaces. Dooley Decl. ¶ 9. It would not make any sense to route these cars over the Foundation's track (even if it were rehabilitated), because Hinsdale County, Glenwood Springs, and the source of the magnesium chloride are west of the Continental Divide and Creede is east of the Divide.

At most then, the Foundation is projecting a potential of one tank car per year for Mineral County from this supposed shipper.

²¹ The letter from the Hinsdale County Road Supervisors is the same June 25, 2003 letter The letters from GMCO and the Mineral County Road Supervisor are identical to their letters submitted in Docket No AB-33 (Sub-No. 132X), except they are dated earlier in 2003

The other supposed, potential shipper, actually recipient, is new. The Foundation identified the new shipper as "Cedar Log Producer," which would ship logs from Tennessee to a "Tenco" in Creede. The Foundation does not have the identity of the "Cedar Log Producer" at this time, according to a supplement to its discovery response.²² According to the Foundation's discovery response, the Foundation is projecting "1-3 [carloads] annually initially" from this unidentified "Cedar Log Producer" to Tenco. Exhibit No. 12 (Response to Interrogatory No. 1). The only evidence of this shipper interest provided by the Foundation was an exchange of e-mails in late May and June 2007 between Mr. Shank and Steve Baxter. Exhibit No. 12 (Appendix No. 5). Steve Baxter is a resident of Creede. Mr. Baxter has incorporated a new business, Tenco Red Cedar Products, which would finish cedar logs for use in home construction. The Foundation's reference to "Cedar Log Producer" is apparently a generic reference to some, as yet unspecified, supplier in Tennessee from which Mr. Baxter would purchase such logs. However, according to Mr. Baxter, "Tenco is in the formative stages and will not require transportation services, truck or rail, for some time to come." Exhibit No. 23 (Letter of Steve Baxter). The e-mail exchange between him and Mr. Shank simply shows that Mr. Shank was trying to get in touch with Mr. Baxter. There is no indication in these e-mails that Mr. Baxter committed to anything. Furthermore, if and when Mr. Baxter does establish his new business, there are already adequate transportation alternatives to having track in the City. So, needless to say, "Cedar Log Producer" is highly speculative, not to mention de minimis.

²² E-mail from T. McFarland, Counsel for Foundation, to R. Johnson, Counsel for City, dated December 14, 1007.

In the more than seven years since the Foundation purchased the Branch, GMCO and Mr. Baxter are the only supposed shippers that the Foundation has ever identified. In an interrogatory response, the Foundation stated that “[t]here are no shippers in addition to the shippers identified in the response to Interrogatory No. 1 that have made commitments to utilize the Foundation for rail freight service.” Exhibit No. 12 (Response to Interrogatory No. 2) But, the Foundation had failed to produce any evidence that either of the two shippers identified in the response to Interrogatory No. 1, GMCO or Mr. Baxter, ever made firm commitments to use the Foundation. The Foundation admits that it “does not currently hold any formal written contracts.” Exhibit No. 12 (Response to Interrogatory No. 3) Mr. Baxter does not yet have a business that would need transportation services. Moreover, even added together, the carloads projected to be shipped by GMCO and received by Mr. Baxter amount to a de minimis amount of freight, less than four carloads a year, at most. In Roaring Fork Railroad Holding Authority - Abandonment Exemption-- In Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X, 1998 STB LEXIS 299, the Board found that a projection of 300 to 400 cars, more than 100 times greater than that now suggested by the Foundation, was insufficient traffic volume to preclude abandonment and support a need to restore freight service on an another out-of-service line in Colorado. The Board there found that projected shipments by this same supposed shipper cited by the Foundation, GMCO, to be “minimal.” 1999 STB LEXIS 299 at *9-10.

Mr. Shank admits in his interrogatory responses that the Foundation has really done very little to solicit freight traffic in Creede or on the Branch since he acquired the Branch, as shown by the following interrogatory response

4 *Please describe all efforts by the Foundation since January 1, 2004 to identify shippers who will use the Foundation's rail line (commonly known as the "Creede Branch") for rail freight service.*

Response

The Foundation has not yet conducted an exhaustive search for shippers; instead the Foundation's efforts have focused on rehabilitation of the Creede Branch and limited revenue generation by means of passenger excursions. However, the Foundation has maintained communication with the shippers and receivers identified in response to Interrogatory No. 1, and have kept them informed of the status of track rehabilitation and the difficulties from the City's extensive legal maneuverings.

Exhibit No. 12 (Response to Interrogatory No. 4). In other words, the Foundation's efforts consist of the solicitation of letters from GCMCO and the Road Supervisors of Mineral County and Hinsdale County in 2003 and the 2007 e-mails with Steve Baxter. These letters and e-mails are the complete documentation of the Foundation's efforts to find shippers. Incidentally, the reference to "passenger excursions" in the Foundation's interrogatory response is not to any passenger train operations on the Creede Branch. The Foundation joined with the SLRG to offer a tourist train that operates between Alamosa and Walsenburg over La Veta Pass on the SLRG. Exhibit No. 4. The Foundation has also allowed speeder enthusiasts to run their motor cars over the Creede Branch. But there have been no train operations of any kind on the Branch.

The Foundation explained its lack of effort to find shippers as follows: "while track rehabilitation work is under way, the Foundation has not made a concerted effort to secure commitments from numerous shippers for rail freight traffic." Exhibit No. 12 (Response to Interrogatory No. 1). It makes no sense to acquire a line to restore freight service but not look for freight customers until after the rehabilitation is done. What kind of business makes investments in facilities without knowing whether it will have any or

enough customers? The reason the Foundation is lackadaisical about a lack of shippers is because all along it acquired the Creede Branch to establish a tourist train.

2. Abandonment Will Not Affect The Foundation's
Ability To Restore Freight Service On The Branch

Abandonment will not adversely affect the Foundation's ability to restore freight service on the Branch or to Creede, because (1) even if there were a potential for freight service, which there is not, the Foundation does not need any track in the City to provide freight service, and (2) there is no possibility ever to restore freight service

a The Foundation Does Not Need Track
In The City To Provide Rail Freight Service

In STB Finance Docket No. 34376, Mr. Shank stated that there is a four-track yard in Creede and that "[a]ll four of those tracks and depot in the Creede railroad yard are necessary for the safe and efficient operation of freight and passenger trains." Exhibit No. 21 at 247. According to Mr. Shank, the yard will be used "for spotting empty freight cars, delivering loaded freight cars, loading and unloading of freight shipments. . ." Id.

First, there is not a four-track yard in Creede. The tracks in Creede are as described in the map in Exhibit No. 3. And, as explained, there are no businesses in Creede at which freight cars will be spotted or loaded and unloaded. There are no current or potential shippers in Creede that require a rail yard, a rail siding or rail service.

As also explained, the Foundation does not own the train depot or the land upon which it is located. The depot is owned by Mineral County and was renovated and is operated and maintained by the Creede Historical Society.

Even if the Foundation could show that there is a potential to restore rail freight service on the Creede Branch, it would still not need to have a yard or any tracks in the

city limits. As explained, after the D&RGW ceased operating trains into Creede, the few freight trains that infrequently operated over the Branch only came as far as Wason. There is a runaround track and wye there, where freight was transloaded from trucks into rail cars. Exhibit No. 25 contains two photographs taken at Wason in 1977.²³ The upper photograph shows a dump truck unloading material into a gondola. The lower photograph shows the track layout at Wason. The only rail service ever even hypothesized by the Foundation is freight that would have to be transloaded to or from trucks, magnesium chloride and cedar logs. Thus, even assuming for the sake of argument that the Foundation could identify rail freight business to the Creede area, it could be transloaded at Wason just as rail freight business was handled there in the final decade on the Branch.

b. There Is No Potential To Reestablish Rail Freight Service

While the City does not need to show that the Foundation cannot reestablish freight service on the Branch in order to show that the public convenience and necessity permit abandonment of track in the City, the reason why the Foundation has been unable to come up with any freight shippers in seven years is simple.²⁴ More than 90 percent of the land in Mineral County is owned by the federal or state government and is Forest Service land. As the U.S. Forest Service Map included as Exhibit No. 26 shows, there are no communities on the Branch between South Fork and Creede. The economy of Mineral County, including Creede, shifted many years ago from mining to services, retail

²³ These pictures are from "Creede," by C. W. Hauck 231, published in Colorado Rail Annual No. 14 (1979).

²⁴ The Board's Section of Environmental Analysis concluded in its 1999 Environmental Assessment in Docket No. AB-33 (Sub-No. 132X) that "it is doubtful that there will be future traffic sufficient to justify the cost necessary to sustain rail operations." Assessment at 1

trade, and construction, all related to seasonal tourism. More information about Creede can be found on the web site of the Creede and Mineral County Chamber of Commerce, www.creede.com. There are simply no businesses in Creede that need or are seeking the restoration of rail freight service.

3. The Public Convenience and Necessity Does Not Require Speeder Excursions

The only recent use to which the Branch has been put since its acquisition by the Foundation is to allow motorcars, also known as "speeders" or "putt-putts," to run over its tracks. Speeders are small gasoline-powered, steel wheeled vehicles, which railroads used to transport maintenance of way employees and supplies over the track. They have been replaced by hi-rail vehicles and other hi-tech inspection vehicles. As a hobby, people acquire speeders that have been discarded by railroads, restore them, and operate them over abandoned or little used track. They can be driven to a location on a trailer pulled by a car or pick-up truck. There are clubs formed to enjoy this hobby.²⁵ Photos of typical speeders, including a group on the Creede Branch in 2006, are in Exhibit No. 27. Over the last couple of years, the Branch has been repaired enough to allow speeder enthusiasts to operate their motorcars over the Branch. In return, the people with the speeders pay a fee to the Foundation and/or sometimes volunteer their labor to work on the Branch. In effect, the Foundation operates a course for speeders.

For example, according to the web site of the Rocky Mountain Division of the North American Railcar Operators Association, it operated a speeder excursion on the Creede Branch on May 26-28, 2007. The May 26-28 event was described as a "Work Party." Exhibit No. 28 at 270. A second group came up the Branch to Creede for July 4,

²⁵ More information about speeders can be obtained at www.naroa.org.

2007. An article from the Mineral County Miner describing this tour is attached as Exhibit No. 28 at 268

Speeders are able to operate on the Branch, because they only weigh between 600 to 4500 pounds. When they have come to one of the paved over highway crossings, the people simply dismount and push the speeder across the highway. The picture in Exhibit No. 6 (Photo No. 10a) shows grooves in Colorado 149 where speeders have crossed the highway. In contrast, a locomotive or modern freight car, loaded, will weigh several hundred tons. There is no indication that the Foundation has restored the track and bridges on the Branch to a level capable of carrying modern locomotives or freight cars.

The speeder business is the only use of the Branch that Mr. Shank is actively pursuing as a means to generate some revenue from the Branch (besides his rent collection efforts). When CDOI opened the crossing of Highway 149 in town on October 11, 2007, Mr. Shank was quoted as follows in the Mineral County Miner, the local weekly paper:

Mr. Shank said, "This is only the beginning. The next streets crossing will be Loma Street. Already several clubs of motorcars have signed for trips next year, and I'm sure more will notify us that they too, will want to make the trip from South Fork to Creede next year." Mr. Shank has much more work to do but he has the men and equipment to get this finished for Tour Year 2008.

Exhibit No. 28 at 267.²⁶ Mr. Shank explained in his November 11, 2007 letter to the City Attorney that the reason that the Foundation tore up the crossings at Loma Street and other city streets and uncovered track in the city was to enable speeders to come all the way into town up to the Creede Depot, stating as follows:

²⁶ The stop light referenced in the article was actually a temporary warning light for motorists set up while construction of the crossing was undertaken. There still is no traffic signal in Creede or, indeed, in Mineral County.

The opportunity to provide sanctioned "speeder" excursions is a function of numerous railroads throughout North America. This is a fund-raising opportunity embraced by the Foundation and will continue. Several chapters of the North American Railcar Operators Association (NACOA) have already re-booked excursions to ride our rails into Creede. Due to our recent efforts, they will thankfully have the opportunity to arrive at the historic depot and then disperse to enjoy the many fine restaurants and shops in downtown Creede. This was extremely difficult this past season as we were forced to walk to town from the ball field at the bottom of Creede. For many, it was just too far and difficult in the rarified air at 8,850 feet. It was also a huge waste of valuable time. This was the only complaint on what everyone perceived as a marvelous railroad in a perfect setting.

Exhibit No. 22 So, the Foundation tore up city streets and property, expects the City to pay for new crossings, and caused the State of Colorado to spend about \$10,000 to construct a new crossing of Highway 149 in town, not because rail freight operations are imminent, but so speeder enthusiasts can run their "putt-putts" into the middle of town a couple of times a year and so Mr. Shank's speeder excursion customers do not have to walk a few blocks from the ball field to the downtown area.

The operation of speeders is probably great fun, but this is not the kind of transportation required by the present or future public convenience and necessity, which would preclude abandonment of the track in the City.

4. The Public Convenience and Necessity Does Not Require Another Intrastate Tourist Passenger Operation

Nor can the Foundation rely on Mr. Shank's hopes one day to establish an intrastate tourist train to defeat the City's Application. The public convenience and necessity also do not require a new tourist railroad in south Central Colorado.

In denying challenges to whether the Foundation was financially responsible for purposes of its OFA, the Board stated that "in determining whether there are sufficient traffic prospects to sustain freight operations, the Board considers 'all potential income

resulting from operation of the rail line.”” June 2004 Decision at 8. The Board there noted that the Foundation planned to “subsidize any available freight traffic by running a tourist passenger excursion service on the line.” However, as the City has shown in this Application, the Foundation has been unable to re-establish any freight service on the Creede Branch and cannot show any need for track in Creede. The Foundation cannot meet that deficiency by arguing that it needs track in the City for its passenger operations. Setting aside for the moment the fact that the Foundation does not have any rail passenger operations to subsidize its non-existent freight operations, the public convenience and necessity analysis is based on the avoidance of premature abandonment of freight service, not the establishment of intrastate tourist trains. The Board and the ICC have repeatedly held that they do not have jurisdiction over intrastate tourist passenger operations, even when the track over which they operate is connected to the interstate rail network. For example, the Board stated as follows in Fun Trains, Inc.—Operation Exemption—Lines of CSX Transportation, Inc. and Florida Dept. of Transportation, STB Finance Docket No. 33472, 1998 S1B LEXIS 75, *5:

As noted, our predecessor, the Interstate Commerce Commission (ICC), determined that it did not have jurisdiction over wholly intrastate rail passenger service where that service was not part of the interstate rail passenger network. There is no indication here that Fun Train’s operations will be sufficiently linked to or will be part of interstate commerce.

The ICC declined jurisdiction over an intrastate tourist train in Napa Valley Wine Train, Inc., Petition for Declaratory Order, Finance Docket No. 31156, 1991 ICC LEXIS 195. Like the Foundation, the Napa Valley Wine Train purchased a branch that was to be abandoned. The ICC found that the minimal freight operations occasionally conducted by the Wine Train did not turn it into an interstate rail carrier. Id. at * 27-28. See also,

c.g., Cuyahoga Falls & Hudson Ry Co v Village of Silver Lake, 2005 U.S App. LEXIS 2285 (6th Cir.): Magner-O'Hara Ry. V. ICC, 692 F 2d 441 (6th Cir 1982).

The Foundation's planned tourist train operations would not involve the interstate movement of passengers by rail. Tourists would arrive by automobile at South Fork or Creede and ride the train to the other end of the Branch. The entire Branch is in the State of Colorado. Almost all of it is in one county, Mineral County. The nearest location served by Amtrak is Glenwood Springs, Colorado, which is about 261 miles north and west from Creede, or Trinidad, Colorado, which is about 178 miles east from Creede.

5. The City Is Not The Reason That The Foundation
Has Not Re-Established Train Operations

The Foundation, actually Mr. Shank, because the Foundation and Mr. Shank are synonymous, likes to blame the City for the Foundation's lack of progress. The Foundation used this excuse again in its interrogatory responses in this proceeding, referring to "the difficulties resulting from the City's extensive legal maneuverings" and blaming its failures on the City throwing up "roadblocks." Exhibit No. 12 (Interrogatory Response Nos. 5 and 6). The Foundation's real "roadblocks" are that it bought a branch that had been out of service for more than 20 years, there are no freight shippers, the Foundation lacks a viable business plan, and, at least so far, the Foundation has never had the financial resources to rehabilitate the Branch and restore train operations.

As a 501(c)(3) charitable organization, the Foundation is required by law to file annually a tax return with the Internal Revenue Service ("IRS"), called a Form 990. One purpose of the Form 990 is to provide some transparency and accountability for how organizations that hold themselves out as non-profit charitable organizations raise and use their revenues. By law, the Form 990s are publicly available and, upon request, a

charitable organization must provide a copy or make it available for inspection within 30 days.

The City has been able to examine the Foundation's Form 990s for 1999 to an incomplete one filed for 2003. Copies of these Form 990s are in Exhibit No. 29. They show that the Foundation has never had a sound financial footing. The story they tell is that the Foundation was initially able to raise about \$400,000, most of which, \$250,000, came from a one-time, anonymous Japanese donor. Most of the funds raised, \$350,000, were paid to the UP as part of the purchase price of \$624,616 in 2000. The UP took back a note for the rest, \$274,616. If UP had not agreed to take a note for the remainder of the purchase price, the Foundation probably never could have closed the deal. The Form 990s seem to indicate that the Foundation did not pay anything on the note during the period through the end of 2003. It is not clear whether the Foundation has ever paid the remainder of the purchase price.

The Foundation was not able to raise any significant revenues in any year after 1999. According to the Form 990s, the Foundation raised \$10,452, \$4942, \$23,830, and \$59,701. in, respectively, 2000, 2001, 2002, and 2003. These are not especially significant amounts given what needs to be done to rehabilitate the Branch and start train operations from scratch (as explained *infra*, the Foundation claimed in 2002 that it needed \$10 million in grants to rehabilitate the Branch). Moreover, its expenditures were greater than its revenues in all of those years, except 2003, when it netted \$7190. However, this amount was more than offset by net losses totaling \$56,846 for the three prior years. The Form 990s also show that from 1999 to 2003, the Foundation has been in financial decline. A comparison of Line 21 on each form, "Net assets or fund balances

at end of year," shows that the Foundation's net assets have steadily declined from \$441,449 in 1999 to \$214,871 by 2003

The Form 990s also show that the Foundation has never had dependable sources of revenue. Some years, there were contributions and none in others. In some years there were membership dues, most years not. The lack of any steady source of revenues suggests a lack of public or private support for the Foundation. Lacking private support, the Foundation applied in 2002 to CDOT for federal and state grants totaling \$ 10 million to rehabilitate the track and bridges on the Branch and build support facilities. Exhibit No. 30. The Foundation withdrew its applications after CDOT asked for evidence of a sponsor who was a governmental entity and evidence of the Foundation's creditworthiness. Exhibit No. 30 at 340

The Form 990s seem to indicate that the Foundation has invested relatively little of what funds it has raised in rehabilitation. The Forms do not show any expenditure for materials or labor for rehabilitation efforts. It appears that the Foundation has relied heavily on volunteers to accomplish much of the unskilled work that has been done to date, such as clearing trees, brush, and rocks from the track and replacing ties

Although the Foundation holds itself out on its letterhead as "A Colorado Not-For-Profit Corporation" and having "Colorado Charitable Registration # : 20023005766," according to the Licensing Division of the Office of the Colorado Secretary of State, the Foundation's ability to solicit contributions was suspended, because the Foundation has failed to comply with registration and reporting requirements under the Colorado Charitable Solicitations Act, Colo. Rev. Stat. § 6-16-104. Colorado law requires that charitable organizations desiring to solicit contributions in Colorado, or have others

solicit on their behalf, must maintain a current annual registration and file annual financial reports with the Secretary of State. After the Foundation was sent three delinquent notices, the Foundation's registration was finally suspended as of February 4, 2004, because of its failure to file renewal registrations or financial reports since 2002. Exhibit No. 31.²⁷

The City has been requesting since before March 2007 that the Foundation provide its Form 990s for 2003 (the prior furnished one was incomplete) through 2006 in order to have a more current picture of the Foundation for use in this adverse abandonment proceeding. The Foundation ignored the City's requests until the City informed the foundation in a letter dated August 1, 2007 that the City would notify the IRS if the Foundation's refusal continued. Exhibit No. 32 at 347. By letter dated August 28, 2007, Mr. Shank advised that he had only just discovered that "[s]ometime within the past few months" (while the Foundation was ignoring the City's prior requests) the accountant he had been using had gone missing along with the only copies of all of the tax records for the Foundation and his personal financial records. Exhibit No. 32 at 348. Mr. Shank promised that "you'll have all the 990s within sixty days " The service that tracks tax filings by charitable contributions from the IRS's Exempt Organizations Master List shows 2003 as the last year for which the Foundation filed a Form 990. Exhibit No. 33. The City subsequently asked Mr. Shank, by letter dated September 5, 2007, whether it was possible that the Foundation had not filed Form 990s since 2003

²⁷ The Foundation's status and failure to file reports is available on-line at the Colorado Secretary of State website, www.sos.state.co.us. Organizations that do not raise more than \$25,000 per year are not required to file a registration statement. If this is the reason that the Foundation has not been complying with the Colorado law, that is another indication that the Foundation is not raising any significant contributions.

He has never responded. Nor has he provided the Form 990s as promised in his August 28 letter.

Even though the Foundation not provided the Form 990s, the lack of progress on rehabilitation and restoring train operations would indicate that the Foundation is still short of revenues. The Foundation's renewed efforts to collect rents from Creede residents and businesses are another indication that the Foundation is having trouble finding sources of revenues.

It is these fundamental problems, not the City, which have prevented Mr. Shank from realizing his plans.

C The City Has Compelling Interests

Creede has demonstrated compelling interests in adverse abandonment. It owns the land underlying the right of way within the city limits, wants to continue the public uses to which the land in the right of way have been put, desires to utilize this land for improvements or development that benefit the City and its residents, and needs to exercise its planning, permitting and zoning authority over this land.

Most of Creede is in land platted as Sections 25 and 36. As has been explained, the Foundation and prior railroads have never owned the land underlying the rights of way in the City. The State of Colorado, through the Colorado State Land Board, owned the land in Section 36. The State Land Board granted the former D&RGW a right of way in Section 36 in 1892. The Land Board subsequently deeded this land to the City in 1965, although this transfer of ownership was subject to the right of way grant. A copy of this deed is Exhibit No. 34. The Land Board cancelled the 1892 grant and replaced it with Right of Way No. 1757 dated October 24, 1969, which is Exhibit No. 35. When the

Foundation acquired the Creede Branch, it succeeded to the UP's rights under this right-of-way agreement

The land in Section 25 was deeded to the City by the federal government by a patent deed dated January 1, 1901. A copy of the patent is attached as Exhibit No 36 "[W]hen a patent issues in accordance with governing statutes, all title and control of the land passes from the United States." Swendig v. Washington Water Power Co., 265 U.S. 322, 331 (1924). This ownership was subject, however, to a pre-existing right-of-way obtained by a predecessor of the D&RGW on January 1, 1892 pursuant to the Federal Right of Way Act of March 3, 1875

The nature of the railroad's interest pursuant to the right of way grants is an easement both under federal and Colorado law. See, e.g., Great Northern Ry. Co. v. U.S., 315 U.S. 262, 279 (1942) (right-of-way obtained pursuant to Federal Right of Way Act of 1875 "is but an easement"). Bijou Irrigation Dist. v. Empire Club, 804 P 2d 175, 182 (Colo. 1991) (right of way grant was an easement, following reasoning of Great Northern Ry.); Hutson v. Agricultural Ditch & Reservoir Co., 723 P 2d 736, 739 (Colo. 1986) ("Colorado cases holding that the term 'right of way' is generally construed to describe an easement")

The State Right-of-Way Agreement terminated by its terms about 25 years ago. Section 16 of the Agreement provides that it is effective only as long as the land is used for railroad operations. Section 16 states as follows

The right-of-way herein granted shall continue for as long as the facilities described above are in place and maintained by the second party [i.e., the railroad], provided that should said facilities be abandoned or discontinued for a period of twelve (12) consecutive months, this right-of-way and all rights of the second party hereunder shall automatically and without notice terminate at the end of such twelve (12) month period.

There is no question that railroad operations on the track subject to the State Right-of-Way Agreement have been discontinued for twelve or more consecutive months. The only factor that has stopped the operation of Section 16 is that the Creede Branch, including the track in the city, is still clothed with the imprimatur of Board jurisdiction, because there has not been a formal abandonment for purposes of 49 U.S.C. § 10903. Upon grant of adverse abandonment, by operation of Section 16, the Foundation's casement will terminate

Similarly, upon grant of adverse abandonment, the City will have full right of control of its land that is subject to the federal right of way grant. By operation of federal statute, when a rail carrier ceases operation over a federally granted right-of-way by "forfeiture or by abandonment . . .", that grant is extinguished. Sec 43 U.S.C § 912. See also, e.g., Marshall v. Chicago & N.W.T. Co., 826 F. Supp. 1310 (D. Wyo. 1992) (by operation of § 912, land reverted to patentee from U.S. after carrier abandoned rail line).²⁸ The Board has held that the abandonment pursuant to 49 U.S.C. § 10903 is necessary to satisfy Section 912.

D. Abandonment Will Not Affect The Public Interest

The Board has described the public interest as avoidance of unnecessary discontinuance of service. See, e.g., Modern Handicraft, 1981 ICC LEXIS 37 at * 7-8. The track in the City was the subject of a *de facto* abandonment many years ago. Thus,

²⁸ Section 912 was amended by the National Trail System Act Amendments of 1983, 16 U.S.C. § 1248(c), which provides that, upon abandonment of a rail line on a federally granted right of way, "any and all right, title, interest, and estate of the United States in all rights of way of the type described in the Act of March 8, 1922 . . . shall remain in the United States upon abandonment or forfeiture of such rights-of-way . . ." Section 1248(c) is not operative in this case, because the United States deeded all of its interest to the City in the patent of 1901

there is no issue here about preserving rail service or preventing the premature discontinuance of rail service. The Foundation, so it claims, is seeking to re-establish freight service where there has been none for more than 30 years. But, there are no shippers desiring rail service in Creede and there are already ample transportation alternatives.

IV. A BALANCING OF INTERESTS REQUIRES GRANTING THE CITY'S APPLICATION

A balancing of interests clearly permits abandonment of the track in the city limits. Actually, in this case, there is nothing to balance.

There are no shipper interests to be protected, because there are no shippers. Even if some were to materialize one day, there are adequate transportation alternatives, including, as explained above, state and federal highways, the SLRG, and the possibility of transloading facilities at Wason, should the Foundation ever actually complete rehabilitation of the Creede Branch

The "carrier," the Foundation, does not have any cognizable interests under 49 U.S.C. § 10903 to be considered. The interests of the Foundation are not always clear and constantly shift. Mr. Shank originally formed the Foundation as a non-profit charitable organization to establish a railroad museum. Then, his objective changed to establish a tourist railroad on the Creede Branch. Then, to comply with the OFA requirements, the Foundation stated that it would provide both tourist and, if any presented themselves, freight operations. Seven years later, the Foundation does not have any railroad operations, freight or passenger, on the Creede Branch. In the meantime, Mr. Shank has tried to use the Foundation as a real estate company of sorts, by attempting to collect rents for buildings that allegedly encroach on the Foundation's railroad rights of

way. More recently, the Foundation has collaborated in some fashion with the SLRG to offer a seasonal tourist train that operates over the track of the SLRG between Alamosa and Walsenburg, Colorado and between Alamosa and Antonito, Colorado. This tourist train is operated under the name "Rio Grande Scenic Railroad." Exhibit No. 24. The only "operations" that have been conducted on the Creede Branch, however, are the occasional speeder excursion. The Foundation's interest in establishing an intrastate tourist train and in providing a track for "speeders" cannot be given any weight, because they are not "transportation" within the Board's jurisdiction and are not required by the public convenience and necessity.

By contrast, the City has demonstrated that it has substantial interests in removing Board jurisdiction from the track in the City. The circumstances presented by the City's Application are similar to those in Modern Handicraft and Chelsea II, where adverse abandonment was granted.

In Modern Handicraft, an adjacent landowner sought adverse abandonment of a segment of a line that had been out of service for 12 years. Like part of the right of way in Creede, the right of way there was being used for other purposes, including a parking lot. Subsequently, a regional transportation authority filed for adverse abandonment of the entire eight-mile line so it could condemn the land for use as part of a mass transit system. The carrier opposed abandonment only to leverage the price for acquiring the right of way, not because it hoped to restore freight service. In these circumstances, the ICC found that adverse abandonment as permitted by the public convenience and necessity. The ICC explained as follows:

The function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against

the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Where as here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a State condemnation proceeding.

We find that the rail service which Freight Operations is authorized to perform is not required and that the elimination of this line will not burden interstate commerce and will benefit the public

1981 ICC LEXIS 37 at * 7-8.

In Chelsea II, developers sought adverse abandonment of about 1.45 miles of Conrail track that had been out of service for about 17 years. The developers and local government wanted to use eminent domain to use the property for local development, but were prevented from doing so by the ICC's jurisdiction. Conrail opposed the adverse abandonment, asserting that it planned to use the line in connection with a future business of handling waste. The ICC found that "this agency need not blindly accept Conrail's assertions" regarding future business prospects. 8 I.C.C. 2d at 781. The ICC found that Conrail's traffic prospects were speculative and its business plan impractical. The ICC approved the adverse abandonment, concluding that "[t]he line's abandonment and the viaduct's demolition would eliminate an obstacle to local development and appears to be consistent with the public interest." Id. at 783.

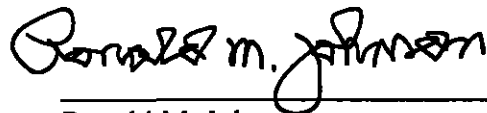
Likewise, here, the Board's jurisdiction over the track in the city is an obstacle to the City's ability to develop and exercise its ownership rights and regulatory authority over public land in the middle of town. Given the Foundation's failure in seven years to show any significant shipper interest, the Board should not "blindly" accept the Foundation's assertions. The City should not be held hostage to the Foundation's plan for a tourist train, or even to restore freight service, a plan that is wholly impractical, as

events, or non-events, have shown. There is simply no Federal interest at stake here that precludes the grant of adverse abandonment

V CONCLUSION

For the reasons stated in this Application, the Board should grant the City's Application for adverse abandonment of the track in the city limits.

Respectfully submitted,

A handwritten signature in black ink, reading "Ronald M. Johnson". The signature is written in a cursive style with a horizontal line underneath it.

Ronald M. Johnson
Heidi L. 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

December 17, 2007

VERIFICATION OF CLYDE DOOLEY

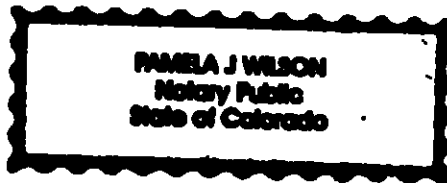
I, Clyde Dooley, being duly sworn states as follows:

I am City Manager of the City of Creede, Colorado, which is the applicant herein; I have been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application for adverse abandonment in STB Docket No. AB-1014; that I have carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that I have knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of my knowledge, information, and belief.

Clyde Dooley
Clyde Dooley

Clyde Dooley subscribed and affirmed before me in the County of Mineral,
State of Colorado, this 13th day of December 2007

Notary Public



My Commission expires: 06/06/2011

Pamela J. Wilson
Notary Public Pamela J. Wilson

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1014

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

AFFIDAVIT OF RONALD M. JOHNSON

I, Ronald M. Johnson, being duly sworn and subject to the penalty of perjury, hereby depose and state:

1. I am over the age of eighteen (18) and am otherwise competent to make this Affidavit. I am not under the influence of any medications that may affect my testimony, and know of no reason why I would not otherwise be able to truthfully swear to the facts in this Affidavit.

2. I am an attorney for the applicant City of Creede, Colorado in the above-captioned matter, and I submit this affidavit in support of the City's Application for Adverse Abandonment. I have personal knowledge of the matters described herein.

3. Pursuant to 49 C.F.R. § 1152.24 (b), I attest to compliance by the applicant City of Creede with the notice requirements of Section 1152.20.

4. The Notice of Intent was published four consecutive weeks prior to the filing of the City's Application, in the Mineral County Miner, a weekly paper, beginning November 15, 2007, and in the Valley Courier, a daily paper, beginning November 10, 2007 through December 13, 2007.

5. The Notice of Intent was sent by UPS overnight on November 16, 2007 to the following governmental officials and agencies:

Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

U.S. Department of Agriculture, Chief of the Forest Service
Chief, Gail Kimbell
1400 Independence Avenue, SW
Washington, D.C. 20250-0003

Joseph A. Boardman
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Bill Ritter, Governor
Office of the Governor of Colorado
136 State Capitol
Denver CO 80203-1792

Mary A. Bomar
U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, D.C. 20240

Colorado State University Extension
1899 E. Highway 160
P.O. Box 30
Monte Vista CO 81144

Assistant Secretary of Defense for Public Affairs
The Department of Defense
Office of Public Communication
1400 Defense Pentagon
Washington, D.C. 20310-1400

6. The Notice of Intent was also served on the Denver & Rio Grande Railway Historical Foundation on November 16, 2007.

7. The Notice of Intent was filed with the Board on November 16, 2007.

8. The Board waived the requirement to post the Notice of Intent.

Ronald M. Johnson
Ronald M. Johnson

Sworn to and subscribed before me

this the 14 day of Dec 2007.

[Signature]
Notary Public

My Commission expires: 01/01/11

Angela A. Staton
Notary Public, District of Columbia
My Commission Expires January 1, 2011



**Application of the City of Creede, CO for Adverse Abandonment
Docket No. AB-1014**

EXHIBIT LIST

[Items Shown In Bold Are In Color]

1	Federal Register Notice
2	Map of Creede Branch
3	Map of Track in City
4	Map of Area Railroads
5	Dooley Declaration and Exhibits
6	Pictures of Track in Creede and Surroundings
7	Pictures of Damage to Public Property by Foundation
8	Pictures Showing Track Conditions
9	Pictures of Surplus Intermodal Flatcars
10	Abandonment of Creede Branch (September 16, 1969)
11	IRS Application for Tax Exempt Status
12	Denver & Rio Grand Ry. Historical Foundation's Discovery Responses
13	Sheriff F. Hosselkus' Request for Information (October 23, 2007)
14	Colorado Attorney General Letter to D. Shank (June 21, 2000)
15	D. Shank Rent Letter to Hardware Store (December 13, 2006)
16	Map Showing Where Track Was Removed
17	D. Shank Follow-on Rent Letter (January 22, 2007)
18	Foundation Settlement Proposal
19	Foundation's Notice of Intent to File OFA (December 18, 1998)
20	Foundation's OFA (April 2, 1999)

21	D. Shank Statements in Prior STB Proceedings
22	D. Shank Letter re Right of Way in Creede (November 11, 2007)
23	Letter of Steve Baxter
24	Rio Grand Scenic Railroad
25	Wason Pictures 1977
26	US Forest Service Map
27	Pictures of Speeders
28	Rocky Mountain Div. Calendar
29	Form 990s 1999-2003
30	CDOT Grant Request
31	Charitable Organization Suspension
32	City's Requests for Form 990s
33	IRS Master List
34	1965 Deed
35	1969 Right of Way Agreement
36	1901 Deed

Exhibits

Exhibit No. 1
Federal Register Notice

DRAFT FEDERAL REGISTER NOTICE

STB Docket No AB-1014

Notice of Application for Adverse Abandonment

On December 17, 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 1970.

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 1901 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. 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 be filed 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.

In addition, a commenting party or protestant may provide 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.

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).

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.

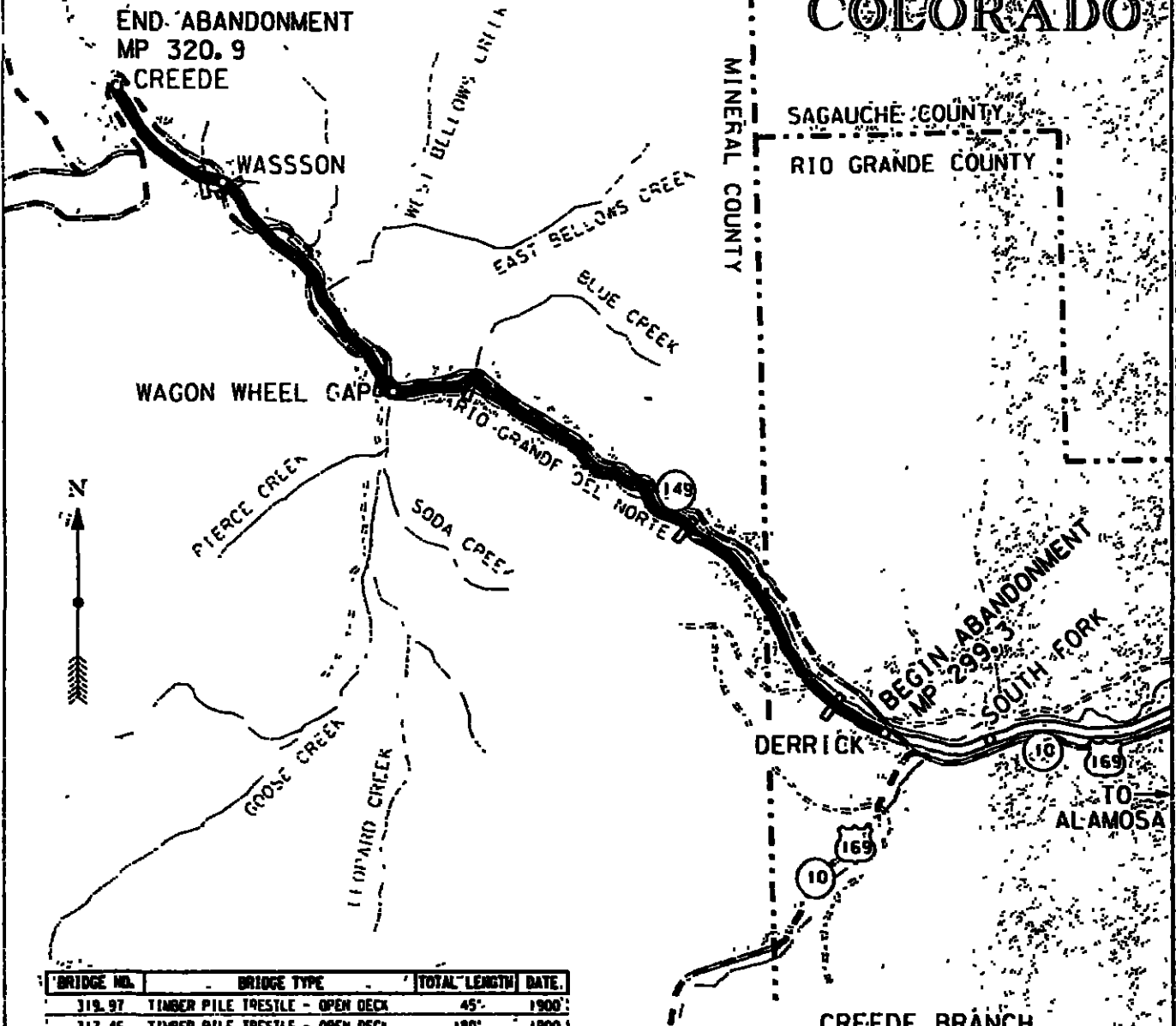
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Exhibit No. 2
Map of Creede Branch

COLORADO

SAGUACHE COUNTY
RIO GRANDE COUNTY

MINERAL COUNTY



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
319.97	TIMBER PILE TREXILE - OPEN DECK	45'	1900
317.46	TIMBER PILE TREXILE - OPEN DECK	180'	1900
312.72	TIMBER PILE TREXILE - OPEN DECK	135'	1900
310.46	TIMBER PILE TREXILE - OPEN DECK	40'	1900
306.39	TIMBER PILE TREXILE - OPEN DECK	75'	1911
301.42	TIMBER PILE TREXILE - OPEN DECK	14'	1900

LEGEND

- UPRR LINES TO BE ABANDONED
- OTHER UPRR LINES
- OTHER RAILROADS
- 50+ YEAR OLD STRUCTURES
- PRINCIPAL HIGHWAYS
- OTHER ROADS

CREEDE BRANCH
MP 299.3 TO MP 320.9
ALAMOSA SUBDIVISION, A TOTAL OF 20.6 MILES
IN MINERAL AND RIO GRANDE COUNTIES,
COLORADO

STATION	MILE POST	AGENCY
CREEDE	220.00	NO
WASSON	319.17	NO
WAGON WHEEL	312.12	NO

UNION PACIFIC RAILROAD CO.
CREEDE BRANCH
INCL. 50+ YEAR OLD STRUCTURES

SCALE 5 MILES

REVISED OCTOBER 1961

Exhibit No. 3
Map of Track in City

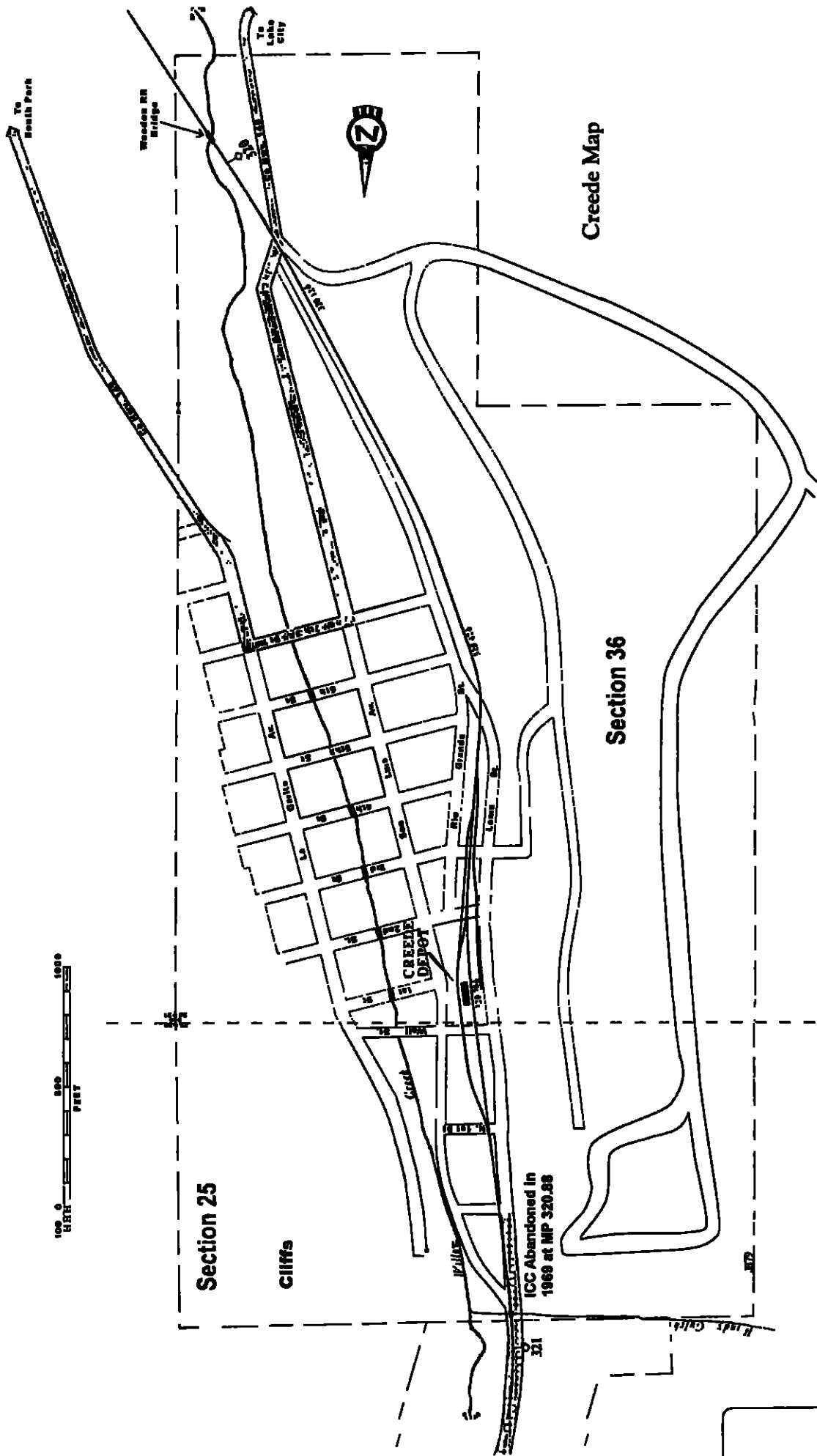


Exhibit No. 4
Map of Area Railroads

✓

South-Central Colorado Railroads

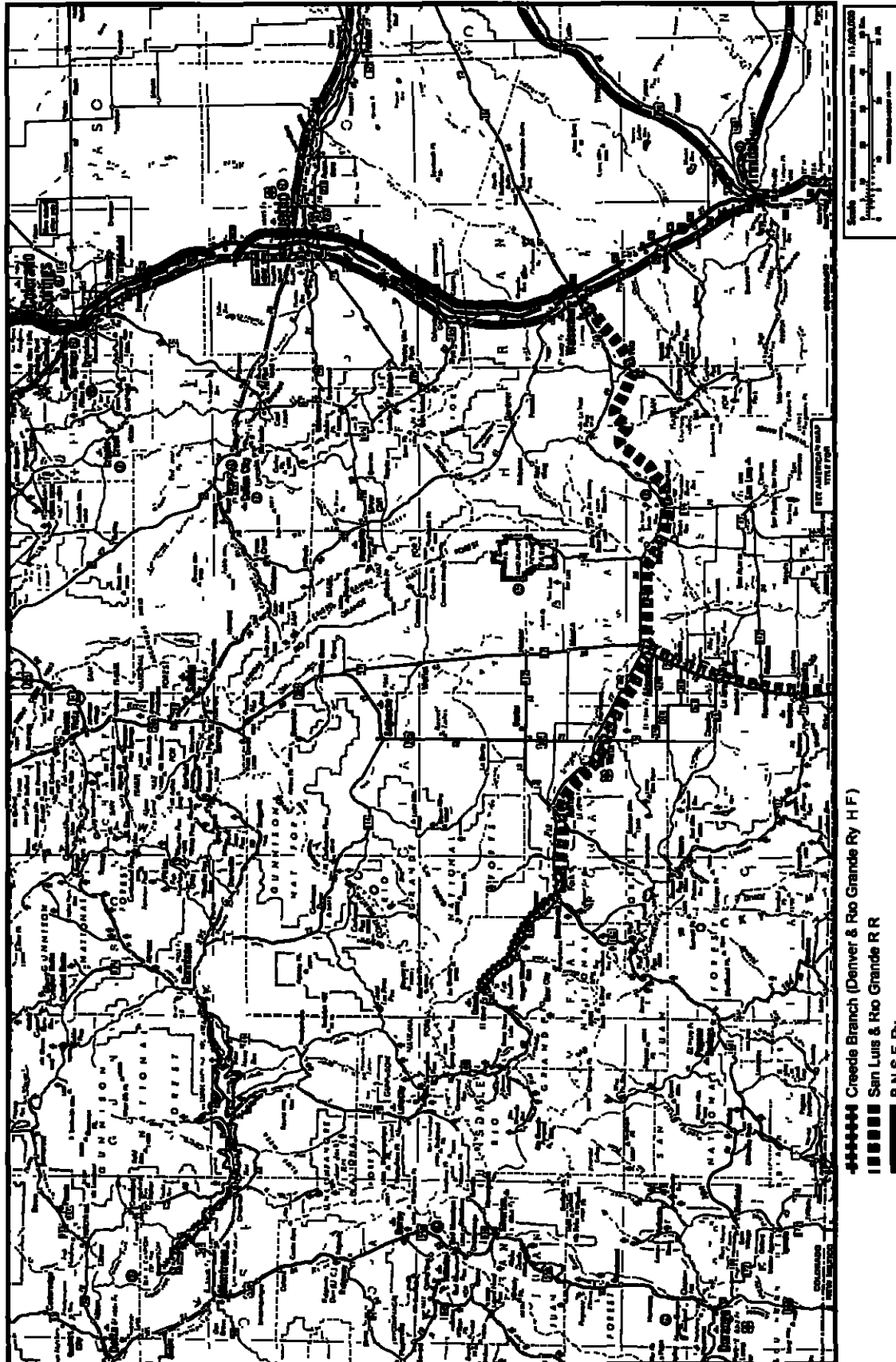


Exhibit No. 5
Dooley Declaration and Exhibits

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1014

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

**APPLICATION OF THE CITY OF CREEDE, COLORADO
FOR ADVERSE ABANDONMENT**

DECLARATION OF CLYDE DOOLEY

I, Clyde Dooley, declare that, based upon my personal knowledge and belief, that the following facts are true.

1. I am City Manager of the City of Creede, Colorado. I have held this position since March of 2003. As City Manager, I am familiar with administration and management of all aspects of the town. I also live in Creede. I previously lived in and went to school in Creede from 1967 to 1969.
2. Creede is a class III town under Colorado statutes. Class III includes the smallest towns in Colorado. The permanent population of Creede is currently about 417. The town's city limits are about one mile by 3/4 mile in area. Creede is the only town in Mineral County. Creede is also the county seat for Mineral County. The permanent population of Mineral County, including the residents of Creede, is about 1,100. The elected officials of Creede are the town council, which is called the Board of Trustees, and the Mayor. As City Manager, I answer to the Mayor and Board of Trustees.
3. Creede was founded in 1890. The town and adjoining areas sprang up after silver was discovered in the mountains around Creede. The town was incorporated in 1892. At that time,

the population of Creede was estimated to be 10,000. With the repeal of the Sherman Act, the demand for silver plummeted. The population likewise sharply declined. By 1900, the population had dropped to 1,173. By 1910, the population was only 741. The last mine closed in 1985.

4. Creede decided that if it were to have a future, and not turn into another ghost town, it needed to reorient itself towards seasonal tourism and outdoor activities. Today seasonal tourism is the main stay of the economy of Creede and Mineral County. The area around Creede already attracted hunters and fishermen. The town also looked for other ways to attract visitors. One such way was the Creede Repertory Theater, which was founded in 1966. It is now considered one of the finest repertory theaters in the nation, and is a very important part of the town's economy. The town also has a historic hotel, a motel, and a variety of rooms and cabins that can be rented. There are several art galleries, gift shops, restaurants, and a combined gas and convenience store. We also have several churches and two taverns. There is a hardware store, a grocery store, and a bank. Many of the town's businesses are oriented towards tourists and seasonal residents and close in the Fall and do not reopen until Spring.

5. Creede also attracts people with summer homes in Creede or in the mountains around Creede. Outside of town there are several dude ranches and RV parks. Creede also attracts people who like to hike, camp, hunt and fish as well as other outdoor activities.

6. The railroad was an important part of Creede's early history. But, as the mining was winding down, so too did the railroad. The former Denver & Rio Grande Western Railroad Company ("D&RGW") sold its train station to Mineral County in 1965. The station has since housed the Creede Historical Society. The D&RGW abandoned about a mile of the northernmost part of its track in Creede in 1969. After 1969, the D&RGW essentially stopped any

service into Creede. At that time, there was only one mining company still active in the area, the Homestake Mining Company. They shipped some ore out by rail. Even then, the railroad did not come into town to handle this business. Ore was taken by truck to Wason, which is a point on the Creede Branch about two miles south of town. The ore would be transferred to railcars at Wason.

7. There are no businesses in Creede that need or want the restoration of rail freight service. There are no warehouses, lumber mills, factories, or any other such businesses in or around Creede that require rail freight service. More than 90 % of the land in Mineral County is owned by the federal or state governments. Most of this government-owned land is forest land and is administered by the U.S. Forest Service. The area is conducive to outdoor activities and tourism, but not to any business that would need rail freight service.

8. The Foundation is contending that Mineral County desires rail service to Creede in order to receive 12-15 rail tank cars of magnesium chloride per year. The City used to obtain magnesium chloride along with the County to apply to road surfaces to control dust. The magnesium chloride is transferred to trucks from railcars at Monte Vista and the trucks then apply it to the road surface. The City and Mineral County do not have equipment to apply the magnesium chloride so a contractor is used to pick it up in Monte Vista (about 51 miles away) and deliver and spread it on the roads. The City does not use this material much any more. The County does still use mag chloride for dust suppressant throughout the summer. I understand that the County only uses one tank car per year and even then only purchases an entire tank car's worth, because that is the minimum order.

9. I understand that the Foundation is also contending that Hinsdale County desires to receive magnesium chloride by rail in Creede based on a 2003 letter from the Hinsdale County

Road & Bridge Supervisor. At that time, Hinsdale County, like Mineral County, obtained its magnesium chloride from GMCO. Since that time, Hinsdale County changed suppliers and now receives its magnesium chloride from Enviro Tech Services in Glenwood Springs, Colorado. I spoke today with Pat Henricksen of Enviro Tech. Enviro Tech receives its magnesium chloride by rail from Utah. Enviro Tech then transfers it to its trucks, which deliver and apply it to the roads of its customers.

10. The land under the railroad in town is actually owned by the City. The D&RGW obtained rights of way from the federal government and State of Colorado around 1892. The federal right of way is in Section 25 of town. The state right of way is in Section 36. The federal government deeded its land in Section 25 to the City in 1901. The Colorado State Land Board sold its land in Creede by a public auction in 1965. The City at that time acquired from the Land Board all of the unplatted land in town, which included the land under the railroad right of way in Section 36. The City's ownership of the land is subject to the railroad rights of way.

11. Because the publicly owned land under the railroad rights of way was no longer needed or used for railroad purposes, the City started to use it for various public uses. A track ran behind the businesses on the west side of Main Street between North First and Wall Streets. This area is a public alley. The City had trouble keeping the alley plowed in the winter because of the track. Snow would accumulate against the back walls of buildings and result in water damage to them. The City and County also desired to have additional public parking west of the County Court House. In the late 1980's, the former D&GRW wanted to sell its train depot at Wagon Wheel Gap, which is a point on the Creede Branch between Creede and South Fork, also in Mineral County. The D&RGW needed the approval of the County for the sale, because after the sale the station would be put to new uses. At that time, there was a consolidated City and County

government administration. In return for the County's approval of the sale of the depot, the former D&RGW gave permission to the City to take up the track behind the west side of Main Street between North First and Wall Streets. A copy of the minutes from the June 8, 1989 meeting of the Board of Trustees, where this arrangement was reported, is attached to my Declaration as Attachment No. 1. The D&RGW also gave its permission for the removal of the track north of North First Street to the then end of the track. The right of way where this track was located has since been used for public parking. A portion of the right of way was also paved over where it is crossed by First Street. The map attached as Exhibit No. 16 to the City's Application shows the location of the track that was removed. The pictures in Exhibit No. 6 to the Application show the alley behind the west side of Main Street where the track was removed. The pictures in Exhibit No. 6 also show the public parking area west of the County Court House and Office Building.

12. The City also covered over with dirt a portion of the right of way between Rio Grande Avenue and Loma Street for use as public parking. In the summer, many tourists and visitors come to Creede and additional public parking is at a premium. This area is the only public parking area in the downtown area. Otherwise, people must park on the street.

13. The town has one park, Basham Park, where a Veteran's Memorial is also located, which is just west of Main Street. A portion of this Park is located on the right of way in Section 36.

14. The town built a small children's playground, which extends onto a portion of the right of way.

15. The town allows a portion of the right of way to be used for an events center. The events center consists of a grandstand and bleachers. The town does not own these fixtures, which are privately owned. The events center hosts the "Days of 92" festival each Fourth of July week.

The festival celebrates the mining heritage of Creede and the entire state. Miners come from across the nation to compete in various contests. Spectators can also participate in some of these contests. Vendors who sell, food, drinks, confections, crafts and souvenirs set up on public land, including on the right of way, adjacent to the events center. The Days of 92 is a big draw for the town. The July 4th attracts the more people to Creede than any other time. As many as 10,000 people may be in town that day.

16. The town has also constructed water and sewer lines under the right of way. City streets cross the railroad rights of way at five locations. North 2nd and Loma. Wall, 2nd, 3rd and where South Rio Grande Avenue and Loma come together near 5th Street. At four of these locations, the street was paved over the track. There are no railroad crossing signs or protection, because there have been no railroad operations in town for more than 30 years. As I explained, the D&RGW ceased any service into Creede after 1910. All rail service on the Creede Branch ceased after 1985, when the last mine closed.

17. The track in the city limits has not been maintained since the D&RGW left town. I see the right of way all the time when I am walking or driving around town. I have also walked the length of the right of way for this proceeding and took pictures in October of this year showing the condition of the track. These pictures are in Exhibit No. 8 to the City's Application for Adverse Abandonment. It is plain to see that the track is in very poor condition. There are gaps in the rail. The ties have rotted. There is no ballast or support left under the tracks. Spikes have pulled loose from the ties. Portions of the track were taken up years ago. For the past couple or decades, much of the track in the City had been completely grown over by vegetation.

18. The City opposed the sale of the Creede Branch, preferring its abandonment, because, as the City learned more about the plans of the Denver & Rio Grande Railway Historical

Foundation ("Foundation") and its founder, Donald H. Shank, for the right of way in town, the town was concerned that these various public uses could be threatened if the Branch were not abandoned as a legal matter.

19. The City also needs to plan for ways in which the publicly owned land in town, of which the land under the right of way is a significant amount, can best be developed for the benefit of the City. There is very little land available in Creede for any kind of public or private development. The town's elevation is about 8900 feet and it is hemmed in on three sides by mountains. The south end of town is in a flood plain and is covered with mine tailings.

20. There are several ways that the land under the right of way can be developed or used that will benefit the City, its residents, businesses and visitors. For example, the town could expand Basham Park or build a second park. The children's playground could be improved. The area used for public parking could be improved by being paved instead of packed dirt. The town could also sell or lease land to businesses so they can expand. The town has only one grocery store, the Kentucky Bell Market. This market would like to expand, but can't because its property is bounded by city streets, Basham Park and the railroad right of way. If the town could make additional land in the right of way available to the Market, it could expand its existing building or construct a new larger building. Another possible use is the sale or lease of land to the Creede Repertory Theater to expand its facilities. The town has a child care center, but it is located about a mile outside of town. Some of the land in the right of way could be used for a new child care center, which would be more convenient for town residents.

21. In the seven years since the Foundation bought the Creede Branch, it has not run any trains. The only vehicles that have run over the Branch are what I understand are called motor cars or speeders. A couple of times a year, a group of people will run their speeders over the

track. When they got to town, they would stop near the City Ball Field, which is at the south end of town. I believe they did not go any further into town, because Colorado Highway 149 in town, was paved over the tracks until fairly recently. In addition, the tracks in town were completely taken over by vegetation or were paved or covered over as I have described.

22. Mr Shank, the President of the Foundation, was very upset that the City decided to go forward with the application for adverse abandonment. The same day he received a copy of the City's petition for exemption and waiver, June 7, 2007, he called and cussed me and the Board of Trustees. Later, he told me that, since the City was pursuing the application, the "gloves were going to come off."

23. The Branch has been paved over by Colorado State Highway 149 in two places and by city streets in four places. After the City served its Petition on Mr. Shank, he began pressing the Colorado Department of Transportation and Colorado Public Utilities Commission to have CDOT open the two paved over crossings of Highway 149. He also took the position that the City was required to open crossings in town where the track had been paved over. A meeting was held in Creede on July 16, 2007, which was attended by representatives from CDOT, CPUC, the City and the Foundation. I attended for the City. Mr. Shank represented the Foundation. Mr. Shank contended that, because the Foundation was a railroad regulated by the Surface Transportation Board and federal trumped state and local regulation, he could insist on the opening of the crossings. I stated the City's position that, to save the taxpayers' money, we should defer opening any crossings until after the Board acted on the City's application for adverse abandonment. Mr. Shank admitted that any train operations would be at least two years away. This was in part because the main line of the San Luis and Rio Grande Railroad, with which the Foundation's tracks connect at South Fork, is being used to store several hundred

railroad intermodal flatcars that apparently are no longer needed. Mr. Shank thought that it would be a couple of more years before they were cut up for scrap or moved. Still, Mr. Shank was insistent that the crossings be opened now.

24. As the correspondence between me and Mr. Shank shows, the City continued to take the position that opening of the crossings should be deferred until next year. The City also stated that it would plan for money in the budget for 2008 for such purpose if the City's application were not granted. Mr. Shank still insisted that the crossings be opened now and threatened that if the City did not open them, he would. This correspondence is attached as Attachment No. 2 to my Declaration.

25. CDOT opened the crossing on Colorado State Highway 149 in town the first week in October of this year. CDOT did not, however, open the crossing of Colorado 149 between Creede and South Fork which CDOT had paved over several years ago. This crossing remains paved over.

26. Even though CDOT did not open both crossings of Highway 149, Mr. Shank and some of his friends and volunteers showed up without advance notice to the City on October 25 through the 28th of this year and tore up Loma Street where it was paved over the track. Loma Street is the next street crossing after Colorado State Highway 149 as the track comes north. Mr. Shank and his crew also tore up 2nd and 3rd Streets where they crossed the track. He used small earthmovers to scrape the parking area off of the tracks. I find it interesting that Mr. Shank decided to tear up city streets when the City did not agree to his timetable, but he did not tear up Colorado Highway 149 when CDOT did not follow his timetable by failing to open both paved over parts of the State Highway.

27. He also cut through a portion of Basham Park and part of the children's playground.

Mr Shank also had Kenny Wyley, who owns the grandstand and bleachers that are part of the events center, remove them from the right of way. His crew also uncovered the tracks in the area that has been used for public parking.

28. Mr. Shank has not been to town since he and his crew tore up the streets and public parking area and damaged the playground and park. He left behind piles of dirt and torn up asphalt. When, after two three weeks, he had not returned to clean up the mess he made, I directed City workers to remove the dirt and rubble left by Mr. Shank and his crew.

29. Mr. Shank removed asphalt from about 15 feet on either side of the tracks where Loma and Rio Grande Streets come together. He removed about ten feet of asphalt from either side of the track at 3rd Street. It is too late in the season to repave the streets where Mr. Shank tore them up. The weather is too cold and asphalt is not made at this time of year in our vicinity. The track is below street level where Mr. Shank uncovered the track at Loma Street. This is going to cause problems for plowing snow from the street at this location. Loma Street is the town's fire and medical emergency route and one of the town's three main streets. There will be similar, though not as severe problems in keeping 3d and 5th Streets clear of snow.

30. Mr. Shank told me that a reason he wanted the tracks cleared into town was because the speeder tours that he allows to operate over the Creede Branch must leave their speeders at the south end of town and walk into town to go to restaurants and shop and this was "ridiculous." This explanation can also be found in his November 11, 2007 letter to the City Attorney. I am not aware that any more speeder tours are planned over the Branch for the remainder of this year. In any event, it is only about a half mile walk from the south end of town to the center of town. Creede is not a big place.

31. As subsequent developments have shown, the City's concerns about the impacts of the Foundation's acquisition of the Creede Branch on Creede were well founded. The public uses have been put in jeopardy and the Foundation has caused several thousands of dollars in damage to city property and facilities. Town residents are being inconvenienced by the street damage and the damage to the playground. The City will have to spend funds to repair this damage. There is concern that Mr. Shank will come back to town and tear up more public property.

32. The City also opposed the sale to Mr. Shank because of concern that he would try and collect rents from homeowners and businesses whose buildings he claimed encroached on his railroad right of way. There was uncertainty whether the former D&RGW or its successor, the Union Pacific Railroad, had the right to collect such rents. This was not a big issue before Mr. Shank came on the scene, because most people did not pay such rents and the railroads did not make an effort to collect from those who did not. This all changed after Mr. Shank bought the Creede Branch in 2000. He started threatening town residents and businesses that unless they paid him rents for the encroachments, he would take them to court and they might be evicted from their homes or businesses. Some people paid him rents, including elderly people who could not afford to hire a lawyer to look into his demands. The City complained to the Colorado State Land Board and the Colorado Attorney General Office that the right of way agreement with the Land Board to which the Foundation succeeded did not allow such rents. The Colorado State Land Board and Attorney General agreed and ordered Mr. Shank in 2000 to stop collecting these rents.

33. In late 2006 and 2007, Mr. Shank has again started to try and collect rents, this time from businesses located on the west side of Main Street in Section 25. He is again threatening that unless these building owners enter into leases with him and pay back rents totaling \$200,000, he

Docket No. AB-1014

will have these owners ejected from their buildings. These buildings encroach onto the right of way by a few feet. After a fire severely destroyed or damaged three businesses on this block of Main Street in December 2006, Mr. Shank wrote to me and informed me that the City could not issue building permits for the rebuilding of these businesses until they entered into leases with them and that they could not rebuild without his permission. A copy of Mr. Shank's letter to me is attached to my Declaration as Attachment No. 3. The City does not believe that the Foundation has the legal right to demand these rents either. So far, the City is only aware of one business that agreed to pay such rents to Mr. Shank. The City issued building permits and the businesses have largely rebuilt their buildings. The land upon which these buildings allegedly encroach is actually City-owned land, although subject to the right of way. The City deeded land several feet at the back of the lots of the businesses on the west side of Main Street to clear up title issues relating to their property. Mr. Shank continues to threaten those businesses who have not agreed to enter a lease with him. With the City's action in deeding some land to these property owners, Mr. Shank is in effect trying to charge them rent for being on their own land.

I, Clyde Dooley, declare, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration.
Executed on December 12, 2007.


Clyde Dooley, City Manager

Attachment 1

June 8, 1989 minutes

401

1. Quit claim deed lots 2, 3, 4. City to give lots to theatre subject of flume right-of-way.
2. Vacation ordinance to follow deed.
3. Quit claim deed from the theatre for lots between east edge and west edge of flume right-of-way.

The theatre needs clear title to get state or federal money. M/S/C to do what necessary to give the theatre the lots they ask for as long as the flume easement is not infringed upon. Ormsby, Leggitt. Wilder to proceed.

--No contact with Mrs. Conour since the May 11th letter.

TOWN ADMINISTRATOR REPORT: Jeff Austin, bridge inspector was here Friday. He felt asphaltting the bridges would not resolve the wavy asphalt problem on the bridges. He suggested railing on the approaches and auto railing located at streets dead-ending at the flume where there are no bridges, plus reflective paint on the bridges. Board agreed to pursue attractive alternatives to guardrails. M/S/C for Kent to proceed. With treated wood as top priority for rails. Ormsby, Lamb. --Kent told the Board the county is entering a program to get uniform addressing in the County and the City should get involved. Trustees Ormsby would like to see the street names changed. --The railroad ok'd removing the rails in the alley behind Main St. It will be 2 lanes. Fred would like to put in fill dirt on the rails by the Kentucky Belle, to insure safer passage for pedestrians. --The Feds like the new flood control ordinance. --The County is coating some of the roads with magnesium chloride and would like to know if the City would like to pay to have Amethyst Heights coated. The Board agreed they would like to see Homestake Road covered.

The Board requested Fred check with local suppliers for prices before making purchases.

Mr. Wilder wrote a notice to send owners and occupants to abate nuisances. The local letters should be hand delivered by the Sheriff and others delivered by certified mail. On a copy kept by the Sheriff, time, date, and who received should be recorded. Mr. Wilder told the Board they must go after all violations, blatant violations first, then the others. Kent felt the impact on the first 12 people could determine how the problem and solution are respected. M/S/C to proceed with a friendly letter. Fief, Lamb. Mayor Basham appointed Trustees Fief, Lamb, and Ormsby to meet with Sheriff Leggitt to decide who the first group of offenders will be.

Board decided to advertise and receive bids to locate the city shop at the old sewer plant. At that time the City will re-evaluate the status of the present building.

Railroad ties to be stockpiled and tabled.

Trustee Leggitt would like to see some of the rail from the railroad lines used as a guard rail on the Mesa road where the turn is.

Board agreed to have the Mayor contact Allen Davey about placing an 8" water line next to the present 6" water line going up to the water tank and pump house. This should increase the water going into the tank and keep the tank fuller longer.

M/S/C to donate \$50.00 to the Creede Elks for the fireworks display. Ormsby, Fief.

Attachment 2

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION**

**A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1433080**

August 13, 2007

Clyde Dooley
Creede City Manager
P. O. Box 457
Creede, CO 81130

**SENT CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED**

RE: Railroad Grade Crossings

Dear Mr. Dooley:

On the 16th of July, you, employees of CDOT, the PUC, Mineral County, Creede City Council and our Foundation attended a meeting in Creede called by Pam Fischhaber of the PUC for the purpose of discussing, auditing and field inspecting virtually all the grade crossings located on the Creede Branch.

During the meeting in the Creede Town Hall, Pam Fischhaber informed the City of Creede that it will be clearing the surface of the grade crossings located within the city limits, "sooner, rather than later" and that those crossings will be rebuilt in the near future.

A subsequent meeting took place between you and I at which time I was informed that the town had no money in its budget to rebuild the crossings. I reminded you that we understood your budgetary constraints, but at this time the railroad only needed a date certain whereby the surface of our track beneath those crossings would be cleared. I wasn't asking for the rebuild, just the clearing that the PUC strongly encouraged you to do. You informed me that this simple function would not be happening. You then went on to state that the railroad needed permits, etc., to perform any work on our crossings in Creede.

For the record, the railroad does not need, nor will it be seeking any permits to work within our right-of-way or on any portion of our track. Further, it is my understanding that the City has attempted to place the same ridiculous demand [permits] upon CDOT for the upcoming rebuild of the Hwy 149 crossings. As Pam from the PUC so eloquently states it, "State trumps City". CDOT won't be needing any permits either.

Therefore, please allow this letter to serve as "**NOTICE**" that the railroad is hereby requesting your immediate compliance with the PUC and our request for the removal (without subsequent damage to our tracks) of all asphalt and/or material currently covering the railroad tracks in the grade crossings within the City of Creede.

**FOUNDATION OFFICE: 20 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email (temp): dhshank@yahoo.com**

This opportunity for your personnel is extended as a courtesy to keep your costs to a minimum. This is a simple process that can easily be accomplished in one day. I understand that the City owns a motor-grader and backhoe, either of which can accomplish this task. The City shall have ten calendar days from the date of receipt of this NOTICE to comply or the railroad will commence clearing the crossing at Loma Street and will bill the City of Creede for all expenses associated with this operation per the terms defined within the legally binding "AGREEMENT" dated September 14, 1977, CONTRACT NO. 27694, a copy of which is attached hereto. This is now the third time we have provided a copy of the Agreement.

Note: Any damage to the track as a result of the removal of asphalt and/or road base by the City of Creede Maintenance Department will be repaired by the railroad at the sole cost and expense of the City of Creede.

Please see to it that the City of Creede becomes compliant within ten (10) days or we will.

Thank you.

A handwritten signature in black ink, appearing to read "Don Shank", written in a cursive style.

Donald H. Shank
President & Executive Director
D&RG Ry. Historical Foundation

Attachment/Grade Crossing Agreement #27694

CC: Pam Fischhaber, CO P.U.C.
Tom McFarland, DRGHF Counsel

DENVER - September 14, 1977
CONTRACT NO. 27694

JAG

Distribution is hereby made of CONTRACT NO. 27694

NAME: CITY OF CREEDE

ADDRESS: Creede, Colorado 81130
CITY AND STATE:

LOCATION: MP 320 + 2547'

DATE: 9-14-77

EFFECTIVE DATE:

EXPIRATION DATE:

RENTAL RATE: \$600 Total Cost
LICENSE FEE:

PURPOSE: Construction of 24-foot wide roadway across RR trackage

Also attached is fully executed duplicate-original for delivery to:

H. A. Phillips

cc: DLC ~ Copy attached

CRL

WPW

MBD

{ } Duplicate-original picked up.

{ X } Duplicate-original forwarded direct. to James Basham, Mayor

This document supersedes and cancels _____ dated _____.

{ } Please advise when work completed and insurance no longer required.

{ } Insurance coverage is perpetual.

{ } If insurance provisions have not yet been complied with, do not permit entry on Railroad property.

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 14th day of September, 1977, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware Corporation, hereinafter called "Railroad Company", party of the first part, and the CITY OF CREEDE, hereinafter called "City", party of the second part.

WITNESSETH:

WHEREAS, the City desires to establish and dedicate a public roadway across the right of way and main track of the Creede Branch of the Railroad Company at Milepost 320 + 2547' at Creede, Mineral County, Colorado, and,

WHEREAS, the Railroad Company is agreeable to the establishment, construction, maintenance and operation of said public roadway, upon the terms and conditions hereinafter set forth; and,

NOW, THEREFORE, in consideration of the premises, subject to the approval of the Public Utilities Commission of Colorado, it is mutually agreed by and between the parties hereto as follows:

1. The Railroad Company hereby licenses and permits the construction, operation and maintenance of a 24-foot wide roadway across its right of way and trackage at Creede, Mineral County, Colorado as shown on Dwg. No. C-561 attached hereto and hereby made a part hereof.

2. The City agrees to assume all taxes and assessments levied upon said premises during the continuance of this Agreement; to keep said premises free from combustible materials; to plant no trees, shrubbery or other vegetation without the previous written consent of the Railroad Company; to erect no structures thereon except as approved by the Railroad Company's Chief Engineer; to provide such culverts, bridges and other structures as may be necessary to properly provide adequate drainage from said premises and the adjoining right of way of the Railroad Company.

3. The rights herein granted are subject to all outstanding superior rights (including those in favor of telegraph and telephone companies and Lessees to abutting property owners and others) and to the right of the Railroad Company to renew and extend the same; and, it is understood that nothing in this Agreement contained shall be construed as a covenant to put the City into possession or to protect the City in the peaceable possession of said premises, and the Railroad Company shall not be deemed to guarantee ownership.

4. The Railroad Company reserves the right at any and all times hereafter to construct, maintain and operate such additional railroad tracks as may be required for its convenience or purposes,

in such manner as not to interfere with the usefulness of said premises as a public thoroughfare.

5. The City shall not at any time use or permit the use by others for any purpose other than described herein.

6. No special assessments first establishing or improving said thoroughfare located upon said premises are to be made against the adjacent railroad right of way of the Railroad Company and the City agrees to protect the Railroad Company against any and all such special assessments.

7. The City agrees to accept the premises in the present condition without any obligation whatsoever on the part of the Railroad Company.

8. The Railroad Company, at the sole cost and expense of the City, shall furnish all labor and material to install the necessary crossing planks and crossing signs required by the Railroad Company for the establishing of said thoroughfare. Any rearrangement of existing wire lines of the Railroad Company and/or its tenant companies along said right of way, the construction of additional or any rearrangement of existing right of way and wing fences and cattle guards that are necessitated in connection with or as a result of the construction or reconstruction of said grade crossing shall be performed or cause to be performed by the Railroad Company at the expense of the City. Labor charges for service performed by Railroad personnel will be in accord with working agreements between Railroad Company and its employees.

9. The estimated cost of the work to be performed by Railroad Company is \$600.00. The City shall reimburse the Railroad Company for all expenses incurred by the Railroad Company within thirty (30) days after the rendition of a bill therefor by the Railroad Company to the City.

10. Upon completion of the work herein provided for, the Railroad Company shall, at the sole cost and expense of the City, repair, maintain, reconstruct, and renew said public highway crossing and its appurtenances.

11. It is understood and agreed that no benefit accrues to the Railroad Company by reasons of the establishment of said public thoroughfare.

12. If at any time after the installation of said public highway crossing, any law, State or Federal, or any officer or regulatory board or commission, State or Federal, having jurisdiction shall require any additional safeguards protection, signals or warnings, the same shall be constructed, maintained and operated at the sole expense of the City as herein provided with respect to maintenance, repair and reconstruction.

13. The City further agrees that the establishment of said public highway crossing over and across the right of way and tracks of the Railroad Company is for the sole benefit and convenience of the public without any benefit to the Railroad Company, and that if it is desired to improve, including grade separations, or widen said public crossing, the City agrees it will assume any and all costs or expenses, whatsoever, that the Railroad Company may be obligated or required to pay.

14. All the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate, the day and year first above written.

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

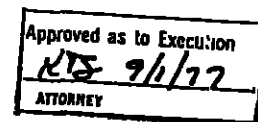
By *Shaking*
Chief Engineer

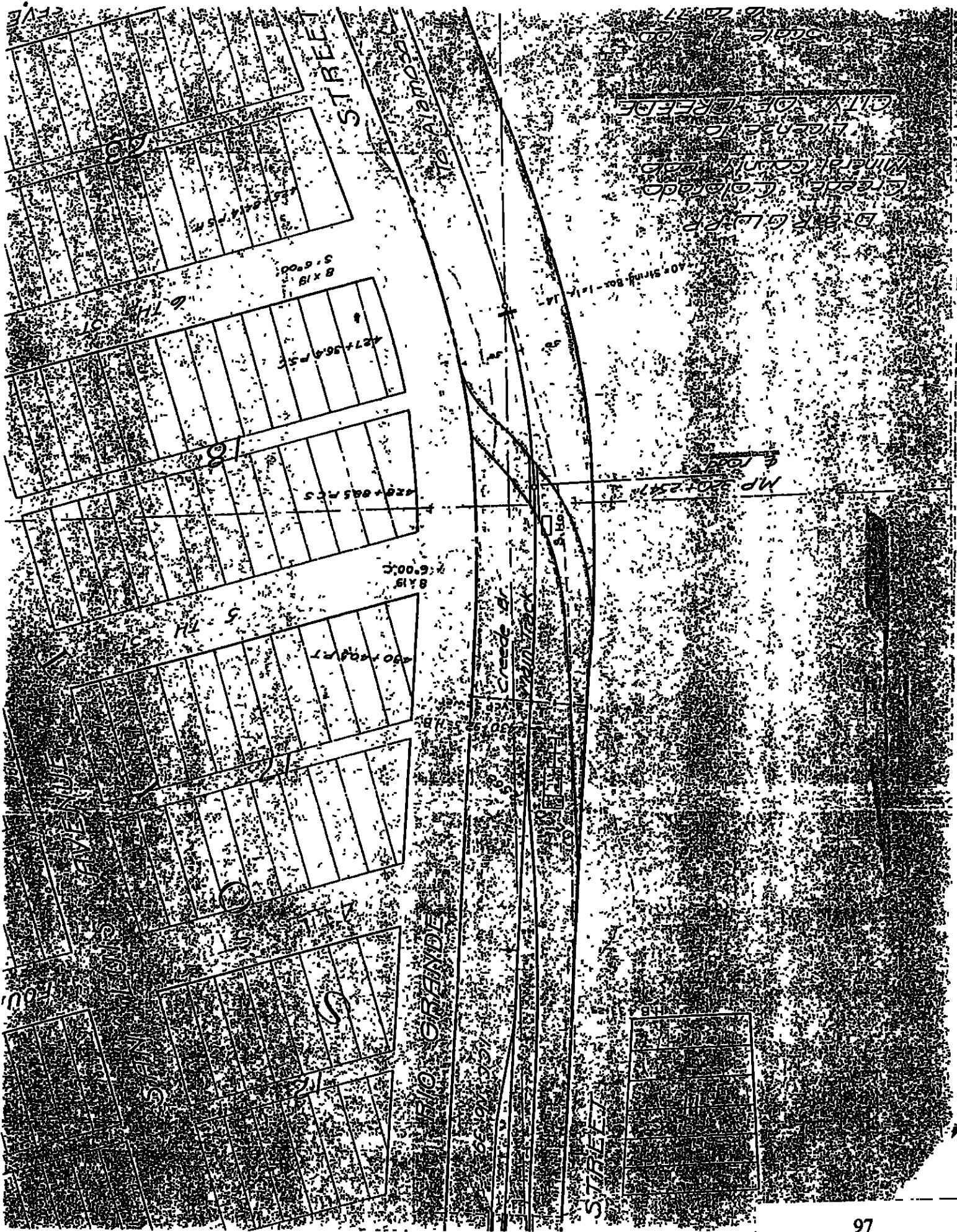
ATTEST:

Emma Bennekort
City Clerk

CITY OF CREEDE

By *James B. Schum*
Mayor





ORDINANCE 324

AN ORDINANCE REQUIRING PROOF OF LIABILITY INSURANCE BEFORE WORK ON PUBLIC LAND

WHEREAS, the Town Board has determined that from time to time it may be necessary for person or persons other than the City personnel to construct, repair or otherwise have access to perform some form of operations on public lands within the City limits, and

WHEREAS, the Town Board is concerned that operations by other than City personnel might cause injury to people in the Town, and

WHEREAS, the Town Board has determined that the person or persons must be able to compensate any person who may be injured by its operations, and to compensate the City for damages, and

WHEREAS, the Town Board had defined public lands as lands owned or controlled by the City, to include streets, sidewalks, alleys, railroad tracks, crossings, rights of way and all other passageways within the City

THEREFORE, BE IT ORDAINED by the Town Board of the City of Creede

SECTION 1. Any repair, construction, building, remodeling or other functions which breaks or disturbs the surface of public lands as defined above within the City Limits of the Town are prohibited until such time as the entity, owner or contractor wishing to do the work has shown adequate reason for the proposed work, has obtained a written permit and the utilities for the area involved have been tagged by the City of Creede or the appropriate entity. Approval of this permit will be valid for one specific purpose only and each permit must be accompanied by an Insurance Certificate naming the City of Creede as additional insured in the amount specified on the permit, proof of workers compensation insurance, equipment liability insurance and any other proof of insurance coverage the City may deem necessary. The Certificate of Insurance must cover liability for any injury to persons or property caused by the proposed project. Self-insurance is not acceptable. The City reserves the right to demand inspection of the entire insurance policy and endorsements and will require at least 30 days prior notification of cancellation or nonrenewal during the course of the proposed project. In addition, a "hold-harmless" indemnification agreement will be required from the permit applicant. A permit application fee of up to \$100 may be charged by the City to process an application.

SECTION 2 PENALTY. Any violation of any provision of this ordinance shall be punishable, upon conviction, by a fine of not more than three hundred dollars and up to 90 days in jail for each separate offense. In addition, the Town may seek an injunction against continued operations which violate this ordinance.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid or unconstitutional, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4 NECESSITY. It is hereby declared that this Ordinance is necessary to the immediate preservation of the public peace, health, and safety, and shall take effect and be enforced from and after its final adoption.

SECTION 5. CODIFICATION This Ordinance shall be codified into the Municipal Code Any changes in numbering of paragraphs, sections, or subparagraphs shall not change the validity of any part of the Ordinance. The word "Ordinance" may be changed to "Title", "Section," "Subsection", or "Code as necessary.

Introduced, read in full, and adopted, approved and signed this 3 day of December, 2001.

CITY OF CREEDE

ATTEST:


Betty Jean Myers, Mayor


Sandra S. Wright, City Manager/Clerk

d:/data/Ordinances/Ordinance 324 - Liability Insurance.doc 12/04/01

City of Creede

A Colorado Town

P O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



August 23, 2007

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

Dear Mr. Shank:

I am responding to your letter dated August 13, 2007, in which you demand that the City clear the crossing at Loma Street within ten days' time or the Foundation will do so and bill the City for expenses of doing so. You refer to a contract dated September 14, 1977 between the City and the former Denver & Rio Grande Western Railroad Company ("D&RGW") as the basis for the Foundation's view that the City would be obligated to bear such expenses. The City does not believe that it is under any obligation to clear a crossing at Loma Street at this time. Indeed, as I explain, it is not clear that there was ever an active crossing at Loma. Even if the City had an obligation to bear any costs of opening a crossing at that location, which is in doubt, the City does not have funds in its budget for 2007 for any such costs.

Your insistence that the City open a crossing at Loma Street is based on your asserted railroad rights of way in the City. As you know, the City disputes that the Denver & Rio Grande Railway Historical Foundation ("Foundation") has a right of way in the city limits, including where Loma Street crosses the tracks. Loma Street crosses that portion of the Foundation's right

of way, which is subject to the 1969 right of way issued by the Colorado State Land Board to the former D&RGW. By the terms of that right of way, the railroad's right of way ceased sometime in 1970 or 1971, after there had been twelve consecutive months with no rail operations. The railroad's continued ability to have its track occupy the land in the right-of-way has since been supported solely by the fact that the track was still technically subject to the jurisdiction of the Interstate Commerce Commission and later its successor, the Surface Transportation Board ("STB"). As you are also aware, the City has begun adverse abandonment proceedings at the STB. If the STB grants the City's application for adverse abandonment, then the Foundation will have to remove, at its expense, all of its track in the city limits, including the track under Loma Street.

Even if the Foundation had a right to demand that a crossing be opened, it does not have the right arbitrarily to dictate when that should occur. There have been no train operations in Creede for more than 30 years and none over the Creede Branch since the mid 1980's. The Foundation has not been able to operate any trains since it acquired the Branch in 2000. The Foundation has no operational railroad cars or locomotives. To the City's knowledge, the Branch has not been rehabilitated to the level required by the Federal Railroad Administration for any kind of passenger train operations. Clearly, there is no pressing need to have this crossing work performed in the next ten days or even in the next ten months. While the Colorado Department of Transportation may have excess funds to spend on crossings that will not see a train for several years, if ever, the City does not.

The City also does not agree that it would be required to bear all of the costs of establishing a crossing at Loma Street, even if that were required to be done at some time in the future. Contrary to the implication in your letter, the City is not under some mandate from the

Colorado Public Utilities Commission to clear a crossing at Loma Street. I have asked the attorneys for the City to review Colorado state law regarding the cost responsibility for establishing a crossing. I understand that, under Colorado law, these costs would be allocated between the City and the Foundation.

In addition, I have asked the City Attorney to review the September 14, 1977 contract with the former D&RGW, which you attached to your letter. While the City needs to further study this contract and its context, it does not appear to support the Foundation's demand that the City pay for or establish a crossing at Loma Street. The D&RGW had ceased any service into Creede by around 1969, long before the 1977 contract. At that time, there was no railroad crossing at Loma Street. Loma was a dirt street that paralleled the west side of the D&RGW track, but did not cross it. Loma dead-ended without crossing any tracks. Later, years after the D&RGW had ceased any rail service or operations into Creede, the City rerouted Loma Street to cross the railroad right of way and merge with Rio Grande Street on the other side of the track. Loma was also paved at that time. Loma was apparently paved over the out-of-service track, completely covering the rails. No one with whom I have spoken can recall there ever being a railroad crossing as such there, with cross bucks or other railroad warning signage.

The City will continue to research the Foundation's claims that the City is responsible to open a crossing at Loma Street. However, the City suggests that the Foundation defer any proposal to establish a crossing at Loma Street until next year. Notwithstanding the City's position that there is no lawful basis for the Foundation to insist on the establishment of a crossing at Loma at this time, the City will include funds in its 2008 budget for such work in case it is determined that the City should bear some costs in the event for opening a crossing.. The STB should rule on adverse abandonment by mid-year 2008, if not earlier. If the STB denies

such abandonment, the City and Foundation can then discuss the design for and how the costs of a crossing at Loma Street should be allocated. If the STB approves adverse abandonment, then there will be no need to open a crossing at Loma Street, because the Foundation will have to vacate the rights of way in the city limits unless the Foundation and City reach some other understanding. There is no prejudice to the Foundation from this proposed course of action, because, by your own (optimistic in the City's view) estimate, there will no train operations for more than two more years.

Once the City has completed its review of your assertions, I suggest that there be a meeting to further discuss the matters raised by your letter. If the Foundation nonetheless chooses in the meantime to follow through on your threat unilaterally to open a crossing at Loma Street, the Foundation does so at its peril. The City will pursue all available legal remedies against the Foundation, and the Foundation will be liable to the City and the public for any damages resulting from its actions.

Sincerely,


Clyde Dooley
City Manager
Creede, CO 81130

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1433880
COLORADO CHARITABLE REGISTRATION #: 20023005786

August 28, 2007

Clyde Dooley
Creede City Manager
P.O. Box 457
Creede, CO 81130

Dear Mr. Dooley:

This letter of response is two-fold. First, it is in response to your request for production of our Foundation's tax records, more specifically, Form 990's for tax years 2003, 2004, 2005 and 2006. These will be forwarded to you in due course.

Our Foundation has engaged the services of Denise Ransford since our incorporation date of May 1997 as bookkeeper and accountant. She has maintained our books and kept all financial records for day-to-day and year-end reporting.

A few years ago, Denise was involved in a very bitter divorce. It is my understanding that she endured physical abuse and subsequent threats of bodily harm. As a result, she relocated and was late in filing our Form 990 for tax year 2003. Our Foundation received a penalty for late filing and she lacked the financial wherewithal to make restitution to IRS. Our Foundation advanced the initial installment, which I only recently learned never made it to IRS, nor did the balance she was supposed to pay. This only recently came to light.

Sometime within the past few months, Denise has disappeared. The Accounting Firm of Miller-Stranger of Grand Junction employed Denise and has to date conducted an exhaustive search for her via every means possible with no positive results.

Denise is in possession of all our Foundation's financial records, just as she is for a number of other clients in this same predicament. I have spoken several times with IRS and have made verbal record of this situation. I am securing a police report reflecting her disappearance, including that of our records and the first installment of our 2003 penalty.

This is a serious situation for us and even more so for her. These facts are all *of record* with IRS and will be worked through within the coming sixty days. We are literally reconstructing the records for 2006 and securing copies of our 990's for the previous years through IRS Form 4506-A. Once secured, we will forward the requested years to you.

FOUNDATION OFFICE: 20 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email (ccmp): dlshank@yahoo.com

Thank you in advance for your understanding. I apologize for any inconvenience this may have caused you or your attorney, Ronald M. Johnson of Akin Gump. I will be forwarding a copy of this to him concurrently. Unlike Mr. Johnson's bold inference, our Foundation is *not* ignoring your request for production of tax records. To the contrary, we have been making every attempt to secure the same from Ms. Ransford, obviously to no avail. Given the fact that our Foundation was a personal client of hers and not the accounting firm of Miller-Stranger that employed, everything was in her personal possession. This also includes my personal information. Once again, you'll have all the 990's within sixty days.

The second topic I'm responding to is regarding the grade crossings within Creede. I am in receipt of *your* August 23rd letter.

At this time nothing has transpired to alter our belief and legal right to continue rehabilitation of the *entire* Creede Branch. In a rather lengthy discussion with counsel and the CO Public Utilities Commission, we have concluded that our Foundation will continue with the rehabilitation of the line including clearing the grade crossings within the city limits of Creede. We will remove the asphalt and other material covering the tracks to expose the rail and flangeway thus rendering the tracks navigable. We have agreed to initially stand the cost of the clearing the surface of the crossings, subject to the decision of the STB regarding your filing of the adverse abandonment action. If the City of Creede prevails in that action, we will absorb the costs involved to clear those crossings. If the Foundation prevails, the City of Creede will reimburse the Foundation for all costs to open those crossings and will honor the crossing contracts as written.

Though several inaccuracies were present in *your* August 23rd letter, they will be responded to at a later date.

Please accept my apology regarding the production of our tax records. I'm certain you can empathize with our shock and dismay. We will be providing them in the coming weeks.

Thank you.

Sincerely,



Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation

CC: Tom McFarland, Esq.
Ronald M. Johnson, Esq. via facsimile and USPS Certified Mail

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT / TAX EXEMPT CORPORATION

TAX ID # 84-1438680

COLORADO CHARITABLE REGISTRATION # 20028005766

FACSIMILE COVER SHEET

DATE: August 28, 2007_____

PAGES: 3 (including cover)

TO: Ronald M. Johnson Esq. of Akin - Gump

FAX PHONE #: 202 - 887 - 4288

FROM: DONALD SHANK, PRESIDENT & EXEC. DIRECTOR

SUBJECT: Production of IRS Form 990's_____

If you have any questions regarding this transmittal, please call 719-852-7000. If you prefer Email, the address is dhshank@yahoo.com

This transmission is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination or copying of this communication in error may be in violation of state or federal law. Please notify us immediately by telephone or Email and return this original transmission to us via U.S. Postal Service. We will reimburse you for the postage or the call. Thank you.

FOUNDATION OFFICE: 20 N. BROADWAY STREET, MONTE VISTA, CO 81144

TEL: 719-852-7000 CELL: 970-749-7575 Email: dhshank@yahoo.com

"Dedicated to the Preservation of Colorado Railroading"

City of Creede

A Colorado Town

P.O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



September 14, 2007

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

Dear Mr. Shank:

I am responding to your August 28, 2007 letter, which was in response to my letter of August 23, where you repeat your position that the City is obliged by an agreement dated September 14, 1977 between the City and former Denver & Rio Grande Western Railroad ("D&RGW") to pay all of the costs of opening a crossing at Loma Street. For the reasons I explain in this letter, the City does not believe that you have shown that the 1977 agreement attached to your August 13, 2007 letter imposes any such contractual obligation on the City. In addition, since the City believes that it will prevail in the adverse abandonment proceeding and the Foundation does not have any train operations, it remains the City's position that it should not be required to bear or incur any costs associated with opening crossings in the city limits.

I have had the city attorney review the 1977 agreement, and I have researched the minutes of meetings of the Board of Trustees for 1977 and several years before and after and spoken to city residents who were present in Creede around the time of the 1977 agreement. Based upon my investigation, Loma Street was not paved over the railroad track until some time in 1984. Prior to that time, Loma Street was a dirt street that ran parallel to the track on the west side of the track and dead-ended without crossing the track. Loma was paved and rerouted to cross the railroad track to merge with Rio Grande Avenue in 1984. No rail-street crossing was created, because the D&RGW track in the City had been out of service for nearly eight years by then, with no trains operated in or into the City. If the 1977 agreement applied to the paving over of Loma Street, it is not clear why that agreement would have been entered into seven years prior.

You have also not pointed to any language in that agreement that expressly requires the City to install a crossing or bear the costs of such installation. If anything, the 1977 agreement may simply have been an agreement with the D&RGW for the City to pave over the track where Loma Street crossed the track to join Rio Grande Avenue. Section 1 of the 1977 agreement states that "[t]he Railroad Company hereby licenses and permits the construction, operation, and maintenance of a 24-foot wide roadway across its right of way and trackage" Adding to the uncertainty, the 1977 agreement appears to be a standard form agreement, which contains language having no relevance to the paving over of the track at Loma Street. For example, the agreement mentions cattle guards and bridges when obviously there were neither in the city limits at Loma Street. Section 10 of the 1977 agreement states that "[u]pon completion of the work herein provided for, the Railroad Company shall, at the sole cost and expense of the City, repair, maintain, reconstruct, and renew said public highway crossing and its appurtenances." But, the only

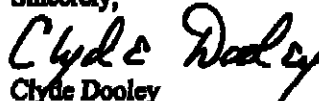
work done was to pave over the track and it is doubtful that that paving work was done by the former D&RGW. No one can recall that a "public railroad crossing and appurtenances" were ever installed where Loma crosses the track. Moreover, the City, not the former D&RGW, which was long gone from Creede by the time Loma Street was paved, has always maintained Loma Street, including where it is paved over the track. Thus, the facts as we know them indicate that there has never been a public railroad crossing at Loma Street.

Given that the language of the 1977 agreement does not clearly require the City to bear responsibility for now establishing a Loma Street railroad crossing, the Foundation will have to produce some additional documentation or evidence that the 1977 agreement requires the City to bear all of the costs of establishing a new crossing at Loma before the City could agree to undertake such a responsibility. In the absence of a contract that provides otherwise, Section 7211(a) of the Colorado Public Utilities Commission regulations place responsibility for the cost of a grade crossing "from the outside end of the tie to the outside end of the tie at single track crossings" on the owner of the track. The railroad is also responsible for the cost of installing the "crossing surface." Therefore, if you decide to open a crossing at Loma Street at this time, the Foundation will bear all such cost responsibility, even if it were to prevail in the adverse abandonment proceeding at the Surface Transportation Board.

Even if the 1977 agreement had the meaning that you would give it, and the City does not agree that it has that meaning, it does not specify when the City would be obligated to install a crossing at Loma Street. The language would not require the City to bear such costs until the Foundation actually had need for a crossing, i.e., the Foundation could show that it would be operating trains through the crossing some time in the foreseeable future. You yourself indicated at the July meeting with representatives from CDOT and the CPUC that train operations are still at least two years away. It would also seem logical for the Foundation to first work out its crossing issues between South Fork and Creede before it raised issues concerning crossings in the City. The City also has a right to have a say in when a public street would have to be closed to allow work on a crossing and the manner of the workmanship.

Finally, you have apparently rejected the City's proposal that the Foundation defer action on a crossing at Loma until next year, after the City has made provision for its share, if any, of costs in its 2008 budget and after the STB has ruled on the City's application for adverse abandonment. I also note in that regard that Section 7211(e) of the CPUC regulations specify that, when the track is taken up from a crossing, the owner of the track is responsible for removing the rail at crossings and restoring the pavement. Thus, the Foundation is at risk that it will end up bearing all of the costs both of installing a new crossing and of taking up that same crossing if it attempts to proceed at this time. Nonetheless, the City still remains willing to discuss a resolution of the crossing issue with the Foundation on a basis which meets both the City's and Foundation's interests.

Sincerely,


Clyde Dooley
City Manager

Cc: Pamela Fischhaber, CPUC
Hayne Hutchinson, CDOT

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION

FEDERAL TAX ID #: 84-1438880

COLORADO CHARITABLE REGISTRATION #: 20023005766

September 17, 2007

Clyde Dooley
Creede City Manager
P. O. Box 457
Creede, CO 81130

Dear Mr. Dooley:

In response to your letter dated September 14, 2007, referencing our letters of August 2007, referring to the situation regarding the City of Creede's interpretation of the D&RGW's grade crossing agreement dated September 14, 1977, once again the City of Creede is taking historic documentation and twisting it to suit its needs.

The language contained within the 1977 Agreement was clear and specific; at the City of Creede's request the D&RGW established a public grade crossing "[a]cross the right of way and main track of the Creede Branch of the Railroad Company". The terms, conditions and approval of the P.U.C. were all spelled out in the agreement. Keep in mind, Loma Street crosses the railroad by virtue of a license.

In paragraph 2 of your letter you claim to have researched the minutes of the meetings of the Board of Trustees from 1977 and spoken with city residents regarding Loma Street and the grade crossing. I too have spoken with applicable residents and parties directly involved with the Agreement itself and the construction of the grade crossing. To quote former Creede Mayor, James Basham, who along with City Clerk, Emma Swinehart, signed the original 1977 Agreement; "that Agreement was entered into by honorable people with honorable intentions and needs to be enforced." Further, the former city employee that built the Loma Street grade crossing remembers doing so in the fall of 1977.

In that same paragraph, you have made a bold assertion that "[n]o rail-street crossing was created". If that is in fact true, then no legal grade crossing exists. The railroad granted the crossing based upon very specific parameters. Those parameters were approved by the PUC and the crossing was then constructed by the railroad at the expense of the City of Creede. It's common knowledge that the last train out of Creede proper was in 1972, but the railroad remained serviceable, was never abandoned and could have gone active at any time the railroad deemed reasonable to have done so.

FOUNDATION OFFICE: 20 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: dbashmk@yahoo.com

Now whether or not Loma was paved over in 1984 or 2004 has little to do with the fact that the asphalt is blocking the free and unrestricted movement of railroad equipment, which by the way, will be entering Creede in the very near future.

The City of Creede has chosen to not clear the surface of the track at any crossing within the city limits. We will do it and keep track of the expense, which the City of Creede will ultimately be responsible for pending the decision of the United States Surface Transportation Board regarding your adverse abandonment action. Unlike the City, the Denver & Rio Grande Railway Historical Foundation and our predecessor remain confident that your abandonment action will be defeated at the STB.

The City of Creede cannot produce any documentation to support railroad approval for the paving over of any grade crossings within the city limits, because none exists. This activity was not done by the railroad. However, it was understood that in the event that the railroad chose to resume rail operations into Creede, the crossings were to be cleared immediately upon the railroads request. Not unlike the removal of our ICC Track 89 above Wall Street and the main line above N. 1st Street, there is no supporting documentation approving said track removal. That track will also be reinstalled in the near future.

So in response to your suggestion that "[t]here has never been a public railroad crossing at Loma Street", if the City of Creede's position denies the existence of a crossing ~~over~~ our railroad, then perhaps the railroad should likewise take the position that no crossing exists and petition the PUC to close Loma Street and remove it from on top of the railroad.

The railroad is going active within the City of Creede. Notice is hereby served. We will be working on the track and roadbed in town. Any attempt to block, delay, or otherwise prevent rail operations within the city limits of Creede will be dealt with both legally and swiftly.

Once again, as suggested numerous times during the past few years, why not channel your efforts towards preparing and profiting from the potential increase in tourism resulting from our rail operations. Since Creede is nearly totally dependent upon tourism, this only makes sense. Ironically, numerous Creede residents have posed the very same question.

As your City of Creede letterhead reflects, Creede was established in 1892. The railroad was already busy serving and helping build the soon to be town in 1891.

Sincerely,



Donald H. Shank
President & Executive Director

Cc: Pamela Fischhaber, CPUC
Hayne Hutchinson, CDOT

Attachment 3

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

**A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1433680
COLORADO CHARITABLE REGISTRATION #: 20023005768**

December 28, 2006

**Mr. Clyde Dooley
Creede City Manager
223 N. Main
Creede, CO 81130**

RE: Recent Fire

Dear Mr. Dooley:

In behalf of the Denver & Rio Grande Railway Historical Foundation (DRGHF), Happy Holidays and Happy New Year!

DRGHF was saddened to learn of the fire in downtown Creede. I made a visit to town the day after the fire to assess the damage to the bank, Journeys and the Holy Moses. It would appear that they are unfortunately a total loss.

On advise of counsel, DRGHF was instructed to remind the City of Creede that those buildings damaged/destroyed during the fire were encroached upon railroad property and in the event that they intend to rebuild, each building owner will need to contact the railroad and request a Commercial Right-Of-Way Lease to support any utilization of our right-of-way. This Lease will need to in place prior to applying for a building permit from the City.

Notices have already been sent out to several business/building owners along the west side of Main regarding back rent issues, which included a Settlement Worksheet. Virtually all buildings/businesses that are encroached upon DRGHF property will need to execute a Commercial Right-Of-Way Lease if they intend to continue to occupy our land. There will be no exceptions, period.

Thank you in advance for assisting the railroad to maintain compliance and the legality of businesses in Creede to benefit from the availability of railroad property.

Though the necessity of a Lease to legally support squatters on the railroad may be distasteful to some, I can assure you that the tens of thousands of dollars DRGHF wasted

**FOUNDATION OFFICE: 20 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: drghf@yahoo.com**

to defend our purchase of the railroad was quite distasteful to many, and no one more than myself. Please do not fail to remember that the multi-year legal quagmire was initiated by the former mayor of Creede, B.J. Myers, and cost everyone dearly.

During the multi-year legal ordeal, the United States Surface Transportation Board (STB) and the U.S. District Court validated and re-validated our railroad. Additionally, it was determined that our leasing efforts were not inconsistent with those of our predecessors. Further, DRGHF enjoys legal authority as an easement-holder to collect rent for permitted uses within our right-of-way.

This coming year will see dramatic progress in the rehabilitation of the Creede Branch as it is returned to operation. The STB regards the Creede Branch as a "Class III, Common Carrier, Interchange Railroad, an active railroad in rehabilitation with all rights and powers attendant thereto" and that the resumption of service does not constitute a new business. To the contrary, the railroad predates the existence of the Town of Creede.

Thank you for your assistance.

Kindest personal regards,



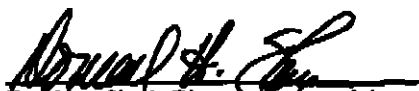
Donald H. Shank
President & Executive Director
DRGHF

ARTICLE IX

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except that the corporation will be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal tax under Section 501 (c)(3) of the Internal Revenue Code, or corresponding Section of any future Federal Tax Code, or (b) by a corporation, contributions to which are deductible under Section 170 (c)(2) of the Internal Revenue Code, or corresponding Section of any future Federal Tax Code.

IN WITNESS WHEREOF, we have hereunto set our hands this 29 day of ~~Apr~~
~~May~~, 1997.


Robert W. Shank, Director


Donald H. Shank, Director, Registered Agent


Robert A. Shank, Director

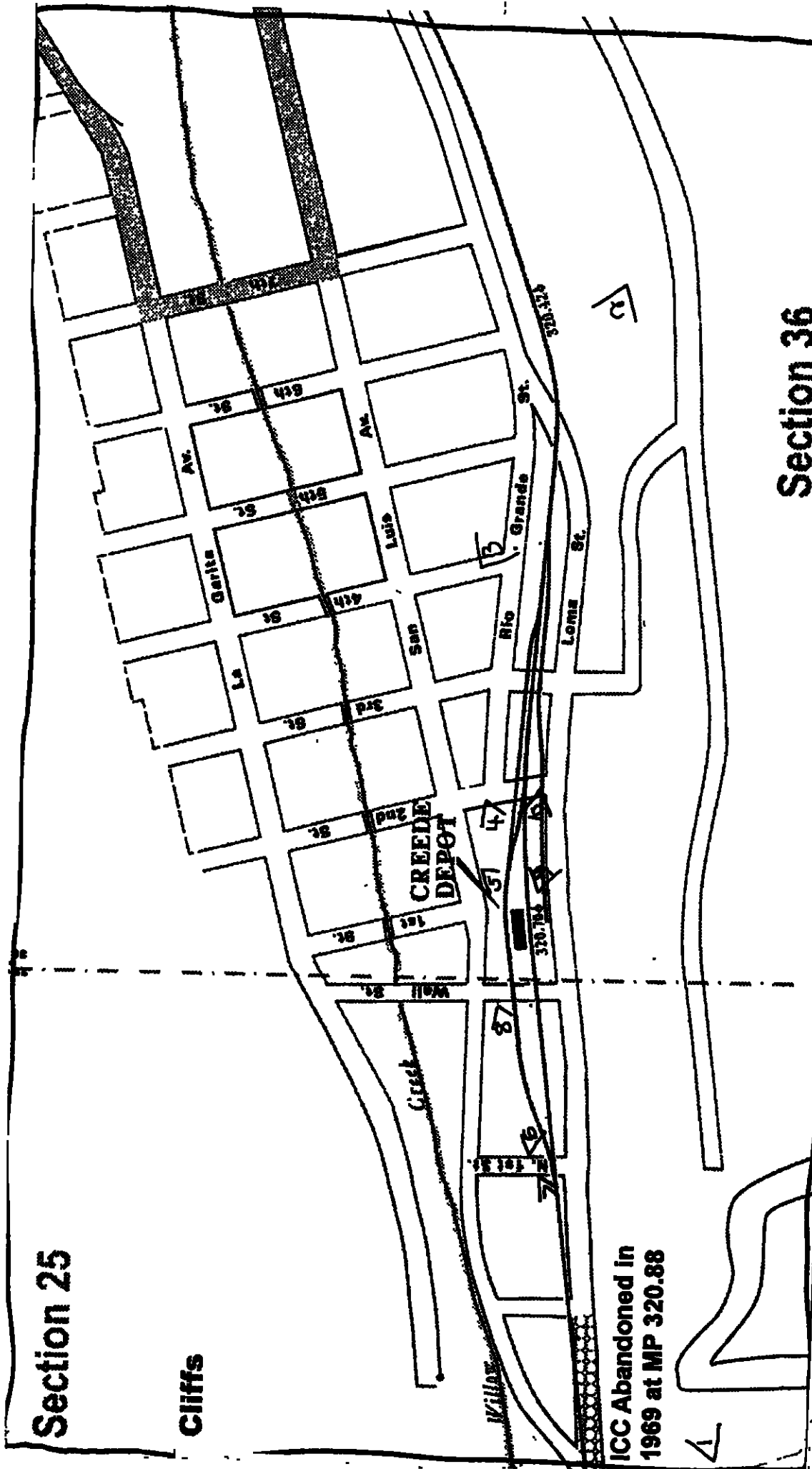

Gayle A. Shank, Director



Exhibit No. 6
Pictures of Track in Creede and Surroundings

Section 25

Cliffs



ICC Abandoned in 1969 at MP 320.88

Section 36

Angles Show Vantage of Picture Numbers
Correspond to Pictures



Photo No. 1
Creede July 2007



Photo No. 2
Looking North: Railroad Covered by Vegetation
and Public Parking Area July 2007

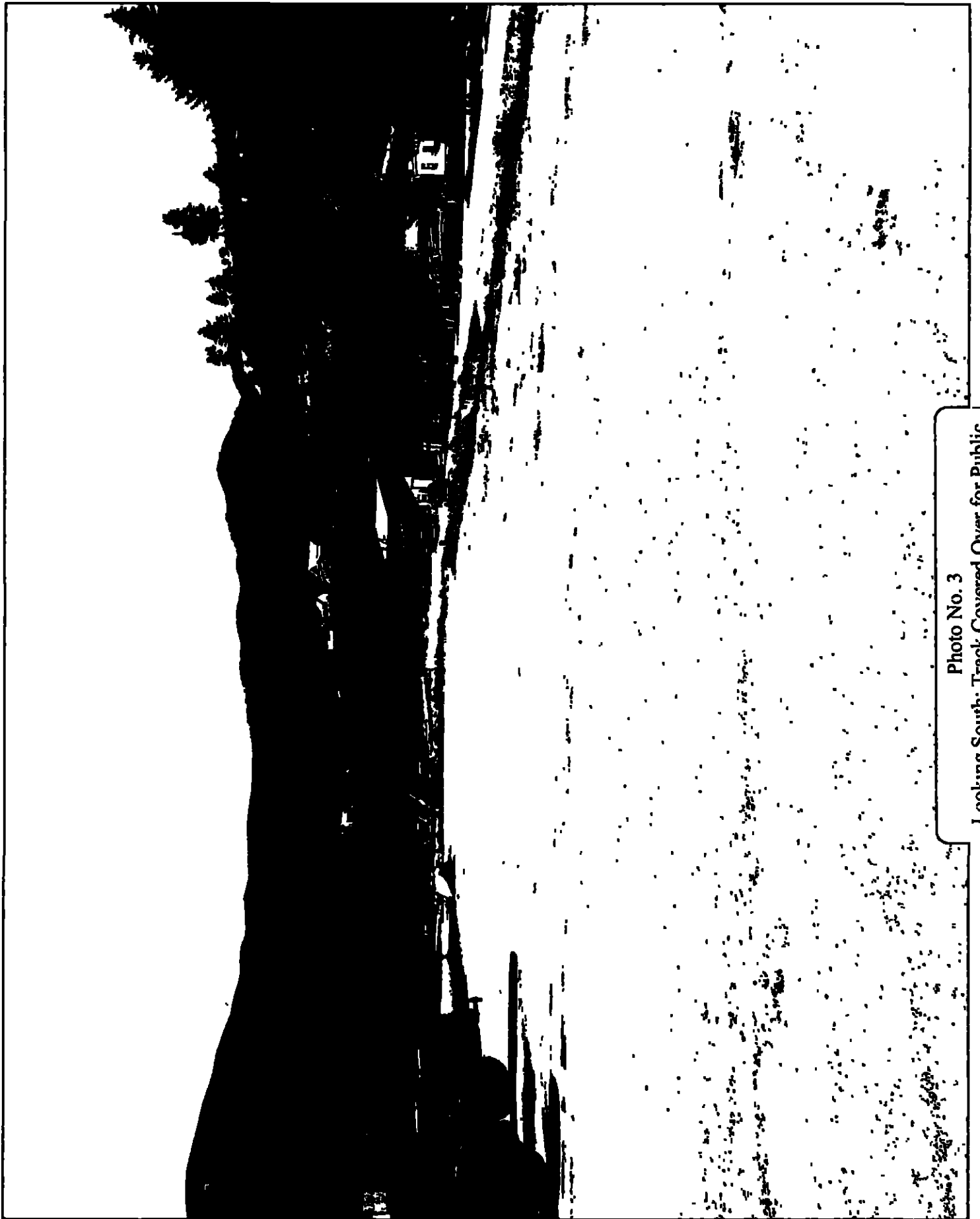


Photo No. 3
Looking South: Track Covered Over for Public
Parking



Photo No. 4
Children's Playground, Events Center, and
Public Parking Area

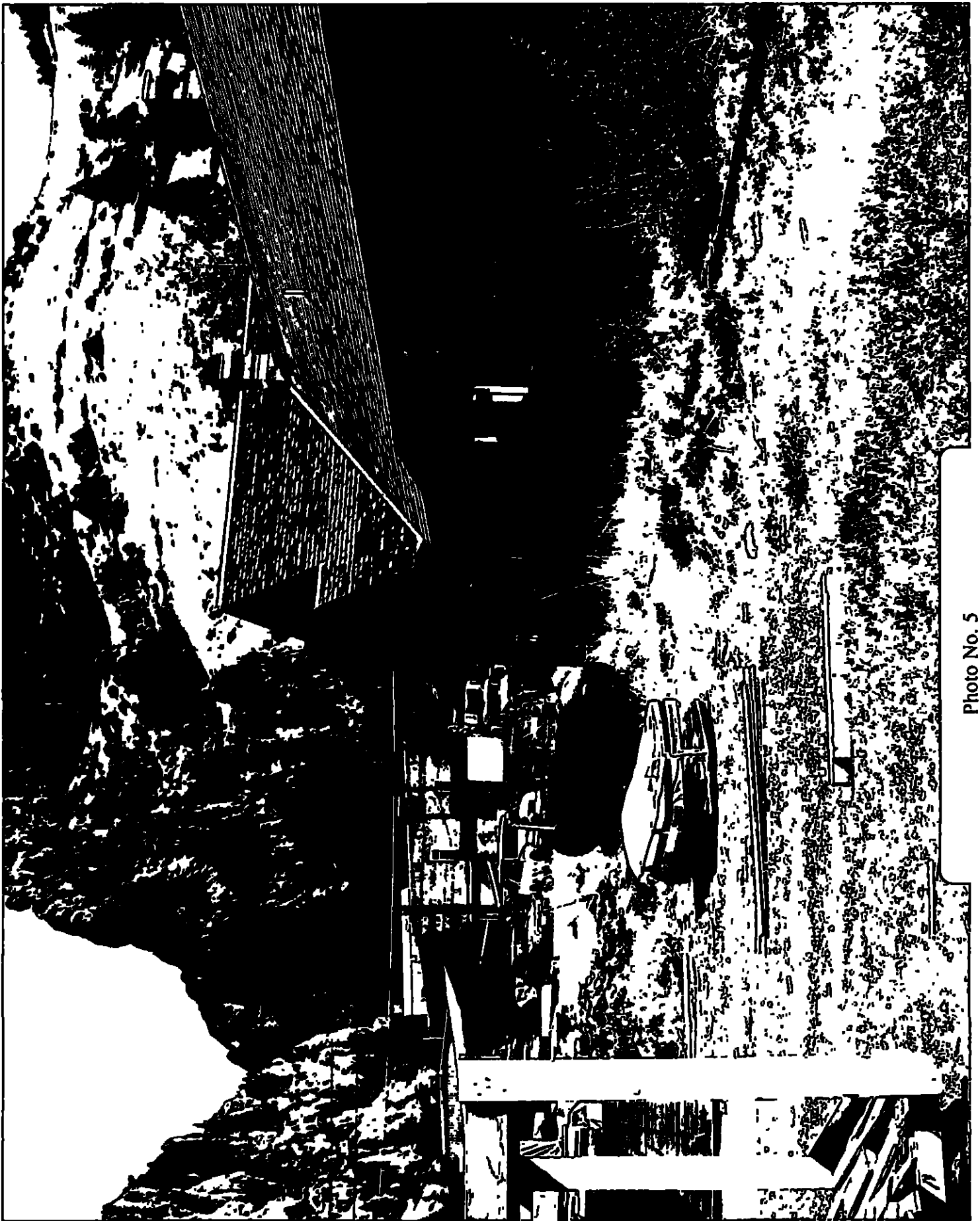


Photo No. 5
Creede Depot July 2007



Photo No. 6
Looking South. Public Alley Behind West Side
of Main Street

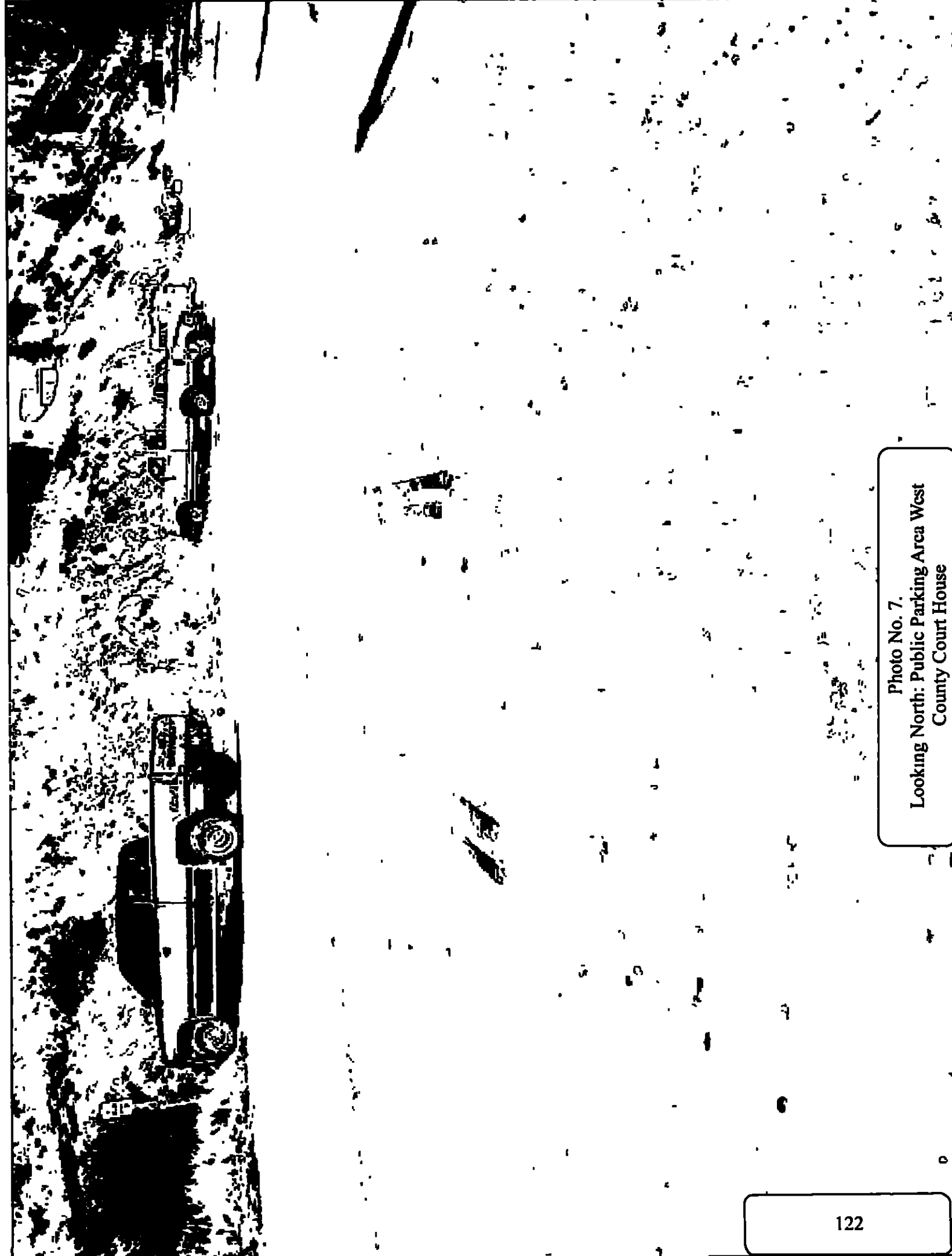


Photo No. 7.
Looking North: Public Parking Area West
County Court House

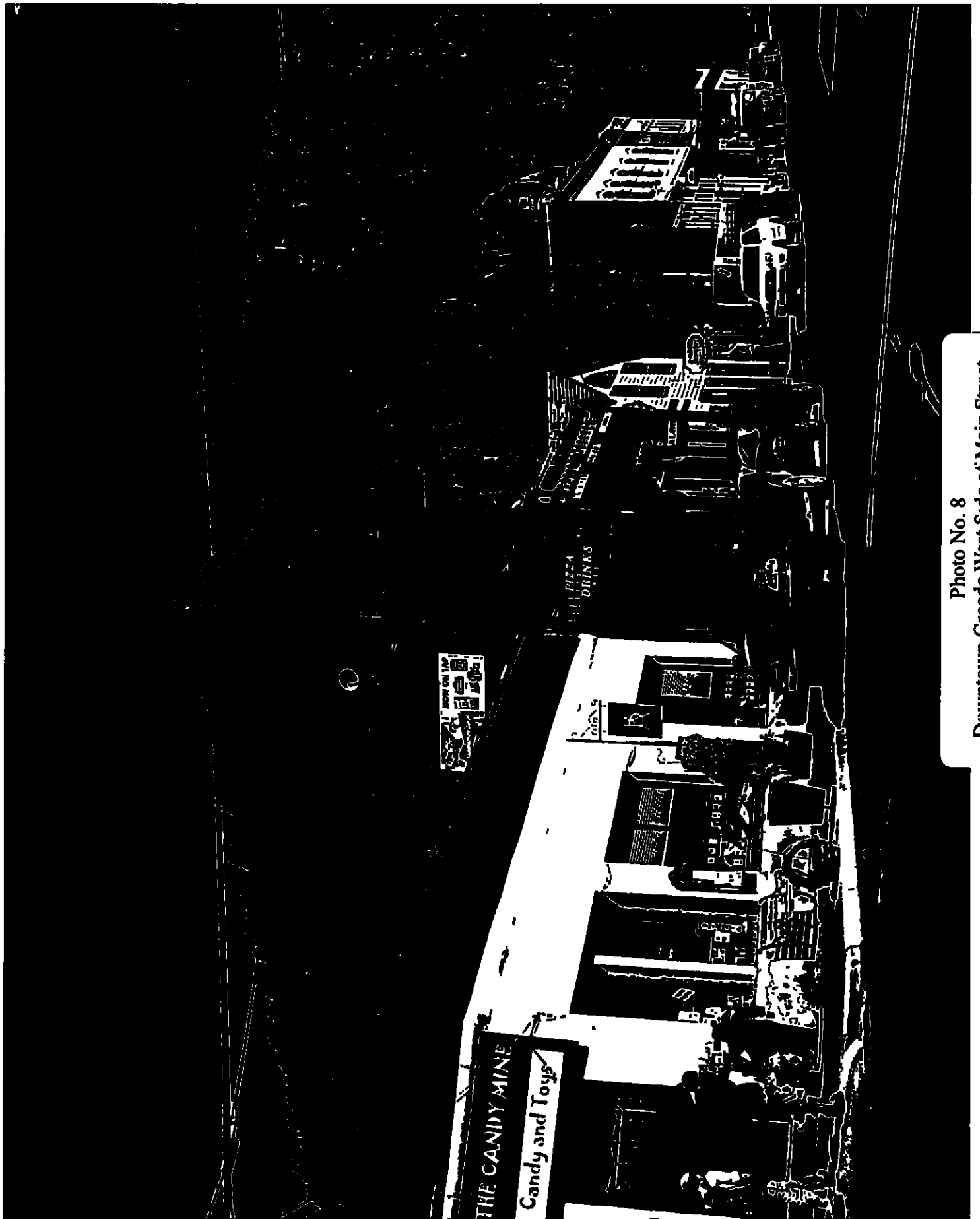


Photo No. 8
Downtown Creede West Side of Main Street
Looking North



Photo No. 9
Events Center "Days of 92" (7/4/07)



Photo No. 10
"Days of 92 Festival" (7/4/07)

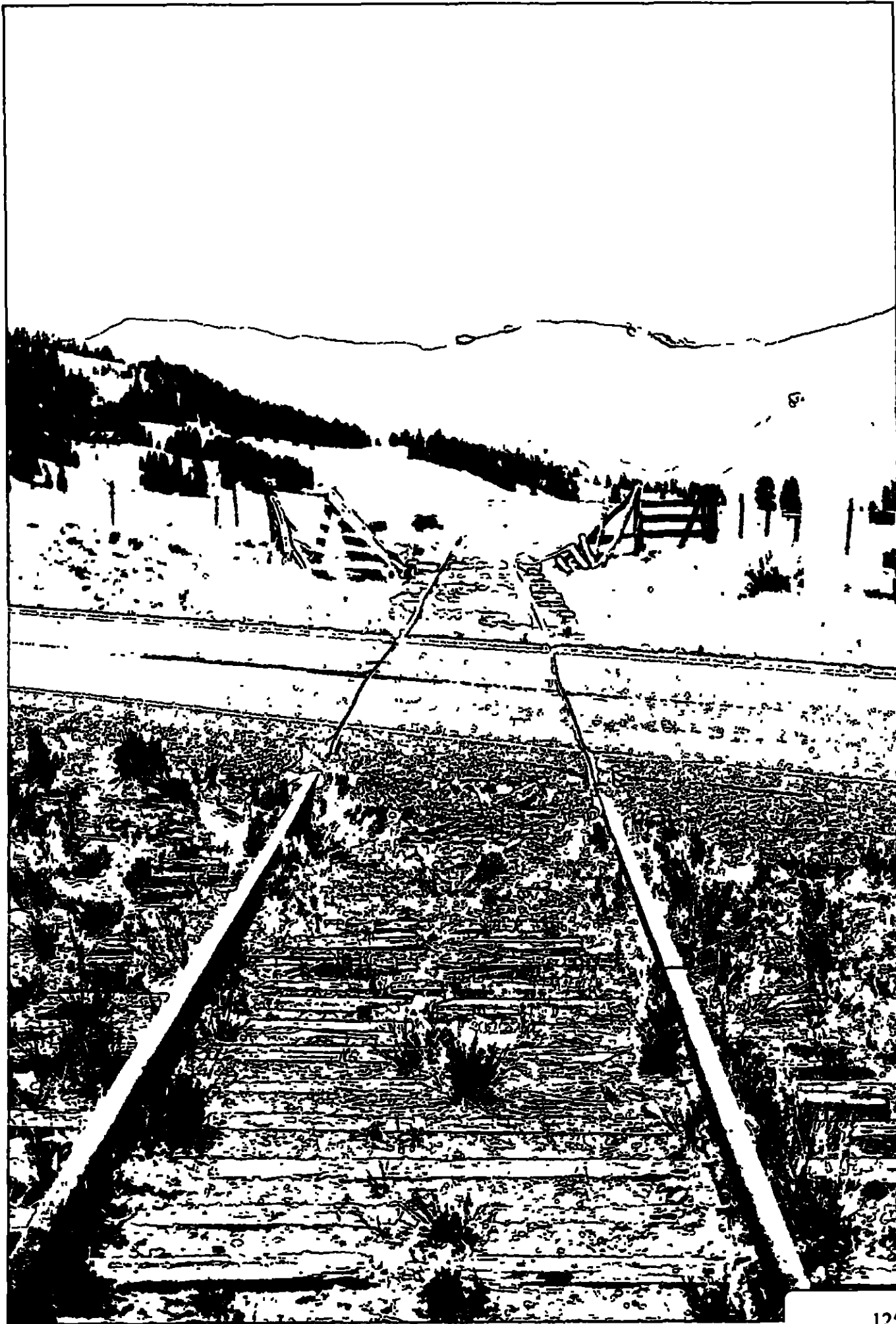


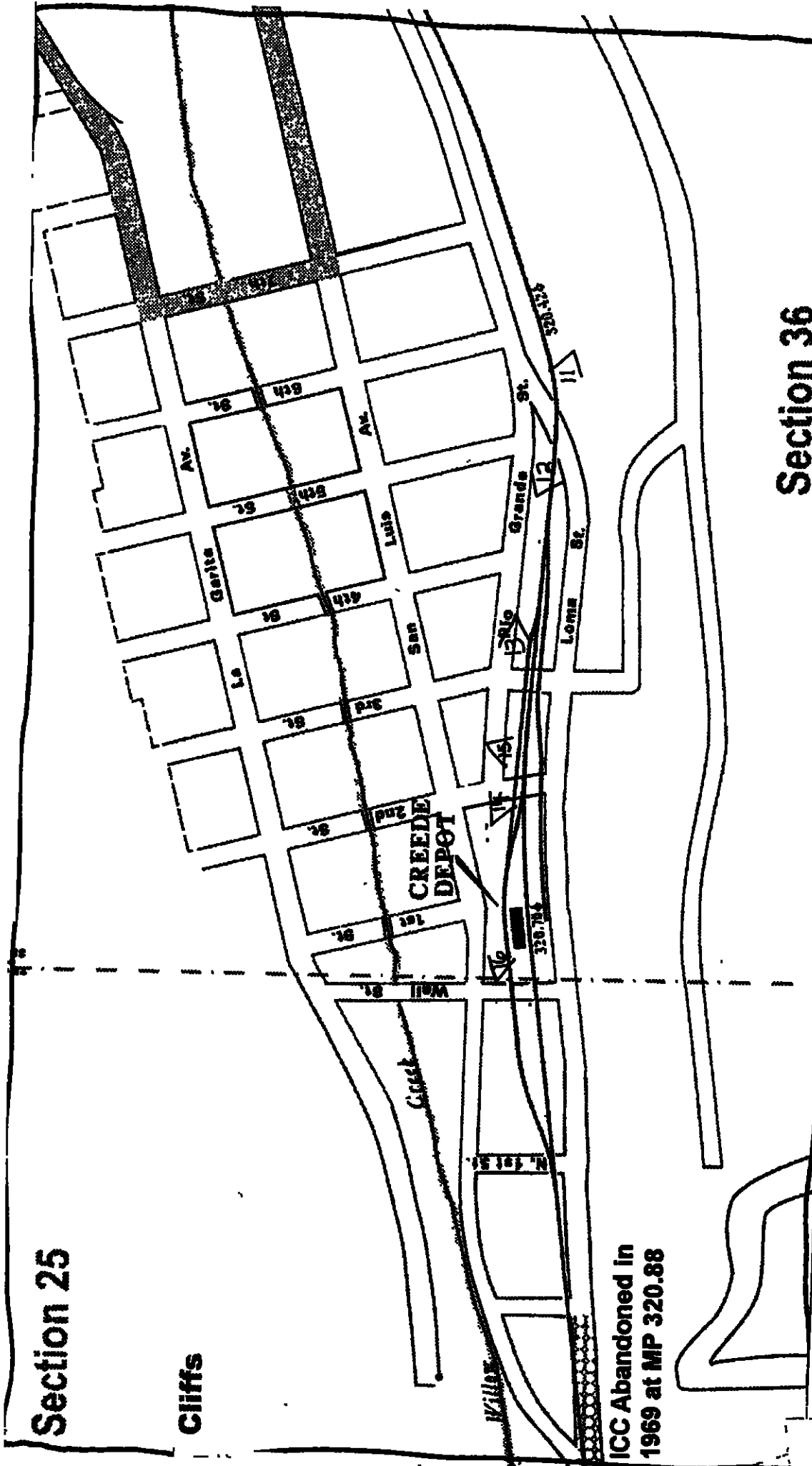
Photo No. 10-A

Exhibit No. 7

Pictures of Damage to Public Property by Foundation

Section 25

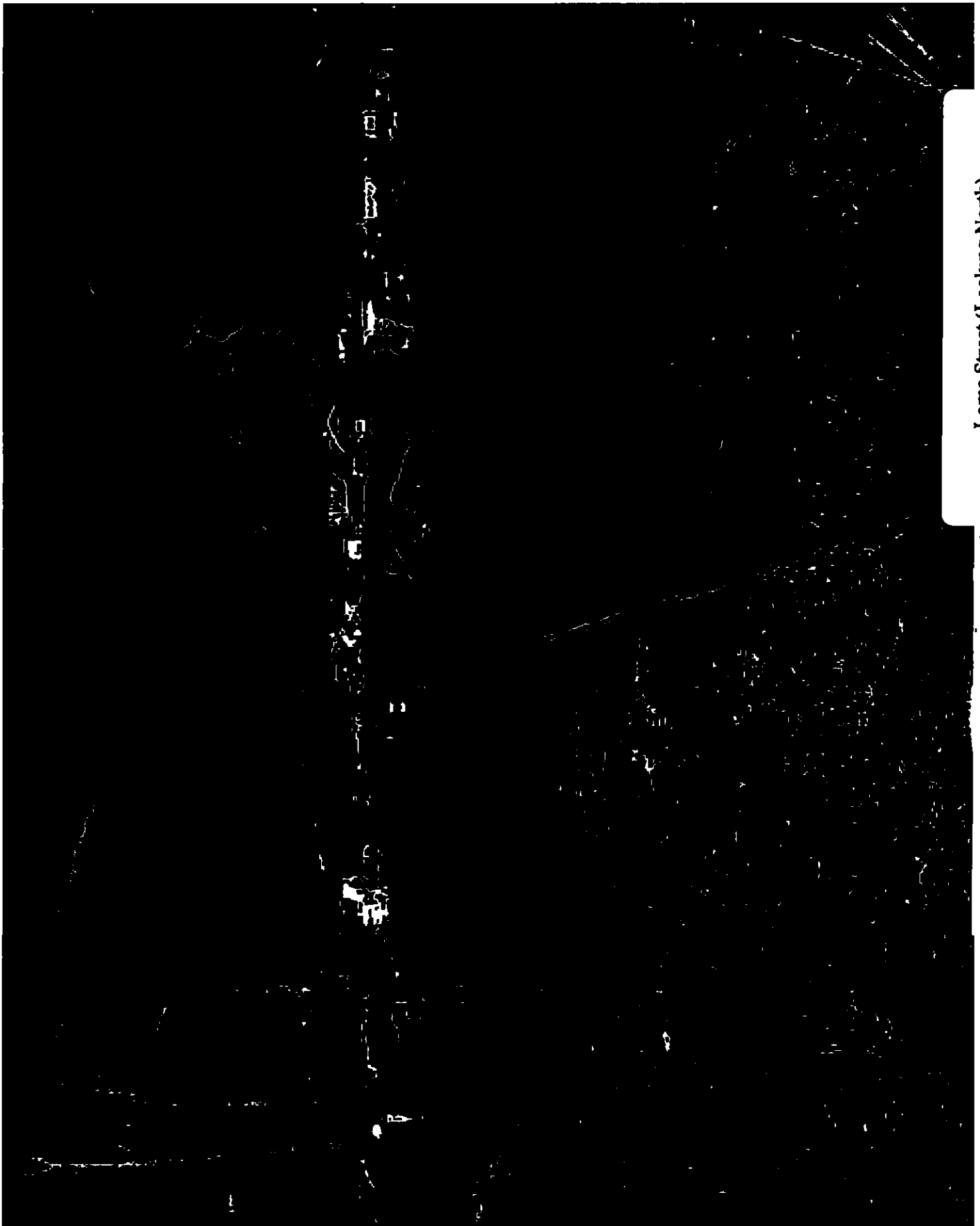
Cliffs



ICC Abandoned in
1969 at MP 320.88

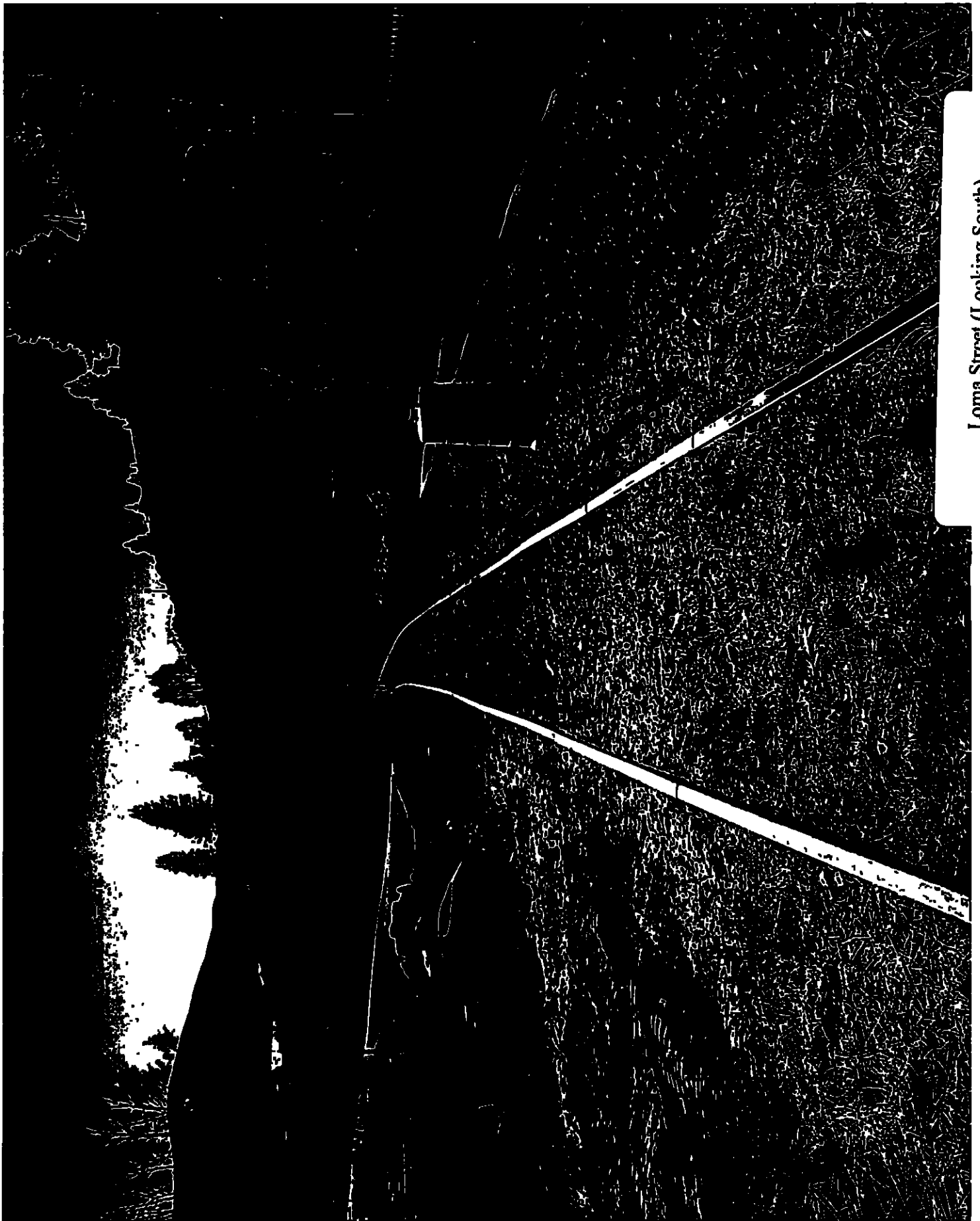
Section 36

Angles Show Vantage of Picture Numbers
Correspond to Pictures



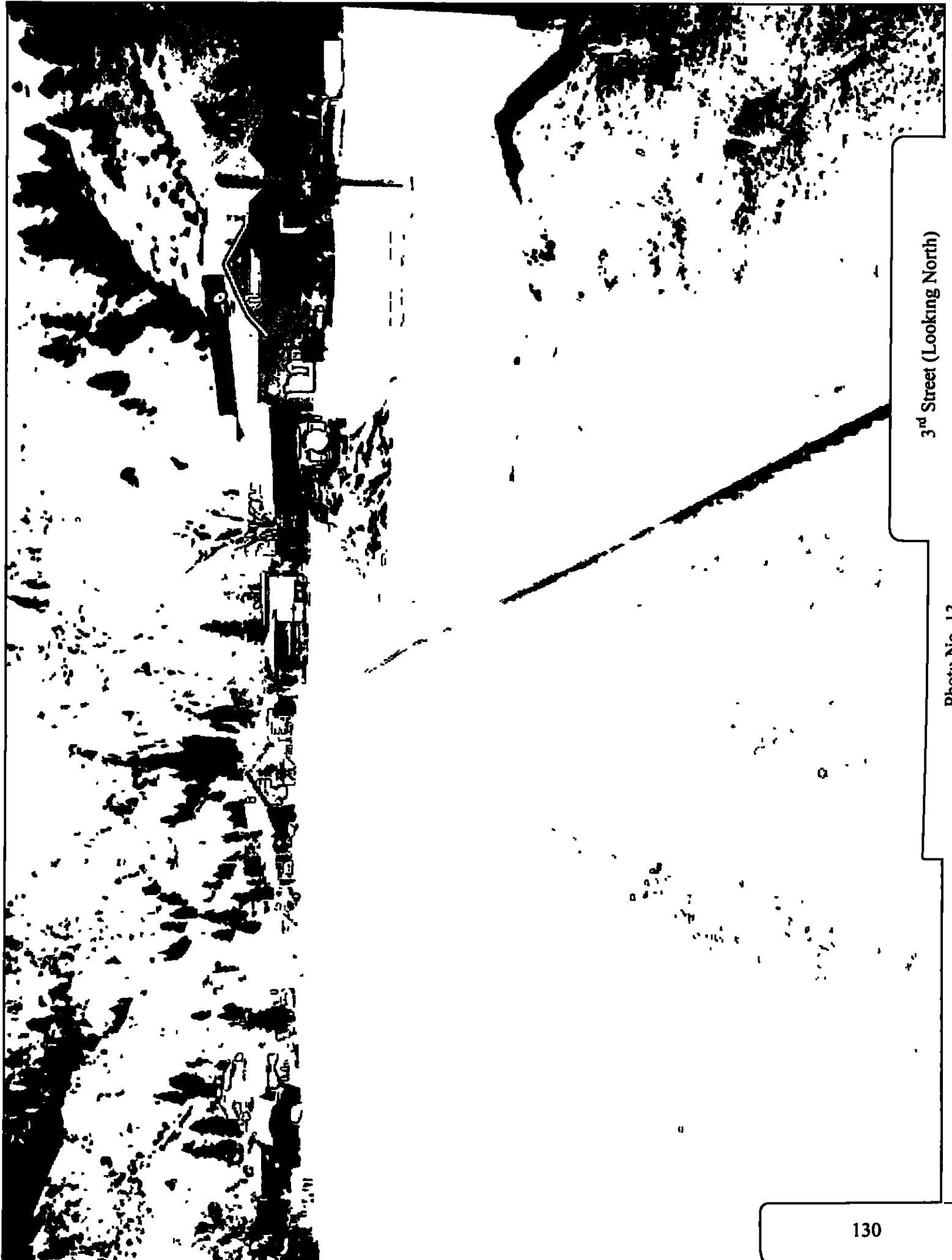
Loma Street (Looking North)

Photo No. 11



Loma Street (Looking South)

Photo No. 12



3rd Street (Looking North)

Photo No. 13

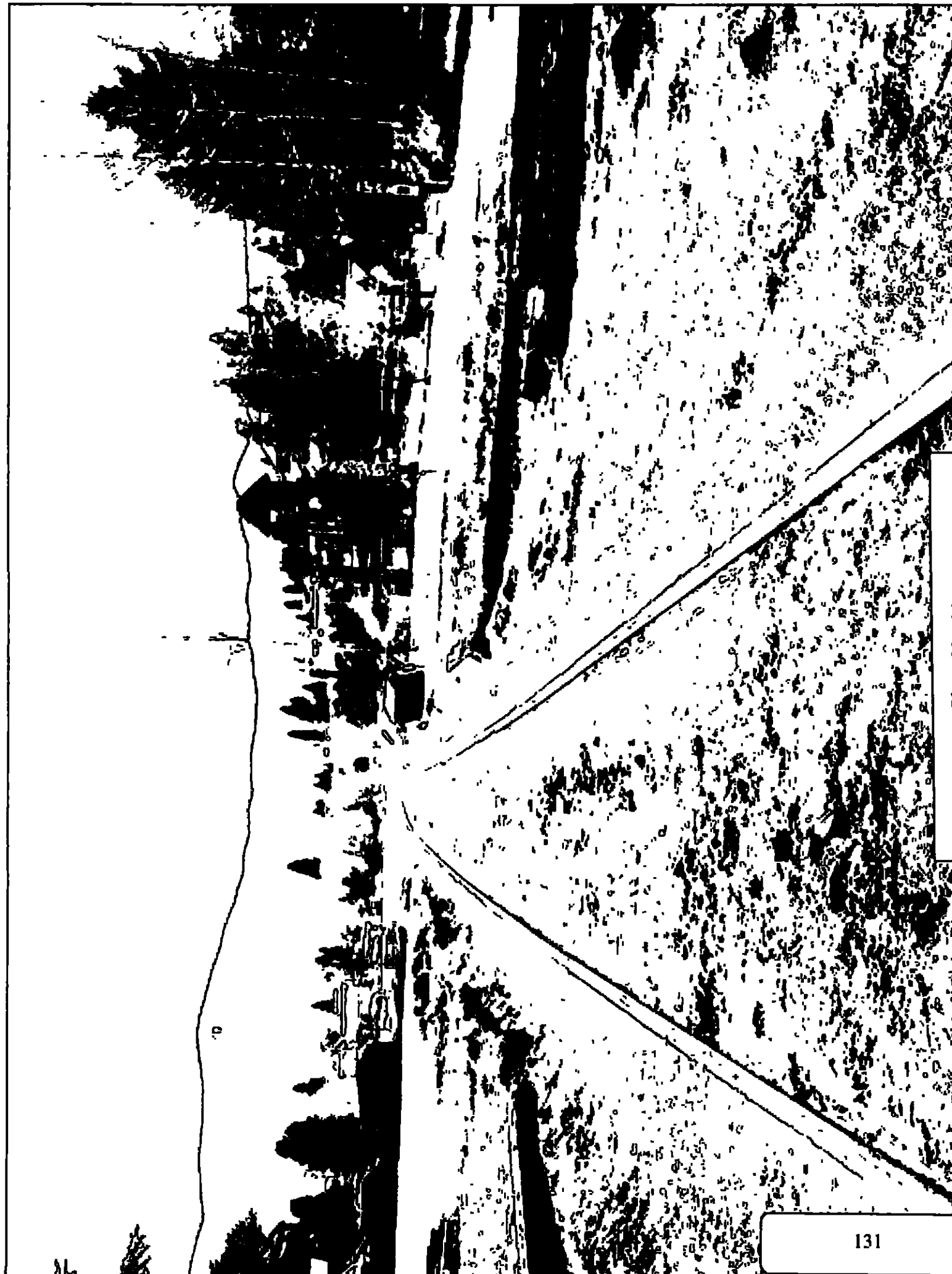


Photo No. 14

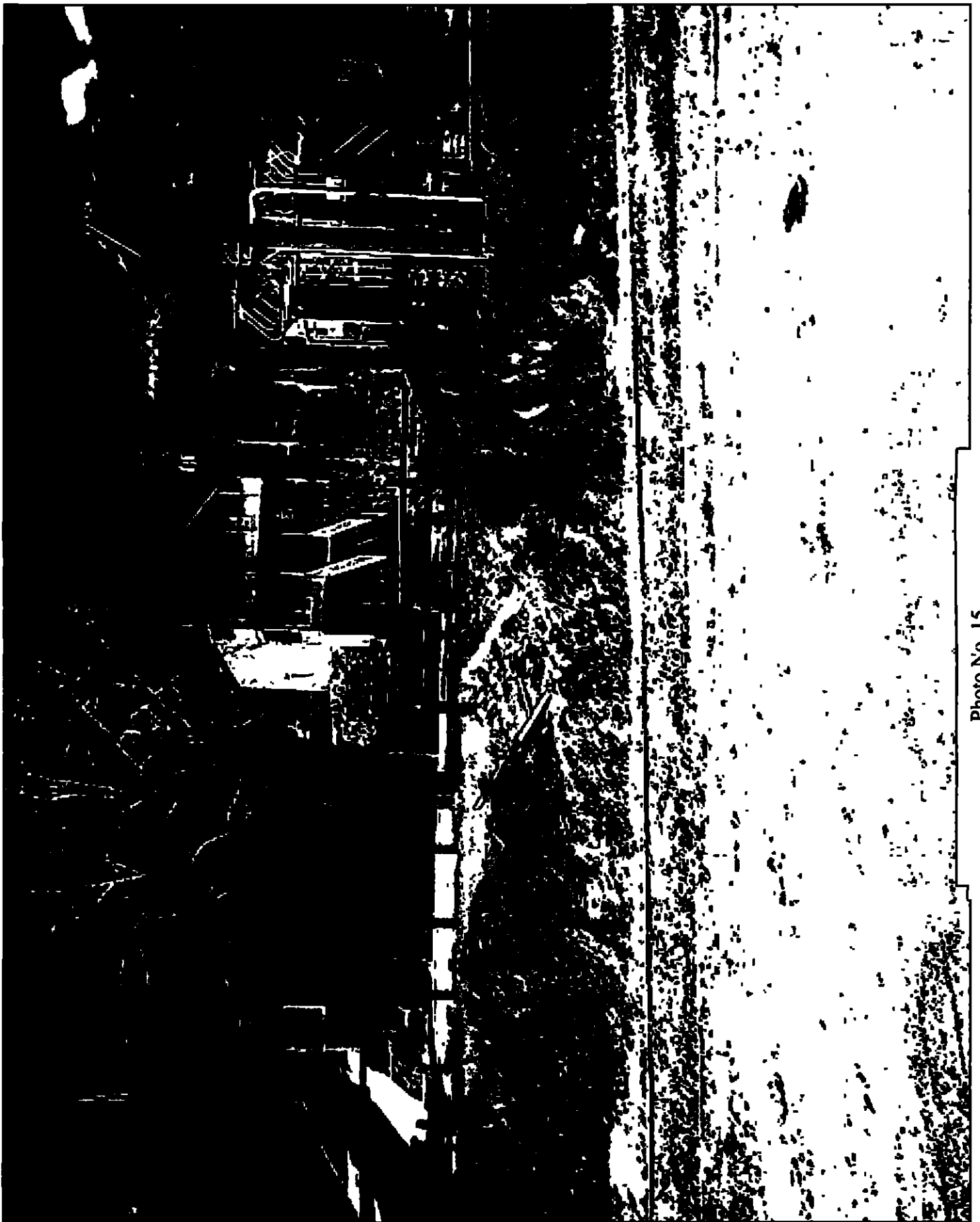


Photo No. 15



Photo No. 16

Exhibit No. 8
Pictures Showing Track Conditions



Photo No. 17



Photo No. 18
Track Gone in Alley Behind Main Street



Photo No. 19

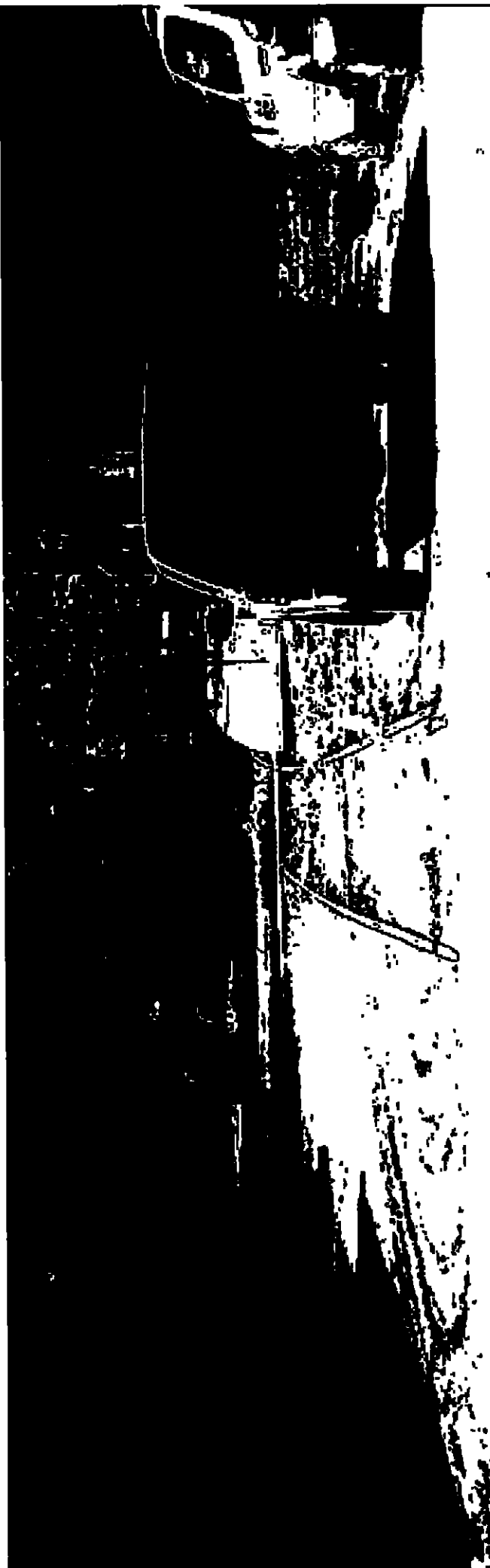


Photo No. 20



Photo No. 21



Photo No. 22

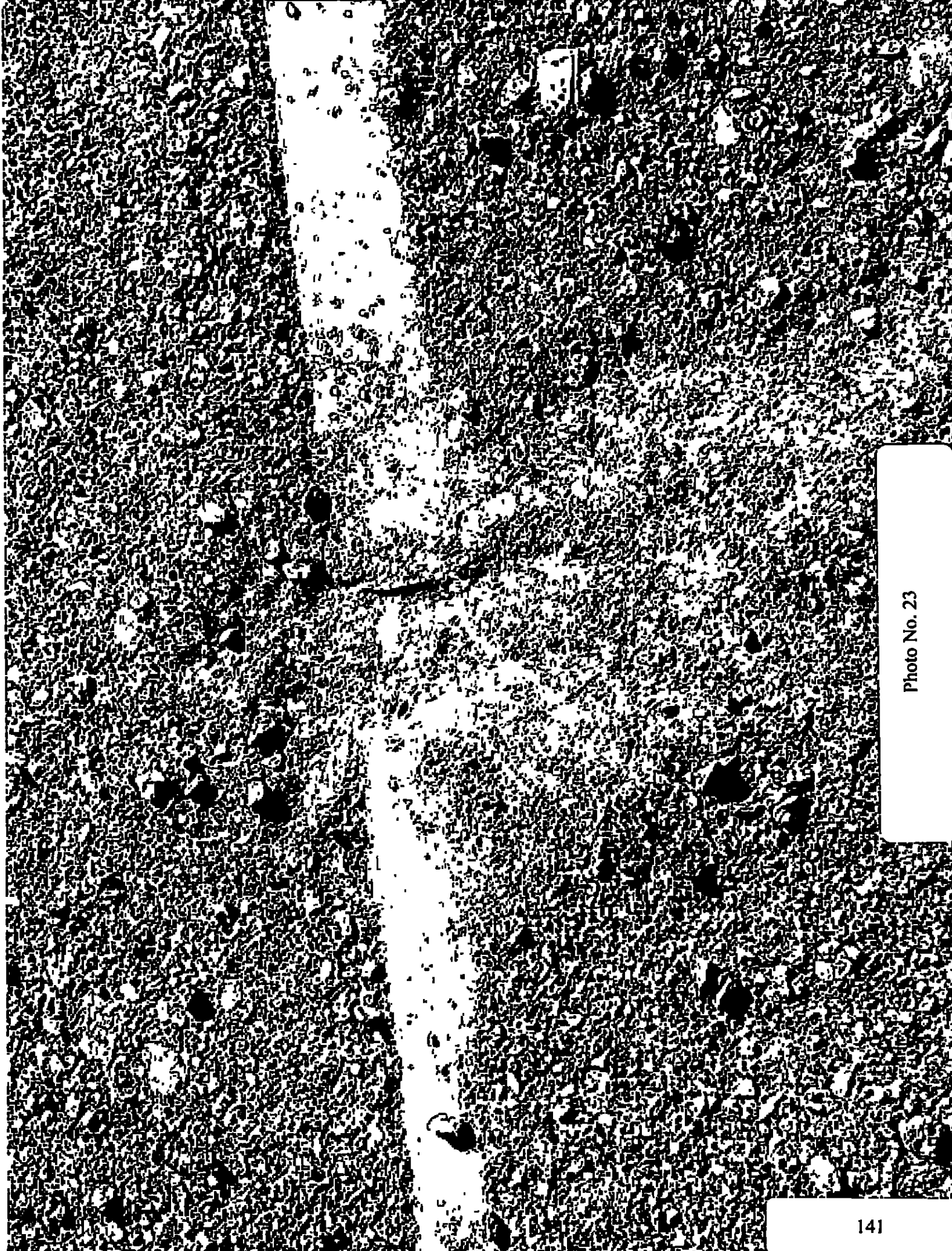


Photo No. 23



Photo No. 24



Photo No. 25



Photo No. 26



Photo No. 27



Photo No. 28



Photo No. 29



Photo No. 30

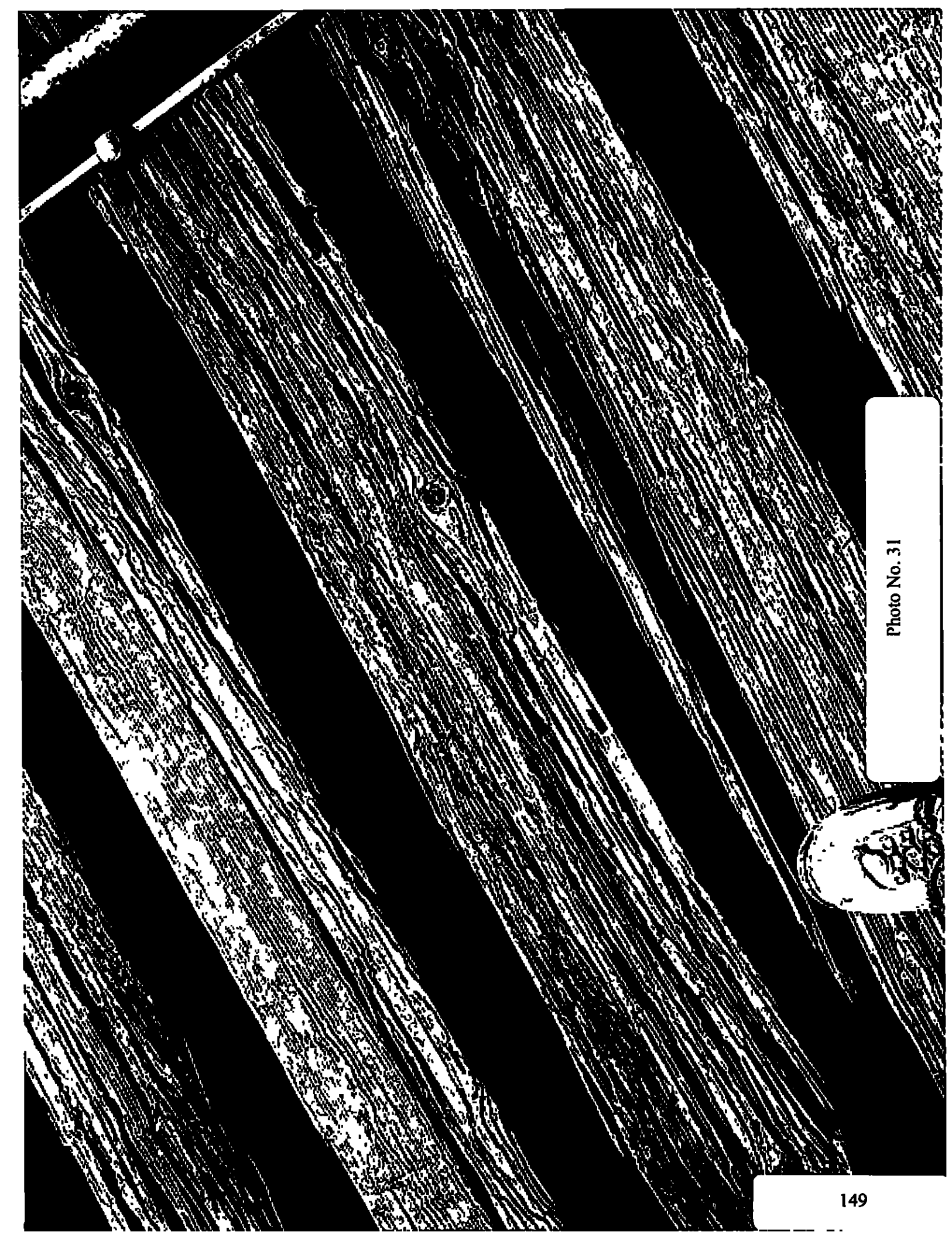


Photo No. 31

Exhibit No. 9
Pictures of Surplus Intermodal Flatcars

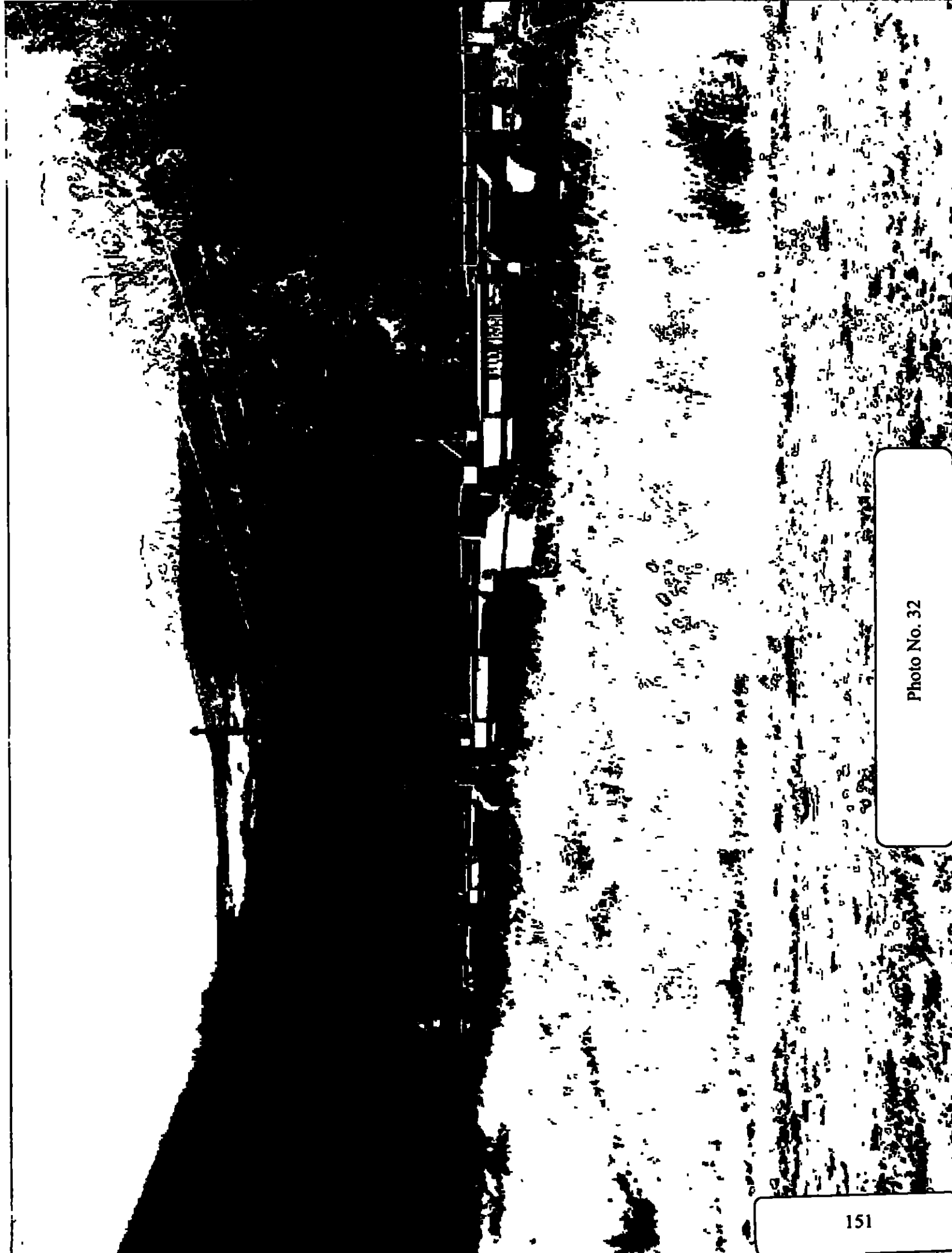


Photo No. 32

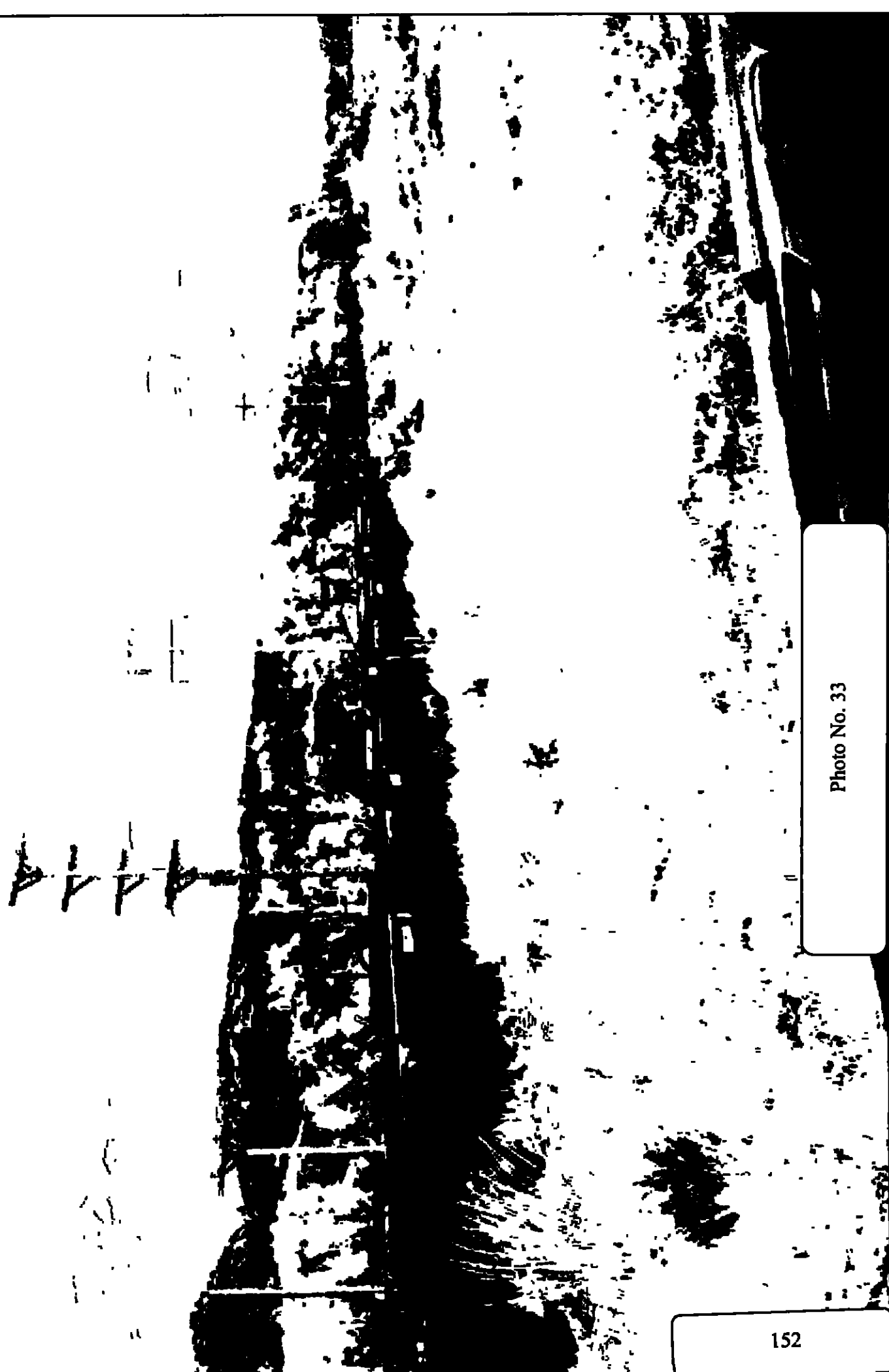


Photo No. 33



Photo No. 34

Exhibit No. 10

Abandonment of Creede Branch (September 16, 1969)

SERVICE DATE
SEPTEMBER 16, 1969

CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 5, held at its office in Washington, D. C., on the 5th day of September, 1969.

Finance Docket No. 25728

DENVER & RIO GRANDE WESTERN RAILROAD CO.
ABANDONMENT AT CREEDE, COLO.

Upon consideration of the application filed under section 1(18) of the Interstate Commerce Act on June 9, 1969, by The Denver and Rio Grande Western Railroad Company, a common carrier by railroad subject to the provisions of Part I of the act, for permission to abandon that portion of its Creede Branch extending from Mile Post 320.88 to the end of the line at Mile Post 321.72, a distance of .84 mile of main track and .33 mile of side track for an aggregate of 1.17 miles of track at Creede, Mineral County, Colo.; and of a related motion of applicant to dismiss the application for abandonment on the ground that it does not require the approval of this Commission pursuant to the provisions of section 1(18)-(20) of the act;

It appearing, That no objections to the application have been made; that the interest of employees will be protected by the imposition of appropriate conditions; that there has been no rail service on the line for the past 20 years; that non-usage of the line resulted from the decline of the mining industry and the availability of superior alternate facilities for the lumbering industry; that there presently are no industries on the line to be abandoned; that it would cost applicant \$3,000 to repair the line; that the United States Government will use the abandoned right-of-way as a thoroughfare for the use of visitors to national parks in the area; and that continued maintenance of the line would impose an unnecessary burden upon applicant and upon interstate commerce; and

It further appearing, That the motion to dismiss fails to show that the application is not one subject to the provisions of section 1(18)-(20) of the act as interpreted by this Commission in Missouri Pacific Railroad Co. Trustee Construction, 282 I.C.C. 388, and that the motion should be denied accordingly;

It is hereby certified, That, subject to the same conditions as set forth in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by The Denver and Rio Grande Western Railroad Co.

F. D. No. 25728

It is ordered, That the motion to dismiss the application be, and it is hereby, denied.

It is further ordered, That this certificate and order shall take effect and be in force from and after its date of service and that tariffs applicable to the line herein permitted to be abandoned may be canceled upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act;

It is further ordered, That, when filing schedules canceling tariffs applicable to said line, the applicant shall in such schedules refer to this certificate and order by date and docket number;

It is further ordered, That, if the authority herein granted is exercised, applicant shall submit for the consideration of this Commission two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, the date on which the abandonment actually took place; and

It is further ordered, That if the authority granted in this certificate and order is not exercised within one year from its effective date, it shall be of no further force or effect.

By the Commission, Review Board Number 5.



Andrew Anthony, Jr.
Acting Secretary

(SEAL)

FILED

BEFORE THE

AUG 21 1969

INTERSTATE COMMERCE COMMISSION

INTERSTATE
COMMERCE COMMISSION

FILE IN DOCKET

FINANCE DOCKET NO. 25728

APPLICATION OF THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY FOR CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY AUTH-
ORIZING ABANDONMENT OF THAT PORTION OF ITS
CREEDE BRANCH FROM MILE POST 320.88 AT
CREEDE, MINERAL COUNTY, COLORADO, TO THE
END OF THE BRANCH LINE, MILE POST 321.72
AT CREEDE, MINERAL COUNTY, COLORADO, CON-
SISTING OF 0.84 MILES OF MAIN TRACK, AND
0.33 MILES OF SIDE TRACKS, ALL STANDARD GAUGE.

RETURN TO QUESTIONNAIRE

INTERSTATE
COMMERCE COMMISSION
RECEIVED

AUG 21 1969

RECORDS & SERVICE
MAIL BRANCH

ERNEST PORTER

JOHN S. WALKER

Attorneys for Applicant
P. O. Box 5482
604 Rio Grande Building
Denver, Colorado 80217

Dated: August 15, 1969

FORWARDED TO *for 8-21-69*

SECTION OF
RECORDS & SERVICE
AUG 21 2 24 PM '69

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF THE DENVER AND RIO)
GRANDE WESTERN RAILROAD COMPANY)
FOR CERTIFICATE OF PUBLIC CONVEN-)
IENCE AND NECESSITY AUTHORIZING)
ABANDONMENT OF THAT PORTION OF ITS) FINANCE
CREEDE BRANCH FROM MILE POST 320.88) DOCKET NO. 25728
AT CREEDE, MINERAL COUNTY, COLORADO,)
TO THE END OF THE BRANCH LINE, MILE)
POST 321.72 AT CREEDE, MINERAL)
COUNTY, COLORADO, CONSISTING OF)
0.84 MILES OF MAIN TRACK, AND 0.33)
MILES OF SIDE TRACKS, ALL STANDARD)
GAUGE.)

RETURN TO QUESTIONNAIRE

The Denver and Rio Grande Western Railroad Company
(herein called Applicant) having made application to the Inter-
state Commerce Commission under Section 1, paragraphs (18) to
(20), inclusive, Part I of the Interstate Commerce Act, as
amended, for a certificate of public convenience and necessity
authorizing abandonment of a portion of its Creede Branch in
Mineral County, Colorado, submits herewith the following
Return to Questionnaire, pursuant to Order of the Commission:

1. Complete statement of the purpose of the application.

It is proposed to retire, abandon and dismantle the
westerly 0.84 miles of main track, and 0.33 miles of side
track, all standard gauge, of the so-called Creede Branch of

The Denver and Rio Grande Western Railroad Company, being that part of the branch which extends from Mile Post 320.88 at Creede, Mineral County, Colorado, to the end of the branch line, Mile Post 321.72 at Creede, Mineral County, Colorado.

2. When, by whom, and for what purpose the line was constructed, and its proprietary history.

The Creede Branch, 69.93 miles in length, was built narrow gauge to South Fork in 1881, to Wagon Wheel Gap in 1883, to the mining camp at Creede in 1891. Third rail was installed to Monte Vista in 1900, to Del Norte in 1901 and the Branch was standard gauge from Alamosa to Creede in 1902. This trackage was constructed narrow gauge in 1891 by a subsidiary company, The Rio Grande Gunnison Railroad Company, and was later incorporated into the Rio Grande system.

3. A copy of the applicant's general balance sheet of the latest date available, and a copy of the applicant's income account for each of the last five calendar years, and for that portion of the current year for which the information is available.

A copy of the applicant's general balance sheet of the latest date available, and a copy of the applicant's income account for each of the last five calendar years, and for that portion of the current year for which the information is available is attached hereto as Exhibit A.

4. The present state of maintenance of the line.

The track structure is composed of 65-pound rail installed in 1902. No service is presently required over this portion of the Creede Branch and none is anticipated for the future, therefore this portion is in poor condition.

5. The estimated salvage value of the line, with a general statement of the basis of the estimate.

It has been determined by our engineering forces that the age, condition and configuration of the rail proposed to be abandoned renders it of no use for repair work on the Creede Branch and that it has no commercial net salvage value. The land would revert to the United States Government.

6. The names of all railroads with which the line connects for interchange of traffic and the point of such interchange.

None.

7. A brief description of the present train service on the line, and of important changes made in the past five years.

No service is being rendered over this portion of the Creede Branch. No important changes have been made in the past five years.

8. The names of all stations on the line, stated in order with mile post numbers, with the approximate population of each, and the authority for the information, showing for each place the names of all other railroads by which it is served, or its distance by highway from the nearest other railroad.

No station is located on the line to be abandoned. The Creede station is a non-agency station and will not be affected by the proposed change. The Town of Creede has a population of approximately 350.

9. The approximate population of the territory served by the line, explaining how the limits of the territory are defined.

The Town of Creede has a population of approximately 350 persons, and the non-agency station at Creede will continue to serve the locality exactly as heretofore.

10. A detailed statement of the location and nature of the highways available for movement of the traffic now handled by the line, and of the common carrier truck and bus service on such highways, if any.

The trackage proposed to be abandoned has generated no traffic for over 20 years. The immediate vicinity is served by State Highway 149, an all-weather, paved road, over which operates Rio Grande Motor Way, a wholly-owned subsidiary of applicant. It is believed that the United States Government contemplates using the right of way to be abandoned as

a thoroughfare for the use of tourists and sightseers and other users of the national forests in the vicinity.

11. The nature of the industries in the tributary territory (such as farming, mining, lumbering, manufacturing, etc.) how long established, and the extent to which each is dependent upon the line for transportation. State location and other facts concerning the most important plants served.

Industries in the tributary territory are primarily mining and lumbering. These were established before the turn of the century and neither is dependent in any degree whatsoever upon the trackage proposed to be abandoned. No plants of any nature are located on the trackage proposed to be abandoned.

12. The passenger traffic handled on the line in each of the last two calendar years, and for that part of the current year for which the information is available.

No passenger service has been rendered on this line since 1945.

13. The freight tonnage handled by the line for each of the last two calendar years, and for that part of the current year for which the information is available.

No freight tonnage has been handled on the line proposed to be abandoned during this period.

14. (1) If the line to be abandoned is less than the entire mileage operated by the applicant, a statement showing the effect of the proposed abandonment on the net railway operating income of the applicant.

None.

- (a) The applicant's railway operating revenue from traffic handled locally between points on the line proposed to be abandoned.

None.

- (b) The applicant's railway operating revenue from traffic originating on or destined to points on the line proposed to be abandoned and also handled on other parts of the applicant's lines of railroad.

None.

- (c) An estimate in detail of the total operating revenue that should be assigned to the line proposed to be abandoned and a statement of the reasons for such assignment.

None.

- (d) The expense of operating the line proposed to be abandoned, stated by appropriate primary accounts, actual so far as possible and otherwise approximated, with a full statement of the methods used.

None.

- (e) Railway tax accruals with method of apportionment.

Not applicable.

(f) Other items entering into the applicant's income account and assignable to the line proposed to be abandoned, with methods of assignment.

Not applicable.

(g) The cost of moving the traffic on the line proposed to be abandoned beyond the limits of said line on other parts of the applicant's lines, with method of determination.

None.

(2) If the applicant's line is operated as part of a system under common control and management, a statement for the same period as required in paragraph (1) showing the effect of the proposed abandonment on the net railway operating income of the system and the unit members thereof. This statement should show the revenues accruing to the system and its unit members from traffic moving to and from the line proposed to be abandoned and the costs of handling such traffic. The method of determining such costs also should be shown.

Not applicable.

15. If the volume of freight or passenger traffic of the line has decreased during recent years, any reasons therefor.

The trackage proposed to be abandoned has been unnecessary to the operation of the company's transportation system for over 20 years, and such abandonment will not impair the ability of the company to handle the traffic of its transportation system. The decline of the mining industry over 20

years ago and the availability of superior and alternate facilities for the lumbering industry at Creede station, Wagon Wheel Gap, and South Fork to the east, has long since rendered the trackage proposed to be abandoned of no utility to the applicant or shippers in the vicinity.

16. If the line is operating as a joint facility, and abandonment of the applicant's operation only is proposed, state fully the facts as to operation by others and the extent to which it will supply the place of the operation it is proposed to abandon.

This trackage is not operated as a joint facility.

17. State what effort has been made to dispose of the line so as to insure its continued operation, and what, if any, transportation service will remain or may be substituted for that proposed to be discontinued.

No effort has been made to dispose of the line proposed to be abandoned so as to insure its continued operation for the reason that the volume of traffic originating and terminating at locations on the segment sought to be abandoned is nil.

18. A summary statement of the reasons for the application.

No industries are located on the line sought to be abandoned and there is neither present nor prospective traffic on the trackage involved.

Denver, Colorado, August 15, 1969.

Respectfully submitted,

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY (Applicant)

By W. J. Holtman
W. J. HOLTMAN
Executive Vice President and
General Manager

STATE OF COLORADO,)
CITY AND COUNTY OF DENVER) ss.

W. J. Holtman makes oath and says that he is Executive Vice President and General Manager of The Denver and Rio Grande Western Railroad Company, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing Return to Questionnaire of said Commission in this Finance Docket; that he has carefully examined all of the statements referred to in said Return and the exhibits attached thereto and made a part hereof; that he has knowledge of the matters set forth in such Return and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

W. J. Holtman
W. J. HOLTMAN

Subscribed and sworn to before me this 15th day of
August, 1969.

My commission expires June 13, 1970.

Robert R. Froese
Notary Public

(NOTARIAL SEAL)

Exhibit No. 11

IRS Application for Tax Exempt Status

**Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

OMB No. 1515-0058

If exempt status is
approved, this
application will be open
for public inspection.

Read the instructions for each Part carefully.
A User Fee must be attached to this application.

If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to you.
Complete the Procedural Checklist on page 7 of the instructions.

Part I Identification of Applicant

1a Full name of organization (as shown in organizing document) Denver & Rio Grande Railway Historical Foundation		2 Employer identification number (EIN) (If none, see page 2 of the instructions) 84-1433680
1b c/o Name (if applicable) Donald R. Shank		3 Name and telephone number of person to be contacted if additional information is needed: Donald Shank 970.259.9498
1c Address (number and street) 1474 Main Avenue	1d City or town, state, and ZIP code Durango, CO 81301	
1e Address (number and street) 1474 Main Avenue	1f City or town, state, and ZIP code Durango, CO 81301	4 Month the annual accounting period ends December
5 Date incorporated or formed May 30, 1997	6 Activity codes (See page 3 of the instructions) 060, 062, 119	7 Check here if applying under section: a ☐ 501(c) b ☐ 501(f) c ☐ 501(k)
8 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? If "Yes," attach an explanation ☐ Yes ☒ No		
9 Is the organization required to file Form 990 (or Form 990-EZ)? If "No," attach an explanation (see page 3 of the Specific Instructions) ☒ N/A ☐ Yes ☐ No		
10 Has the organization filed Federal income tax returns or exempt organization information returns? If "Yes," state the form numbers, years filed, and Internal Revenue office where filed ☐ Yes ☒ No		

11 Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING. (See Specific Instructions for Part I, Line 11, on page 3.) Get Pub. 587, Tax-Exempt Status for Your Organization, for examples of organizational documents.

- a ☒ **Corporation**—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also include a copy of the bylaws.
- b ☐ **Trust**—Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- c ☐ **Association**—Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

If the organization is a corporation or an unincorporated association that has not yet adopted bylaws, check here ☒.

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please



President and Incorporator

Mar. 20, 1998

(Signature)

(Title or authority of signer)

(Date)

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Part II Activities and Operational Information

- 1 Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: (a) a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; (b) when the activity was or will be initiated, and (c) where and by whom the activity will be conducted.

The Denver & Rio Grande Railway Historical Foundation was formed for the following purposes: 1. The main function of the Foundation is the acquisition, restoration and preservation of historic railroad equipment, artifacts and memorabilia native to Colorado, New Mexico and Utah. 2. Our ultimate goal is to acquire either through purchase or donation, a parcel of land suitable to construct a restoration facility and museum/display facility for the restored rail artifacts/equipment. The initial task is to locate old retired railroad relics that could become available. They are typically utilized as farm buildings, storage buildings, or just as an interesting "out" building on acreage scattered throughout the three states mentioned in para. 1. An excellent example of our process is as follows: We (the foundation) contacted a property owner last year after discovering an old Caboose on this land. We wrote the owner asking him of his intentions for the Caboose and asked for its donation to our Foundation, explaining that we would restore it and display it at a yet-to-be built Museum here in Durango. They agreed to donate it to us and help in the costs to move it and operate the Foundation in the form of a \$2,500.00 donation. The car will receive a total rebuild via volunteer labor and hired/compensated professionals and then will be utilized to elevate public awareness to the Foundation and our goal of the Durango Railroad Museum. At this time, we have the commitment for three more historic railcars to be donated to the Foundation. We are planning our first public meeting this April 14th for the main purpose of signing Charter Members to the Foundation and generating interest in our Caboose restoration project. It is our goal to construct the restoration facility in such a manner to allow the viewing of the restoration process from a safe vantage point. This will be available to the schools within our region and civic groups as well. This will become an education benefit to the community as children will be able to see how things were made and how they were used. As donations permit and as the membership grows, the officers and directors of the Foundation will dedicate more and more time to the goal of completing each facet of our plan to create the Durango Railroad Museum Complex. We are all committed to this preservation of Durango's rich rail history that dates back to 1881.

- 2 What are or will be the organization's sources of financial support? List in order of size

- | | |
|---|---|
| 1. Foundation general membership | 6. National Historical Society sponsors |
| 2. Charitable donations from the public | 7. Governmental Grants |
| 3. Donations from local businesses | |
| 4. Corporate sponsorship | |
| 5. State Historical Society sponsorship | |

- 3 Describe the organization's fundraising program, both actual and planned, and explain to what extent it has been put into effect. Include details of fundraising activities such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. Attach representative copies of solicitations for financial support.

To date we have not initiated our plan. We are having our first public meeting this April 14th, (see attached invitation) to kick off our membership drive and fund raising plan. We will implement a graduated level of membership (see attached membership form)

Part II Activities and Operational Information (Continued)**4** Give the following information about the organization's governing body:**a** Names, addresses, and titles of officers, directors, trustees, etc.

Donald H. Shank, President, General Manager, Chairman of the Board
 1474 Main Ave, Suite 121, Durango, CO 81301
 Gayle A. Shank, Treasurer, Office Mgr, Director
 1474 Main Ave, Suite 121, Durango, CO 81301
 Robert W. Shank, Vice Pres, Secretary, Director
 1861 Hauriatt Drive, Clarksville, TN 37040
 Robert A. Gram, Director
 204 St. Andrews Way, Durango, CO 81301

b Annual compensation

D.H. Shank-\$20.00/hr.
 until budget provides
 for salary.

Remaining 3 directors
 are not compensated
 at this time, but
 will be as budget
 permits.

c Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials?☐ Yes ☒ No

If "Yes," name those persons and explain the basis of their selection or appointment

d Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See Specific Instructions for Part II, Line 4d, on page 3)☐ Yes ☒ No

If "Yes," explain.

e Does the organization control or is it controlled by any other organization?☐ Yes ☒ No

Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?

☐ Yes ☒ No

If either of these questions is answered "Yes," explain.

f Does or will the organization directly or indirectly engage in any of the following transactions with any political organization or other exempt organization (other than a 501(c)(3) organization): (a) grants, (b) purchases or sales of assets; (c) rental of facilities or equipment, (d) loans or loan guarantees, (e) reimbursement arrangements; (f) performance of services, membership, or fundraising solicitations, or (g) sharing of facilities, equipment, mailing lists or other assets, or paid employees?☐ Yes ☒ No

If "Yes," explain fully and identify the other organizations involved.

7 Is the organization financially accountable to any other organization?☐ Yes ☒ No

If "Yes," explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been submitted.

Part II Activities and Operational Information (Continued)

8 What assets does the organization have that are used in the performance of its exempt function? (Do not include property producing investment income.) If any assets are not fully operational, explain their status, what additional steps remain to be completed, and when such final steps will be taken. If "None," indicate "N/A." Our Foundation currently has in its possession one 1880 Caboose in serious need of restoration. We have \$468.66 in our bank account prior to including the \$465.00 with this application.

9 Will the organization be the beneficiary of tax-exempt bond financing within the next 2 years? ☐ Yes ☒ No

10a Will any of the organization's facilities or operations be managed by another organization or individual under a contractual agreement? ☐ Yes ☒ No

b Is the organization a party to any leases? ☐ Yes ☒ No

If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

11 Is the organization a membership organization? ☒ Yes ☐ No
If "Yes," complete the following:

a Describe the organization's membership requirements and attach a schedule of membership fees and dues. A genuine sense of pride in Durango's rich rail history and a strong desire to help in the restoration process both physically and financially.

b Describe the organization's present and proposed efforts to attract members and attach a copy of any descriptive literature or promotional material used for this purpose. Our first public meeting to this April 14th. This meeting will kick off our membership and sponsor drive.

c What benefits do (or will) the members receive in exchange for their payment of dues? The satisfaction of supporting the resurrection and preservation of historic rail equipment and memorabilia and the eventual building of the Durango Railroad Museum Complex.

12a If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? ☐ N/A ☒ Yes ☐ No
If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.

We are planning on selling T-shirts and hats depicting the Historical Foundation and each restoration project, i.e., Project 0318 (our Caboose). Pricing is not determined at this time.

b Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? ☐ N/A ☐ Yes ☒ No
If "Yes," explain how the recipients or beneficiaries are or will be selected.

13 Does or will the organization attempt to influence legislation? ☐ Yes ☒ No
If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

14 Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? ☐ Yes ☒ No
If "Yes," explain fully.

Part III Technical Requirements

- 1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed? ☒ Yes ☐ No
If you answer "Yes," do not answer questions on lines 2 through 7 below

- 2 If one of the exceptions to the 15-month filing requirement shown below applies, check the appropriate box and proceed to question 8
Exceptions—You are not required to file an exemption application within 15 months if the organization

- ☐ a is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church See Specific Instructions, Line 2a, on page 4;
☐ b is not a private foundation and normally has gross receipts of not more than \$5,000 in each tax year, or
☐ c is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate

- 3 If the organization does not meet any of the exceptions on line 2 above, are you filing Form 1023 within 27 months from the end of the month in which the organization was created or formed? ☐ Yes ☐ No

If "Yes," your organization qualifies under section 4 01 of Rev. Proc. 92-85, 1992-2 C.B. 490, for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 4 through 7

If "No," answer question 4.

- 4 If you answer "No" to question 3, has the organization been contacted by the IRS regarding its failure to file Form 1023 within 27 months from the end of the month in which the organization was created or formed? ☐ Yes ☐ No

If "No," your organization is requesting an extension of time to apply under the "reasonable action and good faith" requirements of section 5.01 of Rev. Proc. 92-85. Do not answer questions 5 through 7

If "Yes," answer question 5.

- 5 If you answer "Yes" to question 4, does the organization wish to request relief from the 15-month filing requirement? ☐ Yes ☐ No

If "Yes," give the reasons for not filing this application prior to being contacted by the IRS See Specific Instructions, Line 5, on page 4 before completing this item. Do not answer questions 6 and 7.

If "No," answer question 6.

- 6 If you answer "No" to question 5, your organization's qualification as a section 501(c)(3) organization can be recognized only from the date this application is filed with your key District Director. Therefore, do you want us to consider the application as a request for recognition of exemption as a section 501(c)(3) organization from the date the application is received and not retroactively to the date the organization was created or formed? ☐ Yes ☐ No

If you answer "Yes" to question 6 above and wish to request recognition of section 501(c)(4) status for the period beginning with the date the organization was formed and ending with the date the Form 1023 application was received (the effective date of the organization's section 501(c)(3) status), check here ☐ and attach a completed page 1 of Form 1024 to this application.

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PART III Technical Requirements (Continued)

- 8 Is the organization a private foundation?
- ☒ Yes (Answer question 9)
- ☒ No (Answer question 10 and proceed as instructed)

- 9 If you answer "Yes" to question 8, does the organization claim to be a private operating foundation?
- ☐ Yes (Complete Schedule E.)
- ☒ No

After answering question 9 on this line, go to line 15 on page 7.

- 10 If you answer "No" to question 8, indicate the public charity classification the organization is requesting by checking the box below that most appropriately applies.

THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:

- | | | |
|---------------------------------------|---|--|
| ☐ a | As a church or a convention or association of churches (CHURCHES MUST COMPLETE SCHEDULE A.) | Sections 509(a)(1) and 170(b)(1)(A)(i) |
| ☐ b | As a school (MUST COMPLETE SCHEDULE B.) | Sections 509(a)(1) and 170(b)(1)(A)(ii) |
| ☐ c | As a hospital or a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital (MUST COMPLETE SCHEDULE C.) | Sections 509(a)(1) and 170(b)(1)(A)(iii) |
| ☐ d | As a governmental unit described in section 170(c)(1) | Sections 509(a)(1) and 170(b)(1)(A)(v) |
| ☐ e | As being operated solely for the benefit of, or in connection with, one or more of the organizations described in a through d, g, h, or i (MUST COMPLETE SCHEDULE D.) | Section 509(a)(3) |
| ☐ f | As being organized and operated exclusively for testing for public safety. | Section 509(a)(4) |
| ☐ g | As being operated for the benefit of a college or university that is owned or operated by a governmental unit. | Sections 509(a)(1) and 170(b)(1)(A)(iv) |
| ☐ h | As receiving a substantial part of its support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. | Sections 509(a)(1) and 170(b)(1)(A)(v) |
| ☐ i | As normally receiving not more than one-third of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions). | Section 509(a)(2) |
| ☒ j | The organization is a publicly supported organization but is not sure whether it meets the public support test of block h or block i. The organization would like the IRS to decide the proper classification. | Sections 509(a)(1) and 170(b)(1)(A)(vi) or Section 509(a)(2) |

If you checked one of the boxes a through f in question 10, go to question 15. If you checked box g in question 10, go to questions 12 and 13. If you checked box h, i, or j, in question 10, go to question 11.

Part III Technical Requirements (Continued)

- 11 If you checked box h, i, or j in question 10, has the organization completed a tax year of at least 8 months?
- ☐ Yes—Indicate whether you are requesting
- ☐ A definitive ruling (Answer questions 12 through 15)
- ☐ An advance ruling (Answer questions 12 and 15 and attach two Forms 872-C completed and signed)
- ☒ No—You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the application.

- 12 If the organization received any unusual grants during any of the tax years shown in Part IV-A, attach a list for each year showing the name of the contributor; the date and the amount of the grant, and a brief description of the nature of the grant.

We received the donation of one 1880 Caboose and a cash donation of \$2,500.00

- 13 If you are requesting a definitive ruling under section 170(b)(1)(A)(iv) or (vi), check here ☐ and:

- a Enter 2% of line 8, column (e), Total, of Part IV-A.
- b Attach a list showing the name and amount contributed by each person (other than a governmental unit or "publicly supported" organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line 13a above.

- 14 If you are requesting a definitive ruling under section 509(a)(2), check here ☐ and:

- a For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each "disqualified person" (For a definition of "disqualified person," see Specific Instructions, Part II, Line 4d, on page 3)
- b For each of the years included on line 9 of Part IV-A, attach a list showing the name of and amount received from each payer (other than a "disqualified person") whose payments to the organization were more than \$5,000. For this purpose, "payer" includes, but is not limited to, any organization described in sections 170(b)(1)(A)(i) through (vi) and any governmental agency or bureau.

- 15 Indicate if your organization is one of the following. If so, complete the required schedule. (Submit only those schedules that apply to your organization. Do not submit blank schedules.)

	Yes	No	If "Yes," complete Schedule:
Is the organization a church?		X	A
Is the organization, or any part of it, a school?		X	B
Is the organization, or any part of it, a hospital or medical research organization?		X	C
Is the organization a section 509(a)(3) supporting organization?		X	D
Is the organization a private operating foundation?		X	E
Is the organization, or any part of it, a home for the aged or handicapped?		X	F
Is the organization, or any part of it, a child care organization?		X	G
Does the organization provide or administer any scholarship benefits, student aid, etc.?		X	H
Has the organization taken over, or will it take over, the facilities of a "for profit" institution?		X	I

Part IV Financial Data

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

A. Statement of Revenue and Expenses

	Current tax year	3 prior tax years or proposed budget for 2 years			(e) TOTAL
	(a) From 1-98 to present	(b) 19 97	(c) 19 98* *proposed	(d) 19 99* *proposed	
Revenue					
1 Gifts, grants, and contributions received (not including unusual grants—see pages 5 and 6 of the instructions)	0	0	0	0	
2 Membership fees received	0		\$5,000	\$10,000	
3 Gross investment income (see instructions for definition)	0	0	0	0	
4 Net income from organization's unrelated business activities not included on line 3	0	0	0	0	
5 Tax revenues levied for and either paid to or spent on behalf of the organization	0	0	0	0	
6 Value of services or facilities furnished by a governmental unit to the organization without charge (not including the value of services or facilities generally furnished the public without charge)	0	0	0	0	
7 Other income (not including gain or loss from sale of capital assets) (attach schedule)	\$1.30	\$8.06	\$250.00	\$700.00	
8 Total (add lines 1 through 7)	\$1.30	\$8.06	\$5,250.00	\$10,700.00	
9 Gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of section 513. Include related cost of sales on line 22	0	0	\$750.00	\$2,500.00	
10 Total (add lines 8 and 9)	\$1.30	\$8.06	\$6,000.00	\$13,200.00	
11 Gain or loss from sale of capital assets (attach schedule)	0	0	0	0	
12 Unusual grants	0	\$2,500.00	\$20,000.00	\$50,000.00	
13 Total revenue (add lines 10 through 12)	\$1.30	\$2,508.06	\$26,000.00	\$63,200.00	
Expenses					
14 Fundraising expenses	0	0	\$1,500.00	\$4,000.00	
15 Contributions, gifts, grants, and similar amounts paid (attach schedule)	0	0	\$100.00	\$200.00	
16 Compensation to or for benefit of officers, directors, and trustees (attach schedule)	0	0	0	0	
17 Compensation of officers, directors, and trustees (attach schedule)	0	\$1,200.00	\$5,000.00	\$15,000.00	
18 Other salaries and wages	0	0	\$6,500.00	\$17,500.00	
19 Interest	0	0	0	0	
20 Occupancy (rent, utilities, etc.)	0	\$677.00	\$2,400.00	\$2,400.00	
21 Depreciation and depletion	0	0	0	0	
22 Other (attach schedule)	0	\$163.70	\$10,500	\$20,800	
23 Total expenses (add lines 14 through 22)	0	\$2,040.70	\$26,000.00	\$59,900.00	
24 Excess of revenue over expenses (line 13 minus line 23)	\$1.30	\$467.36	0	\$3,300.00	

Part IV Financial Data (Continued)**B. Balance Sheet (at the end of the period shown)**Current tax year
Date _____

Assets		
1	Cash	\$468.66
2	Accounts receivable, net	0
3	Inventories	0
4	Bonds and notes receivable (attach schedule)	0
5	Corporate stocks (attach schedule)	0
6	Mortgage loans (attach schedule)	0
7	Other investments (attach schedule)	0
8	Depreciable and depletable assets (attach schedule)	0
9	Land	0
10	Other assets (attach schedule) Unrestored 1880 Caboose	\$1,900.00
11	Total assets (add lines 1 through 10)	\$2,368.66
Liabilities		
12	Accounts payable Deferred compensation to President/Director	\$2,350.00
13	Contributions, gifts, grants, etc., payable	0
14	Mortgages and notes payable (attach schedule)	0
15	Other liabilities (attach schedule)	0
16	Total liabilities (add lines 12 through 15)	\$2,350.00
Fund Balances or Net Assets		
17	Total fund balances or net assets	\$18.66
18	Total liabilities and fund balances or net assets (add line 16 and line 17)	\$2,368.66

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation ☐

Certification	
I certify that the annual gross receipts of _____ name of organization have averaged (or are expected to average) not more than \$10,000 during the preceding 4 (or the first 4) years of operation.	
Signature ▶	Title ▶
b ☒ Initial request for a determination letter for:	
• An exempt organization that has had annual gross receipts averaging more than \$10,000 during the preceding 4 years, or	
• A new organization that anticipates gross receipts averaging more than \$10,000 during its first 4 years	
c ☐ Group exemption letters	\$500
	\$465

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3. For more information, see Rev. Rul. 97-8, 1997-1 IRB 107.

Check the box on line 3 for the type of application you are submitting. If you check box 5a, you must complete and sign the certification statement that appears under line 3a.

Attach to Form 8718 a check or money order payable to the Internal Revenue Service for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8718 to your determination letter application.

Send the determination letter application and Form 8718 to
Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

If you are using express mail or a delivery service, send the application and Form 8718 in:

**Internal Revenue Service
201 West Rivercenter Blvd
Attn: Extracting Stop 312
Covington, KY 41011**

177

Form **872-C**

(Rev. April 1995)

Department of the Treasury
Internal Revenue Service**Consent Fixing Period of Limitation Upon
Assessment of Tax Under Section 4940 of the
Internal Revenue Code**

(See instructions on reverse side)

OMB No. 1545-0056

To be used with
Form 1023. Submit
in duplicate.

Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(vi) or section 508(a)(2) during an advance ruling period.

Denver & Rio Grande Railway Historical Foundation

(Exact legal name of organization as shown in organizing document)

1474 Main Avenue, Suite 121, Durango, CO 81301

(Number, street, city or town, state, and ZIP code)

and the

District Director of
Internal Revenue, or
Assistant
Commissioner
(Employee Plans and
Exempt Organizations)

Consent and agree that the period for assessing tax (imposed under section 4940 of the Code) for any of the 5 tax years in the advance ruling period will extend 8 years, 4 months, and 15 days beyond the end of the first tax year.

However, if a notice of deficiency in tax for any of these years is sent to the organization before the period expires, the time for making an assessment will be further extended by the number of days the assessment is prohibited, plus 60 days.

Ending date of first tax year

December 31, 1997

(Month, day, and year)

Name of organization (as shown in organizing document)

Denver & Rio Grande Railway Historical Foundation

Date

March 20, 1998Officer or trustee having authority to sign Donald H. Shank, President/Chairman

Signature

or IRS use only

Title PresidentBy Director or Assistant Commissioner (Employee Plans and Exempt Organizations)

Date

Paperwork Reduction Act Notice, see page 1 of the Form 1023 instructions.

Exhibit No. 12

Denver & Rio Grand Ry. Historical Foundation's Discovery Responses

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

December 3, 2007

By e-mail to rmjohnson@akingump.com

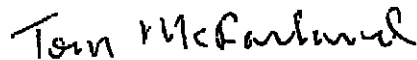
Ronald M. Johnson, Esq
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W
Washington, DC 20036

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

Dear Mr. Johnson

Hereby transmitted is the Foundation's Response To Request For Discovery

Very truly yours,



Thomas F. McFarland
*Attorney for Denver & Rio Grande
Historical Foundation*

TMcf H enc wp8.0\1237:enRMJ1

cc: Donald H. Shank

BEFORE THE
SURFACE TRANSPORTATION BOARD

DENVER & RIO GRANDE RAILWAY)
HISTORICAL FOUNDATION --) DOCKET NO.
ADVERSE ABANDONMENT -- IN) AB-1014
MINERAL COUNTY, CO)

RESPONSE TO REQUEST FOR DISCOVERY

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
DONALD H. SHANK, President & Executive Director
20 North Broadway
Monte Vista, CO 81144

Respondent

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Respondent

DATE: December 3, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

DENVER & RIO GRANDE RAILWAY	)	
HISTORICAL FOUNDATION --	)	DOCKET NO.
ADVERSE ABANDONMENT -- IN	)	AB-1014
MINERAL COUNTY, CO	)	

RESPONSE TO REQUEST FOR DISCOVERY

Pursuant to 49 C F R. § 1114, Subpart B, DENVER AND RIO GRANDE RAILWAY HISTORICAL FOUNDATION (the Foundation) hereby responds to discovery requests submitted by the City of Creede, Colorado (the City) on November 16, 2007.

The Foundation's Response is verified by Mr. Donald H Shank, President and Executive Director of the Foundation. Mr. Shank's signed verification is attached to this Response as Appendix 1

I. Responses to Interrogatories

1. *In a letter dated November 11, 2007 from Donald H Shank, President & Executive Director of the Foundation, to Benjamin F. Gibbons, city attorney for the City of Creede, Mr Shank stated that "[t]he railroad has to date identified three separate shippers, one of which is located east of the Mississippi River, requesting the delivery of material into the City of Creede " (Emphasis in original). Please identify each of the three shippers referred to in Mr Shank's letter. For each such shipper, provide the name and address of the shipper; the commodity, material, or product to be shipped on the Foundation's rail line, the origin and destination of the shipments; when shipments would begin; and the number of freight cars by car type (boxcar, tank car, gondola, hopper, etc) to be shipped on an annual basis*

Response:

Shipper. GMCO Corp , Rifle, CO 81650
Commodity. Magnesium Chloride

Routing:- (UPRR) Rifle-Denver-Walsenburg, i/c (SLRG) Walsenburg-South Fork (Derrick),
 i/c (DRGR) South Fork (Derrick)-Creede (yard)
 Recipient: Mineral County Road & Bridge, Creede, CO, Danny Rogers, Supervisor
 Ship Date: late May, June and early July, subject to track rehab completion
 Car Type: Tank
 No of Cars: 12-15 annually

Shipper: GMCO Corp., Rifle, CO 81650
 Commodity: Magnesium Chloride
 Routing: (UPRR) Rifle-Denver-Walsenburg, i/c (SLRG) Walsenburg-South Fork (Derrick),
 i/c (DRGR) South Fork (Derrick)-Creede (yard), Transload to Lake City, CO
 Recipient: Hinsdale County Road & Bridge, Lake City, CO 81235 Robert Hurd, Supervisor
 and United States Forest Service, Lake City, CO
 Ship Date: late May, June and early July, subject to track rehab completion
 Car Type: Tank
 No. of Cars: 12-15 annually

Shipper: Cedar Log Producer, Cookville, TN
 Commodity: Cedar Logs
 Routing: (CSXT) Cookville-Memphis, i/c (UPRR) Memphis-Omaha-Denver-Walsenburg,
 i/c (SLRG) Walsenburg-South Fork (Derrick), i/c (DRGR) South Fork (Derrick)-
 Creede (yard). Will ship finished products from Creede rail yard to major
 wholesale/retail markets in the west
 Recipient: Tenco Products, Creede, CO 81130
 Ship Date: T.B.D. and subject to track rehab completion
 Car Type: Mr Baxter would prefer to use our Bulkhead Flat already owned by DRGR
 No of Cars: 1-3 annually, initially

2. *In addition to the shippers identified in response to Interrogatory No. 1, please identify all shippers, including without limitation shippers located in Creede, who have made commitments to utilize the Foundation for rail freight service. For each such shipper, identify the shipper; describe the product or commodity to be shipped; explain whether the commitment is in writing; identify the origin and destination of the shipment, specify the number of freight cars by car type that the shipper has committed to ship or receive on an annual basis on the Foundation's rail line, and identify when such shipments would commence. If there are no shippers in addition to those identified in response to Interrogatory No. 1, please so state in your response to this Interrogatory No. 2.*

Response:

There are no shippers in addition to the shippers identified in the response to Interrogatory No. 1 that have made commitments to utilize the Foundation for rail freight service. Further responding while track rehabilitation work is under way, the Foundation has not made a concerted effort to secure commitments from numerous shippers for rail freight traffic. See, also, response to Interrogatory No. 4, *infra*.

3. *Please identify and describe all contracts the Foundation has entered into with shippers, including, without limitation, the three shippers mentioned in Mr. Shank's letter November 11, 2007 letter, to ship freight over the Creede Branch. For each such contract, identify the shipper, the date of the contract, the term of the contract, whether the contract is oral or in writing, whether the contract is still in effect, the commodity or freight to be shipped, the number of freight cars by car type per year that the shipper will ship or receive on the Foundation's rail line, and the location on the Creede Branch where the shipment is to be delivered or picked up by the Foundation.*

Response:

The Foundation does not currently hold any formal written contracts to ship or receive freight over the Creede Branch. However, the Foundation holds letters and e-mail messages from shippers and receivers of freight requesting that the Foundation provide transportation of their commodities over the Creede Branch. Those letters and messages are produced in response to the City's document requests.

4. *Please describe all efforts by the Foundation since January 1, 2004 to identify shippers who will use the Foundation's rail line (commonly known as the "Creede Branch") for freight service*

Response

The Foundation has not yet conducted an exhaustive search for shippers; instead the Foundation's efforts have focused on rehabilitation of the Creede Branch and limited revenue generation by means of passenger excursions. However, the Foundation has maintained

communication with the shippers and receivers identified in response to Interrogatory No. 1, and have kept them informed of the status of track rehabilitation and the difficulties resulting from the City's extensive legal maneuverings.

5. *Please identify all persons with whom the Foundation has communicated since January 1, 2004 regarding the possibility of shipping freight over the Foundation's rail line.*

Response:

The persons so contacted have been identified in response to Interrogatory No. 1.

6 *Please identify the date on which the Foundation will begin to provide rail freight service over its rail line, i e., actually deliver or pick-up freight from shippers in Creede or elsewhere on the Creede Branch*

Response

Inasmuch as track rehabilitation has been hampered by multiple legal actions brought by the City over several years, the Foundation cannot at this time definitively set a date for the beginning of rail freight service. To the extent that the City continues to attempt to throw roadblocks in front of the Foundation, as it is doing by means of the current application for adverse abandonment, the date for reinstitution of rail freight service will be further delayed.

II. Responses to Requests for Production of Documents

1. *In a letter dated November 11, 2007 from Donald H. Shank, President & Executive Director of the Foundation, to Benjamin F Gibbons, city attorney for the City of Creede, Mr. Shank stated that "[t]he railroad has to date identified three separate shippers, one of which is located east of the Mississippi River, requesting the delivery of material into the City of Creede." (Emphasis in original). Please provide copies of all documents, including, without limitation, contracts, letter, or e-mails, relating to each of these shipper's agreement to ship freight on the Foundation's rail line.*

Response:

Attached to this Response as Appendix 2 is a copy of a letter to the Foundation from Mr. Randy Parsons of GMCO Corporation, Rifle, CO, dated July 2, 2003.

Attached to this Response as Appendix 3 is a copy of a letter to the Foundation from Mr. Robert Hurd of Hinsdale County Government, Lake City, CO, dated June 25, 2003:

Attached to this Response as Appendix 4 is a copy of a letter to the Foundation from Mr. Danny Rogers of the Board of Commissioners of Mineral County, Colorado, Creede, CO, dated June 25, 2003.

Attached to this Response as Appendix 5 are copies of a series of e-mail messages between Mr. Shank of the Foundation and Mr. Steve Baxter of Tenco Products, Cookville, TN, dated in May and June, 2007.

2 Please provide copies of all documents relating to written commitments or promises by any shipper or other persons, in addition to those referenced in Mr. Shank's November 11, 2007 letter, to use the Foundation for rail freight service.

Response:

The Foundation does not have documents in addition to those furnished in response to Request for Production No. 1.

3 Please provide copies of any documents relating to the Foundation's efforts from January 1, 2004 to date to identify shippers or obtain rail freight business for its rail line.

Response:

See Appendix 5 attached to this Response

4 Please provide any and all documents references or referred to in the Foundation's responses to Interrogatories served by the City on the Foundation this same day

Response:

Such documents are attached to this Response as Appendices 2-5.

Respectfully submitted,

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
DONALD H. SHANK, President & Executive Director
20 North Broadway
Monte Vista, CO 81144

Respondent

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Respondent

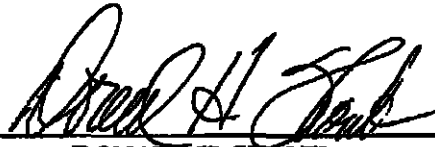
DATE: December 3, 2007

APPENDIX 1

VERIFICATION

STATE OF COLORADO)
) SS:
COUNTY OF RIO GRANDE)

DONALD H. SHANK, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



DONALD H. SHANK

SUBSCRIBED AND SWORN to
before me this 29th day
of November, 2007.



Notary Public



MY COMMISSION EXPIRES
5-9-2011

My commission expires: 5-9-2011

APPENDIX 2

GMCO Corporation

27346 Highway 6
P.O. Box 1480
Rifle, CO 81650

(970) 625-9100
Fax (970) 625-9101
email: gmco@rof.net

July 2, 2003

Denver and Rio Grande Rail Road
Historical Foundation
1474 Main Avenue, Suite 223
Durango, CO 81301

To whom it may concern:

GMCO Corporation is requesting rail service to Creede, CO. We do considerable dust control work in the area and would benefit greatly by having rail service to Creede and the surrounding area. The estimated number of cars we would ship to the area is 25 per year.

Thank you,



Randy Parsons

APPENDIX 3

HINSDALE COUNTY

"Above and Beyond"

511 North Hansen Street
P.O. Box 277 • Lake City Colorado 81235
(719) 970-9444 • Email: hinsdalecounty@pcn.net

June 25, 2003

To: Denver Rio Grande Historical Foundation
From: Hinsdale County Government
Subject: Rail Freight Weeds - Creede Colorado

To Whom It May Concern:

Hinsdale County would very much like to see rail freight service available in the Creede area. We now have to truck about 65,000 gallons of Mag Chloride road treatment from Alamosa to the forest roads that we treat with this product

The US Forest Service and Hinsdale County would benefit greatly if rail service was available into Creede. This dust road treatment is done at least once per year. Please allow rail service to reopen into Creede. Thank you.

Sincerely,



Robert Hurd
Road & Bridge Supervisor

APPENDIX 4

BOARD OF COUNTY COMMISSIONERS

MINERAL COUNTY
P.O. BOX 70
CREEDE, COLORADO 81130
(719) 658-2331



June 25, 2003

Denver & Rio Grande Railway Historical Foundation
Don Shank, President
1474 Main Avenue, Suite 223
Durango, CO 81301

Attention Don,

On behalf of the Mineral County Road & Bridge, we would like to request delivery of our Magnesium Chloride in tank cars by rail line to the City of Creede.

Currently, we are traveling a great distance to Monte Vista to pick up and return with the Magnesium Chloride. This is costing us man hours, time away from our maintenance of roads, wear and tear on trucks, etc. It would be far more convenient for us to receive our goods in the City of Creede.

Please consider our request of freight delivery by rail line. Thank you for your time and consideration in this matter.

Sincerely,

Danny Rogers

Danny Rogers
Mineral County Road & Bridge Supervisor

APPENDIX 5

Fax from : 7198525533

Yahoo! Mail - dhshank@yahoo.com

11-30-07 10:15 Pg: 4

Page 1 of 1

YAHOO! MAIL

Classic

Print - Close Window

Date: Fri, 15 Jun 2007 20:27:36 -0700 (PDT)

From: "Donald Shank" <dhshank@yahoo.com>

Subject: Rate quote

To: "Steve Baxter" <broncogrill@yahoo.com>

Hi Steve,

I've tried several times to call you on the 588-9383 number and all I get is a girls voice mail. I have left a message on the recording, but I'm not sure if it gets to you.

I'd like to speak with you about the cedar log shipping at your earliest opportunity. I'll be available most of tomorrow on my cell. The number is: 970-749-7575

I look forward to speaking with you

Thanks,

Don Shank

Take the Internet to Go: Yahoo!Go puts the Internet in your pocket: mail, news, photos & more.

Fax from : 7198525533
Yahoo! Mail - dhshank@yahoo.com

11-38-27 10:10 PM Pg. 1 of 1
Nov. 22 2007 00:38:11

YAHOO! MAIL
Classic

Print - Close Window

Date: Tue, 22 May 2007 06:46:11 -0700 (PDT)
From: "Donald Shank" <dhshank@yahoo.com>
Subject: Re: Quote
To: "Steve Baxter" <broncogrill@yahoo.com>

Hi Steve,

Sorry I haven't gotten back to you sooner. I've been working 12-14 hrs/day, seven days a week the past three months to prep one of my cars
Alamosa/La Veta passenger train. I'll get you a quote a.s.a.p

Thanks,

Don Shank
719-852-7000 office
970-749-7576 cell

Steve Baxter <broncogrill@yahoo.com> wrote

I've gotten a response from CSX on a rate from Cookeville, TN to Monte in a 54' gondola. Still like the idea of a bulkhead flatcar and I prefer to keep transactions local. Please give a call ...719-588-9383.....

Sick sense of humor? Visit Yahoo! TV's Comedy with an Edge to see what's on, when

We won't tell. Get more on shows you hate to love
(and love to hate): Yahoo! TV's Guilty Pleasures list

http://us.f601.mail.yahoo.com/ym/ShowLetter?box=Sent&MsgId=1571_0_223920_664_1132_0_... 11/19/2007

Fax from : 7198525533
Yahoo! Mail - dlshank@yahoo.com

11-30-07 18:16
Page 1 of 1

YAHOO! MAIL

Classic

Print - Close Window

Date: Fri, 25 May 2007 21:42:14 -0700 (PDT)
From: "Donald Shank" <dlshank@yahoo.com>
Subject: Re: Quote
To: "Steve Baxter" <briscogrin@yahoo.com>

Steve,

Just got home from working on equipment in Alamosa two minutes ago. Been at it since 7:00 a.m. I'm beat. I have an early morning work group meeting on the Creede Branch. It will be next week before I can have a moment to work on things.

Thanks for your patience.

Don Shank

Steve Baxter <briscogrin@yahoo.com> wrote:

Look forward to hearing back.. Thanks for responding.

Donald Shank <dlshank@yahoo.com> wrote:

Hi Steve,

Sory I haven't gotten back to you sooner. I've been working 12-14 hrs/day, seven days a week the past three months to prep one of my cars for the Alamosa/La Veta pass. I'll get you a quote a.s.a.p.

Thanks,

Don Shank
719-852-7000 office
970-749-7875 cell

Steve Baxter <briscogrin@yahoo.com> wrote:

I've gotten a response from CSX on a rate from Cookeville, TN to Monte in a 54' gondola.....825. Give the idea of a bulkhead match and would prefer to keep transac to call.....719-588-0383. ..

Sick sense of humor? Visit Yahoo! TV's Comedy with an Edge to see what's on, when

We won't fail. Get more on shows you love to love
(and love to hate) Yahoo! TV's Reality Pleasures list.

Finding fabulous fares is fun.
Let Yahoo! FareChecker search your favorite travel sites to find flight and hotel bargains.

Park yourself in front of a world of choices in alternative vehicles.
Visit the Yahoo! Auto Green Center.

http://us.f601.mail.yahoo.com/ym/ShowLetter?box=Sent&MsgId=4534_0_228763_665_1837_0_ 11/30/2007

Fax from : 7198525533

11-30-07 10:17

Pg: 1

Yahoo! Mail - dhshank@yahoo.com

Page 1 of 1

YAHOO! MAIL

Print - Close Window

Date: Fri, 15 Jun 2007 20:34:27 -0700 (PDT)
From: "Donald Shank" <dhshank@yahoo.com>
Subject: Re: Rate quote
To: "Steve Baxter" <broncogrill@yahoo.com>

That's great If I could catch you before you start playing, that would be perfect as I am heading to Denver tomorrow Let me know what time will be setting-up at Alibi's and I'll walk over. I'm that close!
Thanks,

Don

Steve Baxter <broncogrill@yahoo.com> wrote:

Our band is playing in Monte from 1-3Pm at the Rally at Alibi's. Maybe you can catch some rock & roll and talk a little biz afterwards. ...Otherwise, I'll try and catch you on the cell!...

Thanks
Steve

Donald Shank <dhshank@yahoo.com> wrote.

Hi Steve,

I've tried several times to call you on the 588-8383 number and all I get is a girls voice mail. I have left a message on the recording, but I'm not sure if it gets to you

I'd like to speak with you about the cedar log shipping at your earliest opportunity I'll be available most of tomorrow on my cell The number is: 970-749-7575

I look forward to speaking with you

Thanks,

Don Shank

Take the Internet to Go Yahoo!Go puts the Internet in your pocket; mail, news, photos & more.

Get the free Yahoo! toolbar and rest assured with the added security of spyware protection.

You snooze, you lose. Get messages ASAP with AutoCheck
in the all-new Yahoo! Mail Beta

http://us.f601.mail.yahoo.com/ym/ShowLetter?box=Sent&MsgId=4867_0_207381_670_1581_0_.. 11/19/2007

Exhibit No. 13

Sheriff F. Hosselkus' Request for Information (October 23, 2007)

"Fred Hosseltus" <fhosseltus@mineralcounty.net>

10/23/2007 06:32 PM

To <mgorman@cityofcreede.net>

cc

Subject: Mineral County adverse abandonment

Thomas Brugman

After our phone conversation on October 23, 2007 about the adverse abandonment in Creede, Colorado, Mineral County, docket # AB_1014_0. I am requesting the explanation on whether or not the Denver & Rio Grande Railway Historical Foundation can do work on the railroad within the City of Creede. We talked about the adverse abandonment not being approved yet and the Historical Foundation still owning the property.

Thank You for your time on this,

Fred Hosseltus
Mineral County Sheriff
719-668-2600

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.503 / Virus Database: 269.15.9/1090 - Release Date: 10/24/2007 8:48 AM

Tom Brugman

Tom Brugman
STB/OCCA (Office of Compliance and Consumer Assistance)
Phone: (202) 245-0281
FAX: (202) 245-0462
Email: brugman@stb.dot.gov
385 E Street, SW,
Washington D.C. 20423-0001
(For FEDEX deliveries, use 20024 zip code)

----- Forwarded by Thomas Brugman/STB on 10/24/2007 02:30 PM -----

Thomas Brugman/STB

10/24/2007 12:55 PM

To "Fred Hoeselkus" <fhoeselkus@mineral.net>
cc
Subject: Re: Mineral County adverse abandonment [Link](#)

Fred Hoeselkus
Mineral County Sheriff

This will confirm our conversations of October 23, 2007, regarding AB 1014, Denver and Rio Grande Railway Historical Foundation - Adverse Abandonment - in Mineral County, CO.

The Surface Transportation Board's decision of October 17, 2007, concerned the filing requirements that the City must comply with, when it files its adverse abandonment application. The Board's decision simply granted waiver of some of the filing requirements that the City asked to be waived. However, no decision regarding the actual adverse abandonment request itself has been issued. The City must still file its actual adverse abandonment application before the Board can address that issue. Accordingly, the rail property in question still belongs to the Denver and Rio Grande Railway Historical Foundation and they are free to work on it as needed.

I strongly would suggest that you or the City's attorney contact your outside counsel who is handling the case before the Board so that he can advise you further. According to the filing, that is Ronald Johnson at the firm of Alden Gump in Washington, DC, and his number is 202-687-4114.

Tom Brugman

Tom Brugman
STB/OCCA (Office of Compliance and Consumer Assistance)
Phone: (202) 245-0281
FAX: (202) 245-0462
Email: brugman@stb.dot.gov
385 E Street, SW,
Washington D.C. 20423-0001
(For FEDEX deliveries, use 20024 zip code)

MINERAL COUNTY SHERIFF'S OFFICE
1201 North Main • PO Box 454 • Creede, Colorado 81130
719.658.2600 • 719.658.2764 FAX
mincosheriff@centurytel.net

Sheriff
Fred Hosselkus

Under Sheriff
Bill Fairchild

On October 23, 2007 at app. 11:00am I talked with Thomas Brugman (202-245-0281) Rail Operations and Analysis. I explained what was going to happen this week with the railroad. I gave him the docket number AB_1014_0. I asked him the question " Does the Denver & Rio Grande Railway Historical Foundation have the right to work on the crossing within Creede? I explained to him my concerns with the adverse abandonment being on the table. He read through the document and said he wasn't sure on the question. He said he would talk to one of the attorneys and have them get back with me. App. 20 minutes later Tomas Brugman called back and said nobody could talk to the attorney directly. He said they told him the adverse abandonment has not been approved. He said the property is still owned by the Historical Foundation and they can do what they want with their property. I asked him if I could get something in writing. He said for me to e-mail him a request and he would have the attorney send the explanation back to me.



Exhibit No. 14

Colorado Attorney General Letter to D. Shank (June 21, 2000)



KEN SALAZAR
Attorney General
BARBARA McDONNELL
Chief Deputy Attorney General
ALAN J. GILBERT
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

June 21, 2000

Via Facsimile & U.S. Mail
(970) 259-0202

Don Shank
Denver & Rio Grande Railway
Historical Foundation
1474 Main Avenue, Suite 223
Durango, CO 81301

RE: Creede R.O.W. Leases

Dear Don:

I received your faxed correspondence dated June 8 and 9, 2000 concerning the four leases on the Creede right-of-way (R.O.W. 1757, issued October 24, 1969). Based upon this correspondence and our recent telephone conversation, I believe there may be some misunderstanding as to the rights and obligations of the Historical Foundation and the Land Board with respect to the right-of-way. I would like to take this opportunity to clarify the Land Board's position with respect to these issues.

Initially, I want to emphasize that pursuant to paragraph 2 of the right-of-way, the grant is for the sole purpose of "constructing, reconstructing, operating and maintaining a railroad and appurtenances . . ." "Additional non-railroad uses of the property by the Historical Foundation," without Land Board consent, will not be tolerated.

I also want to point out that the rights of the parties to sublease of any portion of the section 36 right-of-way are governed by the 1969 right-of-way document. This principle was reiterated in paragraph 4 of the May 18, 2000 letter agreement the Land Board entered into with Union Pacific and holds true for all leases, including any that may pre-date the issuance of the 1969 right-of-way.

With respect to subleasing, upon proper notice to the Land Board, the Historical Foundation may sublet portions of the right-of-way not used for its railroad operations to the railroad's "customers" or for other uses "compatible with railroad business or operations." What uses are considered to be "compatible with railroad business or operations" is not defined. In

Don Shank
June 21, 2000
Page 2

addition, the Land Board must be notified of any railroad-related leases within 60 days of this letter or the date of issuance.

However, in that same paragraph (§14), the right-of-way agreement specifically prohibits the Historical Foundation from subletting or permitting the use of portions of the right-of-way for purposes "not connected" with the railroad's operations or business without the written consent of the Land Board. As such, it would appear that notice is required for railroad-related leases, while written consent is required for non-railroad related leases.

In addition, paragraph 12 of the right-of-way specifically reserves to the Land Board the right to use, sell or otherwise dispose of any portion of the right-of-way, except as necessarily limited by the railroad "facilities." As such, subject to your right-of-way, the Land Board may sell, lease or otherwise dispose of the land in any manner to the extent that it does not interfere with railroad operations.

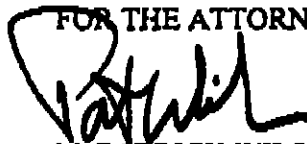
With respect to the current four leases, since none of these leases appear to be connected with railroad business or operations, the Land Board's consent was to be obtained for those leases. As you know, this consent was never obtained. Accordingly, the Land Board will insist that the Historical Foundation terminate all non-railroad leases immediately. Upon review, the Land Board may re-issue some or all of these leases, or grant a temporary right-of-entry to these parties. Any such lease or temporary right-of-entry will be subject to the terms and conditions of the right-of-way.

As I indicated to you recently, the Land Board is under a duty to control its trust assets and to obtain revenue from the right-of-way property. Even with your purported assignment of rental payments, these objectives are not adequately met. The Land Board believes that it should issue and control any non-railroad leases.

Please contact me if you have any questions concerning this letter or if the Historical Foundation will not agree to terminate the non-railroad leases and/or give notice of any leases for railroad purposes.

Sincerely,

FOR THE ATTORNEY GENERAL



M. PATRICK WILSON
Assistant Attorney General
Natural Resources and Environment Section
(303) 866-5127
(303) 866-3558 (FAX)

Don Shank
June 21, 2000
Page 3

cc: Larry Buzick/SLB
Bill Killip/SLB
Merle Knous/City of Creede
Mineral County Commissioners
Dave Klegger/Creede Historical Society
Tomkins Hardware Co.

Exhibit No. 15

D. Shank Letter to Hardware Store (December 13, 2006)

-

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION

FEDERAL TAX ID #: 84-1439680

COLORADO CHARITABLE REGISTRATION #: 20029005766

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 13, 2006

**Robert D. Fredrick
Tomkins Hardware & Lumber Company, Inc.
2686 Hwy 50
Grand Junction, CO 81503**

Re: Right-of-way encroachment

Dear Mr. Fredrick:

This action is taken in view of the recent decision from the United States Surface Transportation Board (STB) last year, which, among other positive findings, included their position that DRGHF's leasing activities in Creede are not inconsistent with those of our predecessors and that we possess legal authority as an easement holder to collect rent for permitted uses within our right-of-way.

Our purchase of the railroad was yet again re-validated and those building/business owners encroaching upon railroad property will now have the opportunity to enter into a lease and legally occupy our right-of-way, subject to certain conditions as defined below.

Tomkins Hardware & Lumber continues to occupy a large portion of railroad property within downtown Creede. At your request during 2001, a Commercial Right-Of-Way Lease (#200101) was provided to you. Your decision to ignore that lease and your continued encroachment did not relieve you of the obligation to either pay for what you occupy and benefit directly from, or vacate DRGHF right-of-way.

Leasing of land not immediately needed for rail operations is a beneficial and legally permissible function available and utilized by virtually all railroads. Individuals or businesses such as your hardware and lumber store/yard benefit directly from the availability and use of our property.

This letter shall serve as "NOTICE" that we intend to collect rent from those parties encroaching on railroad property. All building owners along the west side of Main Street occupying a portion of railroad property will be addressed.

**FOUNDATION OFFICE: 20 N. BROADWAY, MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: dhshank@yahoo.com**

As a gesture of goodwill to you and the other occupants of our right-of-way along west Main Street, DRGHF is offering a one-time settlement for back rent. The settlement will be non-negotiable and will only be offered once.

The Commercial Lease (#200101) we provided you during 2001 reflected a monthly rental amount of \$297.00 and established the baseline from which back rent could be computed. Our settlement will necessitate the payment of three years back rent from January 1, 2004 through December 31, 2006 at the monthly rental amount established in 2001. That equates to \$10,692.00 in back rent and upon that payment, we will waive the delinquent rent for the prior three years 2001 thru 2003. That represents a savings of \$10,692.00.

Once your back-debt has been paid to DRGHF, we will provide you with a new Commercial Right-Of-Way Lease with an effective date of January 1, 2007. All leases will renew on the first of the year. Your Lease will be based upon the amount of square footage of railroad property utilized and will be subject to the appropriate setback from DRGHF track required for safe operation ("red zone").

The area (alley) behind your store is now cluttered with additional structures added to the rear of buildings as well as propane tanks, and numerous other encroaching items. These "additional items" will need to be removed, relocated or otherwise cease to exist upon railroad property outside the boundaries of your Commercial Right-Of-Way Lease or within the "red zone" identified on the Drawing # 501 accompanying your Lease.

The historic lease for your property with our predecessor (D&RGW), reflected a utilization of 30,630 square feet of right-of-way. That lease was executed over twenty-four years ago and is quite obsolete in today's market. The amount of square footage currently being used by Tomkins Hardware & Lumber far exceeds what DRGHF offered to you over six years ago, but is considerably less than your lease with our predecessor. Please note, as previously stated to you, there will be no leasing or use of *any* railroad property below Wall Street, period. This includes the area near the depot. Tomkins Hardware has continued to use this area for loading, unloading and parking trucks, storing and staging of materials, etc. This practice stops as of now.

Tomkins Hardware Company and you Mr. Fredrick profited greatly from the use of DRGHF property. You now have the opportunity to pay for that use at a significantly reduced amount.

Please understand that failure to comply will result in initiation of a legal action that would seek removal of your structures and materials from the right-of-way. If you do not comply, this very reasonable settlement offer will be withdrawn and collection of the full amount of the back rental would be sought by legal means. **WE WILL NOT HESITATE TO SEEK YOUR EJECTMENT FOR NON-PAYMENT OF RENTAL UNDER COLORADO LAW.**

Please take a moment to identify your preference(s) as indicated on the following page. Two copies of the "RIGHT-OF-WAY ENCROACHMENT SETTLEMENT WORK SHEET" page are included. Upon indicating your preference and intent, please return

one copy to DRGHF in care of our offices listed at the bottom of the front page and retain one for your records.

You shall have fifteen (15) days from receipt of this NOTICE to comply.

Thank you.

Sincerely,



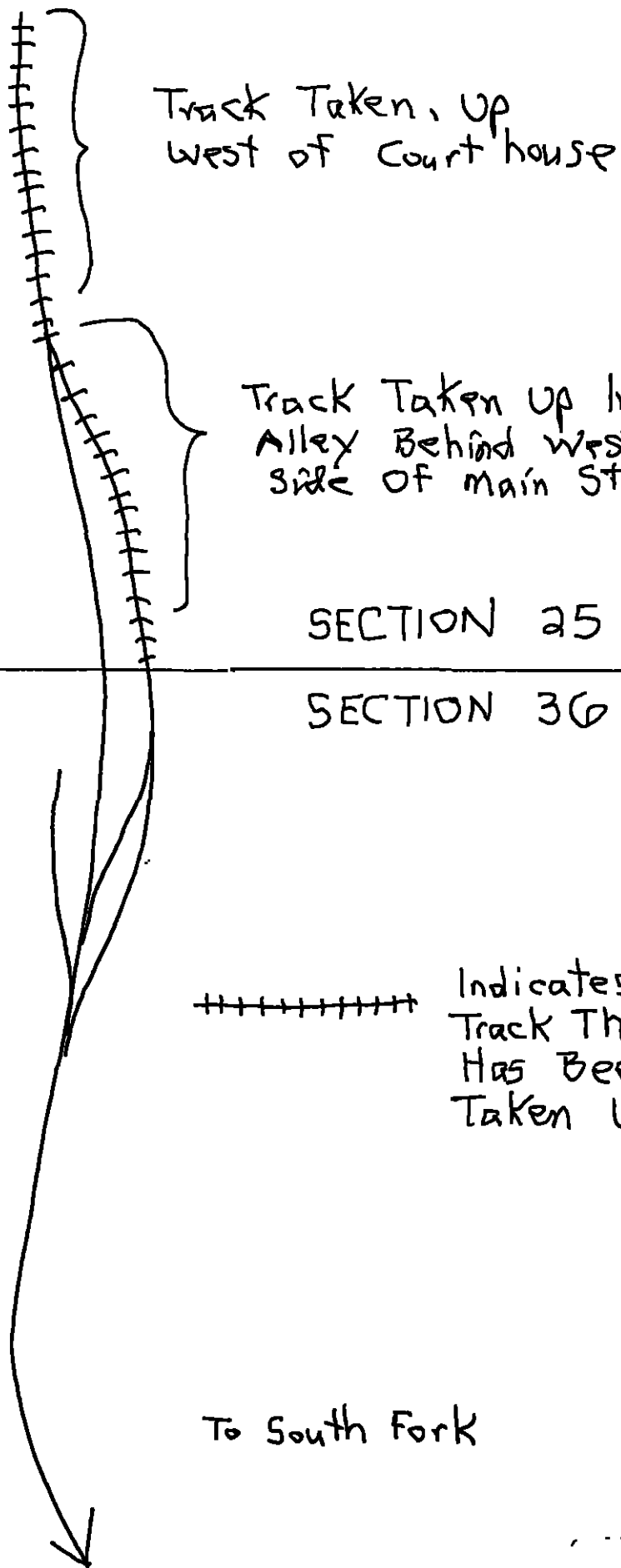
Donald H. Shank
President & Executive Director

Cc: Thomas F. McFarland, Esq.
Mineral County Sheriff's Office
File

Attachment: RIGHT-OF-WAY ENCROACHMENT SETTLEMENT WORK
SHEET

Exhibit No. 16

Map Showing Where Track Was Removed



Track Taken, Up
West of Court house

Track Taken Up In
Alley Behind West
Side of Main St.

SECTION 25

SECTION 36

+++++ Indicates
Track That
Has Been
Taken Up

To South Fork

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Exhibit No. 17

D. Shank Follow-on Rent Letter (January 22, 2007)

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1433680
COLORADO CHARITABLE REGISTRATION #: 20023005766

January 22, 2007

SENT VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED

Mr. & Mrs. Dale E. Pizel
P.O. Box 400
Creede, CO 81180

Re: Right-of-way encroachment

Dear Mr. & Mrs. Pizel:

You are in receipt of the certified, return receipt letter regarding your continued encroachment on railroad property dated December 13, 2006. That letter specifically addressed and provided you with a settlement proposal for back rent for your encroachment, and the opportunity to allow your building to remain on railroad property.

You have chosen to ignore the fifteen (15) day response provision as indicated in that letter. Your continued reluctance to communicate with the Denver & Rio Grande Railway Historical Foundation (DRGHF) regarding the encroaching portion of your commercial building located at 103 N. Main Street in Creede, has now placed your building in serious jeopardy.

This letter shall now serve as formal "NOTICE" that we intend to move forward with the legal process to eject those businesses from railroad property as provided under Colorado law. DRGHF has already prepared the forms to be delivered to the court this Thursday. Once that process has begun, you may consider the very reasonable back rent settlement proposal withdrawn and terminated and the full amount for the past six years now due and payable. I strongly encourage you to contact me before the close of business this Wednesday, January 24, 2007, at the number below. I'll be happy to discuss the matter.

It's a shame that you have chosen to ignore our reasonable offer. From this point forward, things will only get more expensive. As this has been your decision, you have left us no choice.

Respectfully,



Donald H. Shank
President & Executive Director

FOUNDATION OFFICE: 20 N. BROADWAY, MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: dshank@yahoo.com

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1433680
COLORADO CHARITABLE REGISTRATION #: 20023005766

January 22, 2007

SENT VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED

Mr. Robert D. Fredrick
2686 Hwy 50
Grand Junction, CO 81503

Re: Right-of-way encroachment

Dear Mr. Fredrick:

You are in receipt of the certified, return receipt letter regarding your continued encroachment on railroad property dated December 13, 2006. That letter specifically addressed and provided you with a settlement proposal for back rent for your encroachment, and the opportunity to allow your building to remain on railroad property.

You have chosen to ignore the fifteen (15) day response provision as indicated in that letter. Your continued reluctance to communicate with the Denver & Rio Grande Railway Historical Foundation (DRGHF) regarding the encroaching portion of your commercial building located at 127 Main Street in Creede, has now placed your building and lumber yard in serious jeopardy.

This letter shall now serve as formal "NOTICE" that we intend to move forward with the legal process to eject those businesses from railroad property as provided under Colorado law. DRGHF has already prepared the forms to be delivered to the court this Thursday. Once that process has begun, you may consider the very reasonable back rent settlement proposal withdrawn and terminated and the full amount for the past six years now due and payable. I strongly encourage you to contact me before the close of business this Wednesday, January 24, 2007, at the number below. I'll be happy to discuss the matter.

It's a shame that you have chosen to ignore our reasonable offer. From this point forward, things will only get more expensive. As this has been your decision, you have left us no choice.

Respectfully,



Donald H. Shank
President & Executive Director

FOUNDATION OFFICE: 20 N. BROADWAY, MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: dshank@yahoo.com

RIGHT-OF-WAY ENCROACHMENT SETTLEMENT WORK SHEET**LESSEE: FREDRICK - TOMKINS HARDWARE AND LUMBER**

Please check the appropriate choice(s).

- ☐ Tomkins Hardware Company agrees to pay DRGHF \$10,692.00 in back rent within thirty days upon receipt of this letter.
- ☐ Tomkins Hardware Company would like to continue occupying DRGHF property.
- ☐ Tomkins Hardware Company would like to enter into a new Commercial Lease subject to acceptable terms and conditions.
- ☐ Tomkins Hardware Company will not agree to a settlement for back rent.
- ☐ Tomkins Hardware Company will be vacating DRGHF property within thirty days.
- ☐ other: _____

Robert D. Fredrick, President
Tomkins Hardware & Lumber Company, Inc.

Date

Cc: Thomas F. McFarland, DRGHF retained counsel
Mineral County Sheriff's Office
file

Exhibit No. 18
Foundation Settlement Proposal

RIGHT-OF-WAY ENCROACHMENT SETTLEMENT PROPOSAL

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION (DRGHF) comes before you today with an aggressive proposal to remedy the encroachment issues that have plagued the City of Creede since the year it was founded in 1892. This three-part proposal will directly benefit every encroaching business, residence, the City of Creede and Mineral County. The terms and conditions of Part 1 are as follows:

Part 1

Subject to the review and approval by the Union Pacific Railroad and the United States Surface Transportation Board, DRGHF will relinquish its right-of-way under the buildings/businesses within the 100 Block on the West side of North Main Street in Creede, a.k.a. Block 25 Creedemoor Addition, subject to certain specific assurances and exchanges with and from the City of Creede, as identified later in Part 3 of this proposal.

Under this proposal the railroads new eastern boundary line shall be consistent with that identified by the City of Creede at the City Council Meeting held February 13th, 2007, more specifically, the eastern edge of the "drainage pan" as it currently exists behind the businesses identified below. Upon acceptance by the City of Creede to the terms and conditions identified in Part 3 of this proposal, the following building owners shall have the opportunity to purchase DRGHF's right-of-way from the eastern edge of the concrete drainage pan to the historic eastern boundary line of our property:

- Broken Arrow Realty, 103 N. Main, Dale & Anne Pizel. Fee: \$1
 - Mac's Old Mine, 105 N. Main, Dan & Laura Archibald. Fee: \$1
 - 107 N. Main, Daniel & Laura Archibald. Fee: \$1
 - Creede Art Gallery, 111 N. Main, Mr. & Mrs. Thompson. Fee: \$1
 - Journeys, 115 N. Main, Mr. & Mrs. Joe Fox. Fee: \$1
 - First National Bank of Creede, 117 N. Main, Dan Ford. Fee: \$1
 - The Holy Moses, 121 N. Main, Mr. & Mrs. Kulyk. Fee: \$1
 - The Old Fire House, 123 N. Main, Mr. & Mrs. Siddell. Fee: \$1
 - Tomkins Hardware, 127 N. Main, Bob Fredrick. Fee: \$1
- (Retail store on Main only. This excludes the lumber storage facility which will be addressed under a separate agreement.)

- Amethyst Emporium, 129 N. Main, B. J. Myers. Fee: \$1
- Abbey Lane/Amethyst Lodge, 131 & 138 N. Main. Fee: \$1

All costs for survey, filing, document preparation and transfer fees shall be the sole responsibility of the respective building owners. As the aforementioned costs for survey will have been included in the purchase proposal of the fee simple interest from the City of Creede, said survey should match the right-of-way being conveyed, but shall be subject to review by DRGHF.

The issue of delinquent back rent is foremost on everyone's mind and what settlement, if any, could be reached. As an integral part of the Settlement Agreement, DRGHF is willing to waive all claims for delinquent back rent from each and every business, resident, the City of Creede and Mineral County, subject to the City of Creede's acceptance of the terms and conditions as defined in Part 2 of this proposal. Those back rents total well in excess of \$200,000.00.

Part 2

Additional encroachments exist within Section 25 along the west side of DRGHF's right-of-way. Residences like the one belonging to Susan Sparks, businesses like the Creede Moor Inn, Louise Gray's garage, just to name a few. Approximately fifteen feet of the Mineral County Courthouse, the western edge of the City Manager's Office at Town Hall, a portion of the City's Barn, and residences further north all have encroachment issues. DRGHF is willing to relinquish our right-of-way under nearly all those affected for the sum of \$1.00 each, again, subject to the terms and conditions defined in Part 3.

Under Parts 1 and 2 of this proposed settlement scenario, DRGHF relinquishes over 50% of the square footage contained in its right-of-way within the City Limits of Creede. The majority of encroachment issues that have plagued both the town and the railroad since 1892, should be eliminated.

Therefore, it must be strictly understood that DRGHF is not abandoning any right-of-way necessary for the safe and efficient operation of the railroad within the City of Creede, but *is* willing to dramatically reduce the width of our right-of-way to the direct benefit of numerous businesses, residences, the City and Mineral County.

move forward with any legal action against DRGHF, including, but not limited to the proposed "Petition for Adverse Abandonment", then this proposal shall be immediately rescinded and shall be deemed null and void and unenforceable and DRGHF's offer to waive back rent rescinded.

Upon such a rescission, DRGHF would vigorously defend its right-of-way as it existed prior to this proposal and would immediately file in County Court the "Demand(s) for Compliance or Right to Possession Notice(s)."

This proposal is to the benefit of all parties with an encroachment and back rent issue. The railroad's intent is to work in harmony with all affected parties towards curing a dreadful situation.

In an area dependent upon tourism, DRGHF is committed to providing a well-received attraction to the benefit of all. DRGHF will continue to prove itself a valued asset to the communities we intend to serve.

I hope everyone recognizes that through this proposal our Foundation has given-up everything possible to satisfy the concerns of the citizens, businesses, property owners, the County and the City of Creede. The time is way overdue to work together towards a harmonious relationship between the railroad and the town and once-and-for-all stop the waste of time, money and effort associated with the redundant threat of legal action.

Respectfully submitted,



Donald H. Shank
President & Executive Director, DRGHF
By Board Resolution #07-04

Exhibit No. 19

Foundation's Notice of Intent to File OFA (December 18, 1998)

192 11/19

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NON-PROFIT/TAX EXEMPT CORPORATION

BOARD OF DIRECTORS:

DONALD H. SHANK
MARTIN P. PERNAT, M.D.
ROBERT A. GRAM
ROBERT W. SHANK
RICHARD L. MILLARD
WILLIAM H. COLLEY

MAIN OFFICE:

1474 Main Ave., #121
Durango, CO 81301
Tel: 970-259-9498
Fax: 970-259-0095

SAN LUIS VALLEY OFFICE:

CHAMBER OF COMMERCE
COLE PARK
ALAMOSA, CO 81801
Tel: 719-589-3631
Fax: 719-589-1773

December 15, 1998

ENTERED
Office of the Secretary

DEC 18 1998

Part of
Public Record

Office of the Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423

LETTER OF INTENT

Re: Docket # AB-33 (Sub-No. 132X)

Please accept this letter on behalf of the Board of Directors for the Denver & Rio Grande Railway Historical Foundation as notice of our intent to file an **OFFER OF FINANCIAL ASSISTANCE (OFA)**, pursuant to information supplied from your office contained within the "OVERVIEW: Abandonments & Alternatives to Abandonments".

The Union Pacific Railroad has identified a 21.6 mile branch, more commonly referred to as the "Creede Branch" for abandonment. The public notice was published in the local papers within the affected counties and calls for a January 5, 1999 date to file with the Surface Transportation Board, a "Notice of Exemption".

The Denver & Rio Grande Railway Historical Foundation has been in communication with the Union Pacific Railroad for the past several months in an attempt to acquire, either by outright purchase or donation [we are tax-exempt under IRS Section 501(c)(3)] the aforementioned branch. We computed what we believe to be a Net Liquidation Value, using widely accepted formulas for computation and arrived at the figure submitted to the U.P.R.R. on December 4, 1998.

"Dedicated to the Preservation of the Narrow Gauge"

The U.P.R.R. stated that they were not in a position to negotiate, nor effectuate a line sale prior to the filing with the STB for abandonment, or the exemption thereof. After a discussion with the legal department at the STB, they felt the U.P. was not acting in good faith and could have negotiated at any time with our Foundation for a sale. It was not that our Purchase Proposal was rejected, nor the amount deemed unrealistic, they simply said they could not enter into any contract until they filed. Possibly some clarification is in order.

Therefore, please place our name on the mailing list for all information pertinent to the disposition of the Creede Branch, Docket # AB-33 (Sub-No. 132X). The D&RG Rwy. Historical Foundation would ask to be kept informed as to the filing dates and the "window of opportunity" associated with the Notice of Exemption and the OFA.

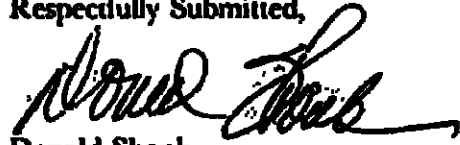
Within the text of our OFA will be a detailed description of our plan to rehabilitate the 21.6 mile line and operate a tourist train between South Fork and Creede, Colorado. Extensive public and private support of our plan has been identified. Letters of support are currently in our possession and will accompany the OFA.

Please accept our apology in the event that this letter is non-conforming or atypical of the conventional Letter Of Intent.

Additionally, would you please forward to our main office any information, periodicals, booklets and any other information, regulations or bulletins pertaining to acquisition through the STB procedure.

Thank-you for your time, consideration and assistance.

Respectfully Submitted,



Donald Shank
Managing Director
D&RG Rwy Historical Foundation

Exhibit No. 20
Foundation's OFA (April 2, 1999)

ORIGINAL**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC RAILROAD)
 COMPANY - ABANDONMENT)
 EXEMPTION - IN RIO GRANDE AND)
 MINERAL COUNTIES, CO (CREEDE)
 BRANCH BETWEEN DERRICK AND)
 CREEDE)

DOCKET NO.
 AB-33 (SUB-NO 132X)



**PETITION FOR LEAVE TO FILE
 OFFER OF FINANCIAL ASSISTANCE OUT OF TIME
 AND TENDERED OFFER OF FINANCIAL ASSISTANCE**

ENTERED
 Office of the Secretary

APR - 5 1999

Part of
 Public Record

**DENVER & RIO GRANDE RAILWAY
 HISTORICAL FOUNDATION**
 1474 Main Avenue, #121
 Durango, CO 81301

Offeror

FEE RECEIVED

APR - 2 1999

**SURFACE
 TRANSPORTATION BOARD**

THOMAS F McFARLAND, JR
McFARLAND & HERMAN
 20 North Wacker Drive, Suite 1330
 Chicago, IL 60606-2902
 (312) 236-0204

Attorney for Offeror

Date Filed: April 2, 1999

FILED

APR - 2 1999

**SURFACE
 TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD
COMPANY - ABANDONMENT
EXEMPTION - IN RIO GRANDE AND
MINERAL COUNTIES, CO (CREEDE
BRANCH BETWEEN DERRICK AND
CREEDE)

DOCKET NO.
AB-33 (SUB-NO. 132X)

PETITION FOR LEAVE TO FILE
OFFER OF FINANCIAL ASSISTANCE OUT OF TIME
AND TENDERED OFFER OF FINANCIAL ASSISTANCE

THE DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION (the
Foundation) hereby (1) petitions for leave to file its Offer of Financial Assistance (OFA) two days
out-of-time; and (2) tenders its OFA for purchase of the rail line for \$387,930.

PETITION FOR LEAVE TO FILE OFA OUT-OF-TIME

By decision served March 30, 1999, the Board extended the date for filing of the
Foundation's OFA to March 31, 1999. Despite the Foundation's best efforts, it was unable to
finalize financial statements for the Foundation and for Mr. Donald H. Shank (Mr. Shank) until
April 2, 1999, two days after that extended filing date.

The Board is respectfully urged to accept the Foundation's OFA for filing out-of-time.
The rationale of the decision served March 30, 1999 supports such acceptance. UP would not be
prejudiced by that action. The effective date of the exemption for abandonment already is
postponed as a result of the filing and acceptance of another OFA. Moreover, if the Foundation's
OFA is accepted for filing, UP will have a choice of offers with which to negotiate.

The Foundation very much appreciates the Board's indulgence in having extended the OFA filing date and asks for the Board's further indulgence in accepting the Foundation's filing two days out-of-time.

OFFER OF FINANCIAL ASSISTANCE

Explanation of Disparity between Amount Offered and UP's Valuation

The amount offered by the Foundation, \$387,930 is disparate from UP's valuation of \$778,616. Pursuant to 49 U.S.C. § 10904(c), the Foundation submits the following in explanation of the basis for that disparity and the manner in which its offer is calculated:

Based on a preliminary valuation of the parcels of the right-of-way held in fee, appropriately adjusted to take into account shape and size, lack of access, lack of utilities and other improvements and the like, as well as costs to arrive at net value, the Foundation values the real estate at \$319,314, as shown below:

<u>Segment No.</u>	<u>Acres in Fee</u>	<u>Value Per Acre</u>	<u>Total Segment Value</u>
1	14.4	\$ 4,320	\$ 61,085
3	8.6	\$ 2,000	\$ 17,200
6	22.73	\$ 2,500	\$ 56,825
7	84.42	\$ 2,182	\$ 184,204
Total Overall Value			\$ 319,314

The Foundation accepts UP's valuation of truck materials of \$68,616. The resulting total net liquidation value is \$387,930 (\$319,314 + \$68,616).

Financial Responsibility

Attached to the pleading as Appendix 1 is a copy of a Statement of Financial Condition for the Foundation as of November 30, 1998. The Foundation's current financial condition is substantially the same as reflected in Appendix 1. As reflected in Appendix 1, the Foundation has cash available for purchase of the rail line in the amount of approximately \$23,000.

Attached to this pleading as Appendix 2 is a copy of a pledge to the Foundation in the amount of \$400,000 executed by Mr. Shank on March 30, 1999. The amount pledged by Mr. Shank is to be used by the Foundation for acquisition of the rail line, as stated in the pledge.

Mr. Shank is President, Board Chairman, incorporator and founder of the Foundation in early 1997. Attached to this pleading as Appendix 3 is a copy of Statement of Financial Condition of Mr. Shank as of March 15, 1999. Mr. Shank's current financial condition is substantially the same as reflected in Appendix 3. Reference is made to the Addendum to that Statement (p. 4). As reflected therein, Mr. Shank currently has sufficient liquid assets to make good on his pledge to the Foundation. There is current equity of \$433,000 in Mr. Shank's residence, which is available for equity financing. In addition, Mr. Shank has approximately \$18,700 in cash and equivalents and \$87,500 in liquid investments. By July, 1999, Mr. Shank will realize net proceeds of approximately \$570,561 from current investments (\$320,850 + \$249,711). Those funds would be available to Mr. Shank for his pledge to the Foundation before the likely closing date of purchase of the rail line from UP (90 days usually are allowed for closing from the date that the price is determined).

Based on Mr. Shank's pledge to the Foundation and Mr. Shank's financial condition, the Foundation would be able to pay the probable purchase price for the line and operate it for at least

two years. In the latter respect, the Colorado Department of Transportation has stated to the Foundation that it would provide a grant of \$1 million to the Foundation for rehabilitation of the line in the event that the Foundation acquires it.

Intended Use of the Rail Line

The Foundation intends to acquire the rail line for rail freight and passenger use. The Foundation is ready, willing and able to handle rail freight traffic. The Foundation would actively seek to develop rail freight traffic to and from the line. In addition, the Foundation intends to operate passenger-tourist rail service.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should:

- (1) accept the Foundation's OFA for filing two days out-of-time, and
- (2) find that the Foundation is a financially responsible person who has offered financial assistance regarding the rail line.

Respectfully submitted,

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
1474 Main Avenue, #121
Durango, CO 81301

Offeror

Thomas F. McFarland Jr.
THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Offeror

Date Filed: April 2, 1999

Exhibit No. 21

D. Shank Statements in Prior STB Proceedings

Docket No AB-33 (Sub-No 132X)

VERIFIED STATEMENT OF DONALD H. SHANK

My name is Donald H. Shank I am President, Board Chairman, incorporator and founder of Denver & Rio Grande Railway Historical Foundation (the Foundation) My business address is 1474 Main Avenue, Suite 223, Durango, CO 81301

The Foundation is a Class III rail common carrier subject to the jurisdiction of the Surface Transportation Board (the Board) By virtue of a Board decision in its Docket No AB-33 (Sub-No 132X), issued May 11, 1999, the Foundation was authorized to acquire from Union Pacific Railroad Company (UP) a 21 6-mile rail line between Derrick and Creede, Colorado (the Creede Branch) The Board's authority was issued in response to an offer of financial assistance (OFA) filed by the Foundation on April 2, 1999

On May 24, 2000, the Foundation's acquisition of the Creede Branch from UP was closed Attached to this Statement as Appendix DHS-1 is a copy of a letter from the attorney for UP to the Board, dated May 26, 2000, confirming consummation of the acquisition as of May 24, 2000

I understand that the City of Creede, Colorado (the City) recently inquired of UP whether the Foundation is in default of any of its financial obligations in regard to purchase of the Creede Branch Attached to my Statement as Appendix DHS-2 is a copy of UP's response to that inquiry, dated November 26, 2003. The UP's response shows that the Foundation is current in its financial obligations Specifically, the UP response shows that the Foundation paid UP

\$350,000 of the \$624,616 purchase price for the Creede Branch in cash at closing, and that the Foundation is not in default in regard to payment of its promissory note for the balance

Attached to my Statement as Appendix DHS-3 is a copy of a statement of contributions made by me to the Foundation, as compiled by the Foundation's bookkeeper, Rosemary Beckwith & Associates, 359 Main Street, Suite 3, Grand Junction, CO 81501, (970) 263-4118

The statement of contributions shows that I have contributed a total of \$506,028 to the Foundation as of the end of 2002. That amount included \$100,000 in cash toward payment of the purchase price for the line and additional amounts for equipment for track rehabilitation and freight and passenger operations. Appendix DHS-4 attached to my Statement is a listing of the Foundation's equipment inventory

The Foundation has received requests for rail freight service over the Creede Branch. Attached to my Statement as Appendix DHS-5 is a letter to the Foundation dated November 21, 2003 from Randy Parsons, Operations Manager, GMCO Corporation, Rifle, CO, requesting rail service to Creede to ship 25 cars per year for dust control in the Creede area. Attached to my Statement as Appendices DHS-6 and DHS-7, respectively, are letters to me from Danny Rogers, Mineral County Road & Bridge Supervisor, dated November 20, 2003 (Appdx DHS-6), and from Robert Hurd, Hinsdale County Road & Bridge Supervisor, dated June 25, 2003 (Appdx DHS-7), requesting delivery of magnesium chloride in tank cars by rail at Creede, CO. Mineral County and Hinsdale County would be the receivers of the rail shipments that would be made by GMCO Corporation.

Although the Foundation's ability to complete rehabilitation of the rail line has been impeded by constant litigation against the Foundation by the City of Creede, Colorado, the Foundation nevertheless has made substantial progress in rehabilitation as a prelude to reinstituting rail service

The Foundation has cleared all 21.6 miles of track. The Creede Branch had been totally overgrown with aspen trees and weeds. The Foundation has removed thousands of trees, tons of brush, hundreds of pine trees, and thousands of "chucos", a dense scrub-brush with a difficult-to-remove root-ball. The Foundation has cleared numerous rock slides, some over a mile long. The Foundation has replaced rock cribbing and has shored up the roadbed where it is adjacent to a river.

On the track itself, the Foundation has installed hundreds of crossties, and has replaced numerous rail lengths, angle bars, tie plates and spikes. We have installed gauge-bars in many locations prior to rail and crosstie replacement to maintain the gauge. The majority of the Branch has been brought back into gauge. The Foundation has completely replaced three road crossings, and has installed a new crossing at South Fork, CO. All other crossings have been cleared and made safe for both railroad employees and the motoring public except those in Creede, where the City refuses to honor its crossing agreements.

The Foundation has removed tons of snags and debris from around the pilings and supports at the numerous railroad bridges and trestles over the Rio Grande River.

The Foundation is acquiring #1 quality relay ties for additional crosstie replacement. We have purchased a tamper, scarifier, regulator, tie inserter and remover, spiker and auto-gauger.

We have twenty 55-gallon drums full of new spikes and several pallets of tie plates. We have purchased new high-visibility crossbuck signs that will be installed in the coming Spring.

Anyone who contends that the Foundation is not willing and able to provide rail service over the Creede Branch is either not aware of, or has ignored, what the Foundation has accomplished in repair of the track structure to enable restoration of rail service. The City of Creede is well aware that the Foundation intends to revive rail service over the Branch, and is capable of doing so. That is why the City has tried so hard to prevent the Foundation from succeeding.

Both the City, Elk Creek Ranch, Inc. and Wason Ranch Corporation (the last two have called themselves "Adjacent Land Owners") have made numerous allegations about the Foundation and about me personally that are false and/or misleading. My attorney has advised me that most of those allegations are not relevant to the issue of whether the decision approving the Foundation's OFA should be reopened. Nevertheless, I would like to respond to those inappropriate statements in order to set the record straight. Attached to my Statement as Appendix D11S-8 is my rebuttal of the false and misleading statements made in the Comments of the Adjoining Landowners. The false and misleading statements in the City's Petition are essentially the same as those contained in the Landowners' Comments. I addressed the Landowners' Comments because the false and misleading statements were made more clearly in those Comments than in the City's Petition.

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VERIFICATION

STATE OF COLORADO)
) SS:
COUNTY OF RIO GRANDE)

DONALD H. SHANK, being duly sworn on oath, deposes and states
that he has read the foregoing statement, that he knows the contents thereof,
and that the facts therein stated are true and correct.

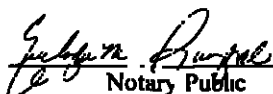


DONALD H SHANK

SUBSCRIBED AND SWORN to

before me this 15th day of

January, 2004.



Notary Public

My Commission Expires: 6/15/07

GMCO Corporation

27316 Highway 6
P O Box 1480
Rifle, CO 81650

(970) 625-9100
Fax (970) 625-9101
email: gmco@rifle.net

Appdx. DHS-5

November 21, 2003

Denver and Rio Grande Rail Road
Historical Foundation
1474 Main Avenue, Suite 223
Durango, CO 81301

To whom it may concern

GMCO Corporation is requesting rail service to Creede, CO. We do considerable dust control work in the area and would benefit greatly by having rail service to Creede and the surrounding area. The estimated number of cars we would ship to the area is 25 per year.

Thank you



Randy Parsons
Operations Manager

SUBSCRIBED AND SWORN TO before me in the County of Garfield, State of Colorado, this 21st day of November, 2003.

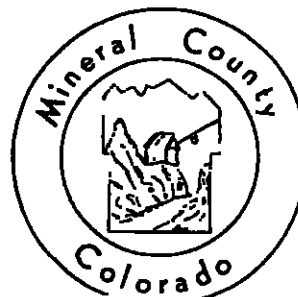

NOTARY PUBLIC

My Commission Expires

02/05/04

BOARD OF COUNTY COMMISSIONERS

MINERAL COUNTY
PO BOX 70
CREEDE, COLORADO 81130
(719) 658 2331



Appdx. DHS-6

November 20, 2003

Denver & Rio Grande Railway Historical Foundation
Don Shank, President
1474 Main Avenue, Suite 223
Durango, CO 81301

Attention Don,

On behalf of the Mineral County Road & Bridge, we would like to request delivery of our magnesium chloride in tank cars by rail line to the City of Creede.

Currently, we are traveling a great distance to Monte Vista to pick up and return with the magnesium chloride. This is costing us man hours, time away from our maintenance of roads, wear and tear on trucks, etc. It would be far more convenient for us to receive our goods in the City of Creede.

Please consider our request of freight delivery by rail line. Thank you for your time and consideration in this matter

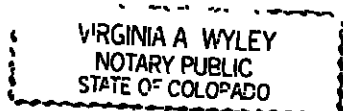
Sincerely,

Danny Rogers

Danny Rogers
Mineral County Road & Bridge Supervisor

Subscribed and sworn to before me by Danny Rogers this 20th day of November, 2003, a Notary Public in and for the State of Colorado, County of Mineral.
My commission expires 1/11/07

Virginia A Wyley



HINSDALE COUNTY

"Above and Beyond"

411 N. 10th Johnson Street
P.O. Box 2777, Latta, CO 81245
Phone: 970.333.2530 Fax: 970.333.2531

Appdx. DHS-7

June 25, 2003

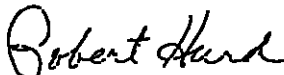
To Denver Rio Grande Historical Foundation
From Hinsdale County Government
Subject Rail Freight Weeds - Creede Colorado

To Whom It May Concern

Hinsdale County would very much like to see rail freight service available in the Creede area. We now have to truck about 65,000 gallons of Mag Chloride road treatment from Alamosa to the forest roads that we treat with this product.

The US Forest Service and Hinsdale County would benefit greatly if rail service was available into Creede. This dust road treatment is done at least once per year. Please allow rail service to reopen into Creede. Thank you.

Sincerely,



Robert Hurd
Road & Bridge Supervisor

ARLA C 0000 9701

County Board: Sec 2225 Assessor: Sec 2226 Clerk & Recorder: Sec 2226 Treasurer & Public Trustee: Sec 2225 Sheriff: Sec 2291
County Engineer: Sec 2226 Health Department: Sec 2291 Building Department: Sec 2291

REBUTTAL OF ADJACENT LANDOWNERS' STATEMENT

Hereby submitted is my rebuttal of the Comments submitted in behalf of "Adjacent Landowners "

Page 3 — Mr Morell follows George Allen's lead by the free use of the term "fraudulent" Has fraud been determined by anyone? At Footnote 1, the right-of-way through the Elk Creek and Wason Ranches comprises less than 1/4 of the Creede Branches total mileage and over 90% of the right-of-way through these two ranches is owned by DRGHF in fee simple. As for his statement that we misled the STB regarding continued rail freight service, everyone knew at the time that no rail operations had taken place on the line since 1985, but we stated that subject to rehabilitation, we would be ready, willing and able to haul freight, if any presented itself As demonstrated by the letters being filed, we have requests for freight service into Creede We misled no one

Page 4 — Four and a half years may have passed since the STB granted the OFA, but the consummation took place in May of 2000, then the immense task of opening the line commenced Since then countless trips by maintenance crews, on DRGHF owned m-o-w equipment have traversed the entire Creede Branch, with the exception of the Creede rail yard. His bold statements regarding our financial wherewithal at the time of purchase, etc , could be explained by the fact that our Japanese donor who did provide \$250,000 at the time of purchase had [verbally] pledged \$1.0 million towards this project. Gayle, my former wife, was sitting in the office with me when that call came in She witnessed the elation I felt by that pledge Mr Morell states on page 13 that it is inconceivable that the STB would have authorized the sale on the basis of potential future donations. However, I did not list the \$1 million pledge from our major donor

Mr Morell is wrong in his assessment of the lack of need for freight rail service as demonstrated by our written requests We needn't labor that issue Those requests are *bona fide*

Mr Morell follows George Allen in his attack on the OFA citing failure to restore rail service and using the OFA award to commence a real estate leasing regime As previously stated over and over, DRGHF sought to continue the leases transferred by Union Pacific as the time of consummation There is a legitimate rental history that accompanied the closing documents

I want to *again* review the accusations surrounding the r-o-w lease with Ms Louise Gray I spoke with Louise just a few moments ago 1-7-04, 10 30 a m. I read her the paragraph from Page 19 regarding "the depths to which Mr Shank will go" and specifically asked her how she paid for her car Ms Gray is appalled by the statements contained in Mr. Allen's and Mr Morell's filing and she explained to me that she had worked for twenty-one years and saved money from that employment to purchase her used Ford Explorer She was adamant that it was not paid for from proceeds derived from scavenging aluminum cans In fact she went on to say that she used her car a few times to go out and

pick up some cans but the proceeds from the "scavenging" amounted to only about \$15.00, a far cry from enough to pay for her car!!! Every time I read the phrase "extort monies from individuals like Louise Gray", I get outraged. During the phone conversation I asked Louise for a letter explaining exactly what we had talked about and nothing more I said, "just tell them the truth" She is scared to death I doubt she'll write one The STB needs to know this is a fabrication, and a very unfair one at that. Refer to George Allen's "Record" @ page 274 I think I explained our position sufficiently

I have NOT used the OFA award to initiate a leasing regime The consummated sale provided an EXISTING number of r-o-w leases that were appropriate for the D&RGW, SPTC and UPRR Why is it suddenly inappropriate for DRGHF? As for the effect the OFA is having on the community, it's a small town and its mayor, BJ Myers, has made this a huge issue and used tons of city time to make it a big issue After all, she has an encroachment problem of her own and wants the railroad gone She has wanted it gone since she inherited her commercial building from her mother and the lease with the UPRR Unlike Mayor Myers, her mother [Margaret Myers] always paid her lease to the railroad Ms Myers wants clear title to *all* the land under her building, not just 60% of it. She wants to sell it and retire. But roughly 40% of the building rests on our r-o-w, not to mention that the City of Creede is now [as of 1901] the fee simple owner of the land under our r-o-w. How did she plan on gaining title to the other 40% even with us gone? I wonder!!

Page 5 — Has Creede satisfied the criteria to reopen the OFA? I admit that some errors may have taken place within the financial statements for myself and DRGHF We've been over the issue regarding the inclusion of our home that was titled solely to Gayle and the railroad collections belonging to my dad, brother and me and the logic of why they weren't formally transferred to DRGHF I admit this may have been an error, but please understand it was an honest error Where in all of this is it taken into account that this entire venture was a first time effort in acquiring a rail line through the OFA process I'd never been involved in something like this Karl Morell once again follows George Allen is stating "other agenda" in acquiring OFA rights That's nonsense! We knew all along that there hadn't been any need for freight rail service for a long time The STB knew we were going to rehab the line, then initiate a tourist-based operation with the hopes of locating some freight business I have located some freight business before *any* operations commenced and we hope to identify additional need, but that has nothing to do with the right-of-way leases that were already in existence We were only pursuing the continuation of leases that had been in place by our predecessors

Bottom of page 5 and on to 6 — We continue to rehabilitate the line We are working through the winter as weather and frozen ground allow. We will operate a *freight* train a s a p, subject to an FRA track certification. We have the legitimate need for service Was there any statutory deadline for rehab to be completed or operations to commence? I don't believe there was

Pages 6, 7, 8 — Mr Morell's bold statement suggesting that *none* of the assets listed in the DRGHF Financial Statement were owned by DRGHF at the time of the OFA filing is patently incorrect. This begins a long and tedious depiction of what was listed in the DRGHF statement vs what was reflected with IRS and the State of Colorado I will try to make some sense of it

The seven pieces of rolling stock with a purported collective value of \$48,500;

- a 1880 D&RG Caboose --- this car with trucks was in our possession and paperwork supporting its donation complete. A narrow gauge [long] Caboose in terrible condition recently sold for \$15,000.
- b 1890 D&RG Dining Car --- this car was in our inventory and the paperwork supporting its donation complete.
- c. 1903 D&RG Box Cars --- the cars were given to DRGHF with no supporting paperwork. The donor stated we'd cover the paperwork when we move the cars. We haven't moved them as yet as we haven't finalized the location for the DRGHF museum facility. The donor knows the cars are DRGHF's. The donor has been a friend of mine for a long time.
- d 1880 RGS Coach --- this car was to have been donated to DRGHF. At the last moment the owner decided he wanted \$12,500 for the car. It had been listed as an asset of DRGHF as we were certain the donation would consummate. Given the absolute rarity of RGS passenger equipment, I personally paid for the car.
- e 1880 D&RG Coach & 1883 D&RG Pullman --- these cars were pledged to DRGHF years ago and remain so today. Certain things had to take place to make the cars available to us for possession. Those just took place recently. Was it wrong to have listed a pledge from people I've known for years and trust? I suppose so. Does that error equate to fraud? There was no intent.

The value given the equipment vs the reported value is the market value vs book value. If we gave a value of \$2,500 for a car, it was reported to the state at that amount. The asset value listed on the Financial Statement was its current market value. Had we chosen to sell the asset, we most likely would have been able to receive the listed figure at a minimum. Case in point, the 1890 D&RG Dining Car valued at \$10,000 was received as a donation. The receipt furnished to the donor for the car was for \$2,500. A similar car in similar condition located here in the San Luis Valley was sold at about the same time for \$10,000. It became a comparable supporting the value shown on the DRGHF statement.

The railroad memorabilia and artifacts listed with a value of \$65,000 and the model railroad collections valued @ \$152,000 are partially in the possession of DRGHF, my father, my brother and myself. We still do not have a suitable location for the museum we intend to develop and display everything. It remains far easier to house the collections in their present locations, which provide insurance coverage by the respective donors. They are safe and secure. Now, again, was

it an error to have listed these collections on the DRGHF statement? Probably so, but I trust my father and my brother. These collections aren't going anywhere Does this constitute fraud?

There seems to be a rather significant discrepancy between the schedule of assets presented to the UPRR/STB and what was reported on our tax return and property declaration. In discussing this with our bookkeeper, she reminded me that through the IRS audit prompted by the opposition, corrections were made to our Form 990 and this changed the Property Statement This is all totally explainable The changes and adjustments were made as suggested by IRS We fully complied.

The cash and cash equivalents totaling \$23,294.07 was correct as of November 30, 1998. Mr. Morell also refers to the 7.37 acre parcel of land in Silverton donated to DRGHF The land had been appraised by a professional real estate appraiser and valued @ \$34,000 at the time of donation. The donation took place during 1998, but didn't hit our books until January 1999. To substantiate this I checked with the San Juan County Assessor's Office in Silverton today 1/7/04 and they verified change of title recording into DRGHF on November 10, 1998, Book 246, Page 964. The land is still an asset of DRGHF. The land was listed for sale at one time but we took it off the market as land values in Silverton were steadily climbing. It remains a convertible asset of which we continue to pay property taxes on As to why it isn't on our Property Declaration, this dealt with the audit

In his summary Mr. Morell again emphatically cites fraud in my filings He paints a bleak picture as to the real net worth of DRGHF His figures aren't even close. I may have included some assets that hadn't formally transferred, which in retrospect was an error in judgment on my part, but not with the intent to commit fraud BUT, think about this: our foundation is not unlike most charities or even churches. They are all dependant upon pledges. Those pledges sometimes materialize into donations and some never materialize at all. However, a charity's budget for the future is based upon those pledges and often times they fall short. This is not unlike our Japanese Billionaire that pledged \$1 million to DRGHF and then funded \$250,000 that was sent to the UP.

Page 9 and 10 — On to my personal financial statement. Mr. Morell states that DRGHF's net worth, ("even at the fraudulently inflated level") fell well short of the Net Liquidation Value ("NLV") of the OFA line and that I pledged to donate \$400,000 to DRGHF We've been over this before with our bookkeeper Denise Jackson I have funded to DRGHF \$506,000 between 1999 and 2002 Obviously a portion of the \$506,000 was in the form of expenses for fuel and repairs for the maintenance equipment operation, as well as fuel, lodging, food, trips to auctions, legal and professional costs, and plenty of intangibles, which wouldn't necessarily appear on a Property Declaration, but a big chunk of the \$506K did.

Mr. Morell refers to the August 3, 2001 deposition and my refusal to answer questions of a financial nature. At that time I was instructed by my attorney, Ray Micklewright, to do so. At that time the district court was not allowing George Allen that kind of latitude In fact at one of the district court hearings the presiding judge made a bold statement: "if the Foundation [DRGHF] was comfortable with Mr. Shank's pledge, who are you to question it?"

Mr Morell adeptly reconciles the financial picture comparing the OFA filing to my California divorce judgment. He shows that property held by me was listed on the OFA but no value given in the divorce judgment. Gayle and I simply agreed that she would take *our* home and I would take our Colorado properties. Ironically the properties referred to by Morell are shown as: (1) an interest in Air Park Village, with a stated value of \$250,000, and; (2) the Highway 160 acreage with a stated value of \$450,000. Both sold, or are about to close, for the amounts reflected. The 22 acres in the Hwy 160 acreage sold a few years ago for \$445,000 and the Air Park property has been under contract for over a year and is due to close in mid-February. My gross share from that sale should be around \$250,000.

My financial picture truly went downhill in late 1999. The investment [on the Nov. 1998 statement] I made through/with Jeffery Matz, a Phoenix, AZ, attorney, turned out to be in a "ponzi scheme" and I lost \$80,000 of the \$100,000 investment and the supposed earned profits of \$87,500 as of 3/20/99 were never there. Jeffery Matz is in federal prison, as well he should be, but I lost big. The real unfortunate side of this was it set up the domino principle. I was forced to restructure debt as it became due and would eventually sell properties with a big reduction in net proceeds.

I reviewed my personal financial statement as provided to the STB during the OFA. Taking into account the errors I made, I can make adjustments to the statement and I arrived at a realistic Net Worth that would probably survive the oppositions scrutiny of just under \$1 Million Dollars, at that time. That is nearly \$620,000 less than reflected in the 3/15/99 statement, but well above Mr. Morell's suggested "marginal net worth at best at the time of the OFA." The major reduction came from backing out the value of our personal residence, however, I also credited the mortgage debt. There were a few other adjustments. The adjusted total assets are \$1,270,100 vs. \$1,957,600 as given to the STB. The adjusted total liabilities are \$298,800 vs. \$366,431 and my adjusted net worth was \$971,300 vs. \$1,591,169 or \$619,869 less than provided to the STB in 1999.

@ footnote 22, I did enter into a Stipulation In Lieu of Judgment with a creditor. It was a disputed matter that I failed to take care of and it had gone far further than I had any knowledge of. It was paid off entirely soon thereafter, but it did become a matter of record.

Page 11 - During the time we were purchasing the railroad a gentleman in the Intermodal Department of the Colorado Department of Transportation ("CDOT") felt he would be successful in assisting DRGHF in securing a \$1 million grant for rehabilitation of the Creede Branch. He was adamant that this could be accomplished. Not knowing or understanding the procedure and taking this gentleman at his word, I conveyed this to the UP's Real Estate Department. This was also conveyed to the STB during our filing. I suspect it could possibly have come through the "Enhancement Program" which administers federal funds at the state level through municipalities, such as South Fork. At that time we had never heard of the Enhancement Program nor did we have a clue to the inner workings of CDOT. This program sounded great so why would we dispute it.

At the bottom of page 11 and on to page 12 — Mr. Morell follows Mr. Allen's lead by restating the cardinal sin created by me signing my name to documents prepared by Terry Whelan of South Fork in an attempt to secure funds through the Enhancement Program with CDOT. However, I have discussed this situation with the DRGHF Board of Directors and we contend that we were correct in estimating the initial cost to get the track minimally acceptable to the FRA in order to operate a freight train. The key here is minimally acceptable. What we were potentially going after through the Town of South Fork and Terry Whelan was something we could have hoped for. Getting the line minimally operable would allow us to generate some revenue that could be reinvested into track improvement. Those improvements would have and most likely will be carried on for years to come. The grants from CDOT would have simply accomplished this far quicker and to a greater extent than any of us could have hoped for. Is \$10 million needed to rehab the line to make it minimally operational? No! But it sure would be nice to have track better than it has to be as opposed to better than it needs to be.

At footnote 29, Page 12 — Mr. Morell is overly presumptuous by assuming DRGHF was short on funds, therefore delaying the closing on four (4) separate occasions. Legal issues that had to be cleared up prior to the closing were the real reason. Mr. Morell and Mr. Allen never miss a chance to paint as bleak a picture as possible. Once again, they are wrong. At this moment I don't recall exactly what the last issue was, but it cleared-up on the morning of May 24, 2000 and we closed at 4:30 p.m. that same day.

At footnote 30, Mr. Morell refers to a statement I made to a reporter in December 2000, "The Note payment issue to the Union Pacific for the year 2000 is resolved . . ." I told the reporter exactly what I discussed with the UP and we [UP/DRGHF] strategized how we would inform the press. I specifically stated that, "the payment issue for 2000 has been resolved and I look forward to next year and retiring the debt." No inference was made that a payment had been made, period. I was very careful not to misrepresent the situation. John Bromley, Public Information Officer for UP, was not notified by the legal and real estate departments and he stated that the payment hadn't been made but instead the note had been extended. It wasn't what UP/DRGHF had agreed to publicly release, but absolutely no misrepresentations were made by either side regarding the note payment.

Pages 13, 14 — Mr. Morell makes some bold accusations by suggesting that I switched stories. It is no mystery that my financial situation changed. The loss of my \$100,000 investment principal as well as the investments earnings of \$87,500 to Jeffrey Matz had a profoundly negative effect. I clearly was relying upon that investment to make the note payment. Mr. Morell asserts that donations dried up before the Nov. 7, 2000 filing of the suit. That loss and Jeffrey Matz conviction and incarceration are a matter of record in Arizona.

The negativity and opposition publicly voiced by the Creede opposition was being heard across the country prior to the suit. We were plagued by one complaint after another at the hands of Creede's mayor. She was creating problems early on with various agencies like the Colorado Public Utilities Commission ("PUC"), Corp of Engineers, Forest Service, etc. These complaints were making the newspapers in a big way. Even Ken Salazar, Colorado Attorney General joined in the fight and made the bold [but incorrect] statement that "the right-of-way was abandoned."

and plastered it on the front page of numerous newspapers. Although we were certainly correct in righting the wrong, it ultimately cost us dearly. DRGHF and I were quietly being blacklisted with various agencies, such as CDOT, that could have potentially helped us. Even in retrospect, we had to respond.

After adjusting my financial statement from 1999 that I submitted during the OFA, I think it should still reflect a net worth that would have been deemed sufficient at that time, though my liquidity was really hurt by the loss. Wouldn't this have some bearing on whether or not fraud was in fact committed? Doesn't intent need to be present? There was no intent!

Pages 15, 16 — These pages deal with Mr. Morell's perception that no freight business exists and refers to our "artfully crafted words", obviously our statement of ready, willing and able. We remain willing, and will be ready and able upon completion of the rehabilitation. Nothing has changed. However, we have acquired an operable 3,000 h.p. diesel locomotive. I purchased one with four-wheel trucks to better handle our tight-radius curves. We also have a nice steel caboose to follow behind, something you don't see much of anymore. Please refer to the DRGHF Inventory of Equipment filed in this proceeding. It should be readily apparent that we have acquired quite an arsenal of equipment to rehabilitate and operate our railroad. The significant investment associated with that equipment should send a clear message that we intended to operate this line as opposed to just initiating a real estate leasing regime. That highly presumptuous theory will not stand the test of time. We have a certified engineer/conductor/maintenance-of-way professional and a former conductor ready to go to work. In addition to those on staff, we have a file with several experienced railroad professionals seeking employment.

This may be repetitious but here goes. We knew going into this purchase that nothing existed in the form of freight business on the line. We knew the line was in tired but restorable condition. We knew that Creede had transformed from a mining town to a tourist-based economy. We felt that a tourist-based passenger operation augmented by freight rail service might have a good chance of success. Our initial plan was to get some form of limited passenger operation going and continue to identify any potential need for freight. Through my efforts I fortunately identified a shipper and two recipients requesting product delivery in Creede prior to any commencement of passenger operations. We will continue our rehabilitation efforts and provide service at our earliest opportunity. Again, we didn't want to get the cart ahead of the horse by offering service we couldn't deliver. Our shipper is aware that we are still in rehabilitation mode.

Bottom of page 16 @ footnote 42 — What a waste of time and paper. We knew the request was absurd and therefore we did not pursue it.

Page 17 — Mayor Myers may have listed every business in Mineral County, but she didn't give Mineral County's Road and Bridge Department any consideration. They want their magnesium chloride delivered into Creede and so does Hinsdale County. DRGHF is happy to oblige as soon as we can. As for the only possible exception, Tomkins True Value Hardware and Lumber, well they don't have any need for rail service because the entire lumber yard and 1/3 of their retail store are located in the middle of the rail yard, and they would like to see us gone as opposed to

referenced this in a letter to CDOT that prompted a response [see Creede Document at 413, next to the bottom paragraph] from Tom Norton. CDOT was attempting to claim that the Crossing Agreements were unenforceable as they failed to identify an expiration date. They changed their thinking, but it created yet another issue

6. This complaint made it to the STB. The complainant made it sound as if we were denying the public access to public lands. The dirt road Mr. Morell refers to was literally two ruts through the weeds that approached the railroad track. Someone had attempted to build a crude grade crossing by throwing some rock and dirt between the rails to get to the river that is all of maybe 75' beyond. A camper from Texas tore out his oil pan and another ripped off the slid plate from his transfer case while bouncing over the tracks. They were also damaging our ties. We dug out the rubble between the rails and drove two metal posts about eight feet apart, hung one strand of twine between and attached a "no trespassing" sign to it. This was never an approved crossing. As for denying access, give me a break. You could literally walk for 1,000' in either direction, uninterrupted, and cross the tracks by foot and camp by the river. People continue to camp in this area, quite often, but they don't try to drive across our track, as they shouldn't. We have had not one request from the Forest Service for a grade crossing throughout this entire stretch. Not one!

7. This is the situation as identified above at (1). The parking lot is the railroad's yard. Years ago that parking lot was allowed to be in the yard via a right-of-way lease. The city stopped paying this lease years ago. At the insistence of the CO State Land Board, I cancelled it. The playground also sits in our rail yard and never had authority to be placed there. It is potentially dangerous and will be moved to a safer location. We planned on helping.

On to page 19.

8. This is a quite interesting. The drainage ditch that's been located on the right-of-way for over 100 years? It may have been in our right-of-way as we have a 75' width on that side of the track, but it most definitely was not directly next to our track until the City of Creede relocated it. Mineral County Sheriff Phil Leggitt, who has lived in Creede his entire life and grew up a stones throw from the ditch said this is not true. This drainage ditch is now undercutting the ties. The structural integrity of the roadbed has been compromised. The ditch used to meander like a snake down through this area. Now, because the city built a ballfield, that encroaches on the right-of-way, they placed a concrete retaining wall made of interlinked "jersey barrier" that parallels our track, but unfortunately on the wrong side of the ditch. For the record, DRGHF does not intend to make an issue regarding that encroachment. Mineral County Road and Bridge had made an offer to install a new culvert that would incorporate the ditches entire flow within the new culvert pipe and then bury it. Even better, they were willing to pay for it themselves. The city [BJ Myers] got in the way and stopped it. She had absolutely no right to do so, but she infuriated the County Commissioners and they withdrew the offer. So who lost, the city, the county, the railroad and the Creede School District. We had suggested a lease between the State Land Board and the School District for use of thirty-five feet of our right-of-way as a running track. This would have been between the twenty-five foot setback from our tracks and the ballfield. This reclaimed area would have worked perfectly for this.

The photographs that are attached to my statement as Appendix DHS-2 show that all of those tracks and the depot are still in place. The photographs were taken at the end of August, 2004. The Foundation intends to rehabilitate those tracks and the depot in conjunction with reinstituting rail service over the entire Derrick-Creede rail line. The Foundation has already commenced rehabilitation of trackage starting from the east end of the line.

All four of the tracks and the depot in the Creede railroad yard are necessary for the safe and efficient operation of freight and passenger trains. The Foundation will make use of those tracks for spotting empty freight cars, delivering loaded freight cars, loading and unloading of freight shipments, storage of freight and passenger railcars, switching and staging of freight and passenger train movements and for general railroad purposes. The Foundation will use the depot for a freight office and for passenger operations. It is readily apparent that those tracks and the depot occupy virtually the full width of the 100-foot-wide ROW in the railroad yard in South Creede. It is also apparent that residential use of any portion of that ROW would be wholly inconsistent with, and disruptive of, the legitimate rail operations identified above.

Although only the main track is located on the South Creede ROW south of the railroad yard, it is apparent from the photographs (Appdx DHS-2) that the usable ROW in that area is considerably narrower than 100 feet in width because of the presence on the ROW of Loma Street and a drainage ditch, and because of hilly terrain. Usable ROW width in this area averages only 30 to 40 feet. The full width of that usable ROW is required for efficient access to the main track by maintenance vehicles, and by maintenance and operating personnel. The maximum width is also required for storage and marshalling of materials used in maintenance such as

cross-ties, switch ties, rail, ballast and bridge materials. The entire ROW width is also required for potential track expansion. In that respect, the Foundation is currently in discussions with a significant potential rail user who could require construction of sidetrack facilities for transloading commodities from truck to rail. Residential use of any part of this narrow ROW would be inconsistent with those legitimate rail uses.

It should be noted that the City itself endorses uses of the ROW at issue that are inconsistent with the residential zoning that the City argues for. Each year for the past 15 years, the City has endorsed and promoted the "Days of '92" State Mining Championship and the Rocky Mountain Knife and Tomahawk Throwing Competition that are held squarely within the ROW in the railroad yard. Both events involve dozens of vendors who sell goods and services and who collect sales taxes that are shared by the City. Despite its claim that the land in that area is zoned residential, the City has never required the organizers of the multi-day events to obtain special use permits for activities in a residential area.

Exhibit No. 22

D. Shank Letter re Right of Way in Creede (November 11, 2007)

FROM : GIBBONS+ASSOCIATES,PC

PHONE NO. : 7198524732

Nov. 15 2007 09:13AM P2

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID #: 84-1489980
COLORADO CHARITABLE REGISTRATION #: 80028005760

November 11, 2007

By Certified Mail
Return Receipt Requested

Benjamin F. Gibbons
Gibbons and Associates, P.C.
800 First Avenue
Monte Vista, CO 81144

RE: Right of Way Activity in Creede

Dear Mr. Gibbons:

I am in receipt of your letter dated November 8, 2007 in which you address a number of issues regarding the Foundations recent work within our right-of-way within the city limits of Creede.

ONCE AGAIN, the City of Creede has chosen the position that twists the facts to serve its own agenda. That agenda is of course the demise of the railroad that built your town. However, it is such a misnomer to simply state "the City of Creede" is against the railroad. During our recent work session we encountered perhaps five individuals, mostly in their teens or twenties that felt it appropriate to display their displeasure with our presence by attempting to wave and muttering only 20% of their digits. This was in stark contrast to the dozens of local residents that happened by to applaud our arrival at the Creede Depot.

Your letter is, yet again, another attempt to state (in context) your interpretation of the STB's rules and regulations, findings and decisions that might conceivably serve your purpose.

Prior to our arrival for the four-day work session, Fred Hoselkus, Mineral County Sheriff took it upon himself to contact the STB and seek clarification of whether or not our Foundation had the legal right to work within our right-of-way in Creede. Sheriff Hoselkus obtained a letter from Mr. Thomas Braggan at the STB that validated our right to work on our track as we chose. That satisfied the sheriff and he and his deputies periodically visited the railroad yard to observe the work being performed.

FOUNDATION OFFICE: 80 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email: dshumak@yahoo.com

FROM : GIBBONS+ASSOCIATES.PC

PHONE NO. : 7198524732

Nov. 15 2007 09:13AM P3

During the work session, Ken Wyley, Chairman of the Days of '92 event, assisted by City of Creede employees, removed the bleachers and press box from resting on top of our mainline track. Mr. Wyley felt this totally appropriate and is very pleased with the Foundation's pledge for continued support of the July 4th event. It was interesting to learn from Clyde Dooley, Creede City Manager, he felt that starting next year the event was going to move to the Mineral County Fairgrounds. In discussing this with Ken Wyley, Ken's position was that if the city is moving the event to the [yet to be developed] fairgrounds, it would be the end of the event. Ken enjoys the harmonious relationship the event shares with the railroad. We intend to continue that relationship.

During the work session, it was necessary to remove about four feet of the children's play area. We were surprised to find it in such rotten and deplorable condition with terribly rusted spikes attempting to hold the sand. A Creede City Council member informed the Foundation a couple years ago that the play yard's location (completely inside our right-of-way) or presence had never been approved by the railroad. "It just appeared." While we were carefully piling the sand removed from the end that rested squarely on top of the mainline, Clyde Dooley happened by on one of his inspections. I was pleased to inform him that we were able to save the majority of the play yard and certainly the portion containing the climbing equipment. Mr. Dooley's response was, "don't worry about that play yard, we're going to move it to the ball field anyway."

With respect to opening the grade crossings at Loma and Third Streets, this situation of paved-over track has been brought to the attention of the City of Creede numerous times for several years. In a well-attended meeting this summer on July 16th, it was determined that the city needed to clear our tracks of asphalt and fill material or anything else that was blocking the free and unrestricted movement on our tracks. In attendance were your City Manager and Rex Sheppard, City Councilman. Also in attendance were the Colorado Public Utilities Commission and the Colorado Department of Transportation. Subsequent to that meeting the City of Creede was notified by a Certified/Return Receipt letter dated August 18th that it needed to comply with the demands to clear the grade crossings. The city chose to ignore those demands.

On September 17th, the Foundation again provided the City of Creede with written "notice" that it would be opening the grade crossings in the very near future and keeping track of the costs involved to perform such work. Both the PUC and CDOT were CC'd and it was clearly understood that if the city prevails in the Adverse Abandonment action, the Foundation would not recover the costs to open the crossings and it was further understood that if the City of Creede fails in their attempt to perfect the action, they would be financially responsible for all work performed and would also be responsible to replace the crossings, per the terms of the Grade Crossing Agreement, Contract # 27694 dated September 14, 1977. To date, the City of Creede is and remains in violation of the terms of that contract. That contract is a license and licenses can be revoked.

With respect to your assertion that our activities in Creede have no relation to the interstate transportation of freight or passengers, I can assure you that you are sadly mistaken. The railroad has to date identified three separate shippers, one of which is located east of the

FROM : GIBBONS+ASSOCIATES.PC

PHONE NO. : 7196524732

Nov. 15 2007 09:14AM P4

Mississippi River, requesting the delivery of material into the City of Creede. Last time I checked, east of the Mississippi would be considered interstate. Given the City of Creede's propensity for creating roadblocks, the identity of said shipper will become known to the STB during our response to your ridiculously absurd adverse abandonment action.

The opportunity to provide sanctioned "speeder" excursions is a function of numerous railroads throughout North America. This is a fund-raising opportunity embraced by the Foundation and will continue. Several chapters of the North American Railcar Operators Association (NARCOA) have already re-booked excursions to ride our rails into Creede. Due to our recent efforts, they will thankfully have the opportunity to arrive at the historic depot and then disperse to enjoy the many fine restaurants and shops in downtown Creede. This was extremely difficult this past season as we were forced to walk to town from the ball field at the bottom of Creede. For many, it was just too far and too difficult in the rarified air at 8,850 feet. It also was a huge waste of valuable time. That walk was the only complaint on what everyone perceived as a marvelous railroad in a perfect setting.

The revenue generated by these excursions and other events are spent on improvements to the track, bridges and roadbed in preparation for bona fide interstate freight movement and enhanced passenger operations. They will continue as will the continued work in Creede. We have track to replace that was inappropriately removed by the City of Creede.

The work performed in October was both legal and appropriate. Creede has had the opportunity to open those crossings on numerous occasions. You chose not to. You were placed on notice on numerous occasions that just such work was going to take place. It will continue.

For the record, nothing was destroyed. There was no "trespass" on city property. We worked only within the boundaries of railroad property. We left the crossings completely navigable. I personally drove across them pulling a trailer and experienced no difficulties. If you would like to have the crossings paved, I suggest you cut the asphalt back further than we did to provide a more level approach to the tracks. You may install asphalt up to the end of the railroad cross-ties in both Loma and 8th Street, but you are not to touch the track or cover them in any manner. This will be at the sole cost and expense of the City of Creede and will not be a Foundation expense. Contrary to your demand, we will not be returning the crossings to the pre-work season condition as that would once again bury our tracks, nor will we be adhering to your self-imposed "cease and desist" demand.

As for Creede Ordinance #324, I recollect when that ordinance was enacted. It was done so specifically, and as an attempt to throw yet another roadblock in front of the railroad. We are exempt from Ordinance #324. We will not be seeking any permits to work on our tracks or within our right-of-way now, or in the future.

In your last paragraph you [City] have once again threatened the Foundation with legal action to enforce its authority over City property and facilities. The property you are referring to is railroad property and has been railroad property since before Creede became a city. In those areas where the City of Creede holds the fee-simple interest, it

FROM : GIBBONS+ASSOCIATES,PC

PHONE NO. : 7198524732

Nov. 15 2007 05:15AM P5

does so "SUBJECT TO RAILROAD RIGHT OF WAY." It is federally pre-empted and federal trumps state, county, city and you Mr. Gibbons

In conclusion, given the indisputable fact that Creede is nearly totally dependant on tourism, everyone including numerous Creede residents would like to know what it is that you are against in terms of the railroad. Here we are, working hard to rebuild the railroad that built Creede. Here is Creede, struggling to increase revenues, and here is the railroad working towards bringing you a trainload of tourists that would effectively be "captive" for a couple hours before their return trip to South Fork, free to shop, eat and spend tourist dollars. Just what is it that the City of Creede is so afraid of? This time, please respond to this question. Give an honest answer.

This past summer I quoted your City Manager in an article regarding the speeder runs. He had asked me if we were running anymore speeder runs to which I responded emphatically, yes! His response was "great, we need the revenues". What a shame to learn that Mr. Dooley was "reamed" by City Council for making such a statement.

In actuality, the city's reluctance to embrace the railroad, compounded by the adverse abandonment action is nothing more than an ill-conceived attempt at a land grab. The City of Creede's propensity for violating the railroad's property rights is, and has been aggravating to say the least and is only exceeded by its willingness to twist the facts, rules, regulations and statutes to suit its perceived needs. This practice needs to stop, permanently.

Your threat of legal action, bring it on. We will not be complying with your absurd demands. We are not required to. The railroad will be running through Creede. Prepare for it and learn how to profit from it. Try listening to business owners other than those with encroachment issues. We have been

Sincerely,



Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation

Cc: Thomas F. McFarland, Esq.
Pamela M. Fischhaber, CPUC
Hayne Hutchinson, CDOT
Thomas Brugman, STB

Exhibit No. 23
Letter of Steve Baxter

December 11, 2007

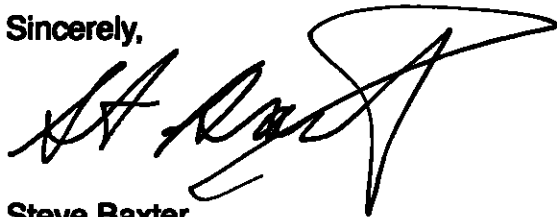
**Clyde Dooley, City Manager
Creede, Colorado**

Dear Clyde,

I understand the Denver & Rio Grande Railway Historical Foundation has shown me as desiring to us the Foundation to have cedar logs delivered by railroad from Tennessee to Creede, Colorado.

I have not made any commitment to the Foundation to purchase rail service at this time. I have incorporated a company, Tenco, to finish cedar logs for use in home construction. Tenco is in the formative stages and will not require transportation services, truck or rail, for some time to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Baxter', with a large, stylized flourish extending from the end of the signature.

Steve Baxter

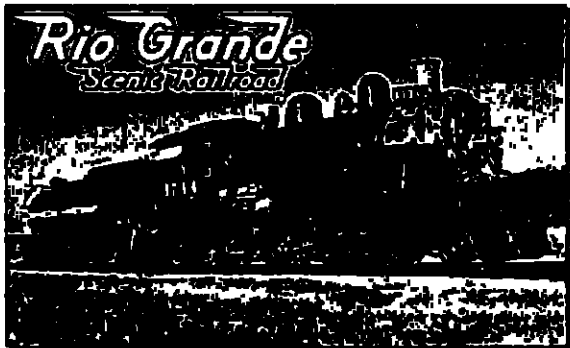
Exhibit No. 24
Rio Grand Scenic Railroad

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Rio Grande Scenic Railroad

La Veta Pass Scenic Line



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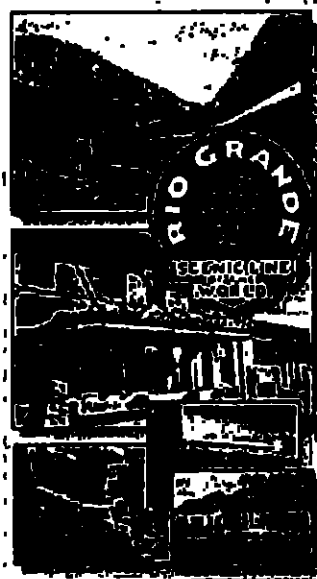


The newly re Grande Sc closed a de "new" 1901 locomotive, the Rio Grande engine has arr to kick off second season and holiday s Veta Pass

Rio Grande Scenic Railroad: About The Route

Welcome to the Train

This historic railroad route through the San Luis Valley, over the majestic Sangre de Cristo Mountains, which have eight peaks of over 14,000 feet, into La Veta, has been carrying freight for over a century. These rail lines opened the San Luis Valley to the world by bringing building supplies in and taking agricultural and mineral products out of the area. The San Luis Valley has always held a special place in the heart of railroaders as it is one of the few North American connections between standard and narrow gauge railroads, the narrow gauge lines have been in continuous operation since the late 1870's. For the first time in over half a century you can ride passenger trains on these historic routes, crossing the Sangre de Cristo into La Veta, rolling into Antonito and changing to the narrow gauge Cumbres and Toltec, or just enjoying a late afternoon cruise through the San Luis Valley. The Rio Grande Scenic Railroad is a collaboration of the San Luis and Rio Grande Railroad, which owns and operates the freight railroad, the Denver and Rio Grande Historical Foundation, which is committed to preserving the railroad history of the San Luis Valley, and the Alamosa and La Veta Chambers of Commerce, which want to share their scenic and historic treasures with you. You can be part of history by joining us on one of the first trips in over half a century on these historic rail lines.



The daily de May 14th.

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Rocky Mountaineer | Royal Canadian Pacific | Whistler Mountaineer **Mexico:** Copper Canyon | Sierra Madre Express **Africa:** The Bl
Rail | The Shongololo Express **Asia:** The Trans Siberian Express | The Shangri La Express (China Orient Express) | The Viceroy of
Venice Simplon Orient Express | The British Pullman | The Royal Scotsman | The Danube Express **South Pacific:** Australian Rail | N
Canadian Mainline Steam. Calgary to Vancouver | Vancouver to Calgary **Pacific Northwest (Oregon / Washington)** Wa
Extravaganza | Spirit Of The Cascades | Eagle Cap Wilderness Rail Adventure | Oregon Coast Steam Adventure | Chelatchie Prairie
America & Beyond. Trains Unlimited, Tours

Exhibit No. 25
Wason Pictures 1977



Photo No 35

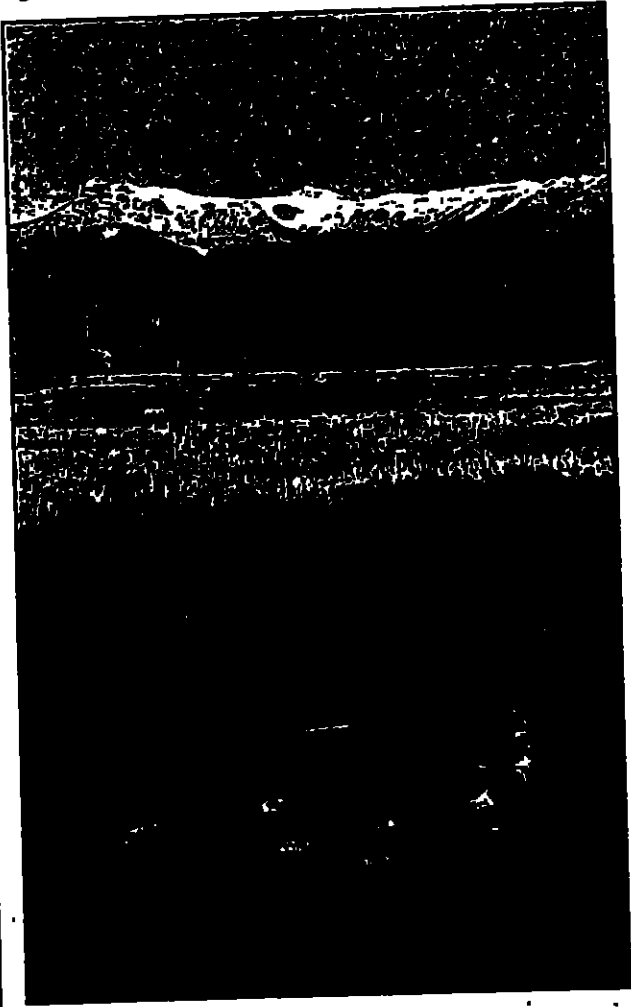


Photo No. 36

Exhibit No. 26
US Forest Service Map

RIO GRANDE

National Forest



America's Great Outdoors

Colorado

1996

Forest  Service

United States Department of Agriculture

Exhibit No. 27
Pictures of Speeders



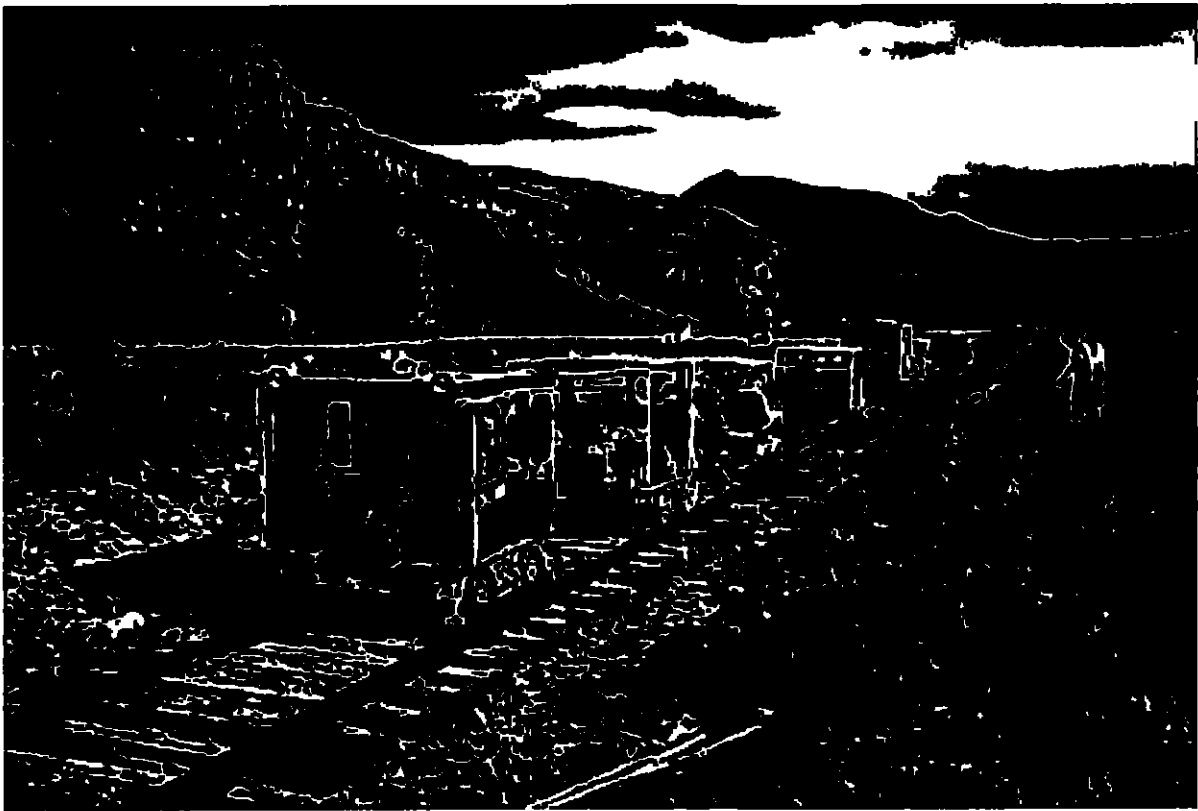


Photo No. 38

Exhibit No. 28
Rocky Mountain Div. Calendar

Don't miss it!
Reminiscent of the
Old West

City Office Copy for The Mineral County Miner



192 - 2007

'...there is no night in Creede.'

Volume 29, Number 41 Creede, Colo. 81130

Thursday, October 11, 2007

50¢

CITY OF CREEDE

Santa Claus

needs your help

NORTH FORK — Santa Claus needs your help. To help out, Peggy or Jim at 873-0278 or at 873-5481

Star party coming

up in Del Norte

DEL NORTE — Weather permitting, the next Lookout Mountain Observatory Association, Inc. star party will be at 8 p.m. Saturday, Oct. 13 at the Del Norte Observatory. Free viewing will be deep sky objects. Training on safe operation of the observatory and the telescope will start at 7:30 p.m. Star party ideas should be sent to the observatory at the Lookout Mountain Observatory. For more info, call Jim Angerer, 4971.

Shank brings first stoplight to town

Light set up to assist motorcars

By Mary Johnson

CREEDE — Don Shank, owner of the Denver-Rio Grande Railroad from South Fork to Creede was busy this week working on the railroad crossing south of town. He and his crew of men were repairing the crossing and installing the first stoplights in the history of Creede.

Shank said, "This is only the beginning. The next street crossing will be Loma Street. Already several clubs of motorcars have signed for trips next year, and I'm sure more will notify us that they too, will want to make the trip from South Fork to Creede next year." Shank has much more work to do but he has the men and equipment to get this finished for Tour Year 2008.



Photo by Mary Johnson

Above: The construction crew works on the repair of the railroad crossing and the installation of the stoplights in downtown Creede.

Below: Denver-Rio Grande Railroad owner Don Shank stands in front of the newly installed stoplight in Creede.

Village at Wolf Creek note strike?



Town of Del Norte East, July 18 and 19 - Hwy. 15 mm 1.40 to 3.40 - South of Monte Vista; July 23 to the 25, Hwy 114 mm 47.4 to 45.9 - Cochetopa Pass area; and July 30 and 31, Hwy 17 mm 94.0 to 96.00 - Moffat. Motorists can expect delays with single-lane, alternating traffic through the work zones between 7 a.m. and 5 p.m. Drivers are urged to keep their speeds low and maintain a safe following distance.

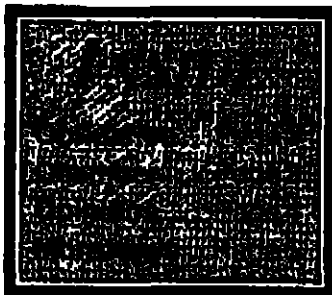
Symphony Orchestra coming to ASC

ALAMOSA— The Alamosa Live Music Association proudly presents a rare chance to hear the nationally-acclaimed Colorado Symphony Orchestra in a beautiful, state-of-the-art, air conditioned, theatre facility without leaving the San Luis Valley. This will be Thursday, July 19, 7:30 p.m. at the Adams State College Theatre, on Main St. between Richardson Ave. and Edgemont Blvd. in Alamosa.

Only a limited number of tickets are available for this concert at \$20 for ALMA members and \$25 for others. To reserve tickets, call or stop in at the Narrow Gauge Newsstand in Alamosa, 589-6712, or Big River Music in South Fork, 873-2010.

ALMA members are welcome to join people from the orchestra during a post-concert reception at the San Luis Valley Medical Center's Auditorium.

For more information about joining ALMA or about upcoming concerts, go to www.almaonline.org or call 480-9162.



Iraq, followed Jim and Kim.

Mayor Eldon Siems was next followed by former mayor and Grand Marshall Jim Basham. Approximately 44 entries made up the parade.

Please see PARADE on Page 6A
Courtesy Photos

Right: The fire truck honored Creede's fallen hero, Sgt. Clint Alquist, who was killed in Iraq.

Below, right: Creedites of all ages participate in the parade to entertain the crowds.

To Ron FYI Clyde

Twenty motorcars venture to Creede

CREEDE— Twenty motorcars traveled from South Fork to Creede on the Creede branch of the Denver & Rio Grande Railroad line. Runs were made on July 3 and 4; they were led by Jon Keeling. The participants set their cars on the tracks in South Fork and then headed up to Creede. Once in Creede, they were able to eat lunch and see some of the mining events. Later that day they backed down the tracks to Wason and turned at the "Y". (A track arrangement with

three switches and three legs for reversing the direction of a train.)

The official name of this vehicle is a Railway Motorcar. It is known as a "speeder," "jitney," "railcar," "track car" and "putt-putt" (for the noise the early one-cylinder two cycle motors made). The motorcar was used for inspection and light maintenance of track and signals. Inspection and section-gang type motorcars weigh as little as 600 lbs. while gang cars can weigh up to 4500 lbs. or more.



The railway motorcars, led by La Veta's John Keeling, took an excursion from South Fork to Creede.

Courtesy Photo

Commissioners issue

By MARY JOHNSON

CREEDE— The Mineral County Board of Commissioners met Monday, July 2 at 8:00 a.m. They had several issues to take into consideration during the meeting. They started the meeting at 8 a.m. in the courthouse to review the agenda and approve the minutes of the last meeting as read.

Road Supervisor Danny Rogers gave a good report on all issues including the oil on the 7 mile road to the end of the line above BHA.

Sheriff Fred Hosselkus gave an update on all issues including the sheriff concerns for July 3 & 4. He discussed some other matters with the commissioners as well.

County Administrator Les Cahill gave his report following Attorney John Wilder's reports.

In the afternoon, Michael Whiting

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The new... Edition

COMING SOON!

The new... Edition



Rocky Mountain Division

of NARCOA

RMD Calendar of Events 2007

Date	Event	Status	Organizer	Details
2007-01-01	CS&E Run	Cancelled	Gus Mocilac	New Years Run info
2007-05-(05/06)	Black Hills Central	Scheduled	Gus Mocilac	Black Hills info
2007-04-(21-22)	Towner Line Work Party	Scheduled	Richard Reiff	Towner Work Party info
2007-05-(19-20)	Towner Line(3-22 Update)	Scheduled	Richard Reiff	Towner Excursion Info
2007-05-(26-27)	Creede Branch Work Party	Scheduled	Doug Davlin	'07 Creede Work Party 1
2007-06-(16-17)	Creede Branch Work Party	Tentative	Doug Davlin	
2007-07-(02-06)	Colorado Tour (Speeders and Steam)	Scheduled	Jon Keeling	Spdr & Steam Exc Info
2007-09-(01-03)	Colorado Fall Tour	Scheduled	Jon Keeling	CO Fall Tour Info
Unknown	Santa Fe Southern	Planning	Richard Reiff	

Calendar Archives

Please select your desired Archive year at the left....

See Excursions for details on RMD sponsored events.

This calendar of events is provided by RMD as a service to interested parties. Not all of the listed events are sponsored by RMD.



Rocky Mountain Division

of NARCOA

Creede Branch Work Party

May 26-28, 2007

South Fork to Creede

Hosted by: **Doug Davlin**

Project Foremen: **Jon Keeling & Jerry Geiger**

The work:

1. Place rail, ties, ballast and make miscellaneous repairs necessary to close gaps in the line between South Fork and Creede.
2. Clear brush, willows and other matter from the rails
3. **High Altitude Warning!** We will be operating at an altitude of 8,400 feet (+/- 400 feet). There will be hard & heavy work and is not recommended for anyone with medical problems or those physically out of shape. Participants should come prepared accordingly.

The environment:

1. It may be cold in the mornings and evenings (in the low 30's)
2. It may rain but usually not for long
3. Mosquitos may be out bring repellent.

The dates: May 26 through May 28th. The bulk of the work will take place on the 26th and 27th. You are welcome to arrive at the Depot on the 25th and stay till the 29th

The accommodations:

All are invited to camp on the property around the Depot. Let Doug know the dates you will be staying and how many will be in your party even if you will not be camping at the depot. As soon as we get an idea of how many will be there, Doug will send out a list of food items to bring. Pets are welcome as long as they are restrained and do not bother others. Contact Doug via email at dwdavlin@comcast.net or by phone before May 21, at 719-632-7967 (Colorado Springs) and after May 23, at 719-685-2766 (Wagon Wheel Gap) Do not count on my having internet access while at the depot.

Other accommodations are available in South Fork and Cottonwood Cove (719-658-2242) ... right next to Wagon Wheel Gap. If staying at Cottonwood Cove, let Tom or Mona know you are with the RR work party they may offer you a discount. Make reservations early, as they may be full on this weekend.

Communication: Cell phones don't seem to work at the depot. They *may* work in Creede and South Fork.

Cameras: Please bring cameras to not only document our work, but to show who was there.

SAFETY: Doug only stocks two band-aids at WWG and the closest medical help is miles away so you may want to bring your first-aid kit Hard boots (steel toes would be better), safety vests, hard hats, and gloves are **required** on the work parties.

Tools: Most tools are available at the Depot but gasoline powered weed eaters are needed. Bring tools to be used in brush cutting and crossing clearing. Tractors welcome!(PW) Air compressors needed' (BD) Brush cutter RR platform.(JK)

Liability: This work party is not sponsored by NARCOA, RMD, nor D & RG R H F (Denver & Rio Grande Railway Historical Foundation). Though promoted through and using RMD services, each person is responsible for their own safety. Liability waivers will be required for all participants, their families and guests.

The Directions: I-25 to Walsenberg West on US Hwy. 160 to South Fork and West on CO Hwy. 149 to WWG (14 miles).

Speeders: Speeders are welcome but there is no guarantee you will

Exhibit No. 29
Form 990s 1999-2003

Return of Organization Exempt From Income Tax

Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(1) nonexempt charitable trust

OMB No 1545-0047

1999

This Form is
Open to Public
InspectionDepartment of the Treasury
Internal Revenue Service

Note: The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 1999 calendar year, OR tax year period beginning

, 1999, and ending

B Check if

- ☐ Change of address
☐ Initial return
☐ Final return
☐ Amended return (required also for state reporting)

Please use IRS label or print or type See Specific instructions.

C Name of organization

DENVER & RIOGRANDE RAILWAY HISTORICAL FOUNDATION

D Employer identification number

94-1433680

Number and street (or P.O. box if mail is not delivered to street address) Room/suite

1474 MAIN AVE, SUITE

E Telephone number

(970) 259-9498

City or town, state or country, and ZIP+4

DURANGO, COLORADO 81301

F Check ☐

if exemption application is pending

G Type of organization— ☒ Exempt under section 501(c)(3) (insert number) OR ☐ section 4947(a)(1) nonexempt charitable trust

Note: Section 501(c)(3) exempt organizations and 4947(a)(1) nonexempt charitable trusts MUST attach a completed Schedule A (Form 990)

H(a) Is this a group return filed for affiliates? ☐ Yes ☒ NoI If either box in H is checked "Yes," enter four digit group exemption number (GEN) ☐ Yes ☒ No(b) If "Yes," enter the number of affiliates for which this return is filed: ☐ Yes ☒ NoJ Accounting method ☒ Cash ☐ Accrual
☐ Other (specify) ☐K Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS, but if it received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return.

Note: Form 990-EZ may be used by organizations with gross receipts less than \$100,000 and total assets less than \$250,000 at end of year.

Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 15)

1	Contributions, gifts, grants, and similar amounts received:			
a	Direct public support	1a	250,000	
b	Indirect public support	1b	202,464	
c	Government contributions (grants)	1c		
d	Total (add lines 1a through 1c) (attach schedule of contributors) (cash \$ _____ noncash \$ _____)	1d	452,464	
2	Program service revenue including government fees and contracts (from Part VII, line 93)	2		
3	Membership dues and assessments	3		
4	Interest on savings and temporary cash investments	4	79	
5	Dividends and interest from securities	5		
6a	Gross rents	6a		
b	Less: rental expenses	6b		
c	Net rental income or (loss) (subtract line 6b from line 6a)	6c		
7	Other investment income (describe ☐)	7		
8a	Gross amount from sales of assets other than inventory	(A) Securities	8a	
b	Less: cost or other basis and sales expenses	(B) Other	8b	
c	Gain or (loss) (attach schedule)	8c		
d	Net gain or (loss) (combine line 8c, capital gains, and losses)	8d		
9	Special events and activities (attach schedule)			
a	Gross revenue (not including contributions reported on line 1a)	9a		
b	Less: direct expenses other than fundraising expenses	9b		
c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c		
10a	Gross sales of inventory, less returns and allowances	10a		
b	Less: cost of goods sold	10b		
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c		
11	Other revenue (from Part VII, line 103)	11		
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	452,543	
13	Program services (from line 44, column (B))	13	10,366	
14	Management and general (from line 44, column (C))	14	17,295	
15	Fundraising (from line 44, column (D))	15	-0-	
16	Payments to affiliates (attach schedule)	16	-0-	
17	Total expenses (add lines 13 and 14, column (A))	17	27,661	
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	274,882	
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	25,450	
20	Other changes in net assets or fund balances (attach explanation)	20	141,117	
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	441,449	

For Paperwork Reduction Act Notice, see page 1 of the separate instructions.

Cat No. 11282Y

Form 990 (1999)

Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 19.)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____)	22			
23	Specific assistance to individuals (attach schedule)	23			
24	Benefits paid to or for members (attach schedule)	24			
25	Compensation of officers, directors, etc.	25			
26	Other salaries and wages	26			
27	Pension plan contributions	27			
28	Other employee benefits	28			
29	Payroll taxes	29			
30	Professional fundraising fees	30	200	200	
31	Accounting fees	31			
32	Legal fees	32	7,568	7,568	
33	Supplies	33	449	449	
34	Telephone	34	719	719	
35	Postage and shipping	35	441	441	
36	Occupancy	36	4,225	4,225	
37	Equipment rental and maintenance	37			
38	Printing and publications	38	1,407	27	1,380
39	Travel	39	514	514	
40	Conferences, conventions, and meetings	40	225	225	
41	Interest	41			
42	Depreciation, depletion, etc. (attach schedule)	42	1,949	1,949	
43	Other expenses (itemize): a	43a			
b	ASBESTOS ABATEMENT	43b	9,100	9,100	
c	INSURANCE	43c	564	564	
d	DAY LABOR	43d	300	300	
e		43e			
44	Total functional expenses (add lines 22 through 43). Organizations completing columns (B)-(D), carry these totals to lines 12-15.	44	27,661	10,366	17,295

Reporting of Joint Costs. Did you report in column (B) (Program services) any joint costs from a combined educational campaign and fundraising solicitation? ☐ Yes ☒ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____; (ii) the amount allocated to Program services \$ _____; (iii) the amount allocated to Management and general \$ _____, and (iv) the amount allocated to Fundraising \$ _____.

Statement of Program Service Accomplishments (See Specific Instructions on page 22.)What is the organization's primary exempt purpose? ☐
 All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses (Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts, but optional for others.)

a	(Grants and allocations \$ _____)	
b	(Grants and allocations \$ _____)	
c	(Grants and allocations \$ _____)	
d	(Grants and allocations \$ _____)	
e	Other program services (attach schedule) (Grants and allocations \$ _____)	-0-
f	Total of Program Service Expenses (should equal line 44, column (B), Program services)	10,366

Balance Sheets (See Specific Instructions on page 22.)

Note: Where required, attached schedules and amounts within the description column should be for end-of-year amounts only

		(A) Beginning of year	(B) End of year
Assets	45 Cash—non-interest-bearing	45	1,108
	46 Savings and temporary cash investments	46	513
	47a Accounts receivable	47a	
	b Less: allowance for doubtful accounts	47b	47c
	48a Pledges receivable	48a	150,000
	b Less: allowance for doubtful accounts	48b	48c
	49 Grants receivable	49	150,000
	50 Receivables from officers, directors, trustees, and key employees (attach schedule)	50	
	51a Other notes and loans receivable (attach schedule).	51a	
	b Less: allowance for doubtful accounts	51b	51c
	52 Inventories for sale or use	52	
	53 Prepaid expenses and deferred charges	53	
	54 Investments—securities (attach schedule)	54	
	55a Investments—land, buildings, and equipment: basis	55a	34,000
	b Less: accumulated depreciation (attach schedule).	55b	55c
56 Investments—other (attach schedule)	56	34,000	
57a Land, buildings, and equipment: basis	57a	631,416	
b Less: accumulated depreciation (attach schedule).	57b	57c	
58 Other assets (describe ►)	58	630,444	
59 Total assets (add lines 45 through 58) (must equal line 74)	59	816,065	
Liabilities	60 Accounts payable and accrued expenses	60	
	61 Grants payable	61	
	62 Deferred revenue	62	
	63 Loans from officers, directors, trustees, and key employees (attach schedule).	63	
	64a Tax-exempt bond liabilities (attach schedule)	64a	
	b Mortgages and other notes payable (attach schedule)	64b	374,616
	65 Other liabilities (describe ►)	65	
66 Total liabilities (add lines 60 through 65)	66		
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here ► ☐ and complete lines 67 through 69 and lines 73 and 74.		
	67 Unrestricted	67	
	68 Temporarily restricted	68	
	69 Permanently restricted	69	
	Organizations that do not follow SFAS 117, check here ► ☒ and complete lines 70 through 74		
	70 Capital stock, trust principal, or current funds	70	
	71 Paid-in or capital surplus, or land, building, and equipment fund	71	
	72 Retained earnings, endowment, accumulated income, or other funds	72	
	73 Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72, column (A) must equal line 19 and column (B) must equal line 21)	73	25,450
	74 Total liabilities and net assets / fund balances (add lines 66 and 73)	74	841,449

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

**Reconciliation of Revenue per Audited
Financial Statements with Revenue per
Return (See Specific Instructions, page 24)**
**Reconciliation of Expenses per Audited
Financial Statements with Expenses per
Return**

a	Total revenue, gains, and other support per audited financial statements . . . ▶	a	415,999	a	Total expenses and losses per audited financial statements . . . ▶	a	27,601
b	Amounts included on line a but not on line 12, Form 990	b		b	Amounts included on line a but not on line 17, Form 990	b	
(1)	Net unrealized gains on investments . . . \$			(1)	Donated services and use of facilities . . . \$		
(2)	Donated services and use of facilities . . . \$			(2)	Prior year adjustments reported on line 20, Form 990 . . . \$		
(3)	Recoveries of prior year grants . . . \$			(3)	Losses reported on line 20, Form 990 . . . \$		
(4)	Other (specify):			(4)	Other (specify):		
	 \$				 \$		
	Add amounts on lines (1) through (4) ▶	b			Add amounts on lines (1) through (4) ▶	b	
c	Line a minus line b ▶	c		c	Line a minus line b ▶	c	
d	Amounts included on line 12, Form 990 but not on line a:	d		d	Amounts included on line 17, Form 990 but not on line a:	d	
(1)	Investment expenses not included on line 6b, Form 990 . . . \$			(1)	Investment expenses not included on line 6b, Form 990 . . . \$		
(2)	Other (specify):			(2)	Other (specify):		
	 \$				 \$		
	Add amounts on lines (1) and (2) ▶	d			Add amounts on lines (1) and (2) ▶	d	
e	Total revenue per line 12, Form 990 (line c plus line d) ▶	e	415,999	e	Total expenses per line 17, Form 990 (line c plus line d) ▶	e	27,601

List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated, see Specific Instructions on page 24.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Compensation to employee benefit plans & deferred compensation	(E) Expense account and other allowances
DONALD H. SHANK 1474 MAIN AVE, STE 223 DURANGO, CO	FOUNDER / CHAIRMAN 60 HRS	-0-	-0-	-0-
ROBERT W. SHANK 1961 HARRIETT DR. CLARKSVILLE, TN	VICE-CHAIRMAN SECRETARY -0-	-0-	-0-	-0-
RICHARD L. MILLARD 601 ANIMAS VIEW DR DURANGO, CO	TREASURER 1 HR	-0-	-0-	-0-
MARTIN P. FIRNAT 1474 MAIN AVE, STE 223 DURANGO, CO	DIRECTOR -0-	-0-	-0-	-0-
WILLIAM M. COLLEY 1474 MAIN AVE, STE 223 DURANGO, CO	DIRECTOR -0-	-0-	-0-	-0-
ROBERT A. GRAM 1474 MAIN AVE, STE 223 DURANGO, CO	DIRECTOR -0-	-0-	-0-	-0-

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? ☐ Yes ☒ No
If "Yes," attach schedule—see Specific Instructions on page 25.

Other Information (See Specific Instructions on page 25.)

	Yes	No
76 Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76	X
77 Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes	77	X
78a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	78a	X
b If "Yes," has it filed a tax return on Form 990-T for this year?	78b	X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79	X
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a	X
b If "Yes," enter the name of the organization _____ and check whether it is ☐ exempt OR ☐ nonexempt		
81a Enter the amount of political expenditures, direct or indirect, as described in the Instructions for line 81. 81a		X
b Did the organization file Form 1120-POL for this year?	81b	X
82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a	X
b If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions for reporting in Part III.) 82b		
83a Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X
b Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X
84a Did the organization solicit any contributions or gifts that were not tax deductible?	84a	X
b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b	
85 501(c)(4), (5), or (6) organizations a Were substantially all dues nondeductible by members?	85a	
b Did the organization make only in-house lobbying expenditures of \$2,000 or less? If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year	85b	
c Dues, assessments, and similar amounts from members 85c		
d Section 162(e) lobbying and political expenditures 85d		
e Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices 85e		
f Taxable amount of lobbying and political expenditures (line 85d less 85e) 85f		
g Does the organization elect to pay the section 6033(e) tax on the amount in 85f?	85g	
h If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount in 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h	X
86 501(c)(7) orgs. Enter: a Initiation fees and capital contributions included on line 12 86a		
b Gross receipts, included on line 12, for public use of club facilities 86b		
87 501(c)(12) orgs. Enter: a Gross income from members or shareholders 87a		
b Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.) 87b		
88 At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX	88	X
89a 501(c)(3) organizations. Enter: Amount of tax imposed on the organization during the year under section 4911 <u>0</u> ; section 4912 <u>0</u> ; section 4955 <u>0</u>		
b 501(c)(3) and 501(c)(4) orgs. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction.	89b	X
c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958. <u>0</u>		
d Enter: Amount of tax on line 89c, above, reimbursed by the organization. <u>0</u>		
90a List the states with which a copy of this return is filed <u>COLORADO</u>		
b Number of employees employed in the pay period that includes March 12, 1999 (See inst.) 90b <u>0</u>		
91 The books are in care of <u>DONALD SHANK</u> Telephone no <u>(970) 247-9498</u> Located at <u>1474 MAIN AVE, SUITE DURANGO, CO</u> ZIP + 4 <u>81301</u>		
92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041—Check here ☐ and enter the amount of tax-exempt interest received or accrued during the tax year <u>92</u>		

Analysis of Income-Producing Activities (See Specific Instructions on page 29)

Enter gross amounts unless otherwise indicated.

Enter gross amounts unless otherwise indicated.		Unrelated business income		Excluded by section 512, 513 or 514		(E) Related or exempt function income
		(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93	Program service revenue.					
a	DIRECT PUBLIC SUPPORT		250,000			
b	INDIRECT PUBLIC SUPPORT		202,461			
c						
d						
e						
f	Medicare/Medicaid payments					
g	Fees and contracts from government agencies					
94	Membership dues and assessments		150,000			
95	Interest on savings and temporary cash investments		79			
96	Dividends and interest from securities					
97	Net rental income or (loss) from real estate:					
a	debt-financed property					
b	not debt-financed property					
98	Net rental income or (loss) from personal property					
99	Other investment income					
100	Gain or (loss) from sales of assets other than inventory					
101	Net income or (loss) from special events					
102	Gross profit or (loss) from sales of inventory					
103	Other revenue: a					
b						
c						
d						
e						
104	Subtotal (add columns (B), (D), and (E))		452,543			
105	Total (add line 104, columns (B), (D), and (E))					452,543

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I

Relationship of Activities to the Accomplishment of Exempt Purposes (See Specific Instructions on page 30)

[illegible]**Information Regarding Taxable Subsidiaries and Disregarded Entities (See Specific Instructions on page 30.)**

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End of-year assets
	%			
	%			
	%			
	%			

urn, including accompanying schedules and statements and to the best of my knowledge
 or (other than officer) is based on all information of which preparer has any knowledge

11-25-00

DONALD H. SHANK, President
Type of print name and title

**SCHEDULE A
(Form 990)**

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(a), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

OMB No 1545-0047

1999

Department of the Treasury
Internal Revenue Service

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

Supplementary Information—(See separate instructions.)

Name of the organization

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

Employer identification number

84-1433680

Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees
(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
Total number of other employees paid over \$50,000 ▶	-0-			

Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See page 1 of the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
Total number of others receiving over \$50,000 for professional services ▶	-0-	

Statements About Activities

	Yes	No
1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ \$ _____ Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.	1	X
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any of its trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary:		
a Sale, exchange, or leasing of property?	2a	X
b Lending of money or other extension of credit?	2b	X
c Furnishing of goods, services, or facilities?	2c	X
d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)?	2d	X
e Transfer of any part of its income or assets? If the answer to any question is "Yes," attach a detailed statement explaining the transactions.	2e	X
3 Does the organization make grants for scholarships, fellowships, student loans, etc.?	3	X
4a Do you have a section 403(b) annuity plan for your employees?	4a	X
b Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs qualify to receive payments. (See page 2 of the instructions.)		

Reason for Non-Private Foundation Status (See pages 2 through 4 of the instructions.)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V, page 4.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(iv).
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(ii). Enter the hospital's name, city, and state ▶ _____
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the Support Schedule in Part IV-A.)
- 11a ☐ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 12 ☒ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the Support Schedule in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in: (1) lines 5 through 12 above; or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations (See page 4 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4). (See page 4 of the instructions.)

Support Schedule (Complete only if you checked a box on line 10, 11, or 12.) Use cash method of accounting.

Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in) . . . ▶	(a) 1998	(b) 1997	(c) 1996	(d) 1995	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28) . . .					
16 Membership fees received	20,000				20,000
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organization's charitable, etc., purpose					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975					
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22.	20,000				20,000
24 Line 23 minus line 17.					
25 Enter 1% of line 23	200				
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24. ▶					26a -0-
b Attach a list (which is not open to public inspection) showing the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1995 through 1998 exceeded the amount shown in line 26a. Enter the sum of all these excess amounts. ▶					26b
c Total support for section 509(a)(1) test: Enter line 24, column (e) ▶					26c
d Add: Amounts from column (e) for lines: 18 _____ 19 _____					26d
22 _____ 26b _____ ▶					26e
e Public support (line 26c minus line 26d total) ▶					26f
f Public support percentage (line 26e (numerator) divided by line 26c (denominator)) ▶					%
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," attach a list to show the name of, and total amounts received in each year from, each "disqualified person." Enter the sum of such amounts for each year:					
(1998) _____ (1997) _____ (1996) _____ (1995) _____					
b For any amount included in line 17 that was received from a nondisqualified person, attach a list to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000 (include in the list organizations described in lines 5 through 11, as well as individuals.) After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year:					
(1998) _____ (1997) _____ (1996) _____ (1995) _____					
c Add: Amounts from column (e) for lines: 15 _____ 16 _____					27c
17 _____ 20 _____ 21 _____ ▶					27d
d Add: Line 27a total _____ and line 27b total _____ ▶					27e
e Public support (line 27c total minus line 27d total). ▶					27f
f Total support for section 509(a)(2) test: Enter amount on line 23, column (e) . . . ▶					27g
g Public support percentage (line 27e (numerator) divided by line 27f (denominator)). ▶					%
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator)). ▶					%
28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1995 through 1998, attach a list (which is not open to public inspection) for each year showing the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not include these grants in line 15 (See page 4 of the instructions)					

Form 4562

Depreciation and Amortization (Including Information on Listed Property)

OMB No 1545-0172

1999

Attachment
Sequence No 67Department of the Treasury
Internal Revenue Service (99)

See separate instructions.

Attach this form to your return.

Name(s) shown on return

Business or activity to which this form relates

Identifying number

DENVER & RIO GRANDE RAILWAY HIST. FOUND.

84-1433680

Part I Election To Expense Certain Tangible Property (Section 179)

(Note: If you have any "listed property,"

complete Part V before you complete Part I.)

1	Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions	1	\$19,000
2	Total cost of section 179 property placed in service. See page 2 of the instructions	2	-0-
3	Threshold cost of section 179 property before reduction in limitation	3	\$200,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions	5	

(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6		
7	Listed property. Enter amount from line 27	7
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8
9	Tentative deduction. Enter the smaller of line 5 or line 8	9
10	Carryover of disallowed deduction from 1998. See page 2 of the instructions	10
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12
13	Carryover of disallowed deduction to 2000. Add lines 9 and 10, less line 12	13

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

Part II MACRS Depreciation For Assets Placed In Service ONLY During Your 1999 Tax Year (Do Not Include Listed Property.)**Section A - General Asset Account Election**

14 If you are making the election under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 3 of the instructions

Section B - General Depreciation System (GDS) (See page 3 of the instructions)

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
15a 3-year property						
b 5-year property						
c 7-year property		SEE LIST	7	2000B	MACRS	972
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	

Section C - Alternative Depreciation System (ADS) (See page 5 of the instructions)

16a Class life				S/L	
b 12-year			12 yrs	S/L	
c 40-year			40 yrs.	MM	S/L

Part III Other Depreciation (Do Not Include Listed Property.)

(See page 5 of the instructions)

17 GDS and ADS deductions for assets placed in service in tax years beginning before 1999	17	
18 Property subject to section 168(f)(1) election	18	
19 ACRS and other depreciation	19	

Part IV Summary (See page 6 of the instructions)

20 Listed property. Enter amount from line 26	20	
21 Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instructions	21	972
22 For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	22	

For Paperwork Reduction Act Notice, see the separate instructions.

EEA

Form 4562 (1999)

Depreciation Detail Listing

1999

For your records only

Assets as shown on books

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

Social security number: 84-1433680

No.	Description	Date	Cost	Salvage	Business percentage	Section 179	Depreciation Basis	Life	Method	Rate	Current depr	Prior deduction	Prior expense	AMT Method	AMT Linc	AMT Current
1	LINK & PIN	2/2/99	400				400	7	MACRS	14.29	57					
2	2- 8'X16' TRAKS	4/21/99	3000				3000	7	MACRS	14.29	429					
3	Misc RE ITEMS	8/19/99	200				200	7	MACRS	14.29	29					
1a	1880 CABOOSE #518	8/19/99	700				700	7	MACRS	14.29	100					
2a	1890 DINING CAR STANDARD GAUGE		2500				2500	7	MACRS	14.29	357					
1b	CREEDS BRANCH	8/10/99	624,616				624,616	-								
1c	LAND SILVERTON 7.369 ACRES	1/5/99	34,000				34,000	-								
							658,616				472					

Return of Organization Exempt From Income Tax

Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation), section 527, or section 4947(a)(1) nonexempt charitable trust

OMB No 1545-0047

2000

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements

Open to Public
Inspection

A For the 2000 calendar year, or tax year period beginning

, 2000, and ending

, 20

B Check if applicable:

- ☐ Change of address
☐ Change of name
☐ Initial return
☐ Final return
☐ Amended return

Please use IRS label or print or type See Specific Instructions

C Name of organization

DENVER & RIO GRANDE RAILWAY

Number and street (or P.O. box if mail is not delivered to street address)

1474 MAIN AVE, SUITE 223

Room/suite

City or town, state or country, and ZIP code

DURANGO, CO 81301

D Employer identification number

84-1433680

E Telephone number

(970) 247-9498

F Check ☐ if application pendingG Organization type (check only one) ☒ 501(c)(3) (insert no.) ☐ 527 or ☐ 4947(a)(1)

Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ)

H Accounting method ☒ Cash ☐ Accrual ☐ Other (specify) ☐

I Check here ☒ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS, but if the organization received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return.

Note: H and I are not applicable to section 527 orgs.

H(a) Is this a group return for affiliates? ☐ Yes ☒ NoH(b) If "Yes," enter number of affiliates ☐H(c) Are all affiliates included? ☐ Yes ☒ No

(If "No," attach a list. See inst.)

H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ NoI Enter 4-digit group exemption no. (GEN) ☐

L Check this box if the organization is not required to attach Schedule B (Form 990 or 990-EZ) ☒

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 16)

1	Contributions, gifts, grants, and similar amounts received				
a	Direct public support	1a			
b	Indirect public support	1b			
c	Government contributions (grants)	1c			
d	Total (add lines 1a through 1c) (cash \$ _____ noncash \$ _____)	1d			
2	Program service revenue including government fees and contracts (from Part VII, line 93)	2			10,443
3	Membership dues and assessments	3			
4	Interest on savings and temporary cash investments	4			9
5	Dividends and interest from securities	5			
6a	Gross rents	6a			
b	Less: rental expenses	6b			
c	Net rental income or (loss) (subtract line 6b from line 6a)	6c			
7	Other investment income (describe ☐)	7			
8a	Gross amount from sale of assets other than inventory	(A) Securities	8a	(B) Other	
b	Less: cost or other basis and sales expenses	8b			
c	Gain or (loss) (attach schedule)	8c			
d	Net gain or (loss) (combine line 8c, columns (A) and (B))	8d			
9	Special events and activities (attach schedule)				
a	Gross revenue (not including \$ _____ of contributions reported on line 1a)	9a			
b	Less: direct expenses other than fundraising expenses	9b			
c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c			
10a	Gross sales of inventory, less returns and allowances	10a			
b	Less: cost of goods sold	10b			
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c			
11	Other revenue (from Part VII, line 103)	11			
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12			10,452
13	Program services (from line 44, column (B))	13			
14	Management and general (from line 44, column (C))	14			10,516
15	Fundraising (from line 44, column (D))	15			2,823
16	Payments to affiliates (attach schedule)	16			
17	Total expenses (add lines 16 and 44, column (A))	17			13,339
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18			(2,887)
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19			291,449
20	Other changes in net assets or fund balances (attach explanation)	20			
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21			288,562

For Paperwork Reduction Act Notice, see page 1 of the separate instructions

EEA

Form 990 (2000)

Part II Statement of

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 20.)

Functional Expenses

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____) . . .	22			
23	Specific assistance to individuals (attach schedule)	23			
24	Benefits paid to or for members (attach schedule) . . .	24			
25	Compensation of officers, directors, etc.	25			
26	Other salaries and wages	26			
27	Pension plan contributions	27			
28	Other employee benefits	28			
29	Payroll taxes	29			
30	Professional fundraising fees	30	1,639		1,639
31	Accounting fees	31	238	238	
32	Legal fees	32			
33	Supplies	33	810	680	130
34	Telephone	34	1,783	1,783	
35	Postage and shipping	35	391		391
36	Occupancy	36	1,750	1,750	
37	Equipment rental and maintenance	37	382	382	
38	Printing and publications	38	663		663
39	Travel	39	1,315	1,315	
40	Conferences, conventions, and meetings	40			
41	Interest	41			
42	Depreciation, depletion, etc. (attach schedule)	42	1,665	1,665	
43	Other expenses (itemize): a AUTO EXP	43a	747	747	
	b BANK FEES/CC FEES	43b	204	204	
	c INSURANCE	43c	1,683	1,683	
	d TAXES	43d	54	54	
	e DUES/SUBSCRIPTIONS	43e	15	15	
44	Total functional expenses (add lines 22 through 43). Organizations completing columns (B)-(D), carry these totals to lines 13-15.	44	13,339	10,516	2,823

Reporting of Joint Costs: Did you report in column (B) (Program services) any joint costs from a combined educational campaign and fundraising solicitation? ☐ Yes ☐ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____, (ii) the amount allocated to Program services \$ _____, (iii) the amount allocated to Management and general \$ _____, and (iv) the amount allocated to Fundraising \$ _____.

Part III Statement of Program Service Accomplishments (See Specific Instructions on page 23.)

What is the organization's primary exempt purpose? ▶ _____

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts, but optional for others.)

a	(Grants and allocations \$ _____)	
b	(Grants and allocations \$ _____)	
c	(Grants and allocations \$ _____)	
d	(Grants and allocations \$ _____)	
e	Other program services (attach schedule) (Grants and allocations \$ _____)	
f	Total of Program Service Expenses (should equal line 44, column (B), Program services)	

Part IV Balance Sheets (See Specific Instructions on page 23.)

Note		Where required, attached schedules and amounts within the description column should be for end-of-year amounts only		(A) Beginning of year		(B) End of year
45	Cash - non-interest-bearing			1,108	45	(117)
46	Savings and temporary cash investments			513	46	516
47a	Accounts receivable	47a				
b	Less allowance for doubtful accounts	47b			47c	
48a	Pledges receivable	48a				
b	Less allowance for doubtful accounts	48b			48c	
49	Grants receivable				49	
50	Receivables from officers, directors, trustees, and key employees (attach schedule)				50	
51a	Other notes and loans receivable (attach schedule)	51a				
b	Less allowance for doubtful accounts	51b			51c	
52	Inventories for sale or use				52	
53	Prepaid expenses and deferred charges				53	
54	Investments - securities (attach schedule) ☐ Cost ☐ FMV				54	
55a	Investments - land, buildings, and equipment basis	55a	34,000			
b	Less accumulated depreciation (attach schedule)	55b		34,000	55c	34,000
56	Investments - other (attach schedule)				56	
57a	Land buildings, and equipment basis	57a	631,416			
b	Less accumulated depreciation (attach schedule)	57b	2,637	630,444	57c	628,779
58	Other assets (describe ☐)				58	
59	Total assets (add lines 45 through 58) (must equal line 74)			666,065	59	663,178
60	Accounts payable and accrued expenses				60	
61	Grants payable				61	
62	Deferred revenue				62	
63	Loans from officers, directors, trustees, and key employees (attach schedule)				63	
64a	Tax-exempt bond liabilities (attach schedule)				64a	
b	Mortgages and other notes payable (attach schedule)			374,616	64b	374,616
65	Other liabilities (describe ☐)				65	
66	Total liabilities (add lines 60 through 65)			374,616	66	374,616
Organizations that follow SFAS 117, check here ☐ and complete lines 67 through 69 and lines 73 and 74						
67	Unrestricted				67	
68	Temporarily restricted				68	
69	Permanently restricted				69	
Organizations that do not follow SFAS 117, check here ☒ and complete lines 70 through 74						
70	Capital stock, trust principal, or current funds				70	
71	Paid - in or capital surplus, or land, building, and equipment fund				71	250,000
72	Retained earnings, endowment, accumulated income, or other funds			291,449	72	38,562
73	Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72, column (A) must equal line 19 and column (B) must equal line 21)			291,449	73	288,562
74	Total liabilities and net assets / fund balances (add lines 66 and 73)			666,065	74	663,178

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return (See Specific Instructions page 25)

a	Total revenue, gains, and other support per audited financial statements	a	10,452
b	Amounts included on line a but not on line 12, Form 990	b	
(1)	Net unrealized gains on investments \$		
(2)	Donated services and use of facilities \$		
(3)	Recoveries of prior year grants \$		
(4)	Other (specify)		
	\$		
	Add amounts on lines (1) through (4)	b	
c	Line a minus line b	c	10,452
d	Amounts included on line 12, Form 990 but not on line a	d	
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify)		
	\$		
	Add amounts on lines (1) and (2)	d	
e	Total revenue per line 12, Form 990 (line c plus line d)	e	10,452

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a	Total expenses and losses per audited financial statements	a	13,339
b	Amounts included on line a but not on line 17, Form 990	b	
(1)	Donated services and use of facilities \$		
(2)	Prior year adjustments reported on line 20, Form 990 \$		
(3)	Losses reported on line 20, Form 990 \$		
(4)	Other (specify)		
	\$		
	Add amounts on lines (1) through (4)	b	
c	Line a minus line b	c	13,339
d	Amounts included on line 17, Form 990 but not on line a	d	
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify)		
	\$		
	Add amounts on lines (1) and (2)	d	
e	Total expenses per line 17, Form 990 (line c plus line d)	e	13,339

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated, see Specific Instructions on page 25)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (if not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
DONALD H. SHANK	FOUNDER			
1474 MAIN AVE, STE 223	60			
ROBERT W. SHANK	VICE CHAIRMAN			
1861 HARRIETT DR, CLARKSVILLE				
RICHARD L. MILLARD	TREASURER			
601 ANIMAS VIEW DR DURANGO CO				
MARTIN P. PIRNAT	DIRECTOR			
1474 MAIN AVE DURANGO CO				
WILLIAM COOLEY	DIRECTOR			
1474 MAIN AVE DURANGO CO				
ROBERT A. GRAM	DIRECTOR			
1474 MAIN AVE DURANGO CO				

75 Did any officer, director, trustee or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? ☐ Yes ☒ No
If "Yes" attach schedule-see Specific Instructions on page 26

Part VI Other Information (See Specific Instructions on page 26)

	N/A	Yes	No
76 Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76		X
77 Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes	77		X
78a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	78a		X
b If "Yes," has it filed a tax return on Form 990-T for this year?	78b		X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79		X
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a		X
b If "Yes," enter the name of the organization _____ and check whether it is ☐ exempt OR ☐ nonexempt			
81a Enter the amount of political expenditures, direct or indirect, as described in the instructions for line 81	81a		
b Did the organization file Form 1120-POL for this year?	81b		X
82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a		X
b If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions for reporting in Part III.)	82b		
83a Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X	
b Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X	
84a Did the organization solicit any contributions or gifts that were not tax deductible?	84a		X
b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b		
85 501(c)(4), (5), or (6) organizations, a. Were substantially all dues nondeductible by members?	85a		X
b Did the organization make only in-house lobbying expenditures of \$2,000 or less?	85b		X
If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year			
c Dues, assessments, and similar amounts from members	85c		
d Section 6033(e) lobbying and political expenditures	85d		
e Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e		
f Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f		
g Does the organization elect to pay the section 6033(e) tax on the amount in 85f?	85g		X
h If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount in 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h		X
86 501(c)(7) organizations. Enter: a. Initiation fees and capital contributions included on line 12	86a		
b Gross receipts, included on line 12, for public use of club facilities	86b		
87 501(c)(12) orgs. Enter: a. Gross income from members or shareholders	87a		
b Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b		
88 At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX	88		X
89a 501(c)(3) organizations. Enter: Amount of tax imposed on the organization during the year under section 4911 _____, section 4912 _____, section 4955 _____			
b 501(c)(3) and 501(c)(4) orgs. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b		X
c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 _____			
d Enter: Amount of tax on line 89c, above, reimbursed by the organization _____			
90a List the states with which a copy of this return is filed: <u>COLORADO</u>			
b Number of employees employed in the pay period that includes March 12, 2000 (See inst.)	90b		
91 The books are in care of: <u>DONALD SHANK</u> Telephone no.: <u>970-247-9498</u> Located at: <u>1474 MAIN AVE STE 223 DGO CO</u> ZIP code: <u>81301</u>			
92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041—Check here ☐ and enter the amount of tax-exempt interest received or accrued during the tax year: <u>92</u>			

Part VII Analysis of Income-Producing Activities (See Specific Instructions on page 30)

Enter gross amounts unless otherwise indicated

Enter gross amounts unless otherwise indicated		Unrelated business income		Excluded by section 512 513 or 514		(E) Related or exempt function income
		(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93	Program service revenue					
a	<u>DIRECT CONTRIBUTIONS</u>		10,443			
b						
c						
d						
e						
f	Medicare / Medicaid payments . .					
g	Fees and contracts from government agencies					
94	Membership dues and assessments . . .					
95	Interest on savings and temporary cash investments		9			
96	Dividends and interest from securities . . .					
97	Net rental income or (loss) from real estate					
a	debt-financed property					
b	not debt-financed property					
98	Net rental income or (loss) from personal property					
99	Other investment income					
100	Gain or (loss) from sales of assets other than inventory					
101	Net income or (loss) from special events					
102	Gross profit or (loss) from sales of inventory					
103	Other revenue a					
b						
c						
d						
e						
104	Subtotal (add columns (B), (D), and (E))		10,452			
105	Total (add line 104, columns (B), (D), and (E))					10,452

Note Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

Part VII Relationship of Activities to the Accomplishment of Exempt Purposes (See Specific Instructions on page 31)

Line No ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See Specific Instructions on page 31)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See Specific Instructions on page 31)

- (a) Did the organization during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☐ No
- (b) Did the organization during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☐ No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions)

Please Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has

APR 1, 2002 → PRESIDENT & EXEC. DIRECTOR
Date Type or print name and title

	Date	Check If	Preparer's SSN or PTIN
--	------	----------	------------------------

SCHEDULE A
(Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(c), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

OMB No 1545-0047

2000

Department of the Treasury
Internal Revenue Service

Supplementary Information -- (See separate instructions)
▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

Name of the organization

Employer identification number

DENVER & RIO GRANDE RAILWAY

84-1433680

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions List each one If there are none, enter "None")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
None				

Total number of other employees paid over \$50,000 ▶

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 1 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
None		

Total number of others receiving over \$50,000 for professional services ▶

Part III: Statements About Activities

	Yes	No
1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum?	1	X
If "Yes" enter the total expenses paid or incurred in connection with the lobbying activities ▶ \$ _____		
Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.		
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any of its trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary		
a Sale, exchange, or leasing of property?	2a	X
b Lending of money or other extension of credit?	2b	X
c Furnishing of goods, services, or facilities?	2c	X
d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)?	2d	X
e Transfer of any part of its income or assets?	2e	X
If the answer to any question is "Yes" attach a detailed statement explaining the transactions.		
3 Does the organization make grants for scholarships, fellowships, student loans, etc?	3	X
4a Do you have a section 403(b) annuity plan for your employees?	4a	X
b Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs qualify to receive payments. (See page 2 of the instructions.)		

Part IV Reason for Non-Private Foundation Status (See pages 2 through 5 of the instructions.)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V, page 5.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(iv).
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(v). Enter the hospital's name, city, and state: _____
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 12 ☐ An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the Support Schedule in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations. (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14
- ☐
- An organization organized and operated to test for public safety. Section 509(a)(4). (See page 5 of the instructions.)

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12) Use cash method of accounting

Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting

Calendar year (or fiscal year beginning in) . . . ▶	(a) 1999	(b) 1998	(c) 1997	(d) 1996	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28) . . .	260,971				260,971
16 Membership fees received . . .	2,705	20,000			22,705
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organization's charitable, etc., purpose . . .					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975 . . .					
19 Net income from unrelated business activities not included in line 18 . . .					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf . . .					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge . . .					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets . . .					
23 Total of lines 15 through 22 . . .	263,676	20,000			283,676
24 Line 23 minus line 17 . . .	263,676	20,000			283,676
25 Enter 1% of line 23 . . .	2,637	200			
26 Organizations described in lines 10 or 11 . . . a Enter 2% of amount in column (e), line 24. . . ▶					26a 5,674
b Attach a list (which is not open to public inspection) showing the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1996 through 1999 exceeded the amount shown in line 26a. Enter the sum of all these excess amounts . . . ▶					26b
c Total support for section 509(a)(1) test. Enter line 24, column (e) . . . ▶					26c 283,676
d Add: Amounts from column (e) for lines 18 _____ 19 _____ 22 _____ 26b _____ . . . ▶					26d
e Public support (line 26c minus line 26d total) . . . ▶					26e 283,676
f Public support percentage (line 26e (numerator) divided by line 26c (denominator)) . . . ▶					26f 1.00%
27 Organizations described on line 12 . . . a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," attach a list (which is not open to public inspection) to show the name of, and total amounts received in each year from each "disqualified person." Enter the sum of such amounts for each year . . .	(1999) _____ (1998) _____ (1997) _____ (1996) _____				
b For any amount included in line 17 that was received from a nondisqualified person, attach a list to show the name of, and amount received for each year that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000 (include in the list organizations described in lines 5 through 11, as well as individuals.) After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year . . .	(1999) _____ (1998) _____ (1997) _____ (1996) _____				
c Add: Amounts from column (e) for lines 15 260,971 16 22,705 17 _____ 20 _____ 21 _____ . . . ▶					27c 283,676
d Add: Line 27a total _____ and line 27b total _____ . . . ▶					27d
e Public support (line 27c total minus line 27d total) . . . ▶					27e 283,676
f Total support for section 509(a)(2) test. Enter amount on line 23, column (e) . . . ▶					27f 283,676
g Public support percentage (line 27e (numerator) divided by line 27f (denominator)) . . . ▶					27g 1.00%
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator)) . . . ▶					27h %
28 Unusual Grants. For an organization described in line 10, 11, or 12 that received any unusual grants during 1996 through 1999, attach a list (which is not open to public inspection) for each year showing the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not include those grants in line 15. (See page 5 of the instructions.)					

Form 990

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

OMB No 1545-0047

2001

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

1 The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2001 calendar year, or tax year beginning

, 2001, and ending

, 20

B Check if applicable:

- ☐ Address change
☐ Name change
☐ Initial return
☐ Final return
☐ Amended return
☐ Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization

DENVER & RIO GRANDE RAILWAY

Number and street for P.O. box (if mail is not delivered to street address)

1474 MAIN AVE, SUITE 223

Room/suite

City or town, state or country, and ZIP + 4

DURANGO, CO 81301

D Employer identification number

84-1433680

E Telephone number

(970) 247-9498

F Accounting method:

☒ Cash ☐ Accrual☐ Other (specify)

* Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations

H(a) Is this a group return for affiliates?

☐ Yes ☒ No

H(b) If "Yes" enter number of affiliates

☐ Yes ☐ No

H(c) Are all affiliates included? (If "No" attach a list. See instructions.)

☐ Yes ☐ No

H(d) Is this a separate return filed by an organization covered by a group ruling?

☐ Yes ☐ No

I Enter 4-digit GEN

M Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF)

G Web site

J Organization type (check only one): ☒ 501(c)() (insert no.) ☐ 4947(a)(1) or ☐ 527K Check here ☒ if the organization's gross receipts are normally not more than \$25,000. The

organization need not file a return with the IRS, but if the organization received a Form 990 Package

in the mail, it should file a return without financial data.

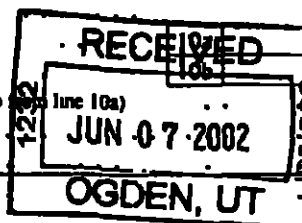
Some states require a complete return.

L Gross receipts: Add lines 6b, 8b, 9b, and 10b to line 12

(See Specific Instructions on page 16.)

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances

1	Contributions, gifts, grants, and similar amounts received				
a	Direct public support	1a	2,600		
b	Indirect public support	1b			
c	Government contributions (grants)	1c			
d	Total (add lines 1a through 1c) (cash \$ 2,600 noncash \$)	1d	2,600		
2	Program service revenue including government fees and contracts (from Part VII, line 93)	2			
3	Membership dues and assessments	3	450		
4	Interest on savings and temporary cash investments	4	2		
5	Dividends and interest from securities	5			
6a	Gross rents	6a	1,890		
b	Less: rental expenses	6b			
c	Net rental income or (loss) (subtract line 6b from line 6a)	6c	1,890		
7	Other investment income (describe)	7			
8a	Gross amount from sales of assets other than inventory	(A) Securities		(B) Other	
b	Less: cost or other basis and sales expenses	8a			
c	Gain or (loss) (attach schedule)	8b			
d	Net gain or (loss) (combine line 8c columns (A) and (B))	8c			
8d		8d			
9	Special events and activities (attach schedule)				
a	Gross revenue (not including \$ of contributions reported on line 1a)	9a			
b	Less: direct expenses other than fundraising expenses	9b			
c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c			
10a	Gross sales of inventory, less returns and allowances				
b	Less: cost of goods sold				
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c			
11	Other revenue (from Part VII, line 103)	11			
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	4,942		
13	Program services (from line 44, column (B))	13			
14	Management and general (from line 44, column (C))	14			
15	Fundraising (from line 44, column (D))	15			
16	Payments to affiliates (attach schedule)	16			
17	Total expenses (add lines 16 and 44, column (A))	17	35,916		
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	(30,974)		
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	288,562		
20	Other changes in net assets or fund balances (attach explanation)	20			
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	257,587		



SCANNED JUL 01 2002

For Paperwork Reduction Act Notice, see the separate instructions

GSA

Form 990 (2001)

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 21.)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____)	22			
23	Specific assistance to individuals (attach schedule)	23			
24	Benefits paid to or for members (attach schedule)	24			
25	Compensation of officers, directors, etc.	25			
26	Other salaries and wages	26			
27	Pension plan contributions	27			
28	Other employee benefits	28			
29	Payroll taxes	29			
30	Professional fundraising fees	30			
31	Accounting fees	31			
32	Legal fees	32	22,075		
33	Supplies	33	469		
34	Telephone	34	1,459		
35	Postage and shipping	35	316		
36	Occupancy	36	1,800		
37	Equipment rental and maintenance	37	3,000		
38	Printing and publications	38	254		
39	Travel	39	481		
40	Conferences, conventions, and meetings	40			
41	Interest	41			
42	Depreciation, depletion, etc. (attach schedule)	42	3,080		
43	Other expenses not covered above (increase) TAXES	43a	730		
b	INSURANCE	43b	800		
c	LICENSES & PERMITS	43c	270		
d	ACCOUNTING FEES	43d	1,180		
e		43e			
44	Total functional expenses (add lines 22 through 43) Organizations completing columns (B)-(D), carry these totals to lines 13-15	44	35,916		

Joint Costs Check ☒ if you are following SOP 98-2

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services?

☒ Yes ☐ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____, (ii) the amount allocated to Program services \$ _____,

(iii) the amount allocated to Management and general \$ _____, and (iv) the amount allocated to Fundraising \$ _____.

Part III Statement of Program Service Accomplishments (See Specific Instructions on page 24.)What is the organization's primary exempt purpose? ☒ _____

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts but optional for others.)

a	(Grants and allocations \$ _____)	
b	(Grants and allocations \$ _____)	
c	(Grants and allocations \$ _____)	
d	(Grants and allocations \$ _____)	
e	Other program services (attach schedule) (Grants and allocations \$ _____)	
f	Total of Program Service Expenses (should equal line 44, column (B), Program services)	

Part IV Balance Sheets (See Specific Instructions on page 24.)

Note	Where required, attach schedules and amounts within the description column should be for end-of-year amounts only	(A) Beginning of year	(B) End of year
45	Cash - non-interest-bearing	(117)	45 726
46	Savings and temporary cash investments	516	46 516
47a	Accounts receivable	47a	
b	Less allowance for doubtful accounts	47b	47c
48a	Pledges receivable	48a	
b	Less allowance for doubtful accounts	48b	48c
49	Grants receivable		49
50	Receivables from officers, directors, trustees, and key employees (attach schedule)		50
51a	Other notes and loans receivable (attach schedule)	51a	
b	Less allowance for doubtful accounts	51b	51c
52	Inventories for sale or use		52
53	Prepaid expenses and deferred charges		53
54	Investments - securities (attach schedule)	☐ Cost ☐ FMV	54
55a	Investments - land, buildings, and equipment basis	55a 34,000	
b	Less accumulated depreciation (attach schedule)	55b 34,000	55c 34,000
56	Investments - other (attach schedule)		56
57a	Land, buildings, and equipment basis	57a 641,588	
b	Less accumulated depreciation (attach schedule)	57b 5,717	57c 635,871
58	Other assets (describe)		58
59	Total assets (add lines 45 through 58) (must equal line 74)	663,178	59 671,114
60	Accounts payable and accrued expenses		60
61	Grants payable		61
62	Deferred revenue		62
63	Loans from officers, directors, trustees, and key employees (attach schedule)		63
64a	Tax-exempt bond liabilities (attach schedule)		64a
b	Mortgages and other notes payable (attach schedule)	374,616	64b 413,586
65	Other liabilities (describe)		65
66	Total liabilities (add lines 60 through 65)	374,616	66 413,586
67	Organizations that follow SFAS 117, check here ☐ and complete lines 67 through 69 and lines 73 and 74		67
68	Unrestricted		68
69	Temporarily restricted		69
70	Organizations that do not follow SFAS 117, check here ☒ and complete lines 70 through 74		70
71	Capital stock, trust principal, or current funds	250,000	71 250,000
72	Paid-in or capital surplus, or land, building, and equipment fund	38,562	72 7,528
73	Retained earnings, endowment, accumulated income, or other funds		
74	Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72, column (A) must equal line 19, column (B) must equal line 21)	288,562	73 257,528
74	Total liabilities and net assets / fund balances (add lines 66 and 73)	663,178	74 671,114

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes in Part III the organization's programs and accomplishments.

Part IV-B	Reconciliation of Expenses per Audited Financial Statements with Expenses per Return
------------------	---

a	Total expenses and losses per audited financial statements	j	a	35,916
b	Amounts included on line a but not on line 17 Form 990			
	(1) Donated services and use of facilities \$ _____			
	(2) Prior year adjustments reported on line 20 Form 990 \$ _____			
	(3) Losses reported on line 20, Form 990 \$ _____			
	(4) Other (specify) _____ \$ _____			
	Add amounts on lines (1) through (4)	j	b	
c	Line a minus line b	j	c	35,916
d	Amounts included on line 17, Form 990 but not on line a			
	(1) Investment expenses not included on line 6b Form 990 \$ _____			
	(2) Other (specify) _____ \$ _____			
	Add amounts on lines (1) and (2)	j	d	
e	Total expenses per line 17, Form 990 (line c plus line d)	j	e	35,916

(List each one even if not compensated, see Specific

[illegible]

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? If "Yes," attach schedule - see Specific Instructions on page 27.

1 ☐ Yes ☒ No

Part VI Other Information (See Specific Instructions on page 27.)

	Yes	No
76 Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity		X
77 Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes		X
78a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?		X
b If "Yes," has it filed a tax return on Form 990-T for this year?		X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement		X
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc. to any other exempt or nonexempt organization?		X
b If "Yes," enter the name of the organization <u>j</u> _____ and check whether it is ☐ exempt OR ☐ nonexempt		
81a Enter direct or indirect political expenditures. See line 81 instructions	81a	
b Did the organization file Form 1120-POL for this year?		X
82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?		X
b If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.)	82b	
83a Did the organization comply with the public inspection requirements for returns and exemption applications?	X	
b Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	X	
84a Did the organization solicit any contributions or gifts that were not tax deductible?		X
b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		
85 501(c)(4), (5), or (6) organizations: a Were substantially all dues nondeductible by members?		X
b Did the organization make only in-house lobbying expenditures of \$2,000 or less?		X
If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.		
c Dues, assessments, and similar amounts from members	85c	
d Section 162(e) lobbying and political expenditures	85d	
e Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e	
f Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f	
g Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?		X
h If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?		X
86 501(c)(7) orgs: Enter: a Initiation fees and capital contributions included on line 12	86a	
b Gross receipts included on line 12, for public use of club facilities	86b	
87 501(c)(12) orgs: Enter: a Gross income from members or shareholders	87a	
b Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b	
88 At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX		X
89a 501(c)(3) organizations: Enter: Amount of tax imposed on the organization during the year under section 4911 <u>j</u> _____, section 4912 <u>j</u> _____, section 4955 <u>j</u> _____		
b 501(c)(3) and 501(c)(4) orgs: Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction.		X
c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 <u>j</u> _____		
d Enter: Amount of tax on line 89c, above, reimbursed by the organization <u>j</u> _____		
90a List the states with which a copy of this return is filed <u>j</u> _____		
b Number of employees employed in the pay period that includes March 12, 2001. (See instructions.)	90b	
91 The books are in care of <u>j</u> DONALD SHANK Telephone no <u>j</u> 970-247-9498 Located at <u>j</u> 1474 MAIN AVE STE 223 DGO CO ZIP + 4 <u>j</u> 81301		
92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041 - Check here ☐ and enter the amount of tax-exempt interest received or accrued during the tax year <u>j</u> 92		

Part VII Analysis of Income-Producing Activities

(See Specific Instructions on page 32.)

Note Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93 Program service revenue					
a					
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments					
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))					
105 Total (add line 104, columns (B), (D), and (E))					

Note Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes

(See Specific Instructions on page 32.)

Line No ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities

(See Specific Instructions on page 33.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See Specific Instructions on page 33.)

(a) Did the organization during the year receive any funds directly or indirectly to pay premiums on a personal benefit contract?

☐ Yes ☐ No

(b) Did the organization during the year pay premiums, directly or indirectly on a personal benefit contract?

☐ Yes ☐ No

Note If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Please

5/31/02

Date

R.E. DIRECTOR

SCHEDULE A
(Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information -- (See separate instructions.)

OMB No 1545-0047

2001

Department of the Treasury
Internal Revenue Service

1 MUST be completed by the above organizations and attached to their Form 990 or 990-EZ

Name of the organization

DENVER & RIO GRANDE RAILWAY

Employer identification number

84-1433680

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions List each one If there are none enter "None")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense accounts and other allowances
None				

Total number of other employees paid over \$50,000 **1**

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
None		

Total number of others receiving over \$50,000 for professional services **1**

Part III Statements About Activities (See page 2 of the instructions)

	Yes	No
1 During the year has the organization attempted to influence national state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes" enter the total expenses paid or incurred in connection with the lobbying activities <u>\$5</u> (Must equal amounts on line 38, Part VI-A, or line 1 of Part VI-B) Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.		
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)		
a Sale, exchange, or leasing of property?	2a	
b Lending of money or other extension of credit?	2b	
c Furnishing of goods, services, or facilities?	2c	
d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)?	2d	
e Transfer of any part of its income or assets?	2e	
3 Does the organization make grants for scholarships, fellowships, student loans, etc.? (See Note below.)	3	
4 Do you have a section 403(b) annuity plan for your employees?	4	
Note: Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs "qualify" to receive payments.		

Part IV Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state: J
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the Support Schedule in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 12 ☐ An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable etc. functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the Support Schedule in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations. (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4). (See page 6 of the instructions.)

Part IV-A Support Schedule (Complete only if you checked a box on line 10 11 or 12) Use cash method of accounting

Note You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2000	(b) 1999	(c) 1998	(d) 1997	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28.)		260,971			260,971
16 Membership fees received		2,705	20,000		22,705
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose					
18 Gross income from interest, dividends amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975					
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets.					
23 Total of lines 15 through 22		263,676	20,000		283,676
24 Line 23 minus line 17		263,676	20,000		283,676
25 Enter 1% of line 23		2,637	200		
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24					5,674
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1997 through 2000 exceeded the amount shown in line 26a. Do not file this list with your return. Enter the total of all these excess amounts.					
c Total support for section 509(a)(1) test. Enter line 24, column (e)					283,676
d Add: Amounts from column (e) for lines 18 _____ 19 _____ 22 _____ 26b _____					
e Public support (line 26c minus line 26d total)					283,676
f Public support percentage (line 26e (numerator) divided by line 26c (denominator))					1.00%
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year.					
(2000) _____ (1999) _____ (1998) _____ (1997) _____					
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year.					
(2000) _____ (1999) _____ (1998) _____ (1997) _____					
c Add: Amounts from column (e) for lines 15 _____ 16 _____ 17 _____ 20 _____ 21 _____					
d Add: Line 27a total _____ and line 27b total _____					
e Public support (line 27c total minus line 27d total)					
f Total support for section 509(a)(2) test. Enter amount on line 23, column (e)					
g Public support percentage (line 27e (numerator) divided by line 27f (denominator))					%
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))					%
28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1997 through 2000, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15.					

Form 4562

Depreciation and Amortization (Including Information on Listed Property)

OMB No 1545-0172

2001Department of the Treasury
Internal Revenue Service (99)

See separate instructions

Attach this form to your return

Attachment
Sequence No 67

Name(s) shown on return

DENVER & RIO GRANDE RAILWAY

Business or activity to which this form relates

MANAGEMENT/GENERAL -

Identifying number

84-1433680

Part I Election To Expense Certain Tangible Property (Section 179)

Note If you have any "listed property," complete Part V before you complete Part I

1	Maximum dollar limitation If an enterprise zone business see page 2 of the instructions	1	\$20,000
2	Total cost of section 179 property placed in service See page 2 of the instructions	2	
3	Threshold cost of section 179 property before reduction in limitation	3	\$200,000
4	Reduction in limitation Subtract line 3 from line 2 If zero or less, enter -0-	4	
5	Dollar limitation for tax year Subtract line 4 from line 1 If zero or less, enter -0- If married filing separately, see page 2 of the instructions	5	
6	(a) Depreciation of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property Enter amount from line 27	7	
8	Total elected cost of section 179 property Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from 2000 See page 3 of the instructions	10	
11	Business income limitation Enter the smaller of business income (not less than zero) or line 5 (SEE INSTRUCTIONS)	11	
12	Section 179 expense deduction Add lines 9 and 10 but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2002 Add lines 9 and 10, less line 12	13	

Note Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment recreation, or amusement) Instead, use Part V for listed property

Part II MACRS Depreciation For Assets Placed In Service Only During Your 2001 Tax Year (Do not include listed property)**Section A - General Asset Account Election**14 If you are making the election under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box See page 3 of the instructions ☐**Section B - General Depreciation System (GDS) (See page 3 of the instructions)**

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only-see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
15a 3-year property						
b 5-year property	STATEMENT # 50					
c 7-year property		2,500	7	HY	200 DB	357
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27 5 yrs	MM	S/L	
i Nonresidential real property			39 yrs	MM	S/L	

Section C - Alternative Depreciation System (ADS) (See page 5 of the instructions)

16a Class life				S/L	
b 12-year			12 yrs	S/L	
c 40-year			40 yrs	MM	S/L

Part III Other Depreciation (Do not include listed property) (See page 5 of the instructions)

17 GDS and ADS deductions for assets placed in service in tax years beginning before 2000	17	1,189
18 Property subject to section 168(i)(1) election	18	
19 ACRS and other depreciation	19	

Part IV Summary (See page 6 of the instructions)

20 Listed property Enter amount from line 26	20	
21 Total Add deductions on line 12 lines 15 and 16 in column (g) and lines 17 through 20 Enter here and on the appropriate lines of your return Partnerships and S corporations - see instructions	21	3,080
22 For assets shown above and placed in service during the current year enter the portion of the basis attributable to section 263A costs	22	

For Paperwork Reduction Act Notice, see the separate instructions

EEA

Form 4562 (2001)

FORM 4562 - LINE 15B

2001
STM 50
PG01

Name(s) shown on return

DENVER & RIO GRANDE RAILWAY

Identifying Number

84-1433680

BASIS	RP	CV	METHOD	DEDUCTION
7,372	5	HY	200 DB	1,474
300	5	HY	200 DB	60
TOTALS				1,534

Form 990

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

OMB No 1545-0047

2002

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2002 calendar year, or tax year beginning 2002, and ending 20

- B Check if applicable:
- ☐ Address change
 - ☐ Name change
 - ☐ Initial return
 - ☐ Final return
 - ☐ Amended return
 - ☐ Application pending

C Name of organization

DENVER & Rio Grande Railway

Number and street (or P.O. box if mail is not delivered to street address)

1474 Main Ave., Suite 223

City or town, state or country, and ZIP + 4

DURANGO, CO 81301

D Employer identification number

84-1433680

E Telephone number

(970) 247-9498

F Accounting method

☒ Cash ☐ Accrual
☐ Other (specify):

* Section 501(c)(2) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ)

H and I are not applicable to section 527 organizations

H(a) Is this a group return for affiliates?

☐ Yes ☒ No

H(b) If Yes, enter number of affiliates

☒ Yes ☐ No

H(c) Are all affiliates included?

☒ Yes ☐ No

(If "No," attach a list. See instructions.)

H(d) Is this a separate return filed by an organization covered by a group ruling?

☐ Yes ☒ No

I Enter 4 digit GEN

M Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF)

G Web site

J Organization type (check only one) ☒ 501(c) ☐ 527 (insert no.) ☐ 4947(a)(1) or ☐ 527K Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The

organization need not file a return with the IRS, but if the organization received a Form 990-PF, file

in the mail. It should file a return without financial data.

Some states require a complete return.

L Gross receipts. Add lines 6b, 8b, 9b, and 10b to line 12

23,830

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances

(See page 17 of the instructions.)

1 Contributions, gifts, grants, and similar amounts received

a Direct public support

b Indirect public support

c Government contributions (grants)

d Total (add lines 1a through 1c) (cash \$ noncash \$)

2 Program service revenue including government fees and contracts (from Part VII line 93)

3 Membership dues and assessments

4 Interest on savings and temporary cash investments

5 Dividends and interest from securities

6a Gross rents

b Less rental expenses

c Net rental income or (loss) (subtract line 6b from line 6a)

7 Other investment income (describe)

8a Gross amount from sales of assets other than inventory

b Less cost or other basis and sales expenses

c Gain or (loss) (attach schedule)

d Net gain or (loss) (combine line 8c, columns (A) and (B))

9 Special events and activities (attach schedule)

a Gross revenue (not including \$ of contributions reported on line 1a)

b Less direct expenses other than fundraising expenses

c Net income or (loss) from special events (subtract line 9b from line 9a)

10a Gross sales of inventory, less returns and allowances

Less cost of goods sold

10b Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)

11 Other revenue (from Part VII line 103)

12 Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)

13 Program services (from line 44, column (B))

14 Management and general (from line 44, column (C))

15 Fundraising (from line 44, column (D))

16 Payments to affiliates (attach schedule)

17 Total expenses (add lines 16 and 44, column (A))

18 Excess or (deficit) for the year (subtract line 17 from line 12)

19 Net assets or fund balances at beginning of year (from line 73, column (A))

20 Other changes in net assets or fund balances (attach explanation)

21 Net assets or fund balances at end of year (combine lines 18, 19, and 20)

For Paperwork Reduction Act Notice, see the separate instructions

EBA

Form 990 (2002)

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See page 21 of the instructions.)

Do not include amounts reported on line 6h, 8b, 9b, 10b or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____)	22			
23	Specific assistance to individuals (attach schedule)	23			
24	Benefits paid to or for members (attach schedule)	24			
25	Compensation of officers, directors, etc.	25			
26	Other salaries and wages	26			
27	Pension plan contributions	27			
28	Other employee benefits	28			
29	Payroll taxes	29			
30	Professional fundraising fees	30			
31	Accounting fees	31	750		
32	Legal fees	32	7,155		
33	Supplies	33	550		
34	Telephone	34	2,717		
35	Postage and shipping	35	18,977		
36	Occupancy	36	2,400		
37	Equipment rental and maintenance	37	6,131		
38	Printing and publications	38	52		
39	Travel	39	1,000		
40	Conferences, conventions, and meetings	40			
41	Interest	41			
42	Depreciation, depletion, etc. (attach schedule)	42	3,916		
43	Other expenses not covered above (describe):	43a			
b	UTILITIES	43b	916		
c	LICENCES & PERMITS	43c	88		
d	PROPERTY TAXES	43d	2,161		
e		43e			
44	Total functional expenses (add lines 22 through 43) Organizations completing column (B)-(D) carry these totals to lines 13-15	44	46,815		

Joint Costs Check ☒ if you are following SOP 98-2Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ☐ Yes ☐ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____ (ii) the amount allocated to Program services \$ _____

(iii) the amount allocated to Management and general \$ _____ and (iv) the amount allocated to Fundraising \$ _____

Part III Statement of Program Service Accomplishments (See page 24 of the instructions.)What is the organization's primary exempt purpose? ☒ _____

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts but optional for others.)

a	(Grants and allocations \$ _____)	
b	(Grants and allocations \$ _____)	
c	(Grants and allocations \$ _____)	
d	(Grants and allocations \$ _____)	
e	Other program services (attach schedule) (Grants and allocations \$ _____)	
f	Total of Program Service Expenses (should equal line 44 column (B), Program services)	

Part IV Balance Sheets (See page 24 of the instructions.)

Note	Where required, attach schedules and amounts within the description column should be for end-of-year amounts only	(A) Beginning of year		(B) End of year
45	Cash - non-interest bearing	126	45	4,360
46	Savings and temporary cash investments	517	46	1,892
47a	Accounts receivable	47a		
b	Less allowance for doubtful accounts	47b	47c	
48a	Pledges receivable	48a		
b	Less allowance for doubtful accounts	48b	48c	
49	Grants receivable		49	
50	Receivables from officers, directors, trustees, and key employees (attach schedule)		50	
51a	Other notes and loans receivable (attach schedule)	51a		
b	Less allowance for doubtful accounts	51b	51c	
52	Inventories for sale or use		52	
53	Prepaid expenses and deferred charges		53	
54	Investments - securities (attach schedule) ☐ Cost ☐ PMV		54	
55a	Investments - land, buildings, and equipment basis	55a 34,000		
b	Less accumulated depreciation (attach schedule)	55b	55c	34,000
56	Investments - other (attach schedule)		56	
57a	Land, buildings, and equipment basis	57a 658,856		
b	Less accumulated depreciation (attach schedule)	57b	57c	658,856
58	Other assets (describe)	671,114	58	699,108
59	Total assets (add lines 45 through 58) (must equal line 74)		59	
60	Accounts payable and accrued expenses		60	
61	Grants payable		61	
62	Deferred revenue		62	
63	Loans from officers, directors, trustees, and key employees (attach schedule)		63	
64a	Tax-exempt bond liabilities (attach schedule)	413,586	64a	454,873
b	Mortgages and other notes payable (attach schedule)		64b	
65	Other liabilities (describe)		65	
66	Total liabilities (add lines 60 through 65)	413,586	66	454,873
67	Organizations that follow SFAS 117, check here ☐ and complete lines 67 through 69 and lines 73 and 74		67	
68	Unrestricted		68	
69	Temporarily restricted		69	
70	Organizations that do not follow SFAS 117, check here ☒ and complete lines 70 through 74			
71	Capital stock, trust principal, or current funds	250,000	70	250,000
72	Paid-in or capital surplus, or land, building, and equipment fund	7,528	71	(8165)
73	Retained earnings, endowment, accumulated income, or other funds		72	
74	Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72, column (A) must equal line 59, column (B) must equal line 21)	257,528	73	244,235
74	Total liabilities and net assets / fund balances (add lines 66 and 73)	671,114	74	699,108

Form 990 is available for public inspection and for some people serves as the primary or sole source of information about a particular organization. However, the public perception of an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes in Part III, the organization's programs and accomplishments.

Part IV-B	Reconciliation of Expenses per Audited Financial Statements with Expenses per Return
------------------	---

Part I		Part II	
a	Total revenue, gains and other support per audited financial statements	a	Total expenses and losses per audited financial statements
b	Amounts included on line a but not on line 12, Form 990	b	Amounts included on line a but not on line 17, Form 990
(1)	Net unrealized gains on investments	(1)	Donated services and use of facilities
(2)	Donated services and use of facilities	(2)	Prior year adjustments reported on line 20 Form 990
(3)	Recoveries of prior year grants	(3)	Losses reported on line 20, Form 990
(4)	Other (specify)	(4)	Other (specify)
	Add amounts on lines (1) through (4)		Add amounts on lines (1) through (4)
c	Line a minus line b	c	Line a minus line b
d	Amounts included on line 12 Form 990 but not on line a	d	Amounts included on line 17 Form 990 but not on line a
(1)	Investment expenses not included on line 6h, Form 990	(1)	Investment expenses not included on line 6b, Form 990
(2)	Other (specify)	(2)	Other (specify)
	Add amounts on lines (1) and (2)		Add amounts on lines (1) and (2)
e	Total revenue per line 12 Form 990 (line c plus line d)	e	Total expenses per line 17 Form 990 (line c plus line d)

Part V List of Officers, Directors, Trustees, and Key Employees
(the instructions)

(List each one even if not compensated see page 26 of

[illegible]

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations of which more than \$10,000 was provided by the related organizations?
If "Yes," attach schedule - see form 27 of the instructions

Yes No

Part VII Analysis of Income-Producing Activities (See page 31 of the instructions)

Note Enter gross amounts unless otherwise indicated		Unrelated business income		Excluded by sections 512, 513, or 514		(E) Related or exempt function income
		(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93	Program service revenue					
a						
b						
c						
d						
e						
f	Medicare/Medicaid payments					
g	Fees and contracts from government agencies					
94	Membership dues and assessments					
95	Interest on savings and temporary cash investments					
96	Dividends and interest from securities					
97	Net rental income or (loss) from real estate					
a	debt-financed property					
b	not debt-financed property					
98	Net rental income or (loss) from personal property					
99	Other investment income					
100	Gain or (loss) from sales of assets other than inventory					
101	Net income or (loss) from special events					
102	Gross profit or (loss) from sales of inventory					
103	Other revenue a					
b						
c						
d						
e						
104	Subtotal (add columns (B), (D), and (E))					
105	Total (add line 104 columns (B), (D), and (E))					

Note Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See page 32 of the instructions)

Line No ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See page 32 of the instructions)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End of year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See page 33 of the instructions)

(a) Did the organization, during the year, receive any funds directly or indirectly to pay premiums on a personal benefit contract? ☐ Yes ☐ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☐ No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Please

Date

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

FAX TRANSMITTAL

DATE: 12-30-04
21 Pages (Including this Cover Page)

TO: HEIDI GUNSTFAX NO: 202 887 4288

* * *

FROM: THOMAS F. MCFARLAND

FAX NO: (312) 201-9695 TELEPHONE NO: (312) 236-0204

* * *

RE:

PER YOUR REQUEST, HEREBY FORWARDED IS A COPY OF FORM
990 FILED BY DENVER + RIO GRANDE RAILWAY HISTORICAL
FOUNDATION FOR 2003.

Tom McFarland

File # 957-A

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law

If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service

DEC 30, 2004 1:16PM

ROSEMARY BECKWITE

NO. 556! P. 2

Form 990

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

OMB No. 1545-0047

2003

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 2003 calendar year, or tax year beginning

, 2003, and ending

, 20

- B Check if applicable:
- ☒ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return
- ☐ Amended return
- ☐ Application pending

C Name of organization

DENVER & RIO GRANDE RAILWAY

Number and street for P.O. box if mail is not delivered to street address

20 N. BROADWAY

City or town, state or country, and ZIP + 4

Monte Vista CO 81144

D Employer identification number

94-1433680

E Telephone number

(719) 852-7000

F Acctg. method: ☒ Cash ☐ Accrual☐ Other (specify) ▶

Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H & I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? ☐ Yes ☒ NoH(b) If "Yes," enter number of affiliates: ☐ Yes ☐ NoH(c) Are all affiliates included? (If "No," attach a list. See instructions.) ☐ Yes ☐ NoH(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No

I Group Exemption Number ▶

M Check ☐ if organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF).

G Website: ▶

J Organization type (check only one) ☒ 501(c)(3) ☐ 4947(a)(1) ☐ 527K Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS, but if the organization received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return.

L Gross receipts: Add lines 8b, 8c, 8d, and 10b to line 12 ▶ 59,701

Part III Revenue, Expenses, and Changes in Net Assets or Fund Balances (See instructions.)

1 Contributions, gifts, grants, and similar amounts received:					
a Direct public support.....	1a				
b Indirect public support.....	1b				
c Government contributions (grants).....	1c				
d Total (add lines 1a through 1c) (cash \$ 0 noncash \$ 0)	1d			0	
2 Program service revenue including government fees and contracts (from Part VII, line 93).....	2			59,698	
3 Membership dues and assessments.....	3				
4 Interest on savings and temporary cash investments.....	4			3	
5 Dividends and interest from securities.....	5				
6a Gross rents.....	6a				
b Less: rental expenses.....	6b				
c Net rental income or (loss) (subtract line 6b from line 6a).....	6c				
7 Other investment income (describe ▶).....	7				
8a Gross amount from sales of assets other than inventory.....	(A) Securities	8a	(B) Other		
b Less: cost or other basis & sales expenses.....	8b				
c Gain or (loss) (attach schedule).....	8c				
d Net gain or (loss) (combine line 8c, column (A) and (B)).....	8d				
9 Special events and activities (attach schedule). If any amount is from gaming, check here ☐					
a Gross revenue (not including \$ of contributions reported on line 1a).....	9a				
b Less: direct expenses other than fundraising expenses.....	9b				
c Net income or (loss) from special events (subtract line 9b from line 9a).....	9c				
10a Gross sales of inventory, less returns and stewardesses.....	10a				
b Less: cost of goods sold.....	10b				
c Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a).....	10c				
11 Other revenue (from Part VII, line 103).....	11				
12 Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11).....	12			59,701	
13 Program services (from line 44, column (B)).....	13			8,472	
14 Management and general (from line 44, column (C)).....	14			41,709	
15 Fundraising (from line 44, column (D)).....	15				
16 Payments to affiliates (attach schedule).....	16				
17 Total expenses (add lines 16 and 44, column (A)).....	17			52,511	
18 Excess or (deficit) for the year (subtract line 17 from line 12).....	18			7,190	
19 Net assets or fund balances at beginning of year (from line 73, column (A)).....	19			213,418	
20 Other changes in net assets or fund balances (attach explanation).....	20			-5,737	
21 Net assets or fund balances at end of year (combine lines 19, 20, and 21).....	21			214,871	

For Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2003)

DEC. 30. 2004 1:17PM

ROSEMARY BECKWITH

NO. 5561 P. 3

Form 990 (2003) DENVER & CO GRANDE RAILWAY 84-14336

Page 2

Part I Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See instructions.)

Do not include amounts reported on line 28, 29, 30, 31, 32, or 33 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising	
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____)	22				
23	Specific assistance to individuals (attach schedule)	23				
24	Benefits paid to or for members (attach schedule)	24				
25	Compensation of officers, directors, etc.	25				
26	Other salaries and wages	26				
27	Pension plan contributions	27				
28	Other employee benefits	28				
29	Payroll taxes	29				
30	Professional fundraising fees	30				
31	Accounting fees	31	300	300		
32	Legal fees	32	39,000	39,000		
33	Supplies	33	1,296	1,075	221	
34	Telephone	34				
35	Postage and shipping	35	186	186		
36	Occupancy	36	400	400		
37	Equipment rental and maintenance	37	1,450	1,450		
38	Printing and publications	38	267	267		
39	Travel	39				
40	Conferences, conventions, and meetings	40				
41	Interest	41				
42	Depreciation, depletion, etc. (attach schedule)	42	2,330			
43	Other expenses not covered above (describe): a AUTO EXPENSE	43a	952		952	
	b INSURANCE	43b	812	412	400	
	c LICENSES & PERMITS	43c	42		42	
	d REPAIRS	43d	219	219		
	e See attachment 4	43e	5,257	5,049	208	
44	Total functional expenses (add lines 22 through 43). Organizations completing columns (B)-(D), carry these totals to lines 13-15	44	52,511	8,472	41,709	0

Joint Costs. Check ☐ if you are following SOP 88-2.Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ☐ Yes ☒ No

If "Yes," enter (i) aggregate amount of these joint costs \$ _____; (ii) the amount allocated to Program services \$ _____;

(iii) the amount allocated to Management and general \$ _____; and (iv) the amount allocated to Fundraising \$ _____.

Part II Statement of Program Service Accomplishments (See instructions.)What is the organization's primary exempt purpose? **HISTORICAL RAILWAY**

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses (Required for 501(c)(3) & (4) orgs., & 4947(a)(1) trusts) but optional for others.

a	(Grants and allocations \$ _____)	8,472
b	(Grants and allocations \$ _____)	
c	(Grants and allocations \$ _____)	
d	(Grants and allocations \$ _____)	
e	Other program services (attach schedule) (Grants and allocations \$ _____)	
f	Total of Program Service Expenses (should equal line 44, column (B), Program services)	8,472

DEC. 30. 2004 1:17PM ROSEMARY BECKWITH

NO. 5561 P. 4

Form 990 (2003) DENVER & RIO GRANDE RAILWAY 84-14336

Page 3

Balance Sheets (See Specific Instructions.)

Note: Where required, attach schedules and amounts within the description column should be for end-of-year amounts only.		(A) Beginning of year		(B) End of year	
ASSETS	45 Cash -- non-interest-bearing	4,360	45	8,189	
	46 Savings and temporary cash investments	1,892	46	1,894	
	47a Accounts receivable	47a			
	b Less: allowance for doubtful accounts	47b	47c		
	48a Pledges receivable	48a			
	b Less: allowance for doubtful accounts	48b	48c		
	49 Grants receivable		49		
	50 Receivables from officers, directors, trustees, and key employees (attach schedule)		50		
	51a Other notes and loans receivable (attach schedule)	51a			
	b Less: allowance for doubtful accounts	51b	51c		
	52 Inventories for sale or use		52		
	53 Prepaid expenses and deferred charges		53		
	54 Investments -- securities (attach schedule)	☐ Cost ☐ FMV	54		
	55a Investments -- land, buildings, and equipment: basis	55a			
	b Less: accumulated depreciation (attach schedule)	55b	55c		
56 Investments -- other (attach schedule)		56			
57a Land, buildings, and equipment: basis	57a	675,988			
b Less: accumulated depreciation (attach schedule)	57b	15,879			
58 Other assets (describe)		662,039	58	660,109	
59 Total assets (add lines 45 through 58) (must equal line 74)		668,291	59	670,192	
LIABILITIES	60 Accounts payable and accrued expenses		60		
	61 Grants payable		61		
	62 Deferred revenues		62		
	63 Loans from officers, directors, trustees, and key employees (attach schedule)	#3	80,257	63	80,705
	64a Tax-exempt bond liabilities (attach schedule)			64a	
	b Mortgages and other notes payable (attach schedule)			64b	
65 Other liabilities (describe)	See attachment #2	374,616	65	374,616	
66 Total liabilities (add lines 60 through 65)		454,873	66	455,321	
FUND BALANCES	Organizations that follow SFAS 117, check here... ☒ and complete lines 67 through 69 and lines 73 and 74.				
	67 Unrestricted		67		
	68 Temporarily restricted		68		
	69 Permanently restricted		69		
	Organizations that do not follow SFAS 117, check here... ☐ and complete lines 70 through 74.				
	70 Capital stock, trust principal, or current funds		70		
	71 Paid-in or capital surplus, or land, building, and equipment fund	250,000	71	250,000	
	72 Retained earnings, endowment, accumulated income, or other funds	-36,582	72	-35,129	
	73 Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72; column (A) must equal line 18, column (B) must equal line 21)	213,418	73	214,871	
74 Total liabilities and net assets / fund balances (add lines 66 and 73)	668,291	74	670,192		

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

DEC. 30. 2004 1:18PM ROSEMARY BECKWITH

NO. 5561 P. 5

Form 990 (2003)

DENVER & CO GRANDE RAILWA 84-14336

Page 4

Reconciliation of Revenue per Audited Financial Statements with Revenue per Return (See Specific Instructions.)

a Total revenue, gains, and other support per audited financial statements **a**

b Amounts included on line a but not on line 12, Form 990:

(1) Net unrealized gains on investments .. \$

(2) Donated services & use of facilities .. \$

(3) Recoveries of prior year grants \$

(4) Other (specify):

\$

Add amounts on lines (1) through (4) ... **b**

c Line a minus line b **c**

d Amounts included on line 12, Form 990 but not on line a:

(1) Investment expenses not included on line 9b, Form 990 \$

(2) Other (specify):

\$

Add amounts on lines (1) and (2) **d**

e Total revenue per line 12, Form 990 (line c plus line d) **e** 0

Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a Total expenses and losses per audited financial statements **a**

b Amounts included on line a but not on line 17, Form 990:

(1) Donated services & use of facilities .. \$

(2) Prior year adjustments reported on line 20, Form 990 \$

(3) Losses reported on line 20, Form 990 \$

(4) Other (specify):

\$

Add amounts on lines (1) through (4) ... **b**

c Line a minus line b **c**

d Amounts included on line 17, Form 990 but not on line a:

(1) Investment expenses not included on line 9b, Form 990 \$

(2) Other (specify):

\$

Add amounts on lines (1) and (2) **d**

e Total expenses per line 17, Form 990 (line c plus line d) **e** 0

List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated; see Specific Instructions.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred comp.	(E) Expense account and other allowances
DONALD H. SHANK 20 N. BROADWAY	FOUNDER			
ROBERT W. SHANK 1861 HARRIET DRIVE	VICE-CHAIR			
RICHARD L. MILLARD 601 ANIMAS VIEW DRIVE	TREASURER			
MARTIN F. PIRNAT 1474 MAIN AVE	DIRECTOR			
WILLIAM COOLEY 1474 MAIN AVE	DIRECTOR			
ROBERT GRAM 1474 MAIN AVE	DIRECTOR			

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? ... ☐ Yes ☒ No
If "Yes," attach schedule -- see Specific Instructions.

DEC. 30. 2004 1:19PM ROSEMARY BECKWITH

NO. 556! P. 6

Form 990 (2003) DENVER & GRAND RAPIDS RAILROAD 84-143364

Page 5

Part III Other Information (See Specific Instructions.)

	Yes	No
76 Did the organization engage in any activity not previously reported to IRS? If "Yes," attach detailed description of each activity	76	X
77 Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.	77	X
78a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	78a	X
b If "Yes," has it filed a tax return on Form 990-T for this year?	78b	X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement.	79	X
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a	X
b If "Yes," enter the name of the organization: _____ and check whether it is ☐ exempt or ☐ nonexempt.		
81a Enter direct and indirect political expenditures. See line 81 instructions.	81a	N/A
b Did the organization file Form 1120-POL for this year?	81b	X
82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a	X
b If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.)	82b	N/A
83a Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X
b Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X
84a Did the organization solicit any contributions or gifts that were not tax deductible?	84a	X
b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b	X
85 501(c)(4), (5), or (6) organizations. a Were substantially all dues nondeductible by members?	85a	X
b Did the organization make only in-house lobbying expenditures of \$2,000 or less? If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.	85b	X
c Dues, assessments, and similar amounts from members.	85c	N/A
d Section 162(e) lobbying and political expenditures	85d	N/A
e Aggregate nondeductible amount of section 8023(a)(1)(A) dues notices	85e	N/A
f Taxable amount of lobbying and political expenditures (line 85d less 85e).	85f	N/A
g Does the organization elect to pay the section 8033(a) tax on the amount on line 85f?	85g	X
h If section 8023(a)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h	X
86 501(c)(7) orgs. Enter: a Initiation fees and capital contributions included on line 12	86a	N/A
b Gross receipts, included on line 12, for public use of club facilities	86b	N/A
87 501(c)(12) orgs. Enter: a Gross income from members or shareholders	87a	N/A
b Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b	N/A
88 At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX	88	X
89a 501(c)(3) organizations. Enter: Amount of tax imposed on the organization during the year under: section 4811 ☐ N/A; section 4812 ☐ N/A; section 4855 ☐ N/A		
b 501(c)(3) and 501(c)(4) orgs. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction.	89b	X
c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958.		N/A
d Enter: Amount of tax on line 89c, above, reimbursed by the organization		N/A
90a List the states with which a copy of this return is filed: COLORADO		
b Number of employees employed in the pay period that includes March 12, 2003 (See instructions).	90b	N/A
91 The books are in care of: DONALD H. SHANK Telephone no.: _____ Located at: 20 N. BROADWAY MONTE VISTA CO ZIP + 4: 81144		
92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041 — Check here: ☐ and enter the amount of tax-exempt interest received or accrued during the tax year: 92 N/A		

DEC 30, 2004 1:19PM ROSEMARY BECKWITH

NO. 5561 P. 7

Form 990 (2003)

DENVER & CO GRANDE RAILWA 84-14336

Page 5

Part VII Analysis of Income-Producing Activities (See Specific Instructions.)

Note: Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93 Program service revenue:					
a UNRESTRICTED		57,703			
b LEASE INCOME		1,995			
c					
d					
e					
f Medicare/Medicaid payments					
g Fees & contracts from govt. agencies					
94 Membership dues & assessments ..					
95 Interest on savings and temporary cash investments		3			
96 Dividends & interest from securities					
97 Net rental income or (loss) from real estate:					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events ..					
102 Gross profit/(loss) from sales of inventory ..					
103 Other revenues: a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E) ..		59,701		0	0
105 Total (add line 104, columns (B), (D), and (E) ..					59,701

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See Specific Instructions.)

Line No.	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes).
1	
2	
3	
4	

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See Specific Instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership int.	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See Specific Instructions.)

(a) Did organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☒ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☒ No

Note: If "Yes" to (a), file Form 8870 and Form 4720 (see instructions).

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature of officer: **DONALD H. SHANK** Date: **EXECUTIVE DIRECTOR**

Type or print name and title.

Paid Preparer's Use Only

Preparer's signature: **Rosemary Beckwith CPA** Date: **10-14-04** Check if self-employed: ☐ Preparer's SSN or PTIN (See Gen. Inv. W): **P00436495**

Firm's name (or yours if self-employed), address, and ZIP + 4: **ROSEMARY BECKWITH & ASSOC CPA PC** EIN: **84-1439797**

359 MAIN STREET STE 3 Phone no.: **970-263-4118**

Grand Junction CO 81501

DEC. 30. 2004 1:20PM

ROSEMARY BECKWITH

NO. 556: P. 8

SCHEDULE A
(Form 990 or 990-EZ)**Organization Exempt Under Section 501(c)(3)**(Except Private Foundation) and Section 501(c), 501(f), 501(g),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

OMB No. 1545-0047

2003Department of the Treasury
Internal Revenue Service**Supplementary Information — (See separate instructions.)**▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

Name of the organization

DENVER & RIO GRANDE RAILWAY

Employer identification number

84-1433680**Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees**
(See the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to empl. benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				
Total number of other employees paid over \$50,000	0			

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
NONE		
Total number of others receiving over \$50,000 for professional services	0	

For Paperwork Reduction Act Notice, see the Instructions for Form 990 and Form 990-EZ.

Schedule A (Form 990 or 990-EZ) 2003

DEC. 30. 2004 1.20PM ROSEMARY BECKWITH

NO. 5561 P. 9

Schedule A (Form 990 or 990-EZ) 2003 **DENVER & RIO GRANDE RAIL A 84-1433680** Page **2**

Part III Statements About Activities (See the instructions.)		Yes	No
1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities . . . \$ _____ (Must equal amounts on line 32, Part VI-A, or line 1 of Part VI-B.) . . .	1	X
Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.			
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)		
a	Sale, exchange, or leasing of property?	2a	X
b	Lending of money or other extension of credit?	2b	X
c	Furnishing of goods, services, or facilities?	2c	X
d	Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)?	2d	X
e	Transfer of any part of its income or assets?	2e	X
3a	Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments.)	3a	X
b	Do you have a section 408(b) annuity plan for your employees?	3b	X
4	Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?	4	X

Part IV Reason for Non-Private Foundation Status (See the instructions.)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5** ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6** ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7** ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8** ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(iv).
- 9** ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(ii). Enter the hospital's name, city, and state: _____
- 10** ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the Support Schedule in Part IV-A.)
- 11a** ☐ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11b** ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 12** ☒ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions — subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 508(a)(2). (Also complete the Support Schedule in Part IV-A.)
- 13** ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in: (1) lines 8 through 12 above; or (2) section 501(c)(4), (5), or (6), if they meet the test of section 508(a)(2). (See section 508(a)(3).)

Provide the following information about the supported organizations. (See the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14** ☐ An organization organized and operated to test for public safety. Section 508(a)(4). (See the instructions.)

DEC. 30. 2004 1:21PM ROSEMARY BECKWITE

NO. 5561 P. 10

Schedule A (Form 990 or 990-EZ) 2003 **DAWNER & RIO GRANDE RAILWA** 6 1433680

Page 3

Support Schedule (Complete only if you checked a box on line 10, 11, or 12.) Use cash method of accounting.
Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28.)					
16 Membership fees received					
17 Gross receipts from all activities, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purposes.					
18 Gross income from interest, dividends, annuities received from payments on securities loans (section 512(b)(13)), rents, royalties, and unrelated business taxable income (see section 511) from businesses acquired by the organization after June 30, 1997.					
19 Net income from unrelated business activities not included in line 18.					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf.					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets.					
23 Total of lines 15 through 22.	0	0	0	0	0
24 Line 23 minus line 17.					
25 Enter 1% of line 23.					

25 Organizations described on lines 10 or 11: **a** Enter 2% of amount in column (e), line 24. **25a** N/A

b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1999 through 2002 exceeded the amount shown in line 25a. Do not file this list with your return. Enter the total of all those excess amounts. **25b** N/A

c Total support for section 509(a)(1) test: Enter line 24, column (e). **25c** N/A

d Add: Amounts from column (e) for lines: **15** **19** **22** **25b** **25d** N/A

e Public support (line 25c minus line 25d total). **25e** N/A

f Public support percentage (line 25e (numerator) divided by line 25c (denominator)). **25f** N/A %

27 Organizations described on line 12: **a** For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year:

(2002)	(2001)	(2000)	(1999)
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year:			
(2002)	(2001)	(2000)	(1999)

c Add: Amounts from column (e) for lines: **15** **16** **17** **20** **21** **27c**

d Add: Line 27a total and line 27b total. **27d**

e Public support (line 27c total minus line 27d total). **27e**

f Total support for section 509(a)(2) test: Enter amount from line 23, column (e). **27f**

g Public support percentage (line 27e (numerator) divided by line 27f (denominator)). **27g** %

h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator)). **27h** %

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1999 through 2002, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15.

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ROSEMARY BECKWITE

NO. 5561 P. 11

Schedule A (Form 990 or 990-EZ) 2003

DENVER & RIO GRANDE RAIL A 84-1433680

Page 4

Private School Questionnaire (See the instructions.)(To be completed **ONLY** by schools that checked the box on line 6 in Part IV) **PAGE N/A**

	Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29	
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30	
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?	31	
If "Yes," please describe; if "No," please explain. (If you need more space, attach a separate statement.)		
32 Does the organization maintain the following:		
a Records indicating the racial composition of the student body, faculty, and administrative staff?	32a	
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b	
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c	
d Copies of all material used by the organization or on its behalf to solicit contributions?	32d	
If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement.)		
33 Does the organization discriminate by race in any way with respect to:		
a Students' rights or privileges?	33a	
b Admissions policies?	33b	
c Employment of faculty or administrative staff?	33c	
d Scholarships or other financial assistance?	33d	
e Educational policies?	33e	
f Use of facilities?	33f	
g Athletic programs?	33g	
h Other extracurricular activities?	33h	
If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.)		
34a Does the organization receive any financial aid or assistance from a governmental agency?	34a	
b Has the organization's right to such aid ever been revoked or suspended?	34b	
If you answered "Yes" to either 34a or b, please explain using an attached statement.		
35 Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 487, covering racial nondiscrimination? If "No," attach an explanation	35	

DEC. 30, 2004 1:21PM ROSEMARY BECKWITH

NO. 5551 P. 12

Schedule A (Form 990 or 990-EZ) 2003 DENVER & RIO GRANDE RAILROAD 84-1433680 Page 5

Lobbying Expenditures by Electing Public Charities (See the instructions.)
(To be completed **ONLY** by an eligible organization that filed Form 5782)

N/A

Check ☐ a If the organization belongs to an affiliated group. Check ☐ b If you checked "a" and "limited control" provisions apply.**Limits on Lobbying Expenditures**

(The term "expenditures" means amounts paid or incurred.)

	(a) Affiliated group totals	(b) To be completed for ALL electing organizations
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36	
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37	
38 Total lobbying expenditures (add lines 36 and 37)	38	
39 Other exempt purpose expenditures	39	
40 Total exempt purpose expenditures (add lines 38 and 39)	40	
41 Lobbying nontaxable amount. Enter the amount from the following table — If the amount on line 40 is — The lobbying nontaxable amount is — Not over \$500,000	41	
Over \$500,000 but not over \$1,000,000		
Over \$1,000,000 but not over \$1,500,000		
Over \$1,500,000 but not over \$17,000,000		
Over \$17,000,000		
42 Grassroots nontaxable amount (enter 25% of line 41)	42	
43 Subtract line 42 from line 38. Enter -0- if line 42 is more than line 38	43	
44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38	44	

Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.

4-Year Averaging Period Under Section 501(h)(Some organizations that made a section 501(h) election do not have to complete all of the five columns below.
See the instructions for lines 45 through 50.)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
45 Lobbying nontaxable amount					
46 Lobbying ceiling amount (150% of line 45(a))					
47 Total lobbying expenditures					
48 Grassroots nontaxable amount					
49 Grassroots ceiling amount (150% of line 48(a))					
50 Grassroots lobbying expenditures					

Lobbying Activity by Nons electing Public Charities
(For reporting only by organizations that did not complete Part VI-A) (See the instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:	Yes	No	Amount
a Volunteers			
b Paid staff or management (include compensation in expenses reported on lines e through h.)			
c Media advertisements			
d Mailings to members, legislators, or the public			
e Publications, or published or broadcast statements			
f Grants to other organizations for lobbying purposes			
g Direct contact with legislators, their staffs, government officials, or a legislative body			
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means			
i Total lobbying expenditures (Add lines e through h.)			

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

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NO. 5561 P. 13

Schedule A (Form 990 or 990-EZ) 2003

DENVER & RIO GRANDE RAILROAD 84-1433680

Page 6

Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See the instructions.)

81 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

2) Transfers from the reporting organization to a noncharitable exempt organization of:

(1) Cash

(17) Other assets.....

In Other transactions:

(f) Sales or exchanges of assets with a noncharitable exempt organization

(f) Purchases of assets from a noncharitable exempt organization

(iii) Rental of facilities, equipment, or other assets

(iv) **Reimbursement arrangements.**

(v) Loans or loan guarantees, ...

(vi) Performance of services or membership or fundraising solicitations.

c Sharing of facilities, equipment, mailing lists, other assets, or paid employees

d If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received:

[illegible]

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(4)) or in section 527?

☐ Yes ☒ No

b If "Yes," complete the following schedule:

[illegible]

DEC. 30. 2004 1:23PM

ROSEMARY BECKWITH

NO. 5551 P. 14

Schedule B

(Form 990, 990-EZ, or 990-PF)

Department of the Treasury
Internal Revenue Service**Schedule of Contributors**Supplementary information for
line 1 of Form 990, 990-EZ and 990-PF (see instructions)

OMB No. 1545-0047

2003

Name of organization

Employer identification number

DENVER & RIO GRANDE RAILWAY**84-1433680**

Organization type (check one):

Filers of:

Section:

Form 990 or 990-EZ

☒ 501(c)(3) (enter number) organization☐ 4947(a)(1) nonexempt charitable trust not treated as a private foundation☐ 527 political organization

Form 990-PF

☐ 501(c)(3) exempt private foundation☐ 4947(a)(1) nonexempt charitable trust treated as a private foundation☐ 501(c)(3) taxable private foundation

Check if your organization is covered by the General Rule or a Special Rule. (Note: Only a section 501(c)(7), (8), or (10) organization can check box(es) for both the General Rule and a Special Rule — see instructions.)

General Rule --

- ☐ For organizations filing Form 990, 990-EZ, or 990-PF that received, during the year, \$5,000 or more (in money or property) from any one contributor. (Complete Parts I and II.)

Special Rules --

- ☐ For a section 501(c)(3) organization filing Form 990, or Form 990-EZ, that met the 33 1/3% support test of the regulations under sections 508(a)(1)/170(b)(1)(A)(vi) and received from any one contributor, during the year, a contribution of the greater of \$5,000 or 2% of the amount on line 1 of these forms. (Complete Parts I and II.)
- ☐ For a section 501(c)(7), (8), or (10) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, aggregate contributions or bequests of more than \$1,000 for use exclusively for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals. (Complete Parts I, II, and III.)
- ☐ For a section 501(c)(7), (8), or (10) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, some contributions for use exclusively for religious, charitable, etc., purposes, but these contributions did not aggregate to more than \$1,000. (If this box is checked, enter here the total contributions that were received during the year for an exclusively religious, charitable, etc., purpose. Do not complete any of the Parts unless the General Rule applies to this organization because it received nonexclusively religious, charitable, etc., contributions of \$5,000 or more during the year.) ▶ \$ _____

Caution: Organizations that are not covered by the General Rule and/or the Special Rules do not file Schedule B (Form 990, 990-EZ, or 990-PF), but they must check the box in the heading of their Form 990, Form 990-EZ, or on line 1 of their Form 990-PF, to certify that they do not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF).

For Paperwork Reduction Act Notice, see the Instructions for Form 990 and Form 990-EZ.

Schedule B (Form 990, 990-EZ, or 990-PF) (2003)

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NO. 5561 P. 15

Schedule B (Form 990, 990-EZ, or 990-PF) (2003)

Page 1 of 1 of Part I

Name of organization

DENVER & RIO GRANDE RAILWAY

Employer identification number

84-1433680

Contributors (See Specific Instructions.)

(a) No.	(b) Name, address, and ZIP + 4	(c) Aggregate contributions	(d) Type of contribution
1	DONALD H. SHANK EIN 55-7842549 20 N. BROADWAY Monte Vista CO 81144	\$ 57,703	Person ☒ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)
		\$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II if there is a noncash contribution.)

DEC. 30. 2004 1:23PM

ROSEMARY BECKWITZ

NO. 5561 P. 16

Form 4562

Depreciation and Amortization (Including Information on Listed Property)

OMB No. 1545-0173

Department of the Treasury
Internal Revenue Service

See separate instructions.

Attach to your tax return.

2003

Attachment
Sequence No. 57

Name(s) shown on return

DENVER & RIO GRANDE RAILWAY

Business or activity to which this form relates
FOR FORM 990Identifying number
84-1433680

Part I Election To Expense Certain Tangible Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1 Maximum amount. See the instructions for a higher limit for certain businesses.	1	100,000
2 Total cost of section 179 property placed in service (see the instructions)	2	
3 Threshold cost of section 179 property before reduction in limitation	3	400,000
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see the instructions.	5	100,000

(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6		

7 Listed property. Enter the amount from line 29	7	
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9 Tentative deduction. Enter the smaller of line 5 or line 8	9	
10 Carryover of disallowed deduction from line 13 of your 2002 Form 4562	10	
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 9 (see instructions)	11	100,000
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13 Carryover of disallowed deduction to 2004. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)

14 Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see the instructions)	14	
15 Property subject to section 168(f)(1) election (see the instructions)	15	
16 Other depreciation (including ACRS) (see the instructions)	16	

Part III MACRS Depreciation (Do not include listed property.) (See the instructions.)

Section A

17 MACRS deductions for assets placed in service in tax years beginning before 2003	17	2,273
18 If you are electing under section 168(f)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B -- Assets Placed in Service During 2003 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depr. (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property		400	07	HY	200DB	57
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	

Section C -- Assets Placed in Service During 2003 Tax Year Using the Alternative Depreciation System

20a Class life				S/L	
b 12-year			12 yrs.	S/L	
c 40-year			40 yrs.	MM	S/L

Part IV Summary (See the instructions.)

21 Listed property. Enter amount from line 28	21	
22 Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations -- see instr.	22	2,330
23 For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2003)

DEC. 30. 2004 1:24PM

ROSEMARY BECKWITH

NO. 5561 P. 19

Attachment 3: page 1 - 990 Page 3, Part IV, Line 63

Schedule of Loans - From Officers, Directors, Trustees, and Key Employees

Open to Public Inspection

For Calendar year 2009, or tax year period beginning

Name of Organization

DENVER & RIO GRANDE RAILWAY

Employer Identification Number

84-1433680

Leader's Name**Lender's Name**
DONALD SHANK

DIRECTOR

DIRECTOR

Original Amount

80.257

Balance Due

80-705

Date of Birth:

Revisions:

Revisions:

Int. Plaza

Security Provided by Borrower

Purpose of Loan

Description and Fair Market Value of the Consideration by the Lender

TOTAL BALANCE DUE	80,705
--------------------------	---------------

Call today for more information—Laser Systems, Knoxville, TN 37921/708-221

РЕШЕНИЕ

DEC. 30. 2004 1:24PM ROSEMARY BECKWITH

NO. 5561 P. 20

Schedule of Other Liabilities**Attachment 2: page 1 - 990 Page 3, Part IV, line 65****Open to Public****Inspection**

For calendar year 2003 or tax period beginning , and ending .

Name of Organization**DENVER & RIO GRANDE RAILWAY****Employer Identification Number****84-1433680****Description of Property****End of Year****NOTE-PAYABLE UNION PACIFIC****274,616****RESOLUTION 99-09****100,000****Page Totals 374,616**
Totals 374,616

DEC. 30. 2004 1.24PM

ROSEMARY BECKWITH

NO. 5561 P. 21

Form 8868 (12-2003)

Page 2

• If you are filing for an Additional (not automatic) 3-Month Extension, complete only Part II and check this box. ☒ **Additional (not automatic) 3-Month Extension of Time—Must File Original and One Copy.**

Note: Only complete Part II if you have already been granted an automatic 3-month extension on a previously filed Form 8868.

• If you are filing for an Automatic 3-Month Extension, complete only Part I (on page 1).

Type or print file by the extended due date for filing the return. See instructions.	Name of Exempt Organization DENVER & RIO GRANDE RAILWAY	Employer identification number 84-1433680
	Number, street, and room or suite no. If a P.O. box, see instructions. 1474 MAIN AVE SUITE 121	For IRS use only
	City, town or post office, state, and ZIP code. For a foreign address, see instructions. Durango CO 81301	

Check type of return to be filed (File a separate application for each return):

☒ Form 990	☐ Form 990-EZ	☐ Form 990-T (sec. 401(a) or 408(a) trust)	☐ Form 1041-A	☐ Form 5297	☐ Form 9870
☐ Form 990-BL	☒ Form 990-PF	☐ Form 990-T (trust other than above)	☐ Form 4720	☐ Form 6069	

STOP: Do not complete Part II if you were not already granted an automatic 3-month extension on a previously filed Form 8868.

- If the organization does not have an office or place of business in the United States, check this box. ☐
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) _____ . If this is for the whole group, check this box ☐ . If it is for part of the group, check this box ☐ and attach a list with the names and EINs of all members the extension is for.

- 4 I request an additional 3-month extension of time until 11-15-04, 2004.
- 5 For calendar year 2003, or other tax year beginning 2003, and ending 2003.
- 6 If this tax year is for less than 12 months, check reason: ☐ Initial return ☐ Final return ☐ Change in accounting period
- 7 State in detail why you need the extension: **ADDITIONAL TIME IS NEEDED TO OBTAIN ALL NECESSARY INFORMATION TO FILE A COMPLETE AND ACCURATE RETURN.**

- 8a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions. \$ 0
- b If this application is for Form 990-PF, 990-T, 4720, or 6069, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit and any amount paid previously with Form 8868. \$ 0
- c Balance Due. Subtract line 8b from line 8a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions. \$ 0

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form.

Signature Ruth Beckwith C/A Title 8/16/04 Date 8/16/04

Notice to Applicant—To Be Completed by the IRS

- ☒ We have approved this application. Please attach this form to the organization's return.
- ☐ We have not approved this application. However, we have granted a 10-day grace period from the later of the date shown below or the due date of the organization's return (including any prior extensions). This grace period is considered to be a valid extension of time for elections otherwise required to be made on a timely return. Please attach this form to the organization's return.
- ☐ We have not approved this application. After considering the reasons stated in item 7, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.
- ☐ We cannot consider this application because it was filed after the due date of the return for which an extension was requested.
- ☐ Other _____

EXTENSION APPROVED

Director _____ By SEP 1 2 2004 Date

Alternate Mailing Address — Enter the address if you want the copy of this application for an additional 3-month extension returned to an address different than the one entered above. _____ (OR REMISSION PROCESSING OFFICE)

Type or print	Name ROSEMARY BECKWITH & ASSOC CPA PC
	Number and street (include suite, room, or apt. no.) Or a P.O. box number 359 MAIN STREET STE 3
	City or town, province or state, and country (including postal or ZIP code) Grand Junction CO 81501

Exhibit No. 30
CDOT Grant Request

**Denver & Rio Grande Railway
Historical Foundation**
A COLORADO NOT-FOR-PROFIT CORPORATION
F.E.I.N. 84-1488680

June 14, 2002

Ms Laurie J. Blanz
Enhancement Program Manager
CDOT Region 5
3803 N. Main Ave., Suite 300
Durango, Colorado 81301

Dear Ms Blanz,

Enclosed are five copies of the Denver & Rio Grande Railway Historical Foundation Transportation Enhancements Funds Applications for the Period July 1, 2003 through June 30, 2005. We are submitting 4 separate requests all for various portions of our Master Plan. Each request is for the rehabilitation of infrastructure that is part of our Master Plan. We realize that the funding of these requests is currently outside of the CDOT Project Plan, and that heretofore the Railway Historical Foundation was not eligible due to the requirement to have a National Historical Registration. This requirement is met during this funds application period and we respectfully request to be included in the CDOT Project Plan. We hope funds for these requests will be able to fit into the available funds that CDOT Region 5 will have over the next few years.

The Railway Historical Foundation recognizes the funding restrictions that CDOT has to deal with, we want to work with you to determine what can be accomplished and to prioritize those funds to proceed in this process to completion. Our approach of dividing this major project into many useful and effective sub-projects should help in the effectiveness of that process.

We appreciate the procedure you are following and the difficulty in applying scarce resources to all the requests you will receive. We hope to be a positive part of your program and bring benefit through this program to all the citizens of Region 5. We wish you success in your efforts to secure funding for all of your projects.

Thank you

Sincerely,



Donald H. Shank
President and CEO

RECEIVED

JUN 14 2002

COLORADO STATE TRANSPORTATION
REC'D #6
PROGRAM ENGINEER

1474 Main Avenue, Suite 223
Tel (970) 259-9498

Durango, Colorado 81301
FAX (970) 259-0202

404
A

TRANSPORTATION ENHANCEMENT PROGRAM APPLICATION
Colorado Department of Transportation

Please type or print legibly

APPLICANT INFORMATION

1. ELIGIBLE APPLICANT AGENCY - Indicate ONE ☒ Municipality ☐ County ☐ State Agency ☐ Federal Agency ☐ Tribal Government			
2. AGENCY NAME Denver & Rio Grande Railway Historical Foundation		3. ADDITIONAL SPONSORS OR CO-SPONSORS Town Of South Fork	
4. CONTACT PERSON Don Shank		5. AGENCY MAILING ADDRESS 1474 Main Avenue, Suite 223	
6. PROJECT NAME Denver & Rio Grande Historic Railway Rehabilitation Project		7. PROJECT LOCATION/ADDRESS South Fork, Colorado	
8. PROJECT LIMITS (mileposts, intersecting roadways, rivers, other geographic features) To Creede, Colorado		9. PROJECT LENGTH 21 Miles	
10. COUNTY Rio Grande/Mineral		11. MUNICIPALITY South Fork	
12. ONE SENTENCE DESCRIPTION OF PROJECT Restore the Track and Ties between South Fork and Creede, Colorado		13. PROJECT CATEGORY - check all that apply	

14. TOTAL PROJECT COST \$8,094,240.00		15. AMOUNT OF FEDERAL FUNDS REQUESTED \$6,475,392.00 too high		16. PREVIOUS ENHANCEMENT FUNDS AWARDED None	
17. AMOUNT OF LOCAL MATCH FUNDS \$1,618,848.00		18. SOURCE OF LOCAL MATCH FUNDS DERG Historical Foundation		19. DATE LOCAL MATCH FUNDS ARE AVAILABLE November 2001	
20. AMOUNT OF OTHER FUNDING SECURED None		21. SOURCE OF OTHER FUNDING N/A		22. DATE OTHER FUNDING IS AVAILABLE N/A	

13. PROJECT CATEGORY - check all that apply					
PEDESTRIAN & BICYCLE ☐ Bicycle & pedestrian facilities ☐ Safety & educational activities for pedestrians & bicycles ☐ Conversion of abandoned railway corridors to trails			TRANSPORTATION AESTHETICS ☐ Acquisition of scenic easements & scenic areas ☐ Scenic Highway programs ☐ Landscaping & other scenic beautification ☐ Provision of tourist & welcome center facilities ☐ Control & removal of outdoor advertising		
HISTORIC PRESERVATION ☐ Acquisition of historic sites ☐ Historic highway programs ☐ Historic preservation ☐ Establishment of transportation museums ☐ Rehabilitation & operation of historic transportation buildings, structures or facilities ☐ Archeological planning & research			ENVIRONMENTAL MITIGATION ☐ Mitigation of water pollution due to highway runoff ☐ Reduction of vehicle-caused wildlife mortality		

REQUIRED INFORMATION

23. REQUIRED ATTACHMENTS - please label attachments accordingly					
☒ Attachment A - Description of proposed project ☒ Attachment B - Maps, plans and photographs ☒ Attachment C - Evidence of eligibility by project category ☒ Attachment D - Benefits of proposed project ☒ Attachment E - Environmental Review			☒ Attachment F - Budget and implementation schedule ☒ Attachment G - Proposed maintenance plans, agreements, covenants ☒ Attachment H - Resolutions of support and letters of approval ☒ Attachment I - Right-of-way acquisition or legal property description		

SIGNATURE

1. AUTHORIZED AGENCY REPRESENTATIVE Don Shank		TITLE President	
2. SIGNATURE 		DATE 06-14-02	

CDOT USE ONLY

3. CDOT RTO OR DESIGNEE/TITLE/DATE		SEP #		PROJECT #	
4. TRANSPORTATION ENHANCEMENT PROGRAM MANAGER/TITLE/DATE		PROJECT NAME			
5. CDOT RESIDENT OR PROGRAM ENGINEER/TITLE/DATE		☐ Approved ☐ Disapproved			

Submit completed application & supporting documentation to the CDOT Transportation Enhancement Program Manager in your Region.

Appendix D

TRANSPORTATION ENHANCEMENT PROGRAM APPLICATION
Colorado Department of Transportation

Please type or print legibly

APPLICANT INFORMATION

1. ELIGIBLE APPLICANT AGENCY - indicate ONE ☒ Municipality ☐ County ☐ State Agency ☐ Federal Agency ☐ Tribal Government			
2. AGENCY NAME Denver & Rio Grande Railway Historical Foundation		3. ADDITIONAL SPONSORS OR CO-SPONSORS Town Of South Fork	
4. CONTACT PERSON Don Shank		5. PHONE (970) 259-9498	
6. AGENCY MAILING ADDRESS 1474 Main Avenue, Suite 223		7. CITY, STATE, ZIP Durango CO 81301-5182	

PROJECT DESCRIPTION

8. PROJECT NAME Denver & Rio Grande Historic Railway Rehabilitation Project		
9. PROJECT LOCATION/ADDRESS South Fork, Colorado		
10. PROJECT LIMITS (mileposts, intersecting roadways, etc., other geographic features) To Creede, Colorado		
11. COUNTY Rio Grande/Mineral	12. MUNICIPALITY South Fork	13. PROJECT LENGTH 21 Miles
14. ONE SENTENCE DESCRIPTION OF PROJECT Restore the Bridges between South Fork and Creede on the D&RG line.		

ELIGIBILITY

15. PROJECT CATEGORY - check all that apply	
PEDESTRIAN & BICYCLE ☐ Bicycle & pedestrian facilities ☐ Safety & educational activities for pedestrians & bicycles ☐ Conversion of abandoned railway corridors to trails	TRANSPORTATION AESTHETICS ☐ Acquisition of scenic easements & scenic areas ☐ Scenic highway programs ☐ Landscaping & other scenic beautification ☐ Provision of tourist & welcome center facilities ☐ Control & removal of outdoor advertising
HISTORIC PRESERVATION ☐ Acquisition of historic sites ☐ Scenic highway programs ☐ Historic preservation ☐ Establishment of transportation museums ☐ Rehabilitation & operation of historic transportation buildings, structures or facilities ☐ Archeological planning & research	ENVIRONMENTAL MITIGATION ☐ Mitigation of water pollution due to highway runoff ☐ Reduction of vehicle-caused wildlife mortality

FUNDING

16. TOTAL PROJECT COST \$2,075,500.00	17. AMOUNT OF FEDERAL FUNDS REQUESTED \$1,660,400.00	18. PREVIOUS ENHANCEMENT FUNDS AWARDED None
19. AMOUNT OF LOCAL MATCH FUNDS \$415,100.00	20. SOURCE OF LOCAL MATCH FUNDS D&RG Historical Foundation	21. DATE LOCAL MATCH FUNDS ARE AVAILABLE November 2001
22. AMOUNT OF OTHER FUNDING SECURED None	23. SOURCE OF OTHER FUNDING N/A	24. DATE OTHER FUNDING IS AVAILABLE N/A

REQUIRED INFORMATION

25. REQUIRED ATTACHMENTS - please label attachments accordingly	
☒ Attachment A - Description of proposed project ☒ Attachment B - Maps, plans and photographs ☒ Attachment C - Evidence of eligibility by project category ☒ Attachment D - Benefits of proposed project ☒ Attachment E - Environmental Review	☒ Attachment F - Budget and implementation schedule ☒ Attachment G - Proposed maintenance plans, agreements, covenants ☒ Attachment H - Resolutions of support and letters of approval ☒ Attachment I - Right-of-way acquisition or legal property description

SIGNATURE

26. AUTHORIZED AGENCY REPRESENTATIVE Don Shank	27. TITLE President
28. SIGNATURE 	29. DATE 06-14-02

CDOT USE ONLY

30. PROJECT OR DESIGNER/TITLE/DATE	31. STEP #	32. PROJECT #
33. TRANSPORTATION ENHANCEMENT PROGRAM MANAGER/TITLE/DATE	34. PROJECT NAME	
35. CDOT RESIDENT OR PROGRAM ENGINEER/TITLE/DATE	36. ☐ Approved ☐ Disapproved	

Submit completed application & supporting documentation to the CDOT Transportation Enhancement Program Manager in your Region.
Appendix D

TRANSPORTATION ENHANCEMENT PROGRAM APPLICATION
Colorado Department of Transportation

Please type or print legibly

APPLICANT INFORMATION

1. ELIGIBLE APPLICANT AGENCY - Indicate ONE ☒ Municipality ☐ County ☐ State Agency ☐ Federal Agency ☐ Tribal Government			
2. AGENCY NAME Denver & Rio Grande Railway Historical Foundation		3. ADDITIONAL SPONSORS OR CO-SPONSORS Town Of South Fork	
4. CONTACT PERSON Don Shank		TITLE President	
5. AGENCY MAILING ADDRESS 1474 Main Avenue, Suite 223		PHONE (970) 259-9498	ZIP 81301-5182
CITY Durango		STATE CO	

PROJECT DESCRIPTION

1. PROJECT NAME Denver & Rio Grande Historic Railway Rehabilitation Project		
2. PROJECT LOCATION/ADDRESS South Fork, Colorado		
3. PROJECT LIMITS (Intersects, interesting roadways, areas, other geographic features) To Creede, Colorado		4. PROJECT LENGTH 21 Miles
5. COUNTY Rio Grande/Mineral	6. MUNICIPALITY South Fork	
7. ONE SENTENCE DESCRIPTION OF PROJECT Construct a Railroad Maintenance Facility		

ELIGIBILITY

3. PROJECT CATEGORY - check all that apply PEDESTRIAN & BICYCLE ☐ Bicycle & pedestrian facilities ☐ Safety & educational activities for pedestrians & bicyclists ☐ Conversion of abandoned railway corridors to trails STORIC PRESERVATION ☐ Acquisition of historic sites ☐ Scenic highway programs ☐ Historic preservation ☐ Establishment of transportation museums ☐ Rehabilitation & operation of historic transportation buildings, structures or facilities ☐ Archaeological planning & research		TRANSPORTATION AESTHETICS ☐ Acquisition of scenic easements & scenic areas ☐ Scenic highways programs ☐ Landscaping & other scenic beautification ☐ Provision of tourist & welcome center facilities ☐ Control & removal of outdoor advertising ENVIRONMENTAL MITIGATION ☐ Mitigation of water pollution due to highway runoff ☐ Reduction of vehicle-caused wildlife mortality
--	--	--

FUNDING

TOTAL PROJECT COST \$125,650.00	15. AMOUNT OF FEDERAL FUNDS REQUIRED \$100,520.00	16. PREVIOUS ENHANCEMENT FUNDS AWARDED None
AMOUNT OF LOCAL MATCH FUNDS \$25,130.00	18. SOURCE OF LOCAL MATCH FUNDS DRRG Historical Foundation	19. DATE LOCAL MATCH FUNDS ARE AVAILABLE November 2001
AMOUNT OF OTHER FUNDING SECURED None	21. SOURCE OF OTHER FUNDING N/A	22. DATE OTHER FUNDING IS AVAILABLE N/A

REQUIRED INFORMATION

REQUIRED ATTACHMENTS - please label attachments accordingly

Attachment A - Description of proposed project	Attachment F - Budget and implementation schedule
Attachment B - Maps, plans and photographs	Attachment G - Proposed maintenance plans, agreements, covenants
Attachment C - Evidence of eligibility by project category	Attachment H - Resolutions of support and letters of approval
Attachment D - Benefits of proposed project	Attachment I - Right-of-way acquisition or legal property description
Attachment E - Environmental Review	

SIGNATURE

AUTHORIZED AGENCY REPRESENTATIVE Don Shank	TITLE President
SIGNATURE 	DATE 06-14-02

CDOT USE ONLY

1. RTO OR DESIGNEE/TITLE/DATE	RTP #	PROJECT #
2. TRANSPORTATION ENHANCEMENT PROGRAM MANAGER/TITLE/DATE	PROJECT NAME 407	
3. RESIDENT OR PROGRAM ENGINEER/TITLE/DATE	☐ Approved ☐ Disapproved	

Mail completed application & supporting documentation to the CDOT Transportation Enhancement Program Manager in your Region.
enclose D

TRANSPORTATION ENHANCEMENT PROGRAM APPLICATION
Colorado Department of Transportation

Please type or print legibly

APPLICANT INFORMATION

1. ELIGIBLE APPLICANT AGENCY - Indicate ONE ☒ Municipality ☐ County ☐ State Agency ☐ Federal Agency ☐ Tribal Government			
2. AGENCY NAME Denver & Rio Grande Railway Historical Foundation		3. ADDITIONAL SPONSORS OR CO-SPONSORS Town Of South Fork	
4. CONTACT PERSON Don Shank		TITLE President	PHONE (970) 259-9498
5. AGENCY MAILING ADDRESS 1474 Main Avenue, Suite 223		CITY Durango	STATE CO ZIP 81301-5182

PROJECT DESCRIPTION

6. PROJECT NAME Denver & Rio Grande Historic Railway Rehabilitation Project		
7. PROJECT LOCATION/ADDRESS South Fork, Colorado		
8. PROJECT LIMITS (mileposts, intersecting roadways, rivers, other geographic features) To Creede, Colorado	9. COUNTY Rio Grande/Mineral	10. MUNICIPALITY South Fork
11. PROJECT LENGTH 21 Miles		12. ONE SENTENCE DESCRIPTION OF PROJECT Acquire Right-of-Way between South Fork and Monte Vista, Colorado

ELIGIBILITY

13. PROJECT CATEGORY - check all that apply PEDERIAN & BICYCLE ☐ Bicycle & pedestrian facilities ☐ Safety & educational activities for pedestrians & bicycles ☐ Conversion of abandoned railway corridors to trails HISTORIC PRESERVATION ☐ Acquisition of historic sites ☐ Scenic highway programs ☐ Historic preservation ☐ Establishment of transportation museums ☐ Rehabilitation & operation of historic transportation buildings, structures or facilities ☐ Archeological planning & research	TRANSPORTATION AESTHETICS ☐ Acquisition of scenic easements & scenic areas ☐ Scenic highway programs ☐ Landscaping & other scenic beautification ☐ Provision of tourist & welcome center facilities ☐ Control & removal of outdoor advertising ENVIRONMENTAL MITIGATION ☐ Mitigation of water pollution due to highway runoff ☐ Reduction of vehicle-caused wildlife mortality
--	---

FUNDING

14. TOTAL PROJECT COST \$1,000,000.00	15. AMOUNT OF FEDERAL FUNDS REQUESTED \$800,000.00	16. PREVIOUS ENHANCEMENT FUNDS AWARDED None
17. AMOUNT OF LOCAL MATCH FUNDS \$200,000.00	18. SOURCE OF LOCAL MATCH FUNDS D&RG Historical Foundation	19. DATE LOCAL MATCH FUNDS ARE AVAILABLE November 2001
20. AMOUNT OF OTHER FUNDING SECURED None	21. SOURCE OF OTHER FUNDING N/A	22. DATE OTHER FUNDING IS AVAILABLE N/A

REQUIRED INFORMATION

23. REQUIRED ATTACHMENTS - please label attachments accordingly ☒ Attachment A - Description of proposed project ☒ Attachment B - Maps, plans and photographs ☒ Attachment C - Evidence of eligibility by project category ☒ Attachment D - Benefits of proposed project ☒ Attachment E - Environmental Review		☒ Attachment F - Budget and implementation schedule ☒ Attachment G - Proposed maintenance plans, agreements, covenants ☒ Attachment H - Resolutions of support and letters of approval ☒ Attachment I - Right-of-way acquisition or legal property description
--	--	---

SIGNATURE

1. AUTHORIZED AGENCY REPRESENTATIVE Don Shank	TITLE President
2. SIGNATURE <i>Don Shank</i>	DATE 06-14-02

CDOT USE ONLY

3. DOT USE OR DESIGNEE/TITLE/DATE	STP #	PROJECT #
4. TRANSPORTATION ENHANCEMENT PROGRAM MANAGER/TITLE/DATE	PROJECT NAME 408	
5. DOT RESIDENT OR PROGRAM ENGINEER/TITLE/DATE	☐ Approved ☐ Disapproved	

Submit completed application & supporting documentation to the CDOT Transportation Enhancement Program Manager in your Region.
Appendix D

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION**Executive Director****Tom Norton****4201 E. Arkansas Avenue, Room 262****Denver, CO 80222****(303) 757-9201****(303) 757-9656 Fax****August 23, 2002**

**Mr. Don Shank, President
Denver and Rio Grande Railway Foundation
1474 Main Street, Suite 223
Durango, Co 81301-5195**

Dear Mr. Shank:

I have reviewed your letter to me dated May 30, 2002, as well as your letters of May 16, 2002 to Richard Reynolds and June 14, 2002 to Laurie Blanz. It would be beneficial to clarify several initial points. The selection process for enhancement projects calls for the submission of applications, a review by CDOT staff, and presentation to the Transportation Planning Region for their prioritization. Unfortunately, this process was not followed at the San Luis Valley Transportation Planning Region meeting where the TPR voted to award funding to your railroad, prior to your submission of any application. Had you submitted the application and received staff review, perhaps much of this confusion could have been avoided.

The enhancement program guidelines adopted by CDOT, dated October 10, 2000, potentially allows for the funding of this type of project in the activities of 6. Historic Preservation and 7. Rehabilitation and Operation of Historic Transportation Buildings, Structures, or Facilities (Appendix A). As outlined in these guidelines, all projects must fall into one of the following four project categories: Pedestrian and Bicycle Facilities; Historic Preservation; Transportation Aesthetics; Environmental Mitigation. The project you suggest most appropriately falls in the category of Historic Preservation. These guidelines further state that the Transportation Enhancement Program does not normally fund rehabilitation, restoration, or stabilization work on privately-owned resources. Your railroad is privately owned. In reading the guidelines under the two activities listed above, any application is to be reviewed by the State Historic Preservation Officer or the local landmark commission before the submission of any application. Once again this was not done.

It is our understanding that on August 2, 2002, the Colorado Historic Preservation Review Board considered your request for the Creede Branch of the Denver & Rio Grande Railroad to be designated as historic and recommended the inclusion of the railroad on the National Register of Historic Places. This nomination to the National Park Service covers the railroad right-of-way, from South Fork to Creede and generally 50 feet from the track centerline and 100 feet from the

AUG-29-2002 10:30AM FROM:CDOT EXECUTIVE OFFICES

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track centerline in the Creede area. CDOT has been informed that the Park Service should respond to this nomination in the next 60 days. For both activity 6 and 7 projects, as detailed above, inclusion in the State or National Registers of Historic Places or designation as a landmark or historic district by a local government or a landmark commission is a prerequisite to receiving enhancement funding.

In further reviewing the Enhancement Guidelines, there are a number of questions that remain unanswered in the application you submitted following the Transportation Planning Region meeting, including: Purpose of the project; Quality of the project; Cost of the project; Environmental sensitivity; Implementation and maintenance; and Local support. We will need responses to these questions in order to fully evaluate your application.

Given the purpose of the enhancement program and the above guidelines, a concern exists over awarding your railroad enhancement funding and the appropriateness of expending of federal dollars. Public funding is not normally expended on a privately owned facility, as acknowledged by the enhancement guidelines. The Colorado Constitution, Article XI, Section 2, generally prohibits the expenditure of public funds on private corporations. As trustee for federal funds, CDOT needs assurance that this will be a wise expenditure in terms of benefit to the public and assurance that this railroad will, in fact, operate and remain open to the public on a not-for-profit basis, again a requirement of the enhancement guidelines. To this end, proof of your financial ability to operate this railroad in the form of a bond or letter of credit, subject to the approval of CDOT, sufficient to cover the costs of track/structure rehabilitation, rolling stock, maintenance and operating facilities will be necessary prior to the commitment of public funds.

Enhancement project applications are received only from government agencies, although a partnership with a private, non-profit agency is allowed. The government entity must be involved in a lead role and have the authority to contract with the State. We will need a resolution from the Town of South Fork attesting to their lead role in this project and a statement of their commitment to the long-term operation of this facility.

You have submitted four additional enhancement funding applications in the name of the Denver & Rio Grande Railway Historical Foundation, requesting over \$9 million in federal funding for track and bridge rehabilitation, maintenance facility construction, and purchase of right-of-way. Please again note that project applications are only accepted from federal, tribal, state, county or municipal governmental agencies. Private, non-profit, and civic organizations must partner with government agencies to develop project applications. Each of these applications will be reviewed against the above guidelines.

With respect to the statements in your letter relative to the maintenance of railroad/highway crossing agreements, and also the statement in your May 16, 2002 letter addressed to Richard Reynolds, that 'perhaps DRGHF will be forced to close the crossings as they will no longer be covered by these agreements', I can assure you this issue has been reviewed by the State of Colorado Attorney General's Office and any such attempt to interfere with the operation of State Highway 149 will be countered with all available legal recourse, including the exercise of eminent domain.

In summary, CDOT staff review of all applications must occur prior to the review by the Transportation Planning Region and their priority recommendations; the railroad must receive historical designation or listing on the State or National Register of Historic Places; applications

AUG-03-2006 10:00AM FROM: JUI ERLUITE OFFICE

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must be submitted by a government agency; there must be a resolution from the government agency of continuing support for this project; there must be assurance that you have sufficient resources to operate this railroad and render the public expenditure of funds appropriate. Please work with Laurie Blanz with our Region 5 Engineering Office in the provision of the requested information. Every effort will be made to expedite the review of your application and the appropriateness of expending public funds.

Sincerely,



Tom Norton

Transportation Commissioner Steve Parker
First Assistant Attorney General Harry Morrow
SLVTPR Chair Vern Rominger
Richard Reynolds

Blanz, Laurie

From: Donald Shank [drghf@frontier.net]
Date: Tuesday, September 24, 2002 12:05 PM
To: Blanz, Laurie
Subject: Re: Denver & Rio Grande Railway Historical Foundation enhancement application

Hi Laurie,

Per conversations with Terry Whelan, Town Manager of South Fork and our atty, DRGHF is hereby withdrawing from the CDOT Enhancement Program. The demands placed upon us are simply unrealistic. Case-in-point, The final requirement from Tom Norton for a letter of credit sufficient to cover rehab, equipment, maintenance and operation. If we had that we wouldn't need enhancement funds, would we? Additionally, South Fork cannot provide a resolution stating they accept responsibility for the long-term operation of the facility (railroad). That is unrealistic.

In view of these demands, DRGHF formally withdraws its applications. Thank you Laurie. I am sure you more than understand.

Don Shank
Executive Director, DRGHF

Blanz, Laurie writes:

- > Don,
- >
- > This is a followup to the SLV Regional Planning Commission meeting that was held on August 27th and our phone conversation yesterday. Please provide the following information to me by Oct. 14th, so I have time to review it before the next RPC meeting on Oct. 21st for the selection and prioritization of projects:
- >
- > * The applications must be sponsored by a governmental entity.
- > * Provide more detailed descriptions of the individual projects.
- > * State the enhancement activity under which each proposed project is eligible.
- > * Provide the status of your efforts to list the railroad on the National Register of Historic Places.
- > * Provide revised, reasonable funding requests, taking into consideration the limited Region 5 enhancement funding.
- > * Provide detailed cost estimates.
- > * Provide an implementation schedule for the proposed projects, as well as the start date of railroad operation.
- > * Provide a statement that the local agency will provide all required environmental clearances.
- > * Attach a resolution of support from the Town of South Fork: 1) attesting to their lead role in the project, and 2) a statement that they are responsible for the long-term operation of the facility.
- Provide letters of support from Creede.
- Attachment I says the railroad property belongs to Union Pacific Railroad. State whether or not this is correct and provide the name of the owner, if Attachment I is incorrect.
- > * Provide a letter of credit or bond, subject to the approval by CDOT, sufficient to cover the costs of

track/structure rehabilitation, rolling stock, and maintenance and operation of the facilities, as required by Tom Norton in his letter to you dated August 23, 2002.

>

> Thank you and please call me at (970)385-1435 with any questions,
> Laurie

>

>

411

Exhibit No. 31
Charitable Organization Suspension

Gray, Juliet

From: Russell Subiono [Russell.Subiono@SOS.STATE.CO.US] on behalf of Public Charitable [Public.Charitable@SOS.STATE.CO.US]
Sent: Thursday, December 06, 2007 3:05 PM
To: Gray, Juliet
Cc: Public Charitable
Subject: RE: Charitable registration status

Juliet,

This organization's charitable registration, which allows them to fundraise in Colorado or receive donations from people in Colorado, went into suspension on 2/4/2004 for failure to file the renewal registration that reports information from the 2002 fiscal year and is currently still in suspension.

Regards,

Russell K. Subiono

Charities Program Assistant

Licensing Division

Colorado Secretary of State

303 894-2200 ext 6421

303 869-4871 (fax)

Russell.Subiono@sos.state.co.us

www.sos.state.co.us

You should not consider any guidance or assistance that you may receive from this office to be legal, business or tax advice. Any such guidance or assistance is no substitute for the informed advice of competent legal, business, tax or other professional counsel. If you have substantive questions, you are encouraged to consult your private attorney, business or tax advisor, or other professional. The employees of the Colorado Secretary of State's office are not authorized to provide legal, business or tax advice.

From: Gray, Juliet [mailto:jgray@akingump.com]

Sent: Thursday, December 06, 2007 12:11 PM

To: Russell Subiono

Subject: Charitable registration status

Dear Russell Subiono,

I just left a voicemail with you in regards to checking on the registration status of a charitable organization, the Denver & Rio Grande Railway Historical Foundation. The Colorado Charitable Registration number for this organization is 20023005766. According to the online database, this organization's status has been suspended. Not knowing how up to date the website is, I just want to be sure that they did not recently refile.

I would appreciate it if you could let me know the current status of this organization.

Thank you very much for your assistance.

Best regards,

Juliet Gray

12/12/2007

343

Juliet Gray*

Law Clerk

Akin Gump Strauss Hauer & Feld LLP

1333 New Hampshire Avenue, N W

Washington, D C 20036-1564

202.887.4334 (direct)

202.887 4288 (fax)

jgray@akingump.com

*Not admitted to practice Practicing under the supervision of partners of Akin Gump Strauss Hauer & Feld LLP

IRS Circular 230 Notice Requirement: This communication is not given in the form of

The information contained in this e-mail message is intended only for the personal a

Exhibit No. 32
City's Requests for Form 990s

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

RONALD M. JOHNSON
202 887 4114/fax 202 887 4288
rmjohnson@akingump.com

August 1, 2007

VIA OVERNIGHT DELIVERY

Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation
20 N. Broadway Street
Monte Vista CO 81144

Re. Form 990's

Dear Mr. Shank:

I am writing on behalf of the City of Creede to once again request that the Denver & Rio Grande Railway Historical Foundation provide it with copies of Form 990's that the Foundation has filed for the years 2003 through 2005 and now 2006 as well, since it should be available. The City previously requested that the Foundation provide copies of its Form 990's by letters dated January 30, 2007 and March 5, 2007 from Clyde Dooley, City Manager, to you, as President and Executive Director of the Foundation. I understand that Clyde has also asked you for these copies during a later visit by you to the Creede Town Hall.

As you know, the City is pursuing an application for adverse abandonment of the Foundation's track in the city limits. The City wants to have the most up to date and accurate information on the Foundation's finances that is publicly available. By law the Foundation is required to furnish copies of its Form 990's within 30 days of a request. This is part of the responsibility of being a Section 501(c)(3) tax-exempt organization, which is what the Foundation holds itself out to be. I attach to this letter a copy of information from the Internal Revenue Service, which explains the Foundation's obligation to furnish the requested tax returns to the City.

**AKIN GUMP
STRAUSS HAUER & FELD LLP**
Attorneys at Law

Donald H. Shank
August 1, 2007
Page 2

Please send copies of the Foundation's Form 990's to the City Manager at the following address.

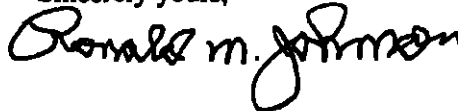
Clyde Dooley, City Manager
City of Creede
PO Box 457
Creede, CO 81130

Or, you could drop copies off at the Creede Town Hall during one of your visits to Creede.

Given the Foundation's prior lack of response, it is conceivable that you will ignore this request as well. If the City has not received by August 17, 2007 copies of Form 990's for years ending 2003, 2004, 2005, and 2006, the City will notify the IRS and appropriate Colorado state authorities of the Foundation's failure to comply with its legal obligations to furnish information to the public. The IRS can impose a penalty of \$20 per each day that the Foundation refuses to make available its Form 990's, up to a maximum fine of \$10,000.

It may be that the Foundation has not filed Form 990's for some years because its revenues were less than \$ 25,000 for a given year. In such circumstances, a 501(c)(3) organization may not be required to file a Form 990. If that is the reason that the Foundation does not provide a Form 990 for a requested year, please so state.

Sincerely yours,



An attorney for the City of Creede

Enclosures

cc Clyde Dooley, City Manager

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION

FEDERAL TAX ID #: 84-1433680

COLORADO CHARITABLE REGISTRATION #: 20023005766

August 28, 2007

Clyde Dooley
Creede City Manager
P.O. Box 457
Creede, CO 81130

Dear Mr. Dooley:

This letter of response is two-fold. First, it is in response to your request for production of our Foundation's tax records, more specifically, Form 990's for tax years 2003, 2004, 2005 and 2006. These will be forwarded to you in due course.

Our Foundation has engaged the services of Denise Ransford since our incorporation date of May 1997 as bookkeeper and accountant. She has maintained our books and kept all financial records for day-to-day and year-end reporting.

A few years ago, Denise was involved in a very bitter divorce. It is my understanding that she endured physical abuse and subsequent threats of bodily harm. As a result, she relocated and was late in filing our Form 990 for tax year 2003. Our Foundation received a penalty for late filing and she lacked the financial wherewithal to make restitution to IRS. Our Foundation advanced the initial installment, which I only recently learned never made it to IRS, nor did the balance she was supposed to pay. This only recently came to light.

Sometime within the past few months, Denise has disappeared. The Accounting Firm of Miller-Stranger of Grand Junction employed Denise and has to date conducted an exhaustive search for her via every means possible with no positive results.

Denise is in possession of all our Foundation's financial records, just as she is for a number of other clients in this same predicament. I have spoken several times with IRS and have made verbal record of this situation. I am securing a police report reflecting her disappearance, including that of our records and the first installment of our 2003 penalty.

This is a serious situation for us and even more so for her. These facts are *all of record* with IRS and will be worked through within the coming sixty days. We are literally reconstructing the records for 2006 and securing copies of our 990's for the previous years through IRS Form 4506-A. Once secured, we will forward the requested years to you.

FOUNDATION OFFICE: 20 N. BROADWAY ST., MONTE VISTA, CO 81144
TEL: 719-852-7000 FAX: 719-852-5533 Email (temp): dhshank@yahoo.com

Thank you in advance for your understanding. I apologize for any inconvenience this may have caused you or your attorney, Ronald M. Johnson of Akin Gump. I will be forwarding a copy of this to him concurrently. Unlike Mr. Johnson's bold inference, our Foundation is *not* ignoring your request for production of tax records. To the contrary, we have been making every attempt to secure the same from Ms. Ransford, obviously to no avail. Given the fact that our Foundation was a personal client of hers and not the accounting firm of Miller-Stranger that employed, everything was in her personal possession. This also includes my personal information. Once again, you'll have all the 990's within sixty days.

The second topic I'm responding to is regarding the grade crossings within Creede. I am in receipt of *"your"* August 23rd letter.

At this time nothing has transpired to alter our belief and legal right to continue rehabilitation of the *entire* Creede Branch. In a rather lengthy discussion with counsel and the CO Public Utilities Commission, we have concluded that our Foundation will continue with the rehabilitation of the *line* including clearing the grade crossings within the city limits of Creede. We will remove the asphalt and other material covering the tracks to expose the rail and flangeway thus rendering the tracks navigable. We have agreed to initially stand the cost of the clearing the surface of the crossings, subject to the decision of the STR regarding your filing of the adverse abandonment action. If the City of Creede prevails in that action, we will absorb the costs involved to clear those crossings. If the Foundation prevails, the City of Creede will reimburse the Foundation for all costs to open those crossings and will honor the crossing contracts as written.

Though several inaccuracies were present in *your* August 23rd letter, they will be responded to at a later date.

Please accept my apology regarding the production of our tax records. I'm certain you can empathize with our shock and dismay. We will be providing them in the coming weeks.

Thank you.

Sincerely,



Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation

CC: Tom McFarland, Esq.
Ronald M. Johnson, Esq. via facsimile and USPS Certified Mail

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

RONALD M. JOHNSON
202 887 4114/fax 202 887 4288
rmjohnson@akingump.com

September 5, 2007

VIA OVERNIGHT DELIVERY

Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation
20 N. Broadway Street
Monte Vista CO 81144

Re. Form 990's

Dear Mr. Shank:

I am responding to your letter dated August 28, 2007, which you faxed to Clyde Dooley, City Manager of Creede, and myself on that same date.

It is regrettable about Ms. Denise Ransford's unfortunate circumstances, as you describe them, but, at the risk of sounding judgmental, it was rather careless for the Foundation not to retain copies of its own Form 990's and financial records, if for no other reasons than to comply with IRS requirements for record retention and to be prepared to give an accounting of the Foundation's activities. Be that as it may, your explanation of why the Foundation has only just discovered that it is unable to make available its Form 990's for 2003 through 2006 raises some questions.

The City has been requesting copies of the Foundation's tax forms for more than six months. Why are you just now discovering that Ms. Ransford has disappeared? I gather from your August 28 letter that you no made no attempt to comply with the City's previous requests to review the Foundation's Form 990's until I wrote you on August 1, 2007. When did you speak with the IRS about the disappearance of Ms. Ransford and the Foundation's records? Do you have copies of any letters, e-mails between or other communication between the Foundation and IRS to verify your description of events?

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

Donald H. Shank
September 5, 2007
Page 2

Another possible explanation for why the Foundation has not produced any Form 990's for years after 2003 is that it did not file any. After receiving your letter, I checked the IRS Exempt Organizations Master List, which is an on-line data base maintained by the IRS of tax filings by charitable organizations. According to the IRS database, as of July 30, 2007, the Foundation had not filed any Form 990's since the Form 990 that it filed for 2003. You indicate that you are seeking copies of the Foundation's Form 990's for the years 2003, 2004, and 2005 by filing IRS Form 4506-A. That will not be fruitful if the Foundation has not been making tax filings for those years.

While you indicate that Ms. Ransford prepared all of the Foundation's Form 990's which the Foundation did file, that does not appear to be correct. The Foundation's Form 990 for 2003 and request for extension of time to file an amended Form 990 for that year show that they were prepared and signed by the accounting firm of Rosemary Beckwith & Associates of Grand Junction, Colorado. Have you checked with that accounting firm to see if it has copies of the Foundation's Form 990's?

I look forward to your reply.

Sincerely yours,



cc: Clyde Dooley, City Manager
Thomas McFarland, Esq.

Exhibit No. 33
IRS Master List

**Exempt Information for
DENVER AND RIO GRANDE RAILWAY HISTORICAL FOUNDATION**
Data from the IRS Exempt Organizations Master List, released on 07/30/2007

DENVER AND RIO GRANDE RAILWAY HISTORICAL FOUNDATION
DURANGO RAILROAD MUSEUM
In Care of DONALD H SHANK PRES
20 N BROADWAY ST
MONTE VISTA, CO 81144-1166

Employer Identification Number: 84-1433680

Code Section Classification: Section 501(c)(3) -- Charities

Private Foundation Indicator: Organization which receives a substantial part of its support from a governmental unit or the general public

Asset Amount: \$670,192

Assets Code: 500,000 to 999,999

Income Amount: \$59,701

Income Code: 25,000 to 99,999

Revenue Amount: \$59,701

Ruling Date: December 2001

Type of Entity: Corporation

Classification: Charitable Organization

Principal Activity: 170(b)(1)(A)(vi) determinations, Museum, zoo, planetarium, etc.

Deductibility of Contributions: Contributions are deductible

Group Affiliation: This organization is an independent organization or an independent auxiliary (i.e., not affiliated with a National, Regional or Geographic grouping of organizations)

Accounting Period: December

Tax Period of Latest Return Filed: December 2003

Filing Requirements: 990 or 990EZ return (Income exceeds \$25,000)

Advance Ruling Expiration Date: Not Available

**National Taxonomy of Exempt Entities Classification: A99 - Arts, Culture, and Humanities
NE C**

Copyright 2007 Tax Analysts

Exhibit No. 34

1965 Deed



State of Colorado

PATENT No. 7336

STATE OF COLORADO

PATENT

In the form of a Quit Claim Deed

PAYMENT NO. 7336

County of
of the State
conveyance
situate in &

THIS DEED, Made this 17th day of August in the year of our Lord one thousand nine hundred and sixty-five, between the STATE OF COLORADO, of the first part, and the CITY OF CRESCADE, Colorado, of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of SIXTY AND NO/100 Dollars (\$60.00), to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remise, released, sold, conveyed and QUIT CLAIMED, and by these presents does remise, release, sell, convey and QUIT CLAIM unto the said party of the second part and its assigns, forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described land situate, lying and being in the County of Mineral, and State of Colorado, to-wit:

TOWNSHIP FORTY-TWO (42) NORTH - RANGE ONE (1) WEST OF THE NEW MEXICO PRINCIPAL MERIDIAN

SECTION THIRTY-SIX (36): Tract Number Five (5): Lot Twenty (20), Block Sixteen (16), South Crescades. (Subject to Right of Way No. 970-9 to the City of Crescades.)

Tract Number Six (6): Lot Eleven (11) and Lot Twenty (20), Block Nineteen (19), South Crescades. (Subject to Right of Way No. 970-9 to the City of Crescades.)

Tract Number Eight (8): Lot Eleven (11) and Lot Twenty (20), Block Twenty-two (22), South Crescades. (Subject to Right of Way No. 970-9 to the City of Crescades.)

Tract Number Fourteen (14): Lots Sixteen (16) to Twenty (20) inclusive, Block Thirty (30), South Crescades. (Subject to Right of Way No. 970-9 to the City of Crescades.)

Tract Number Fifty-six (56): All streets, avenues and alleys shown on the plats of Crescades and South Crescades, and all unplatted areas within the boundaries of said town, within Section 36, Township 42 North, Range 1 West of the New Mexico Principal Meridian, not included in any other patents or conveyances from the State of Colorado.

for the sum

in such sum

and to

mine as a

and to

RESERVING, however, to the State of Colorado, all rights to any and all minerals, ores and metals of any kind and character, and all coal, asphaltum, oil, gas or other like substance in or under said land, the right of ingress and egress for the purpose of mining, together with enough of the surface of the same as may be necessary for the proper and convenient working of such minerals and substances, Subject to any and all assessments or rights of way heretofore legally obtained and now in full force and effect, if any there be.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part and its assigns forever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

STATE OF COLORADO

John A. Love
Governor of the State of Colorado

Page 1 of 2

Filed for record this thirtieth day of September A. D. 1965, at 11:35 o'clock A.M.

School Land
County of Mineral

Sold: August 17, 1965

Board Order June 28, 1965

Howard M. Abell

Register



State of Colorado

PATENT No. 7336



Howard M. Shultz
Register State Board of Land Commissioners

County of
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e, lying and
ado, to-wit,

Attest *Lyman A. Jackson*
Secretary of State of the State of Colorado

STATE OF COLORADO)
COUNTY OF DENVER) ss.

The foregoing instrument was acknowledged before me this 17th day of
September, A. D. 1965, by JOHN A. LOVE, Governor of the State of
Colorado,

Witness my hand and official seal.

Margaret Cockburn
Notary Public

My commission expires: March 1, 1966

for the use

In such case

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Dollars

d Assembly,

HOLD the

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Governor

the State of

day of

of Colorado

Page 2 of 2

Filed for record this Thursday day of September, A. D. 1965, at 11:35 o'clock A.M.

School Land
County of Montezuma
Sold: August 17, 1965
Bond Order June 23, 1965

Howard M. Shultz
Register

Exhibit No. 35
1969 Right of Way Agreement

RIGHT OF WAY NO. 1757, Book 17

1. THIS INDENTURE, Made this 24th day of October, 1969, between the
2. STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS,
3. party of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
4. P. O. Box 5482, Denver, Colorado 80217, party of the second part:

W I T N E S S E T H

1. 2. WHEREAS, Party of the second part has made application to said
2. STATE BOARD OF LAND COMMISSIONERS for a right-of-way over, upon, under and
3. across the surface of the hereinafter described land for the purpose of con-
4. structing, reconstructing, operating and maintaining a railroad and appur-
3. tenances, and
1. 3. WHEREAS, Said State Board of Land Commissioners is desirous of
2. granting such right-of-way for the purpose aforesaid and none other, upon the
3. terms and conditions set forth herein.
1. 4. NOW, THEREFORE, THESE PRESENTS WITNESSETH, that the said party of
2. the first part, in consideration of the premises, and in the further con-
3. sideration of the release, abandonment, and cancellation of Right-of-Way No. 1033,
4. granted to the party of the second part by the party of the first part on
5. January 27, 1892, for a railway line in Sec. 36, T. 42 N., R. 1 W., N.M.P.M.,
6. Hinsdale County, Colorado, has granted and by these presents does grant unto
7. the party of the second part, its successors and assigns, a right-of-way over,
8. upon, under and across the surface of the following described land, for
9. purpose of constructing, reconstructing, operating and maintaining said rail-
10. road and appurtenances.

In Section Thirty-six (Sec. 36), Township Forty-two North (T. 42 N.), Range One West (R. 1 W.), of the New Mexico Principal Meridian (N.M.P.M.), in the Town of Creede, Mineral County, State of Colorado.

Being more particularly described as follows:
All land lying within 50 feet on the westerly side of the center line of the Creede Branch main track of The Denver and Rio Grande Western Railroad Company, as said track is presently constructed and operated, over and across the northeast quarter and the northeast quarter of the southeast quarter of Section 36, containing 4.93 acres, more or less;

- 1 -

PLATTED & TRACTED
JAN 12 1970

EXHIBIT A

Also all land lying within 30 feet on the easterly side of the center line of said main track extending southerly 1960 feet, more or less, from the north line of said Section 36 to a point in said center line at Mile Post 320+1838 feet, containing 2.33 acres, more or less;

Also, all land lying within 75 feet on the easterly side of the center line of said main track extending southerly 2290 feet, more or less, from said Mile Post 320+1838 feet to the east line of said Section 36, containing 3.86 acres, more or less. (Total area, Main Track Right-of-Way--11.04 acres, more or less.)

1. 5. The party of the second part shall have the full and unrestricted
2. right to use of the surface of said premises for railroad purposes only as
3. long as this grant is in effect, and the party of the first part shall not con-
4. struct, or allow the construction, of any buildings or other obstructions,
5. nor impound any water, nor in any way impede the operation or maintenance of
6. said facility, upon the right-of-way herein granted.

1. 6. The use of land or any structure owned by the party of the second
2. part and located on this right-of-way may be granted to third parties upon
3. written application and proper description being submitted to, and approval
4. obtained from, the party of the first part.

1. 7. This grant of right-of-way is made subject to any and all easements
2. and rights-of-way heretofore legally granted and now in full force and
3. effect, if any there be.

1. 8. The party of the second part agrees to assume the risk of all injuries,
2. including death resulting therefrom, to persons, and damage to and
3. destruction of property, including loss of use thereof, resulting directly or
4. indirectly, wholly or in part, from the prosecution or omission of any work or
5. obligation undertaken or required by this Agreement, and to indemnify and save
6. harmless the first party, from and against any and all liability arising therefrom

1. 9. The party of the second part will pay to the party of the first part
2. the full amount necessary to compensate the first party for damages to its
3. property, rights, franchises or privileges, resulting from acts or omissions
4. of the second part, its agents or employees, or from the exercise of the
5. rights-of-way herein granted and the use of the lands of the first party.

1. 10. The party of the second part shall have such rights of ingress
2. and egress as may be necessary for the construction, reconstruction, repair,
3. maintenance and removal of said facilities, but shall not leave open, or per-
4. mit to be left open, any fences, bars or gates. All such fences, bars or
5. gates which may be damaged or disturbed in any way shall be fully repaired by
6. the party of the second part.

1. 11. The party of the second part may remove said facilities whenever
2. it may desire and forthwith, upon such removal, the right-of-way herein created
3. and all rights of the second party under this right-of-way shall terminate.

1. 12. The party of the first part shall have the right at any and all
2. times during the continuance of this right-of-way, to sell or otherwise dis-
3. pose of said land and to use the same for all purposes, except as necessarily
4. limited by the facility described above.

1. 13. All rights to any and all minerals, ores and metals of any kind
2. and character, and all coal, asphaltum, oil, gas or other like substances in
3. or under said land are hereby reserved to the State of Colorado.

1. 14. Party of the first part grants to party of the second part the
2. right to sublet portions of this right-of-way not used for railroad purposes
3. to customers of the party of the second part or for other uses compatible with
4. railroad business or operations. The permission herein granted is conditioned
5. upon the party of the second part serving written notice to the party of
6. first part within sixty days after issuance of a sublease, and without such
7. notice, and at the option of the party of the first part, the party of
8. first part may terminate this agreement. The party of the second part
9. not sublet, nor permit use of any part of this right-of-way for purposes
10. connected with the operation or business of the second party, nor shall it
11. assign this agreement, except as herein provided without the written consent
12. of the first party. It is agreed that any transfer or assignment, or attempted
13. transfer or assignment of this agreement, for non-railroad purposes, without
14. such consent in writing, shall be absolutely void, and at the option of the
15. first party, shall terminate this agreement. Assignment of the agreement to
16. another party for the purpose of operating the railroad thereon shall not be
17. made without the written consent of the party of the first part.

1. 15. Any notice which may be given by the party of the first part

2. the party of the second part may be mailed registered mail to: The Denver
3. & Rio Grande Western Railroad Company, P. O. Box 3482, Denver, Colorado
4. 80217, or such other address as second party shall furnish to the first
5. party in writing and in advance of giving such notice, and the second part,
6. agrees to advise the first party of any change in said address at any time
7. in the period this right-of-way is in effect.

1. 16. The right-of-way herein granted shall continue for as long as
2. the facilities described above are in place and maintained by the second
3. party, provided that should said facilities be abandoned or discontinued
4. for a period of twelve (12) consecutive months, this right-of-way and all
5. rights of the second party hereunder shall automatically and without notice
6. terminate at the end of such twelve (12) month period.

1. 17. The right-of-way is made for the sole and only purpose as set forth
2. set forth, and no other; and in the event that the party of the second part,
3. its successors and assigns, shall at any time use or attempt to use the same
4. for any other purpose whatsoever, then and in that case this right-of-way
5. shall become void and of no effect, and any and all such rights and privileges
6. herein granted shall revert to the party of the first part.

1. 18. In case of a removal of said facilities, as specified in this
2. right-of-way, the party of the second part shall clear up the lands of the
3. party of the first part from which such removal takes place to the end that
4. such lands shall be restored as nearly as possible to their condition at the
5. time this right-of-way is granted.

1. 19. IN WITNESS WHEREOF, The party of the first part has caused these
2. presents to be executed in its name and in its behalf by the State Board of
3. Land Commissioners, and has caused the seal of the State Board of Land Com-
4. missioners, to be hereunto affixed, and the party of the second part has here-
5. unto caused these presents to be signed by its _____

6. and _____, and its corporate seal affixed
7. hereto, the day and year first above written.

STATE OF COLORADO

BOARD OF LAND COMMISSIONERS

Raymond H. Simpson
President

Howard M. Chilton
Register

Wesley E. Woodward
Engineer

By _____
President

Attest _____
Secretary

R/U Appl. No. 68/26

FILED IN 68/26

FILED
BUTLER
FEB 12 1968

Exhibit No. 36

1901 Deed

City of Creede
PO Box 457
Creede, CO 81130
Phone: 719-658-2276
Fax: 719-658-2017

City of Creede

July 17, 2006

Mr. Ron Johnson

RE Creede Information

Dear Ron,

I've enclosed the information I have, concerning the ownership of property in Creede

The two hand written pages that start with "The United States of America" is for Section 25 of the town. Section 25 begins just below Wall Street (approximately where Stan's house is) and goes north

The other hand written page entitled "Map of South Creede" is the incorporation document from 1892 for section 36. Section 36 begins just below Wall Street and goes south. I've also enclosed the Patent in Form of Quit Claim Deed which I believe you have a copy of. As soon as I get the Bargain and Sale deed (sp) from the State, I'll forward that to you as well.

I'll forward these documents to you via USPS as well. Please let me know if these documents need more support or if there is something else you need.

Please call me at 658-2276 if you have any questions.

Sincerely,


Clyde Dooley
City Manager

City of Creede

The United States of America.

To all to whom these presents shall come, Greeting:

Certificate

No. 2729

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Del Norte Colorado, whereby it appears that pursuant to the provisions of the Act of Congress of the 24th of April 1826, (entitled An Act making further provision for the sale of the Public Lands), and the Acts supplemental thereto, including Section 2387 of the Revised Statutes, full payment has been made by Alexander N. Simpson, Mayor of the City of Creede, Mineral County, Colorado, for Amethyst Townsite, beginning at corner No. 1, being the South East corner of Section twenty-five, in Township forty-two North, of Range one West, New Mexico Meridian in Colorado, according to the suspended plat of survey of said Township; running thence N. 0° 23' E, 9307 feet, to corner No. 2; thence S. 89° 33' W. 2523.1 feet to corner No. 3; thence S. 0° 23' W, 1320 feet to corner No. 4, being the old N. 1/4 corner of Section 36; thence N. 89° 15' E, 2523.4 feet to place of beginning, containing 76,084 acres, all in accordance with the official plat of said townsite approved by the Surveyor General of Colorado on January 26, 1898.

Now know Ye, That there is, therefore, granted by the United States unto the said Alexander N. Simpson the tract of land above described. To Have and To Hold the said tract of land with the appurtenances thereof unto the said Alexander N. Simpson in trust.

445

for the several use and benefit of the occupants of the Townsite of Amethyst in said County, according to their respective interests, and to his successors in trust as aforesaid. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the Authority of the United States.

In testimony whereof I, William McKinley President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

L.S.

Given under my hand
at the City of Washington,
the tenth day of January,
in the year of our Lord
one thousand nine hundred
and one, and of the Inde-
pendence of the United
States the one hundred
and twenty-fifth.

By the President. William McKinley.

By T. M. McKean.. Secretary

C. H. Brush, Recorder of the General Land Office.

MAP OF
South Creede
 In
 Section 36 Township 42 North Range 1 West N.M.P.M.

HINSDALE CO COLORADO.

J. P. Maxwell
 State Engineer

Scale 100 ft = 1 inch

February 20th 1892

Wm. U. Shipley
 Deputy State Engineer

All lots not otherwise marked are 25 by 100 feet
 know all men by these presents that the State
 Board of Land Commissioners have laid out
 and platted the parcel of land shown on
 this plat or map to wit: The North East Quarter,
 the East half of the North West Quarter ^{and the North 1/2} of
 the South East Quarter, all in Section Thirty
 six (36) in Township Forty Two (42) North of
 Range One (1) West of the New Mexico Principal
 Meridian, in Hinsdale County State of
 Colorado, under the name and style of
South Creede, and we do by these presents
 grant unto the public use all streets
 avenues and alleys as shown hereon

In testimony whereof the State Board of
 Land Commissioners by its President he hereunto
 authorized by order of said Board
 of even date herewith has executed these
 presents and caused the seal of the State Board
 of Land Commissioners to be hereunto attached
 this the 24th day of February A.D. 1892.

John S. Rault

President of the State Board
 of Land Commissioners, and
 Governor of the State of Colorado

Attest Mark France

Register of the State Board of Land Commissioners

31722

PATENT
IN FORM OF QUIT CLAIM DEED

STATE OF COLORADO
STATE OF COLORADO
County of Mineral ss.

TO

CITY OF CREEDE, COLORADO

I hereby certify that this instrument was filed for record in my office, at 8:30 O'Clock A.M.,
Nov. 2, 1965, and is duly recorded in Book 110-J Page 296

Chloe Rogers
Recorder

STATE OF COLORADO
PATENT
In Form of a Quit Claim Deed
PATENT No. 7336

THIS DEED, Made this 17th day of August in the year of our Lord one Thousand nine hundred and sixty-five,
between the STATE OF COLORADO, of the first part, and the CITY OF CREEDE, Colorado, of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of SIXTY AND NO/100
.....Dollars (\$60.00), to the said party of the first part in hand paid by the said party of the
second part, the receipt whereof is hereby confessed and acknowledged, has revised, released, sold,
conveyed and QUIT CLAIMED, and by these presents does revise, release, sell, convey and QUIT CLAIM
unto the said party of the second part and its assigns, forever, all the right title, interest,
claim and demand which the said party of the first part has in and to the following described land
situate, lying and being in the County of Mineral, and State of Colorado, to-wit:

TOWNSHIP FORTY - TWO (42) NORTH - RANGE ONE (1) WEST OF THE NEW MEXICO PRINCIPAL MERIDIAN

SECTION TWENTY-SIX (26): Tract Number Five (5): Lot Twenty (20), Block Sixteen (16),
South Creede. (Subject to Right of Way No. 970-9 of the
City of Creede.)

Tract Number Six (6): Lot Eleven (11) and Lot Twenty (20),
Block Nineteen (19), South Creede. (Subject to Right of Way
No. 970-9 to the City of Creede.)

Tract Number Eight (8): Lot Eleven (11) and Lot Twenty (20),
Block Twenty-two (22), South Creede. (Subject to Right of Way
No. 970-9 to the City of Creede.)

Tract Number Fourteen (14): Lots Sixteen (16) to Twenty (20)
inclusive, Block Thirty (30), South Creede. (Subject to Right
of Way No. 970-9 to the City of Creede.)

Tract Number Fifty-six (56): All streets, avenues and alleys
shown on the plat of Creede and South Creede, and all unplatted areas within
the boundaries of said town, within Section 26, Township 42 NORTH,
Range 1 West of the New Mexico Principal Meridian, not included
in any other patents or conveyances from the State of Colorado

RESERVING, however, to the State of Colorado, all rights to any and all minerals, ores and metals
of any kind and character, and all coal, asphaltum, oil, gas or other like substance in or under said
land, the right of ingress and egress for the purpose of mining, together with enough surface of the
same as may be necessary for the proper and convenient working of such minerals and substances;
Subject to any and all easements or rights of way heretofore legally obtained and now in full
force and effect, if any there be.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges
thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and
claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use,
benefit and behoof of the said party of the second part and its assigns forever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and
year first above written.

STATE OF COLORADO

JOHN A. LOVE
Governor of the State of Colorado

SHERIFF

HOWARD H. SMITH
Register State Board of Land Commissioners

ATTORNEY:

STON A. ANDERSON

Secretary of State of the State of Colorado

STATE OF COLORADO
ss.
COUNTY OF DENVER

The foregoing instrument was acknowledged before me this 17th day of September, A.D. 1965, by
JOHN A. LOVE, Governor of the State of Colorado.

Witness my hand and official seal.

CERTIFICATE OF SERVICE

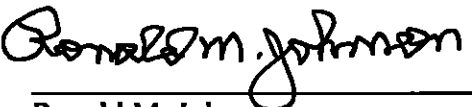
I hereby certify that I have caused a true and correct copy of the Application of the City of Creede, Colorado for Adverse Abandonment and related attachments to be served upon the following individuals by United Parcel Service 2-day delivery, this 17th Day of December, 2007.

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

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

Office of the Governor of Colorado
Bill Ritter, Governor
136 State Capitol
Denver, CO 80203-1792

Colorado Public Utilities Commission
Doug Dean, Director
1560 Broadway, Suite 250
Denver, CO 80202



Ronald M. Johnson

FILING CONTAINS COLORED DOCUMENTS

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Office of Proceedings**

DEC 18 2007

**Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-1014



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

**COMBINED ENVIRONMENTAL AND HISTORICAL REPORT
OF THE CITY OF CREEDE**

The City of Creede, Colorado is providing this combined Environmental and Historical Report in satisfaction of the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. The City is seeking the adverse abandonment of all of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located within the city limits. Since the track has been out of service for more than 30 years and no historic structures are being affected, the City does not believe that any environmental or historic conditions are warranted.

ENVIRONMENTAL REPORT

(1) **Proposed Action and Alternatives.** Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

The City is proposing that the Foundation's track located in the city limits be abandoned. The track in the city limits is about a mile in length and runs through town north to south, approximately between milepost 320.9 and milepost 319.9. The track, at one time, included a main line, a run around track, and a spur track. This track has been out of service since around 1970.

Upon the grant of abandonment, the track in the City will no longer be subject to the Board's jurisdiction. The land under the railroad tracks in the City was deeded to the City many years ago, but is subject to pre-existing rights-of-way granted by the state and federal government to a railroad predecessor to the Foundation. The removal of Board jurisdiction will allow the Foundation's rights-of-way to terminate according to the terms of the state and federal right-of-way grants. The City will then require that the track be removed from the rights-of-way in the city limits. There is one railroad structure in the right-of-way in town that may be affected by the proposed abandonment, a wooden bridge about 47 feet in length. At some point, this bridge might be removed.

The track that will be the subject of the City's petition is part of what is commonly known as the "Creede Branch." The Creede Branch runs from South Fork, Colorado to Creede, which is the end of the Branch. A map showing the location of the Creede Branch is Exhibit No. 1. The Creede Branch is a 21.6-mile line of railroad constructed by an affiliate of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). The Branch was initially constructed to Wagon Wheel Gap in 1884 or 1885. It was extended to Creede in 1892. The Branch was extended to Creede to serve the mining industry around Creede. When mining activity dropped off in the early 1900s, the demand for rail service sharply declined. Passenger service ended around 1939. Around 1970, the D&RGW stopped operating freight trains into Creede. The few freight trains that did operate up the Branch stopped at Wason, which is a location on the Branch about two miles south of Creede. Ore would be loaded from trucks into railcars at that location. There was also a wye where the locomotive could be turned. All freight service ceased on the Branch around 1985. The Branch has been out of service since then and remains so today. A map of the track located in the city limits is attached as Exhibit No. 2.

The D&RGW acquired control of the Southern Pacific Transportation Company ("SP") in 1988. The D&RGW and SP were subsequently acquired by the Union Pacific Railroad Company ("UP") in 1996.

The UP filed a notice of exemption to abandon the Creede Branch in December 1998 in Docket No. AB-33 (Sub-No. 132X). The Board's Section of Environmental Analysis prepared an Environmental Assessment for that docket in which it concluded that the abandonment of the entire Branch, including the track in the City, would not have any adverse environmental impact. Environmental Assessment, Union Pacific Railroad Co.—Abandonment Exemption—in Rio Grande and Mineral Counties, CO. STB Docket No. AB-33 (sub-No. 132X) (served Jan. 29, 1999). The Assessment noted that "[t]here are no rail shipments on the line and it is doubtful that there will be future traffic sufficient to justify the cost necessary to sustain rail operations." Assessment at 1. Essentially nothing has changed since that time.

The Branch was not abandoned, however, because the Foundation acquired the Branch in 2000 pursuant to the offer of financial assistance procedure. The Foundation claimed at that time that it was going to restore rail freight service on the Branch.

There are no alternatives to the proposed abandonment. In the more than seven years since the Foundation acquired the Branch, the Foundation has been unable to identify any shippers desiring the restoration of freight service to the Branch or Creede. The Foundation has also been unable to operate any trains and has no train operations. Moreover, Creede intends that the publicly owned land under the right-of-way be put to the uses described infra in Part (3).

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The abandonment of the track in the City will have no impact on regional or local transportation systems and patterns. There are no shippers in Creede. The state and federal highway systems are more than adequate to handle the movement of any goods into Creede. Creede is on Colorado State Highway 149, a paved, all-weather highway. Colorado State Highway 149 intersects U.S. 160, a major east-west highway, at South Fork, and parallels the entire Creede Branch.

Rail service can still be had to Monte Vista, Colorado, which is about 50 miles from Creede, on the San Luis and Rio Grande Railroad Company. Goods or commodities can be transferred there to truck and delivered to the Creede area.

Because no commodities are shipped over the Creede Branch, there will be no diversion of freight to other transportation systems by abandonment of the track in Creede.

Even if the Foundation could show that some day there might be users of rail service in the Creede area, the Foundation would not need any track in the city limits to provide such service. As explained above, and as the D&RGW did in the last dozen or so years of sporadic freight service on the Branch, the Foundation could transfer freight from railcars to trucks, or vice versa, at Wason, which is a few miles south of Creede.

(3) Land Use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

Creede is a small town with a permanent population of about 417. The land under the right-of-way in the city limits is owned by the City. The railroad predecessors to the Foundation never owned the land under the rights-of-way in the city limits. An affiliate of the former D&RGW obtained a right-of-way grant from the State of Colorado in 1892 for part of the track

in the City that is in Section 36, as shown on the map in Exhibit No. 2. The 1892 right-of-way was replaced by a 1969 right-of-way agreement between the D&RGW and the Colorado State Land Board. However, in 1965, the Land Board deeded its land under this railroad right-of-way to the City, but subject to the pre-existing right-of-way. By its terms, the 1969 right-of-way agreement terminated after there had been no rail operations for 12 consecutive months. The termination provision in the 1969 right-of-way agreement has not become operative, however, because the track in the City, although out of service, remained under the jurisdiction of the Interstate Commerce Commission, now the Board.

The former D&RGW obtained a right-of-way from the federal government over federally owned land in Section 25, shown on Exhibit No. 2, also in 1892. The federal government subsequently deeded its land to the City in 1901. Abandonment of the track will similarly allow the federal right-of-way to terminate pursuant to federal law.

The land under the right-of-way, about eleven acres, represents a significant amount of land in the city limits. Creede is in the mountains at an elevation of about 8800 feet. The City is situated at the head of a mountain canyon. It is hemmed in on the west and east by mountains as shown in the U.S.G.S. topographical maps in Exhibit Nos. 4 and 5. The right-of-way runs through and is adjacent to residential and retail business areas. Over many years, the City has established a playground, created an area for public parking, and allowed an events center hosting an annual festival (the "Days of 92") celebrating Colorado's mining heritage to be on public land in the right-of-way. The City also has installed water and sewer lines under the right-of-way and streets over the right-of-way. None of these uses have interfered with railroad operations because there have been none for more than 30 years. The City has determined that this land should continue to be put to such public uses and developed in other ways that best

serve the public interest of Creede. However, the existing public uses are threatened by the Foundation, which recently tore up public streets and the public parking area; damaged the playground and a park; and caused the events center to be removed. Pictures of the aftermath of the Foundation's work are in Exhibit No. 7. In addition, because this land is burdened by the Foundation's easements over the land, the City cannot make improvements or allow the land to be developed in other ways beneficial to the City.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

The City does not believe that the abandonment will have any effect on prime agricultural land, because the track is in the City and does not run through such agricultural land. The City notified the United States Department of Agriculture Natural Resources Conservation Service ("USDA") of the proposed abandonment by letter dated October 29, 2007. Copies of the City's letters to various federal and state agencies are in Exhibit No. 3. A copy of this report was provided to the USDA for its information and comment. The City has not received a response from the USDA.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by §1105.9.

The track in the City does not run through a designated coastal zone.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

The City does not believe that the land under the right-of-way is appropriate for trail use or rail banking. The right-of-way is in town. Part of the right-of-way is in an alley behind retail stores on Creede's main street. The streets running parallel to the right-of-way, and only a few yards away, are already available for walking and biking and are used as such. Trail use and rail

banking are also incompatible with the previously described, long-standing public uses to which land in the right-of-way has been put.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources; (ii) Describe the effect of the proposed action on recyclable commodities, (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why; (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(c)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.

(i) The proposed abandonment will have no impact on the transportation of energy resources

(ii) The proposed abandonment will have no impact on the transportation of recyclable commodities.

(iii) The proposed abandonment will not result in an increase or decrease in overall energy efficiency.

(iv) The proposed abandonment will have no impact on the transportation of, or cause diversions of, freight from rail to motor carriage.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection 5(i)(A) will apply; (ii) If the proposed action affects a class I or non attainment area under the Clean Air Act, and will result in either: (A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, (B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or (C) An average increase in truck traffic more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the

three train a day threshold in this item shall apply; (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents, and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will have no impact on air emissions or quality, because the track in the City has been out of service for more than 30 years. The City has written to the U.S. Environmental Protection Agency ("EPA") and the Colorado Department of Public Health and Environment, by letters dated October 29, 2007, about possible effects on air, water, or noise.

See Exhibit No. 3. To date, the City has not received a response. The City has furnished a copy of this report to these agencies.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) An incremental increase in noise levels of three decibels Ldn or more; or (ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

The proposed abandonment will have no impact on noise levels, because the track in the City has been out of service for more than 30 years.

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings); (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents, and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials; (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

The proposed abandonment will have no impact on public health and safety since the track in the City has been out of service for more than 30 years

(8) **Biological Resources** (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects; (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The proposed abandonment will not affect any endangered or threatened species or areas designated as critical habitat, because the abandonment only involves about a mile of track located in the middle of town. As explained, the right-of-way is adjacent to retail business and residential areas. For similar reasons, the proposed abandonment will not have any impact on wildlife sanctuaries or refuges or National or State parks or forests. The track in the city limits does not run through any such areas.

The City wrote to the U.S. Fish and Wildlife Service, National Parks Service, and Division of Wildlife of the Colorado Department of Natural Resources by letters dated October 29, 2007, informing them of the proposed abandonment. See Exhibit No. 3. Copies of this report were provided to each of these agencies for their information and comment.

The City received a response dated November 30, 2007 from the U.S. Fish and Wildlife Service. The Service agreed that the abandonment of the track in the City "will not affect any endangered or threatened species" and "does not appear to impact wetlands or other trust resources." Copies of responses received from agencies are in Exhibit No. 9.

(9) **Water** (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State, or local water quality standards. Describe any inconsistencies; (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe effects; (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required).

The City does not believe that the proposed abandonment will have any impact on water quality standards.

The City also does not believe that any permits under section 404 of the Clean Water Act will be required for the proposed abandonment and that no designated wetlands or 100-year flood plains will be affected by the proposed abandonment.

The City contacted the U.S. Army Corps of Engineers about the proposed abandonment by letter dated October 29, 2007, because a small wooden bridge carries the track over Willow Creek at the South end of town. See Exhibit No. 3. Willow Creek is channeled through town by a flume that was constructed and is owned by the Corps. The City has not yet heard back. A copy of the report was provided to the Corps for its information and comment.

The City also does not believe that any permits under section 402 of the Clean Water Act will be required for the proposed abandonment. As noted, the City contacted the EPA and the Colorado Department of Public Health and Environment by letters dated October 29, 2007 to inform them of the proposed abandonment. See Exhibit No. 3. A copy of this report has been provided to these agencies for their comment.

Proposed Mitigation

The City does not expect any adverse environmental impact from the proposed abandonment and therefore does not believe that there is any need for any mitigating actions.

HISTORICAL REPORT

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action.

The City has provided two U.S. Geological Survey maps to the Colorado Office of Archeology and Historic Preservation.¹ One is a scale of 1:24 000. See Exhibit No 4. The other is a scale of 1:50 000. See Exhibit No 5 The 1:50 000 scale map shows the entire Creede Branch. For some reason, the 1:24 000 scale map does not show the Branch coming all the way into Creede. In addition, a map in scale showing the location of the track in the city limits and the location of railroad structures was also provided to the Office of Archeology and Historical Preservation. See Exhibit No. 2. There are two railroad structures in the city limits. Only one, a 47-foot long wooden bridge, may be affected by the proposed abandonment. The other structure is the train station, which was sold by the former D&RGW to Mineral County around 1961, and has been operated as a museum by the Creede Historical Society since 1965. This train station was constructed in 1891-92. The City understands that the Creede Historical Society has received grants from the Colorado Historical Fund to help preserve the station. The proposed abandonment will have no effect on the train station, and it is not part of the proposed abandonment.

The City received a response dated November 30, 2007 from the Colorado Office of Archeology and Historic Preservation. A copy is in Exhibit No. 9. The Office recommended that "care should be taken to :"

- 1) ensure that the existing rail corridor is maintained, so that it remains recognizable as a rail corridor;
- 2) ensure that the historic integrity of the Creede train station is not reduced as a result of the project. It may be sufficient to leave the tracks in place in front of the station itself. Consultation with the State Historical Fund is critical.

¹ The maps provided to the Colorado Office of Archeology and Historic Preservation and the Board's Section of Environmental Analysis were purchased from the U.S.G.S. and are in color. The copies of the maps provided as part of the Combined Report to other agencies are in black and white.

The City is opposed to the first recommendation. That would defeat the purpose of the Application for Adverse Abandonment. Moreover, the track in the city limits is already unrecognizable as a rail corridor. Pursuant to the suggestion of the Office of Archeology and Historic Preservation, the City consulted with the Colorado State Historical Fund. It recommends that a short segment of track be preserved in front or behind the station to help keep the restored depot in its historic context. The City is not opposed to the preservation of a short segment of track in front or behind the train station and believes this could be beneficial. However, the City does not own the track and ties to be abandoned. If the City's Application is granted, the Foundation would have to decide whether it desired to donate any track adjacent to the station to the Historical Society.

Based on consultation with the Colorado State Historical Fund, the abandonment of the track in the City will not have any impact on any grants that the Creede Historical Society has received from the Fund.²

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area.

The right-of-way is about one mile long, running north and south through the middle of town, between approximately milepost 320.9 and milepost 319.9. The right-of-way is 200 feet wide in Section 25, which is north of Wall Street as shown on the map in Exhibit No. 2. The right-of-way in Section 36, which is south of Wall Street, is 100 feet wide in places and 75 feet wide in other places.

The topography of the land in the City under the right-of-way is flat. The track to be abandoned is located adjacent to both residential and retail business areas.

² Telephone call with Mark Wolf, Director, Colorado State Historical Fund, December 13, 2007.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area.

Pictures showing the surrounding area and the right-of-way as it appeared for the last couple of decades until October 25, 2007 are in Exhibit No. 6.³

In response to the City's initiation of this adverse abandonment proceeding, the Foundation, for the first time since it acquired the Creede Branch in 2000, performed some work in the City on October 25-28, 2007. The Foundation then uncovered track that had been overgrown, covered over, or paved over for more than 25 years. In so doing, the Foundation tore up three street crossings, damaged a city park and public children's playground, and caused the events center to be removed. Photos showing the area after the Foundation's work are in Exhibit No. 7.

As explained, there is only one railroad structure, of any age, that might be affected by the proposed abandonment. That is a wooden railroad bridge, which carries the railroad track over Willow Creek. The City is not proposing that the bridge be removed right away. Pictures of the bridge are in Exhibit No. 8.

While the train station is not affected by the proposed abandonment, it is shown in Picture No. 1 and No. 9 in Exhibit No. 6. Additional pictures of and information on the train station can be found at www.museumtrail.org/creedehistoricalmuseum.asp.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known.

The City believes that the present wooden bridge was constructed around 1950. The City does not know whether any modifications have been made to this bridge.

³ The numbers on the map provided as part of Exhibit No. 6 indicate the vantage point from which the pictures in Exhibit Nos. 6 and 8 were taken. A similar map is provided as part of Exhibit No. 7 showing the vantage point of the pictures in that Exhibit.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action.

As explained in the Environmental Report, the track in the City was constructed as part of the Creede Branch by a predecessor of the former D&RGW in 1892. The Branch was originally constructed as a narrow gauge line with 65-lb rail. The Branch was widened to standard gauge in 1902 by moving one rail. The Branch was extended to Creede from Wagon Wheel Gap to serve the mining industry in and around Creede. Passenger operations into Creede ceased around 1939. Freight trains operated on the Branch only on a seasonal, as-needed basis. Freight trains stopped coming into Creede and only operated as far as Wason beginning around 1970. All freight service on the Branch ceased around 1985. There have been no train operations in Creede since 1970 and there are none today. Thus, the proposed abandonment will not result in any change in carrier operations.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic.

The City does not believe that the wooden bridge over Willow Creek is of any historic significance or would meet the criteria for listing on the National Register of Historic Places. It is simply an ordinary wooden, pile-type bridge. The City does not have any drawings or other documents relating to the bridge. The bridge is 47 feet long, 10 feet wide and about 8 feet above the creek.

The Environmental Assessment prepared by the Board's Section of Environmental Analysis suggested that six bridges on the Branch might be suitable for inclusion in the National Register of Historic Places. The City does not believe that the Section had in mind the wooden bridge in town, because there is nothing historic or unique about it.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic

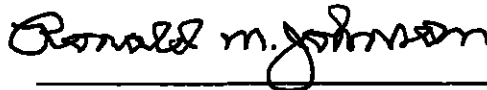
Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the bases for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities).

The City consulted with the President of the Creede Historical Society on November 12, 2007 and can state that it is not aware that there would be any archeological resources or other previously unknown historic properties in the railroad right-of-way. As explained, there are no structures other than the wooden bridge which might be affected by the proposed abandonment.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

The City does not believe there to be any known prior subsurface ground disturbance or fill or environmental conditions that might affect the archeological recovery of any potential resources.

Respectfully submitted,



Ronald M. Johnson
Heidi L. 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

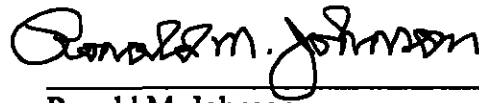
Dated: December 14, 2007

CERTIFICATION

The City of Creede certifies that, on November 15, 2007, it sent by UPS overnight mail copies of the Combined Environmental and Historic Report to the agencies listed in paragraph (b) and within the time frame specified in that paragraph. In addition to the agencies listed in Section 1105.7(c), the City provided a copy of the Report to the Division of Wildlife of the Colorado Department of Natural Resources. The City also served a copy of the Report on the President of the Denver & Rio Grande Railway Historical Foundation, and its counsel.

The City provided a copy of the Report to the following governmental entities:

Mineral County, Colorado
Office of the Governor of Colorado
National Geodetic Survey
Colorado Office of Archaeology and Historic Preservation
Colorado Department of Public Health & Environment
Division of Wildlife, Colorado Department of Natural Resources
U.S. Environmental Protection Agency
U.S. Fish & Wildlife Service
National Park Service (first class mail)
Natural Resources Conservation Service
U.S. Army Corps of Engineers



Ronald M. Johnson
Counsel for the City of Creede

Dated: December 14, 2007

Exhibit No. 1
Map of Creede Branch

South-Central Colorado Railroads

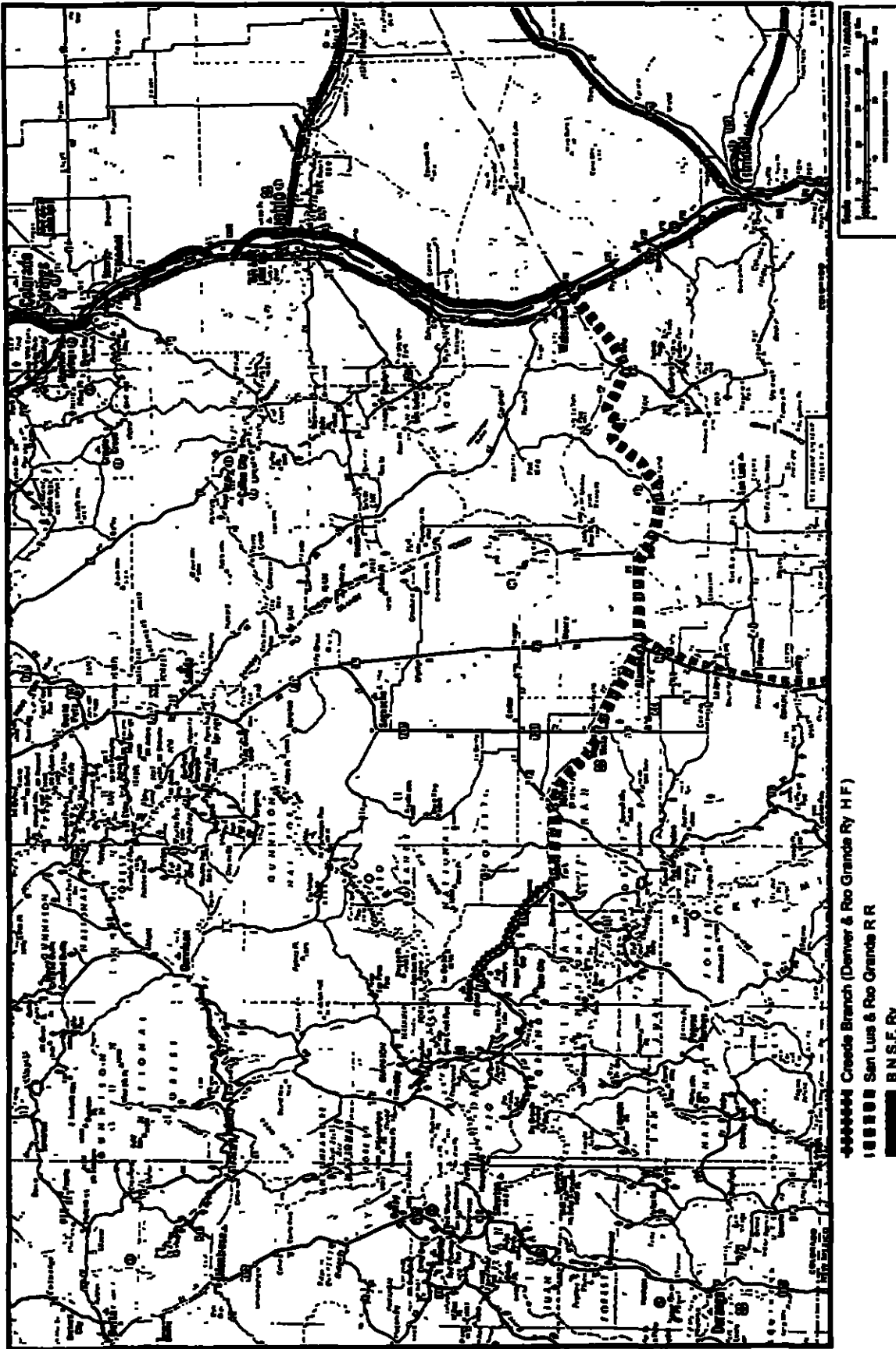


Exhibit No. 2
Map of Track in Creede

Exhibit No. 3
Letters to Agencies

City of Creede

A Colorado Town

P.O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



Colorado Department of Public Health & Environment
Mark Walker
4300 Cherry Creek Dr., South
Denver, CO 80246-1530

Oct. 29, 2007

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

Dear Mr. Walker:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

The track for which the City is seeking abandonment is about one mile in length at the end of what is commonly known as the Creede Branch. The Creede Branch is an approximately 21.6 mile rail line from South Fork, Colorado to Creede. The Branch has been out of service since around 1985, the track in the City even longer, since around 1970.

The Union Pacific Railroad ("UP") acquired the Branch in 1996, when it acquired control of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). A railroad must obtain authorization from the STB before it abandons a rail line. The UP notified the STB in 1998 of its intention to abandon the Creede Branch. An Environmental Assessment issued by the STB's Section of Environmental Analysis in January 1999 concluded that abandonment of the entire Branch would not have any adverse environmental impacts. The Branch was not abandoned, because it was purchased by the Foundation in 2000. The Foundation contended then that it planned to rehabilitate the Branch and restore rail freight service. The Foundation, however, has not been able to rehabilitate the Branch or restore freight service in the seven years since its purchase. Although the track has been out of service for many years, it is as a legal matter still considered by the STB to be part of the interstate rail system until the STB finds that it can be abandoned.

The land under the railroad right of way in the city limits has never been owned by the railroad. Part of the land was sold by the United States government to the City in 1902. The rest was sold to the City by the Colorado State Land Board in 1965. The railroad, now the Foundation, only has easements over this publicly owned land. The land under the right of way varies in width from 100 or 50 feet from either side of the centerline of the track and runs north

and south through the middle of town. This land comprises about 11 acres. Attached to this letter is a map showing the location of the track (or where it formerly existed) in the city.

Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

The City would like to make improvements to these public facilities and consider other uses to which the land in the right of way could be put, which benefits the community and its residents and businesses. The City cannot do so as long as the Foundation has a right of way over this land. The City does not believe that the Foundation will ever be able to restore freight service on the Branch, there are no current or potential shippers, and even if it could, the Foundation does not need any track in the City to provide such freight service. It is the City's position that, if the STB finds that this track can be abandoned, the Foundation's easements will be extinguished by the terms of the railroad rights of way from the federal and state governments to which the Foundation succeeded when it purchased the Creede Branch. The City will then be free to the plan for the further use and development of this land. This is the reason that the City is pursuing the abandonment application. The application is termed "adverse," because it is opposed by the Foundation.

Abandonment will result in the removal of the track, which has not already been taken up or paved over, in the city limits. The materials to be removed will be the railroad ties, all of which have rotted and are essentially scrap, and the rail. There is only one railroad structure in the right of way, a short wooden bridge that carries the track over Willow Creek at the southern end of town. The Creek is channeled through town in a flume. This bridge may be removed at some point.

Because the track in the city has been out of service for more than 30 years, the City does not believe that the removal of this track will have any effect on air emissions, on the quality of air or water, or noise levels in Creede. Similarly, the abandonment will not result in any increase in truck or automobile traffic. If your agency has any views on whether the abandonment will raise any environmental issues, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, Colorado

Enclosure

City of Creede

A Colorado Town

P O Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017

Division of Wildlife
Bruce Mcloskey, Director
6060 Broadway
Denver, CO 80216



Oct. 29, 2007

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

Dear Mr. McCloskey:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

The track for which the City is seeking abandonment is about one mile in length at the end of what is commonly known as the Creede Branch. The Creede Branch is an approximately 21.6 mile rail line from South Fork, Colorado to Creede. The Branch has been out of service since around 1985, the track in the City even longer, since around 1970.

The Union Pacific Railroad ("UP") acquired the Branch in 1996, when it acquired control of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). A railroad must obtain authorization from the STB before it abandons a rail line. The UP notified the STB in 1998 of its intention to abandon the Creede Branch. An Environmental Assessment issued by the STB's Section of Environmental Analysis in January 1999 concluded that abandonment of the entire Branch would not have any adverse environmental impacts. The Branch was not abandoned, because it was purchased by the Foundation in 2000. The Foundation contended then that it planned to rehabilitate the Branch and restore rail freight service. The Foundation, however, has not been able to rehabilitate the Branch or restore freight service in the seven years since its purchase. Although the track has been out of service for many years, it is as a legal matter still considered by the STB to be part of the interstate rail system until the STB finds that it can be abandoned.

The land under the railroad right of way in the city limits has never been owned by the railroad. Part of the land was sold by the United States government to the City in 1902. The rest was sold to the City by the Colorado State Land Board in 1965. The railroad, now the Foundation, only has easements over this publicly owned land. The land under the right of way varies in width from 100 or 50 feet from either side of the centerline of the track and runs north and south through the middle of town. This land comprises about 11 acres. Attached to this letter is a map showing the location of the track in the city or where the track formerly existed

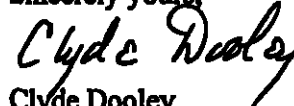
Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

The City would like to make improvements to these public facilities and consider other uses to which the land in the right of way could be put, which benefits the community and its residents and businesses. The City cannot do so as long as the Foundation has a right of way over this land. The City does not believe that the Foundation will ever be able to restore freight service on the Branch, there are no current or potential shippers, and even if it could, the Foundation does not need any track in the City to provide such freight service. It is the City's position that, if the STB finds that this track can be abandoned, the Foundation's easements will be extinguished by the terms of the railroad rights of way from the federal and state governments to which the Foundation succeeded when it purchased the Creede Branch. The City will then be free to the plan for the further use and development of this land. This is the reason that the City is pursuing the abandonment application. The application is termed "adverse," because it is opposed by the Foundation.

Abandonment will result in the removal of the track, which has not already been taken up or paved over, in the city limits. The materials to be removed will be the railroad ties, all of which have rotted and are essentially scrap, and the rail. There is only one railroad structure in the right of way, a short wooden bridge that carries the track over Willow Creek at the southern end of town. The Creek is channeled through town in a flume, which was built by the U. S. Army Corps. This bridge may be removed at some point.

Because the track in question is located in the middle of town, and surrounded by business and residential areas, the City does not believe that its abandonment and the removal of this track will have any impact on biological resources within the meaning of 49 C.F.R. § 1105.7 of the STB's regulations. Since the land under the right of way is located in the middle of town, the City does not believe that abandonment will affect endangered or threatened species or any areas designated as critical habitat. There are no such habitats or National or State parks or forests in town. If the Department has any concerns relating to the proposed abandonment, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, CO 81130

Enclosure

City of Creede

A Colorado Town

P O Box 457

Creede, CO 81130

(719) 658-2276

Fax 658-2017

U.S. Environmental Protection Agency

Gwen Christiansen

1595 Wynkoop Street

Denver, CO 80202-1129



Oct. 29, 2007

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

Dear Ms. Christiansen:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

The track for which the City is seeking abandonment is about one mile in length at the end of what is commonly known as the Creede Branch. The Creede Branch is an approximately 21.6 mile rail line from South Fork, Colorado to Creede. The Branch has been out of service since around 1985, the track in the City even longer, since around 1970.

The Union Pacific Railroad ("UP") acquired the Branch in 1996, when it acquired control of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). A railroad must obtain authorization from the STB before it abandons a rail line. The UP notified the STB in 1998 of its intention to abandon the Creede Branch. The Branch was not abandoned, because it was purchased by the Foundation in 2000. The Foundation contended then that it planned to rehabilitate the Branch and restore rail freight service. The Foundation, however, has not been able to rehabilitate the Branch or restore freight service in the seven years since its purchase. Although the track has been out of service for many years, it is as a legal matter still considered by the STB to be part of the interstate rail system until the STB finds that it can be abandoned.

The land under the railroad right of way in the city limits has never been owned by the railroad. Part of the land was sold by the United States government to the City in 1902. The rest was sold to the City by the Colorado State Land Board in 1965. The railroad, now the Foundation, only has easements over this publicly owned land. The land under the right of way varies in width from 100 or 50 feet from either side of the centerline of the track and runs north and south through the middle of town. This land comprises about 11 acres. Attached to this letter is a map showing the location of the track in the city or where the track formerly existed.

Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public

parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

The City would like to make improvements to these public facilities and consider other uses to which the land in the right of way could be put, which benefits the community and its residents and businesses. The City cannot do so as long as the Foundation has a right of way over this land. The City does not believe that the Foundation will ever be able to restore freight service on the Branch, there are no current or potential shippers, and even if it could, the Foundation does not need any track in the City to provide such freight service. It is the City's position that, if the STB finds that this track can be abandoned, the Foundation's easements will be extinguished by the terms of the railroad rights of way from the federal and state governments to which the Foundation succeeded when it purchased the Creede Branch. The City will then be free to the plan for the further use and development of this land. This is the reason that the City is pursuing the abandonment application. The application is termed "adverse," because it is opposed by the Foundation.

Abandonment will result in the removal of the track, which has not already been taken up or paved over, in the city limits. The materials to be removed will be the railroad ties, all of which have rotted and are essentially scrap, and the rail. There is only one railroad structure in the right of way, a short wooden bridge that carries the track over Willow Creek at the southern end of town. The Creek is channeled through town in a flume. This bridge may be removed at some point.

Because the track in the city has been out of service for more than 30 years, the City does not believe that the removal of this track will have any effect on air emissions, on the quality of air or water, or noise levels in Creede. Similarly, the abandonment will not result in any increase in truck or automobile traffic. The City also does not believe that any permits would be required under Section 402 of the Clean Water Act in order for the track to be abandoned. If you have any views on whether the abandonment will raise any environmental issues, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, Colorado

Enclosure

City of Creede

A Colorado Town

P.O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



U.S. Fish & Wildlife Service
Al Pfister
Denver Federal Center
P.O. Box 25486
Denver, CO 80226-0486

Oct. 29, 2007

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

Dear Mr. Pfister,

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

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Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

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Because the track in the city has been out of service for more than 30 years, the City does not believe that the removal of this track will have any effect on air emissions, on the quality of air or water, or noise levels in Creede. Similarly, the abandonment will not result in any increase in truck or automobile traffic. If your agency has any views on whether the abandonment will raise any environmental issues, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



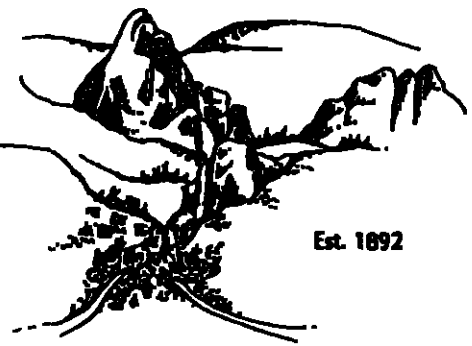
Clyde Dooley
City Manager
Creede, Colorado

Enclosure

City of Creede

A Colorado Town

P O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



Est. 1892

National Park Service
Larry Wiese
PO Box 8
Mesa Verde National Park, CO 81330-008

Oct. 29, 2007

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

Dear Mr. Wiese:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

The track for which the City is seeking abandonment is about one mile in length at the end of what is commonly known as the Creede Branch. The Creede Branch is an approximately 21.6 mile rail line from South Fork, Colorado to Creede. The Branch has been out of service since around 1985, the track in the City even longer, since around 1970.

The Union Pacific Railroad ("UP") acquired the Branch in 1996, when it acquired control of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). A railroad must obtain authorization from the STB before it abandons a rail line. The UP notified the STB in 1998 of its intention to abandon the Creede Branch. An Environmental Assessment issued by the STB's Section of Environmental Analysis in January 1999 concluded that abandonment of the entire Branch would not have any adverse environmental impacts. The Branch was not abandoned, because it was purchased by the Foundation in 2000. The Foundation contended then that it planned to rehabilitate the Branch and restore rail freight service. The Foundation, however, has not been able to rehabilitate the Branch or restore freight service in the seven years since its purchase. Although the track has been out of service for many years, it is as a legal matter still considered by the STB to be part of the interstate rail system until the STB finds that it can be abandoned.

The land under the railroad right of way in the city limits has never been owned by the railroad. Part of the land was sold by the United States government to the City in 1902. The rest was sold to the City by the Colorado State Land Board in 1965. The railroad, now the Foundation, only has easements over this publicly owned land. The land under the right of way varies in width from 100 or 50 feet from either side of the centerline of the track and runs north

and south through the middle of town. This land comprises about 11 acres. Attached to this letter is a map showing the location of the track in the city or where the track formerly existed

Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

The City would like to make improvements to these public facilities and consider other uses to which the land in the right of way could be put, which benefits the community and its residents and businesses. The City cannot do so as long as the Foundation has a right of way over this land. The City does not believe that the Foundation will ever be able to restore freight service on the Branch, there are no current or potential shippers, and even if it could, the Foundation does not need any track in the City to provide such freight service. It is the City's position that, if the STB finds that this track can be abandoned, the Foundation's easements will be extinguished by the terms of the railroad rights of way from the federal and state governments to which the Foundation succeeded when it purchased the Creede Branch. The City will then be free to the plan for the further use and development of this land. This is the reason that the City is pursuing the abandonment application. The application is termed "adverse," because it is opposed by the Foundation.

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Because the track in question is located in the middle of town, and surrounded by business and residential areas, the City does not believe that its abandonment and the removal of this track will have any impact on any national park land. The closest National Park is Sand Dunes, which is 110 miles away. If the National Park Service has any concerns relating to the proposed abandonment, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, Colorado

Enclosure

City of Creede

A Colorado Town

P.O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



Natural Resources Conservation Service
Steve Yochum
12345 W. Alameda Pkwy Suite 307
Lakewood, CO 80228

Oct. 29, 2007

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

Dear Steve:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. Your agency will also be provided a copy of that report.

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Because the track in question is located in the middle of town, and surrounded by business and residential areas, the City does not believe that its abandonment and the removal of this track will have any impact on any national park land. The closest National Park is Sand Dunes, which is 110 miles away. If the National Park Service has any concerns relating to the proposed abandonment, please write, call or e-mail me so we can discuss. Thank you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, Colorado

Enclosure

City of Creede

A Colorado Town

P.O. Box 457
Creede, CO 81130
(719) 658-2276
Fax 658-2017



Est. 1892

U.S. Army Corps of Engineers
LTC B.A. Estok
4101 Jefferson Plaza
Albuquerque, NM 87109-3435

Oct. 29, 2007

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

Dear Colonel Estok:

The City of Creede, a town in Mineral County, Colorado, plans to file an application with the U.S. Surface Transportation Board ("STB") for the adverse abandonment of the track of the Denver & Rio Grande Railway Historical Foundation ("Foundation") located in the city limits. I am writing to consult in connection with an Environmental Report that the City is required by STB regulations (49 C.F.R. § 1105.7) to prepare and submit with its application. The Corps of Army Engineers will also be provided a copy of that report.

The track for which the City is seeking abandonment is about one mile in length at the end of what is commonly known as the Creede Branch. The Creede Branch is an approximately 21.6 mile rail line from South Fork, Colorado to Creede. The Branch has been out of service since around 1985, the track in the City even longer, since around 1970.

The Union Pacific Railroad ("UP") acquired the Branch in 1996, when it acquired control of the former Denver & Rio Grande Western Railroad Company ("D&RGW"). A railroad must obtain authorization from the STB before it abandons a rail line. The UP notified the STB in 1998 of its intention to abandon the Creede Branch. An Environmental Assessment issued by the STB's Section of Environmental Analysis in January 1999 concluded that abandonment of the entire Branch would not have any adverse environmental impacts. The Branch was not abandoned, because it was purchased by the Foundation in 2000. The Foundation contended then that it planned to rehabilitate the Branch and restore rail freight service. The Foundation, however, has not been able to rehabilitate the Branch or restore freight service in the seven years since its purchase. Although the track has been out of service for many years, it is as a legal matter still considered by the STB to be part of the interstate rail system until the STB finds that it can be abandoned.

The land under the railroad right of way in the city limits has never been owned by the railroad. Part of the land was sold by the United States government to the City in 1902. The rest was sold to the City by the Colorado State Land Board in 1965. The railroad, now the Foundation, only has easements over this publicly owned land. The land under the right of way varies in width from 100 or 50 feet from either side of the centerline of the track and runs north

and south through the middle of town. This land comprises about 11 acres. Attached to this letter is a map showing the location of the track in the city or where the track formerly existed.

Because the former D&RGW ceased any rail service in Creede more than 30 years ago, the City has been putting some of the land which is in the right of way, along with adjacent publicly owned land, to various public uses over the years. The City constructed a playground on the right of way; a portion of the tracks was covered over and the area is used as public parking; and an events center was constructed on a portion of the right of way, where an annual festival (the "Days of 92") is held each July 4 celebrating Colorado's mining heritage. The City has also constructed water and sewer lines under the right of way and paved some streets in land that is also in the right of way.

The City would like to make improvements to these public facilities and consider other uses to which the land in the right of way could be put, which benefits the community and its residents and businesses. The City cannot do so as long as the Foundation has a right of way over this land. The City does not believe that the Foundation will ever be able to restore freight service on the Branch, there are no current or potential shippers, and even if it could, the Foundation does not need any track in the City to provide such freight service. It is the City's position that, if the STB finds that this track can be abandoned, the Foundation's easements will be extinguished by the terms of the railroad rights of way from the federal and state governments to which the Foundation succeeded when it purchased the Creede Branch. The City will then be free to the plan for the further use and development of this land. This is the reason that the City is pursuing the abandonment application. The application is termed "adverse," because it is opposed by the Foundation.

Abandonment will result in the removal of the track, which has not already been taken up or paved over, in the city limits. The materials to be removed will be the railroad ties, all of which have rotted and are essentially scrap, and the rail. There is only one railroad structure in the right of way, a short wooden bridge that carries the track over Willow Creek at the southern end of town. The Creek is channeled through town in a flume, which was built by the Corps. This bridge may be removed at some point. The City will advise the U.S. Army Corps before the bridge is removed.

Because the track in the city has been out of service for more than 30 years, the City does not believe that the removal of this track will have any impact on the environment. If the Corps has any views on whether the abandonment will raise any environmental issues, please write, call or e-mail me so we can discuss. Thanks you for taking time to consider this matter.

Sincerely yours,



Clyde Dooley
City Manager
Creede, Colorado

Enclosure

Exhibit No. 4
U.S.G.S. Map [1: 24 000 scale]

Exhibit No. 5
U.S.G.S. Map [1: 50 000 scale]

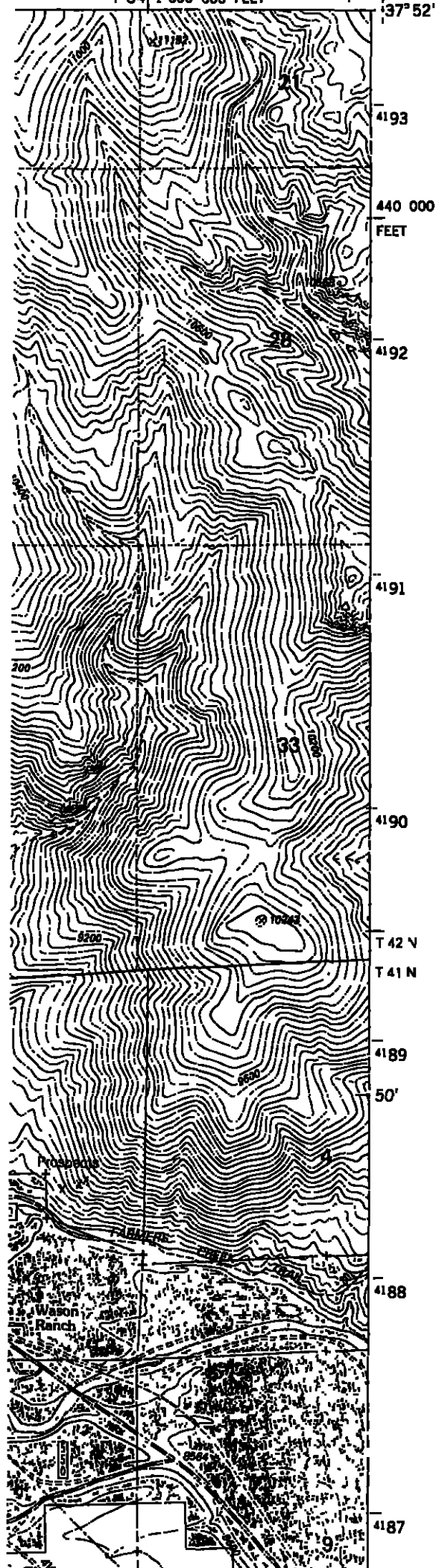
**CREEDE QUADRANGLE
COLORADO-MINERAL CO.**

7.5-MINUTE SERIES (TOPOGRAPHIC)

1334 1 600 000 FEET

106° 52' 30"

37° 52' 30"



MINERAL COUNTY, COLORADO
COUNTY MAP SERIES (TOPOGRAPHIC)
SHEET 1 OF 2

45

45

50

106°41'15"

37°58'45"

400

460 000
FEET

95

52'30"

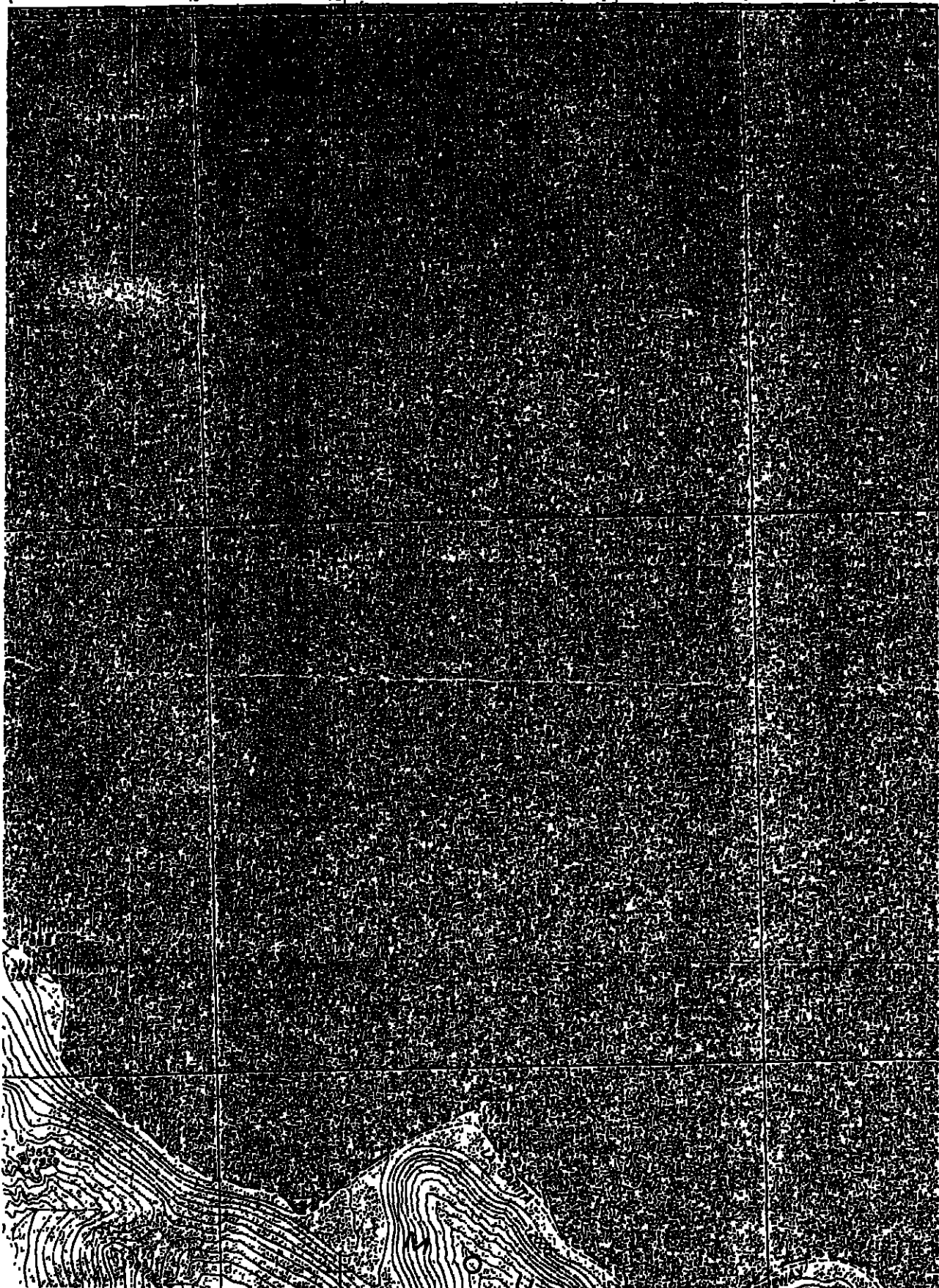


Exhibit No. 6
Pictures of Surrounding Area

(Pictures taken July 2007)
(Pictures 2 and 3 are Exhibit No. 8)
(Numbers corresponds to pictures)





Photo No. 1



Photo No. 4

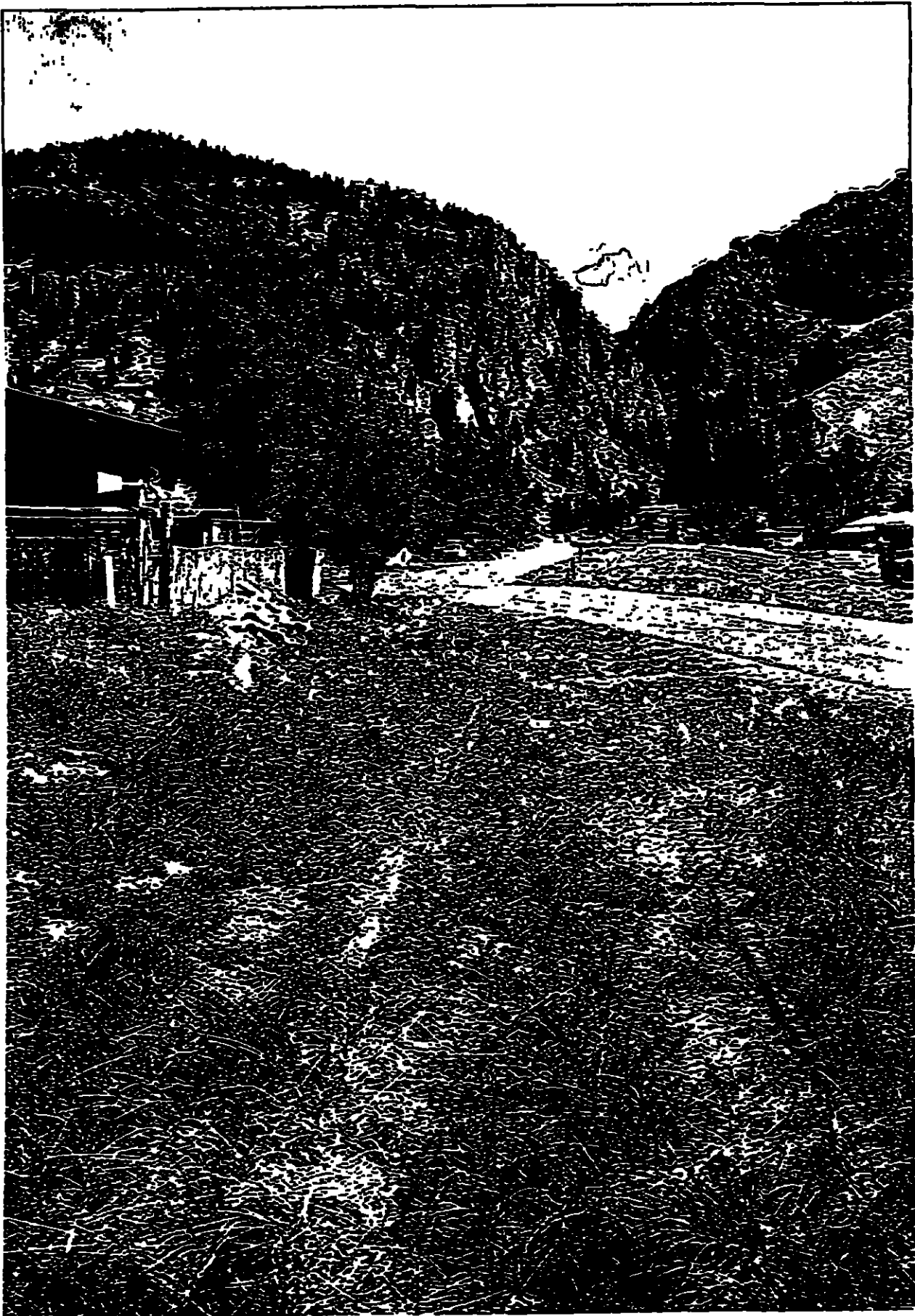


Photo No. 5
Looking North



Photo No. 6
Looking South

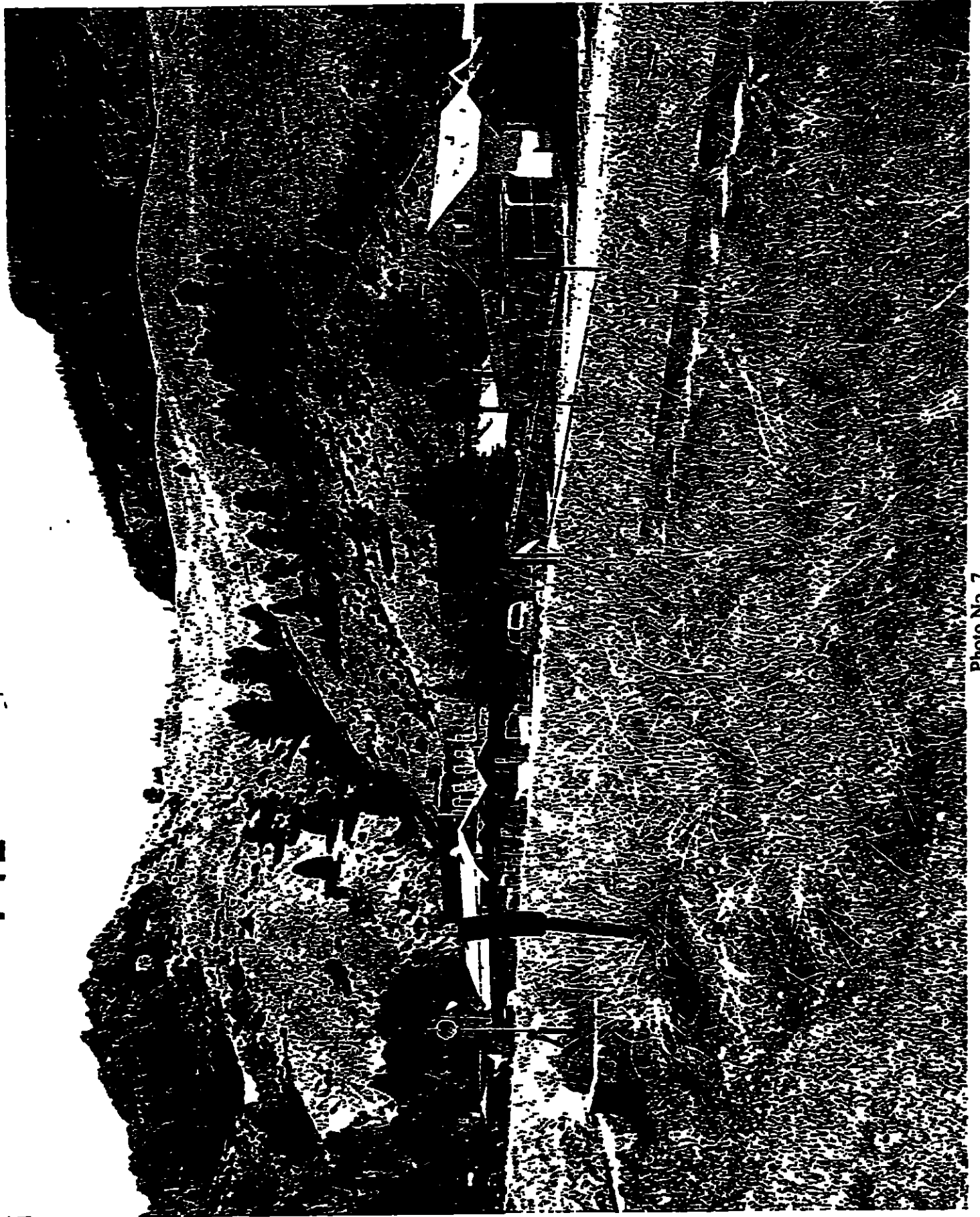


Photo No. 7
Looking Northeast

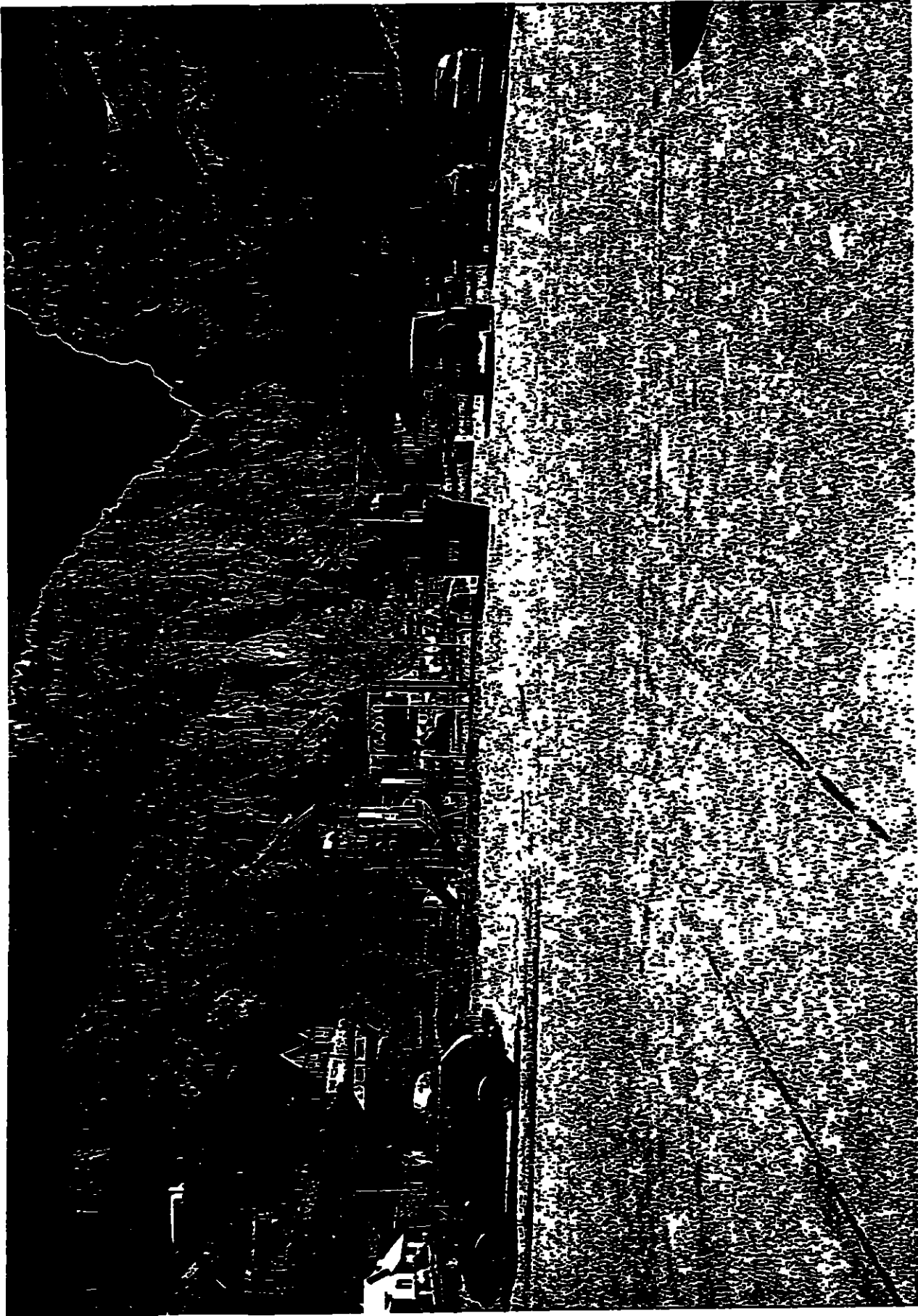


Photo No. 8
Looking North Playground on Left

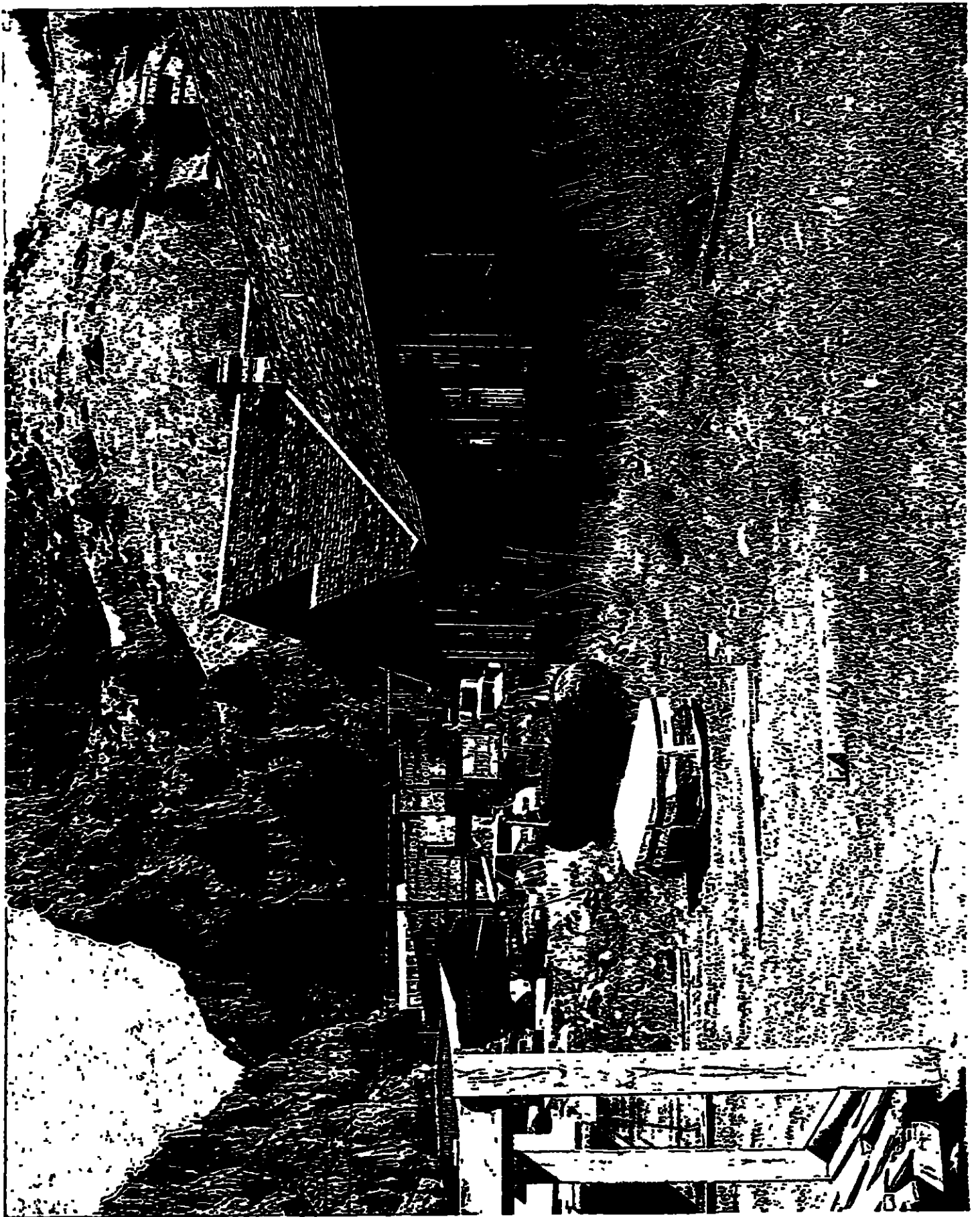


Photo No. 9

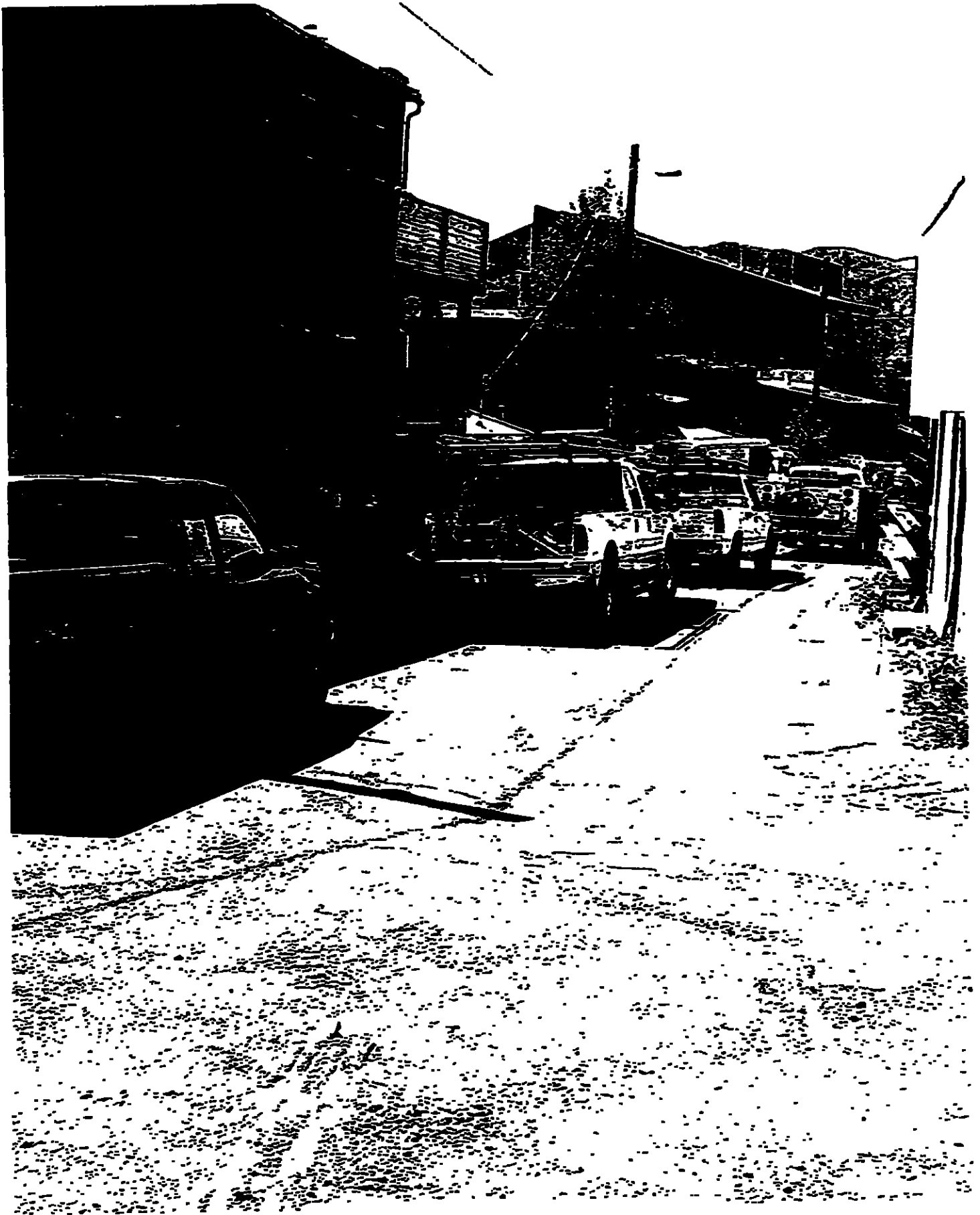


Photo No. 10
Looking South Behind Main Street



Photo No. 11
Looking North Up Main Street



Photo No. 12
Looking North Up Main Street

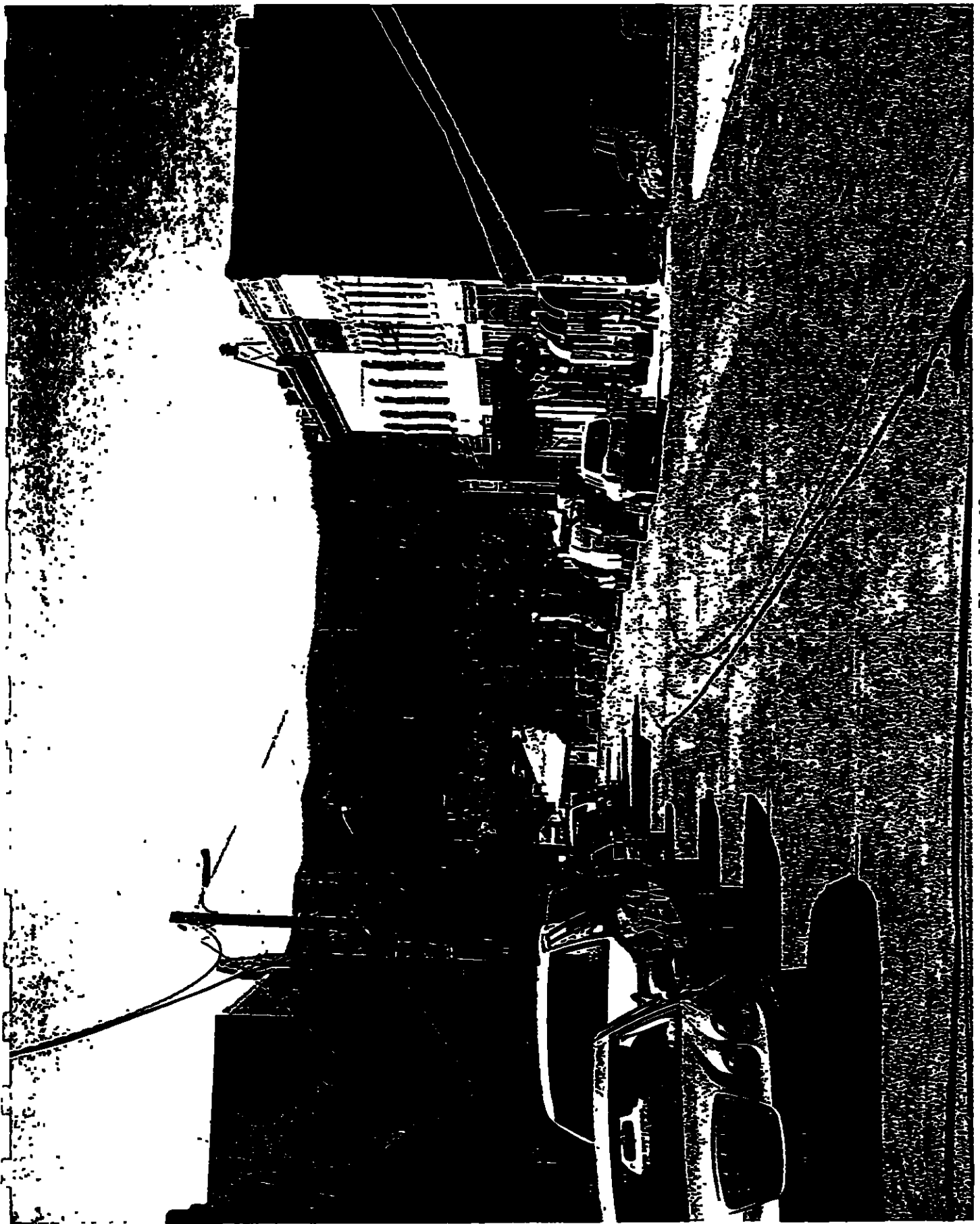


Photo No. 13
Looking South Down Main Street



Photo No. 14



Photo No. 15
"Days of 92 Festival" (7/4/07)

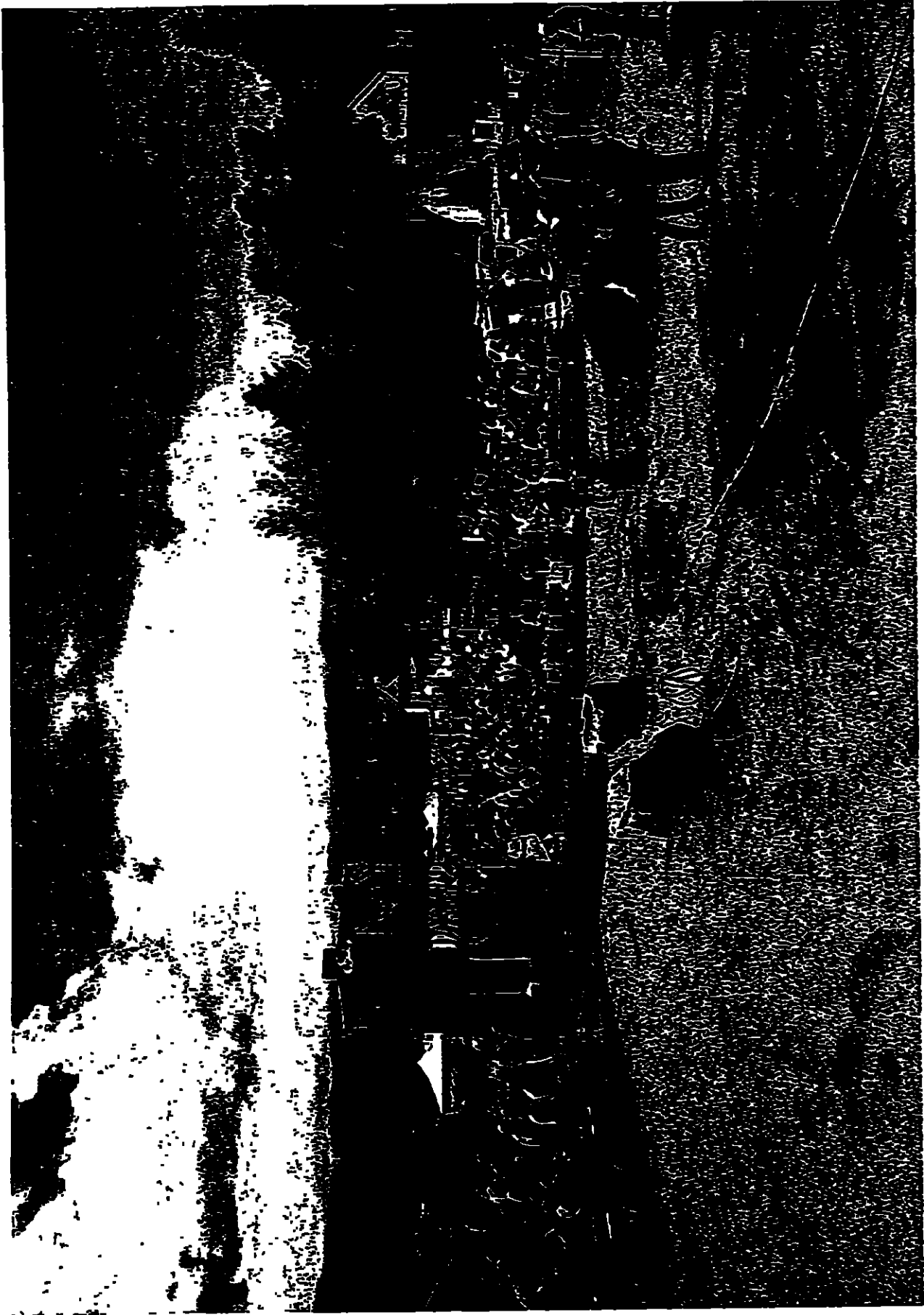


Photo No. 16
Events Center "Days of 92" (7/4/07)

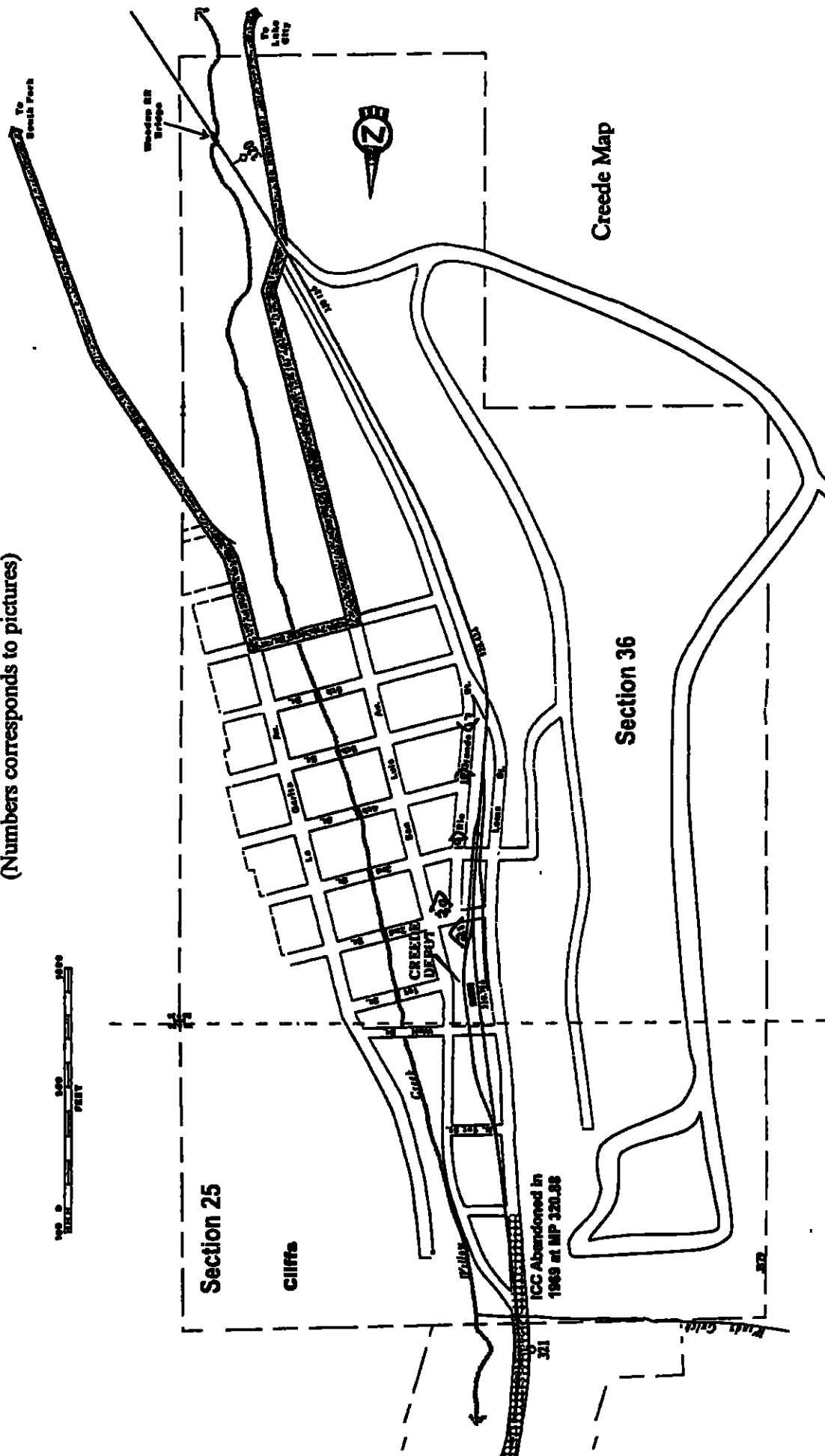
Exhibit No. 7

Pictures of Surrounding Area – After Damage

After Pictures

(Pictures taken 10/30/07)

(Numbers corresponds to pictures)



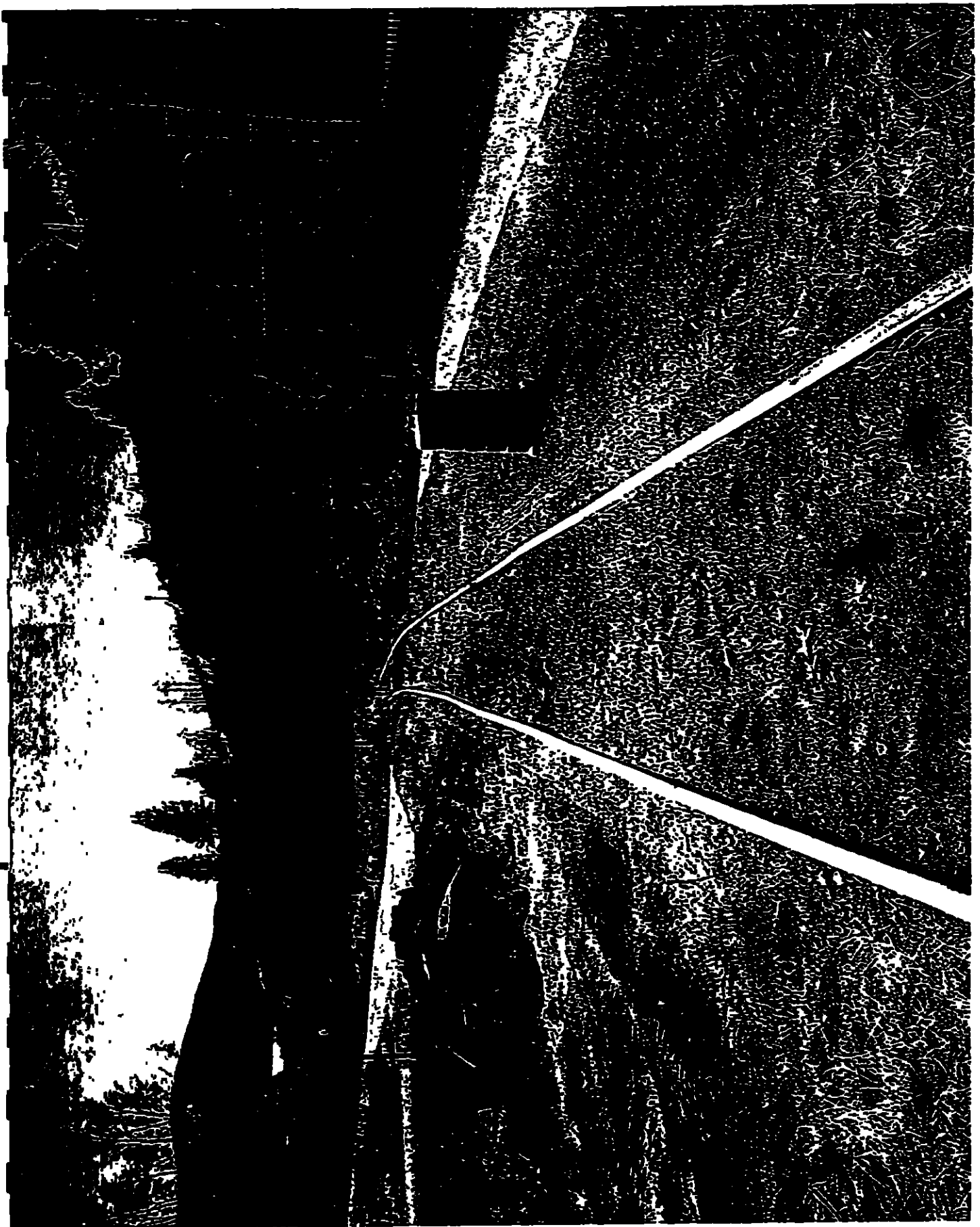


Photo No. 17
Loma Street



Photo No. 18
Loma Street Looking North

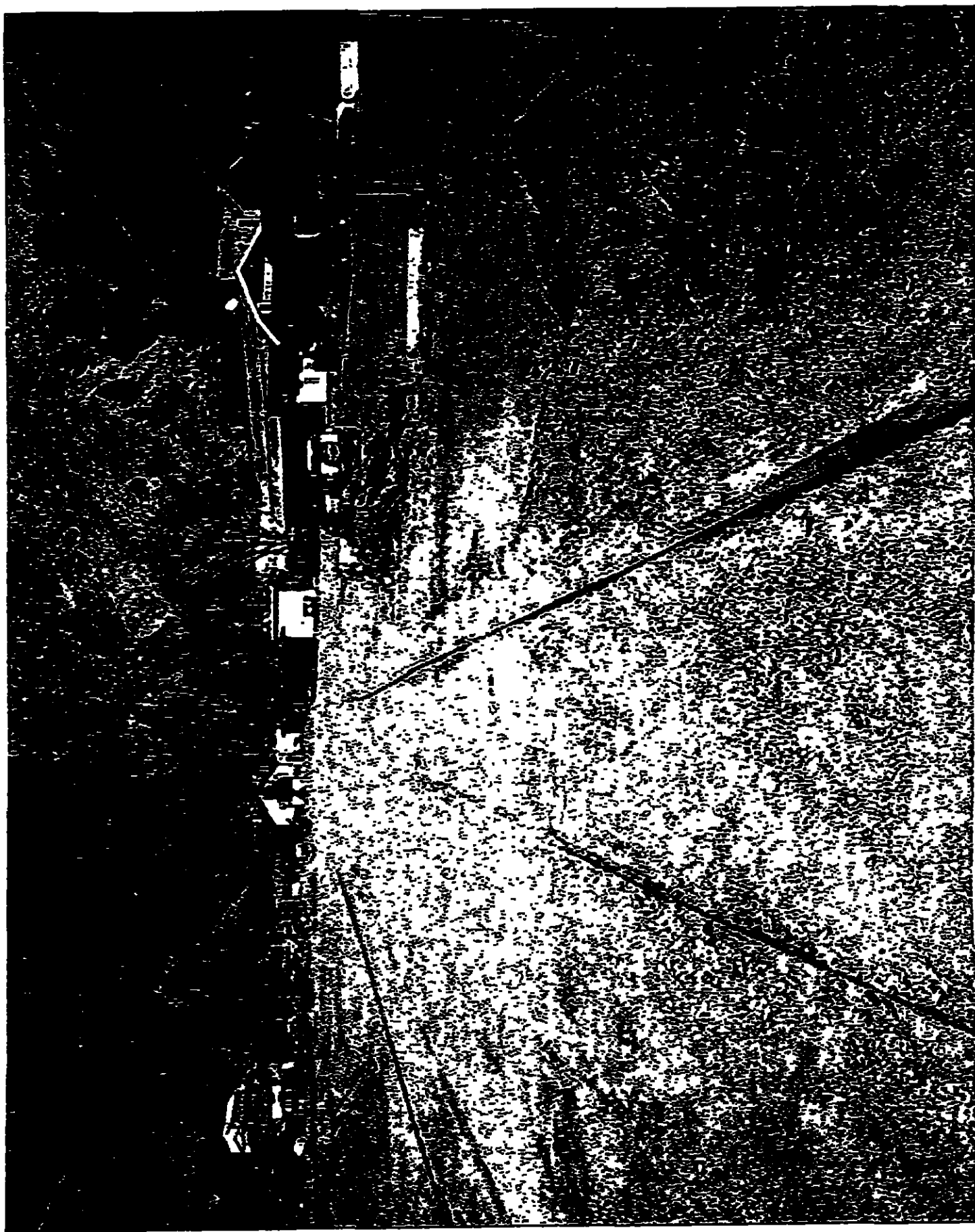


Photo No. 19
Third Street

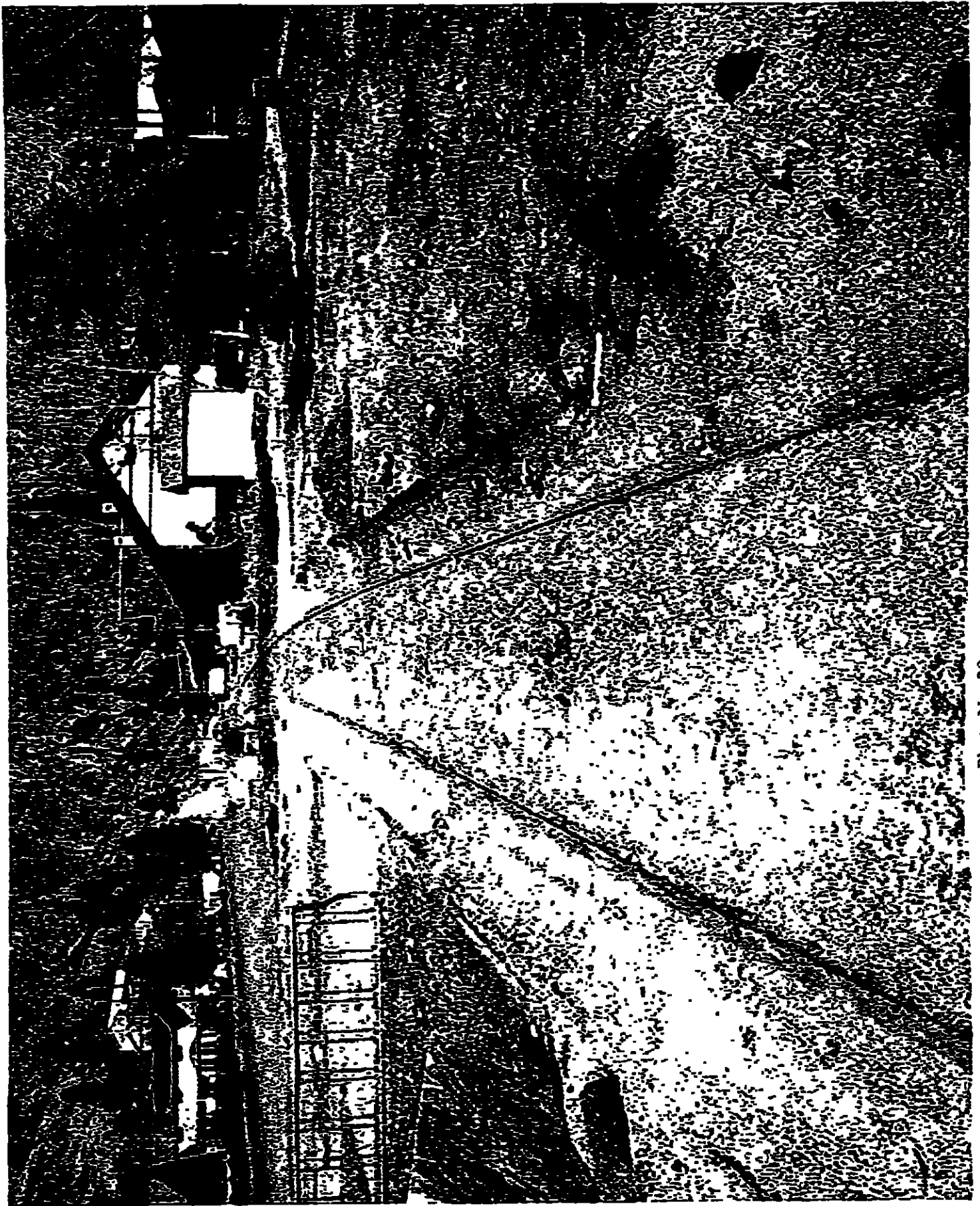


Photo No. 20

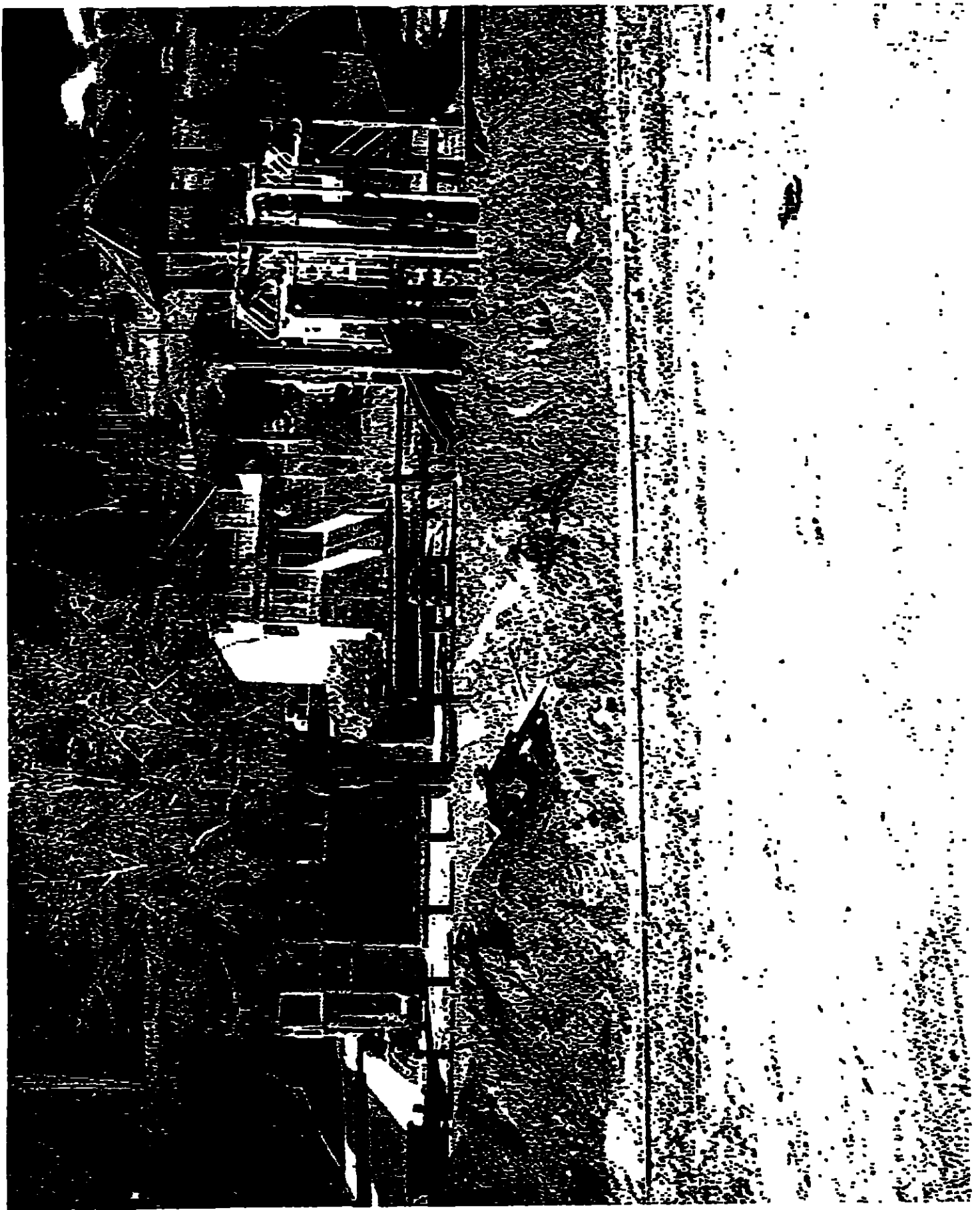


Photo No. 21

Exhibit No. 8
Pictures of Wooden Bridge



Photo No. 2



Photo No. 3



Photo No. 3A

Exhibit No. 9
Letters from Agencies



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
764 Horizon Drive, Building B
Grand Junction, Colorado 81506-3946

IN REPLY REFER TO
ES/CO DOT-STB
TAILS 65413-2008-I-0024

November 30, 2007

Clyde Dooley, City Manager
City of Creede
P O Box 457
Creede, CO 81130

Dear Mr. Dooley

The U S Fish and Wildlife Service has reviewed your October 29, 2007, letter and the November 15, 2007, Environmental and Historic Report submitted by Ronald Johnson of Akin, Gump, Strauss, Hauer, and Feld LLP – Attorneys at Law, regarding the abandonment of about 1 mile of Union Pacific's Creed Branch railroad. The portion of track to be abandoned and removed is in the City of Creede. As such we agree with the Environmental and Historic Report that removal of the track will not affect any threatened or endangered species. The project also does not appear to impact wetlands or other trust resources.

If the Service can be of further assistance, please contact Terry Ireland at the letterhead address or (970) 243-2778, extension 16.

Sincerely,

Allan R. Pfister
Western Colorado Supervisor

Pc: Akin, Gump, Strauss, Hauer, and Feld LLP, Robert S. Strauss Building, 1333, New Hampshire Ave., NW, Washington, DC 20036-1564 (Attn: Ronald Johnson)

30 November 2007

Ron Johnson
Akin Gump Strauss Hauer & Feld, LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564

RE. Docket No. AB-1014, Denver & Rio Grande Railway, Creede Branch, Mineral County

Dear Mr. Johnson:

Thank you for your recent correspondence dated 16 November 2007, concerning the proposed abandonment of one mile of track between MP319.9 and MP320.9 in Creede, Colorado. Our office has reviewed the submitted materials.

In some cases, the removal of tracks and ties can result in a finding of "no adverse effect," because an elevated railroad embankment (or railroad cut) can allow a visitor to easily see where the former rail line once ran. In the case of the Creede Branch, this approach may result in the complete disappearance of any evidence of the line, as the land is flat. In addition, the right-of-way is unlikely to be retained in place. Once the rail line is removed, new paved, grassed, and developed areas may obliterate the former path and make it impossible for future visitors to discern.

In addition, the removal of trackage would likely affect the historic integrity of the former Creede train station, which is currently operated as a museum. One aspect of historic integrity is context, for example, a historic ship carries more historic context if it is floating in water than if it is placed in a museum. Given that the tracks originally ran past the station, and because by nature a station is associated with train tracks, the removal of the Creede Branch line could reduce this aspect of historic integrity.

We request that you contact the State Historical Fund (303-866-2825) for more information on the Creede train station. The building has been the recipient of historic grants from the State Historical Fund. In some cases these grants are tied to a conservation plan or easement, removal of the tracks may constitute a violation of such an agreement, which could place the grant in jeopardy. The State Historical Fund officials can provide further guidance on what (if any) guidelines need to be followed with regards to the station.

 OFFICE of ARCHAEOLOGY and HISTORIC PRESERVATION

In conclusion, we feel that the removal of the train tracks in Creede could have an adverse effect on this segment of the Denver and Rio Grande Western railroad line. In order to avoid an adverse effect, care should be taken to:

- 1) ensure that the existing rail corridor is maintained, so that it remains recognizable as a rail corridor,
- 2) ensure that the historic integrity of the Creede train station is not reduced as a result of the project. It may be sufficient to leave the tracks in place in front of the station itself. Consultation with the State Historical Fund is critical.

If you have any questions, please contact Joseph Saldibar, Architectural Services Coordinator, at (303) 866-3741.

Sincerely,

For 
Georgianna Contiguglia
State Historic Preservation Officer, and
President, Colorado Historical Society

CERTIFICATE OF SERVICE

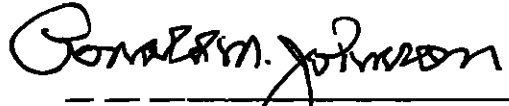
I hereby certify that I have caused a true and correct copy of the Combined Environmental and Historical Report of the City of Creede, Colorado to be served upon the following individuals by United Parcel Service 2-day delivery, this 17th Day of December, 2007.

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

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

Office of the Governor of Colorado
Bill Ritter, Governor
136 State Capitol
Denver, CO 80203-1792

Colorado Public Utilities Commission
Doug Dean, Director
1560 Broadway, Suite 250
Denver, CO 80202



Ronald M. Johnson