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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014

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

PROTEST OF
WASON RANCH CORPORATION

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Dated: January 31, 2008

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Pursuant to the provisions of 49 U.S.C. Section 10903 and 49 C.F.R. Part 1152, and in accordance with the Surface Transportation Board's Notice served on January 4, 2008, Wason Ranch Corporation ("Wason") hereby submits its Protest in response to the application for an adverse abandonment filed in this docket by the City of Creede, Colorado ("Creede").

WASON'S POSITION

Wason fully and enthusiastically supports approval of the adverse abandonment application Creede has filed and urges the Board to approve that application expeditiously. Wason believes Creede has presented a compelling case for adverse abandonment which is more than warranted under the governing legal standards. ^{1/}

^{1/} Wason is participating in this proceeding through a Protest because the Board's regulations and the January 4 Notice do not expressly provide for the full and active participation of a party supporting an application for adverse abandonment. Thus, Wason is required to participate by filing a Protest. Wason is not aware of any reason why the Board would want to prohibit a supportive party from participating fully and actively in this proceeding and assumes that the use of a Protest in this fashion is reasonable and acceptable. If Wason's assumption is not valid, Wason respectfully requests the Board to grant it procedural relief sufficient to permit it to proceed in this manner.

In addition, Wason respectfully asks the Board to expand the geographic scope of the abandonment at issue to include those portions of the line that traverse Wason's property and to act on that request contemporaneously with its consideration of Creede's application. Most of the evidence and all of the arguments Creede has advanced in support of its application apply with equal force to Wason's request.

BACKGROUND

Through its application, Creede has demonstrated persuasively that, under all governing legal precedents, the Board should authorize and permit adverse abandonment of the line of railroad operated by the Denver & Rio Grande Railway Historical Foundation ("the Foundation") over property located within Creede's city limits. Creede argues convincingly that the Board's experiment that began in 2000 and that gave the Foundation access to the line has been a failure and should be terminated through this adverse abandonment proceeding.

Creede has shown that no rail operations have been conducted over the line for decades and that Creede and its citizens have taken the city in a direction that makes the reinstitution of rail service over the line within the geographical limits of the city difficult if not impossible to contemplate.

Creede has asserted that there are no shippers with a realistic interest in the reinstitution of rail service over the line, and it has proven that it cannot reasonably be assumed that any such shipper will ever materialize. There is no evidence--in this proceeding or in any of the other related proceedings the Board has conducted in recent years-- remotely suggestive of the notion that reinstitution of rail service over the line is to be anticipated.

Creede has also identified and proven another reason the Board should approve Creede's application. Creede has shown that the Foundation has never, over all the years it has expressed an interest in the line, been able to establish that it is qualified to reinstitute rail service over the line in the wholly unlikely event economic development might justify it. The Foundation does not have assets, sources of funds, equipment, technical qualifications or the trained personnel required to mount a successful rail operation conducted in the public interest. Moreover, Creede has demonstrated that the Foundation and its managers lack the professional qualifications and disposition toward public service that the Board should expect of the carriers it authorizes to provide rail service into the cities, towns and villages railroads serve.

Accordingly, as Creede so persuasively argues, abandonment of the line is clearly warranted under the governing legal standards. Creede has more than satisfied its burden of proof in this regard, and its application should be approved.

WASON AND ITS INTEREST IN THIS PROCEEDING

Wason is a corporation in good standing organized under the laws of the State of Colorado. It owns approximately 1,620 acres of land immediately south of Creede in Mineral County, Colorado. Wason's property and the extension of the Foundation's railroad line over it adjoins the Rio Grande River. Wason conducts a trout fishing business on its property and offers access to the Rio Grande to many fishermen throughout the fishing season. Wason has invested substantial amounts of money to preserve and protect the river and its properties along the river to assure that its fishing operations are and will continue to be successful.

As the line at issue traverses Wason property, it crosses Colorado Highway 149 and crosses over the Rio Grande with an out-of-service railroad bridge. The condition of the line on

Wason property is essentially as Creede describes the portion of the line located in the city. Required maintenance of the line, the roadbed and the bridge has been deferred for years if not decades, and there has been no rail service or traffic on the portion of the line traversing Wason's property for as long as there has been none on the portion of the line in Creede.

While Wason has not encountered any of the unpleasant and antisocial conduct from the Foundation that the Foundation has visited upon Creede, Wason has been made aware of the city's encounters with the Foundation and would not anticipate that the Foundation would treat it any better than it treated the city were Wason to have a disagreement with the Foundation.

To date, Wason has not suffered any damage or losses to its property directly attributable to the Foundation or its stewardship of the line. Wason is, however, fully aware of the dismal condition of the line as it traverses Wason property and fully anticipates the possibility of loss if the Foundation were ever to consider operating railroad equipment over it. Wason has also been made aware of the activities of the speeder excursions the Foundation has authorized to use the line and is concerned about the possibility that those excursions can result in trespass on and damage to Wason property. Wason is not aware of anything the Foundation is doing to assure that property owners over whose property the line extends are protected against loss in the case of an accident or similar event.

THE CREEDE APPLICATION SHOULD BE APPROVED

Creede has presented compelling evidence and argument in support of its application for an adverse abandonment of the line at issue, and Wason urges the Board to grant Creede the relief it seeks.

The governing legal standards applicable to adverse abandonment applications under 49 U.S.C. Section 10903 are well established,^{2/} and Creede has satisfied each and every one of them. As stated, Creede has shown that there has been no rail service over the line for decades, and that there is no conceivable possibility that there will ever be a need for such service to be reinstituted. Creede has also shown that there are, as there always have been, a substantial number of questions concerning the qualifications of the Foundation to act as a rail carrier in the public interest.

Wason agrees with Creede that there is no probative evidence to show that public convenience and necessity permit or require continuation of rail service over the line or that the Foundation can be expected to act in a manner and up to the standards the Board should expect carriers subject to its jurisdiction to satisfy.

THE ABANDONMENT CREEDE SEEKS SHOULD BE EXPANDED TO INCLUDE THOSE PORTIONS OF THE LINE TRAVERSING WASON'S PROPERTY

As shown above, the record evidence provided by Creede in this proceeding should convince the Board to approve the Creede application. The Board's experiment with the Foundation has not been successful and has only led to pain and disruption for the Creede community. Accordingly, the Board should end the experiment now and approve Creede's application. The record evidence not only supports that conclusion; it requires it.

More importantly, as far as Wason is concerned, that record evidence and the arguments Creede has presented to the Board also justify expanding the requested abandonment to include, at least, those portions of the line which traverse Wason's property.

^{2/} See Creede Application, at pages 33-34.

There are no shippers originating or terminating shipments in Creede. There are none at Wason. There have been no railroad patrons in Creede for decades. There have not been any at Wason. It is extremely unlikely that there will ever be a shipper needing rail service in Creede. It is impossible that there would ever be such a shipper at Wason. Creede has shown that the Foundation is not fit, willing and able to conduct rail transportation in the public interest in Creede. Similarly, the Foundation is not fit, willing and able to conduct rail transportation in the public interest at Wason or at any other point along the line. The Foundation's interrelationships in Creede and with its citizens and public officials have not satisfied the standards of conduct the Board should expect of its licensed carriers. There is no reason to expect the Foundation to act any more reasonably toward Wason if and when controversies arise regarding the Foundation's presence on Wason property.

Accordingly, under well established Board precedent and for all the reasons Creede has offered, the Board should grant and permit abandonment of the line within Creede and beyond Creede to include those portions of the line traversing Wason property.^{2/}

**EXPANDED ABANDONMENT SHOULD BE
CONSIDERED IN A CONSOLIDATED PROCEEDING**

Wason recognizes that the Board's regulations do not expressly authorize the consolidation and contemporaneous consideration Wason is requesting in this proceeding. Nevertheless, in the interest of due process, economy and administrative convenience, Wason's procedural request should be approved and adopted by the Board. Consolidation and

^{2/} In its Application, at footnote 2 on page 4, Creede observed that "...a strong case can be made for abandonment of the entire Branch..." Wason certainly agrees.

contemporaneous consideration of the Wason request with the Creede application is clearly justified, and there can be no legitimate reason to require Wason to process a new and separate application independent of the Creede proceeding

The statutory remedy sought by Creede and Wason is the same. The relevant issues arising under controlling Board precedent are the same. The evidence and arguments to be relied on by one of the two parties are almost completely the same as those to be relied on by the other party. The relevant geography is the same. Any analysis of the relevant Creede economy and its potential would certainly be identical to such an analysis for Wason. The line of railroad is the same. The physical description of the lines of railroad in Creede and on the Wason property are similar if not the same for all intents and purposes. The entire line of railroad is out of service, has been out of service for decades and could not be restored to active service absent an incredibly large financial investment which is not available to the Foundation. The relationship of the line in Creede to the national rail transportation system is the same as the relationship of the entire line to the national system: as Creede has explained, the line--in Creede and at Wason--is physically disconnected from the interstate system and cannot, as a practical matter, be a part of it. The operator of the line is the same in both cases and evidence regarding the operator's fitness, willingness and ability to conduct rail operations in the public interest is identical. The history of rail operations over the two portions of the line is the same. Evidence regarding the likelihood of and challenges to the reinstitution of rail operations over the two portions of the line is the same. And the legal arguments supporting the requested relief of both parties are the same.

Consolidation and contemporaneous consideration of Wason's request with the Creede application will be of great benefit to the Board. There is no reason for it to have to process two

such closely related applications in separate proceedings duplicating processes at every step along the way.

Consolidation will obviously save time and effort by parties participating in the case. Wason fully intends to continue to participate in the Creede case and to offer its support for Creede in its effort to secure the abandonment it seeks. Needless duplication and added expense will be avoided if the Board consolidates and processes Wason's request as it continues to process Creede's.

No party will be disadvantaged by consolidation and contemporaneous consideration of the two requests. There is no reason to anticipate that Creede's application cannot be acted upon by the Board with the urgency and timeliness Creede has sought and to which it is entitled while, at the same time, the Board also considers Wason's closely related request.²⁷ If the Foundation chooses to contest the Creede application, its burden will not be materially increased by responding to the Wason request at the same time.

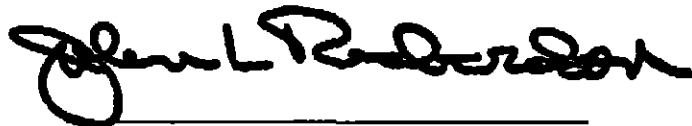
It is a principle of sound administrative and judicial procedure that closely related matters should be consolidated and considered together by the appropriate decision maker unless there is some compelling reason why consolidation and contemporaneous consideration are not advisable. Wason believes that this is a situation where consolidation and contemporaneous consideration is especially warranted and justified.

²⁷ Wason will soon be filing evidence it is able to acquire required by Part 1152 specifically related to the adverse abandonment of the portion of the line traversing Wason property and will also be seeking appropriate waivers for relief from filing requirements it is not able or should not be required to satisfy.

SUMMARY AND CONCLUSION

The City of Creede has prepared and presented to the Board a compelling justification for approval of the adverse abandonment it seeks. Wason supports its neighbors in Creede and, for all the reasons presented, in the interest of administrative economy and for the convenience of all the parties. Wason also urges the Board to expand the scope of the abandonment under consideration and extend approval of the requested relief to include the portion of the line of railroad that traverses property owned by Wason.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Richardson", written over a horizontal line.

John L. Richardson

John L. Richardson, P.L.L.C.

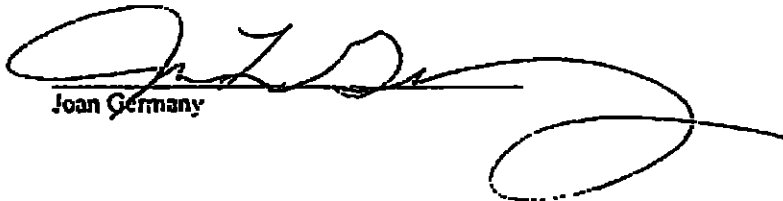
Counsel for Wason Ranch Corporation

Dated: January 31, 2008

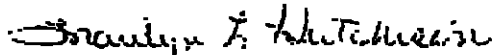
VERIFICATION OF JOAN GERMANY

I, Joan Germany, being duly sworn, state as follows:

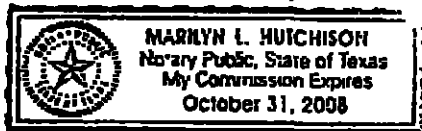
I am President of Wason Ranch Corporation, I have been authorized by Wason to verify and file a Protest in this proceeding; I have carefully examined the Protest; I have knowledge of the matters referred to in the Protest; and all representations set forth therein are true and correct to the best of my knowledge, information and belief.


Joan Germany

Joan Germany, subscribed and affirmed before me in the County of Dallas, State of Texas, this 30th day of January, 2008


Notary Public

My commission expires: 10-31-2008



CERTIFICATE OF SERVICE

I certify that I have, this 31st day of January 2008, caused a true and correct copy of the foregoing Protest to be served upon the following individuals by United States mail

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A handwritten signature in black ink, appearing to read "John L. Richardson". The signature is fluid and cursive, with a large initial "J" and "R".

John L. Richardson