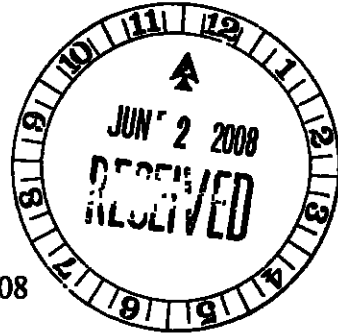


222490

JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129

TEL (617) 886-9322
FAX (617) 886-9324
EMAIL JIM@JEHOWARDLAW.COM



May 30, 2008

VIA FEDERAL EXPRESS

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

Re Rarus Railway Company--Abandonment and Discontinuance Exemption in
Deer Lodge County, Montana (Anaconda/West Valley Line)
Docket No AB-260 (Sub- No 2X)

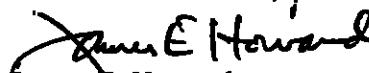
Dear Secretary Quinlan

Enclosed for filing in the above-captioned matter are the original and 10 copies of
a Notice of Exemption pursuant to 49 CFR 1152.50. Also enclosed is a check in the
amount of \$3,200 representing the filing fee for the Notice.

As described in more detail in the Notice, the Section of Environmental Analysis
of the Board has authorized Rarus to submit a draft environmental assessment rather than
the environmental and the historic reports required by 49 CFR 1105.7 and 1105.8. A
final draft of the environmental assessment, including changes suggested by SEA, has
been submitted to SEA.

If you have any questions or require additional information, please contact me.
Thank you very much for your attention to this request.

Very truly yours,


James E. Howard

Enclosures

ENTERED
Office of Proceedings
JUN 2 - 2008
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-260 (Sub-No 2X)

RARUS RAILWAY COMPANY--
ABANDONMENT AND DISCONTINUANCE
EXEMPTION

IN DEER LODGE COUNTY, MONTANA
(ANACONDA/WEST VALLEY LINE)

NOTICE OF EXEMPTION
PURSUANT TO 49 C F R 1152.50

FILED

JUN 2 - 2008

**SURFACE
TRANSPORTATION BOARD**

James E Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
617-886-9324

Attorney for Rarus Railway Co

Dated May 30, 2008



ENTERED
Office of Proceedings

JUN 2 - 2008

Part of
Public Record

FEE RECEIVED
JUN 2 - 2008
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



Docket No AB-260 (Sub-No 2X)

RARUS RAILWAY COMPANY--
ABANDONMENT AND DISCONTINUANCE
EXEMPTION

IN DEER LODGE COUNTY, MONTANA
(ANACONDA/WEST VALLEY LINE)

NOTICE OF EXEMPTION
PURSUANT TO 49 C F R 1152 50

Rarus Railway Company ("Rarus") hereby submits this Notice of Exemption pursuant to 49 C F.R 1152 50 for abandonment of and discontinuance of operations on the approximately 4 7 mile line of railroad between a point at Pennsylvania Avenue west of the West Anaconda Yard in Anaconda, Montana and a point at North Cable Road approximately 4 2 miles west of Anaconda in Deer Lodge County, Montana referred to as the Anaconda/West Valley Line (the "Line") In accordance with the requirements of 49 C F R 1152 50(d)(2), Rarus provides the following information

Proposed Consummation Date--49 C F R 1152 50(d)(2)

The proposed consummation date for the abandonment and discontinuance is July 20, 2008

Traffic Certification--49 C F R. 1152.50(b) and (d)(2).

As stated in the certificate attached hereto as Exhibit A, no local revenue traffic has moved over the Line for at least 20 years, there is no overhead traffic on the Line that would have to be rerouted over other lines and no formal complaint filed by a user of rail service on the Line, or a State or local governmental entity acting on behalf of such a user, regarding cessation of service on the Line is pending with the Board or in any United States District Court or has been decided in favor of a complainant within the last two years

Name of Applicant--49 C F R 1152 22(a)(1).

The exact name of the applicant is Rarus Railway Company, which is the owner of the Line

Common Carrier Status--49 C.F R 1152 22(a)(2).

Rarus is a Class III common carrier by railroad subject to 49 U S C. Subtitle IV, chapter 105 as a consequence of its lease, from the State of Montana in 1985, of the Line and the lease and operation of a connected line that is approximately 25 7 miles in length and that is located between Butte, Montana and the eastern terminus of the Line in Anaconda (the "Rarus Active Line") Finance Docket No. 30640, decision served April 26, 1985 Subsequently, in 1991, BGM Equipment Co , Inc ("BGM"), which was formerly an affiliate of Rarus, acquired ownership of the Line and the Rarus Active Line from the State of Montana, and Rarus continued to operate the Rarus Active Line pursuant to a lease from BGM Finance Docket No 31697, decision served October 31,

1990 In 2007, Rarus and BGM were acquired by Patriot Rail Corp , and BGM was merged into Rarus

Relief Sought--49 C F R 1152.22(a)(3)

By this notice, Rarus seeks to abandon and discontinue service on the Line pursuant to the class exemption for the abandonment of and discontinuance of service on out-of-service lines as set forth at 49 C F R 1152.50

Map--49 C F R 1152 22(a)(4).

A detailed map of the Line showing its location and its relation to other rail lines in the area, highways, water routes and population centers is attached hereto as Exhibit B

Applicant's Representative--49 C.F.R 1152 22(a)(7)

The representative of the applicant to whom correspondence should be sent is their attorney, James E Howard, One Thompson Square, Suite 201, Charlestown, MA 02129

Zip Code--49 C F R 1152 22(a)(8)

The Line traverses the following United States Postal Service zip code 59711

Suitability for Other Public Purposes--49 C F R 1152 22(e)(4).

Pursuant to an agreement dated October 31, 2006, BGM and Rarus agreed to convey the Line to the State of Montana, acting by and through the Montana Department of Transportation, for highway or trail use purposes after the consummation of the abandonment and discontinuance Rarus is unaware of any restrictions on title to the Line that would affect the transfer or use of the Line for purposes other than rail transportation

Labor Protection--49 C F R 1152 50(d)(2)

Because the Line has been out of service for over 20 years, Rarus believes that no employees will be adversely affected by the abandonment and discontinuance. The level of labor protection applicable is established in Oregon Short Line Railroad Company--Abandonment--Goshen, 360 I C C 91 (1979).

Notice Requirements--49 C.F.R. 1152 50(d)(2).

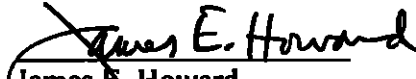
Attached hereto as Exhibit C is a certificate to the effect that there has been compliance with the notice requirements of 49 C.F.R. 1152 50(d)(1), 49 C F R 1105.11 and 49 C F R 1105 12.

Environmental and Historic Reports-- 49 C F R 1105 7 and 1105 8

The Line is located within the Anaconda Smelter Superfund Site, which was established by the U.S. Environmental Protection Agency in order to address contamination resulting from copper concentrating and smelting activities in the Anaconda area. EPA has approved a remediation plan for the site that includes the abandonment of the Line and the removal of the track, ballast and underlying track bed materials. Pursuant to letters dated April 26, 2007 and May 20, 2008, and in accordance with several telephone conversations, the Section of Environmental Analysis ("SEA") approved the request of Rarus to submit a preliminary draft environmental assessment in lieu of the environmental and historic reports required by 49 C F R 1105 7 and 49 C F R 1105 8. On May 10, 2007, the preliminary draft environmental assessment was submitted to SEA, and on June 13, 2007 it was mailed to the persons and entities described in 49 C.F.R. 1105 7(b). The preliminary draft environmental assessment has

been amended several times subsequent to May 10, 2007 in order to take into account comments of SEA, and a final version of the preliminary draft environmental assessment as recently been submitted to SEA. The transmittal letter dated June 13, 2007 and responses that have been received are attached hereto as Exhibit D.

Respectfully submitted,


James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
617-886-9322

Attorney for Rarus Railway Co.

Dated May 30, 2008

Exhibit A

TRAFFIC CERTIFICATION

State of Montana

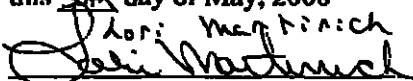
ss

County of Deer Lodge

Paul McCarthy, being duly sworn, deposes and says that he is the President of Rarus Railway Co. ("Rarus"), that he is familiar with the property, business and operations of Rarus, including the approximately 4.7 mile line of railroad known as the Anaconda/West Valley Line between Pennsylvania Avenue just west of the West Anaconda Yard in Anaconda and North Cable Road approximately 4.2 miles west of Anaconda (the "Line"), and that (1) no local revenue traffic has moved over the Line for at least two years, (2) no overhead traffic has moved over the Line for at least two years and that if there were any overhead traffic on the Line it could be rerouted over other lines and (3) no formal complaint filed by a user of rail service on the Line or a State or local government entity acting on behalf of such a user regarding cessation of service over the Line either is pending before the Surface Transportation Board or any United States district court or has been decided in favor of a complainant in any such proceeding within such two-year period.


Paul McCarthy

Subscribed and sworn to before me
this ~~3rd~~ day of May, 2008


Lori Martinich
Notary Public

My Commission expires 4-1-2012

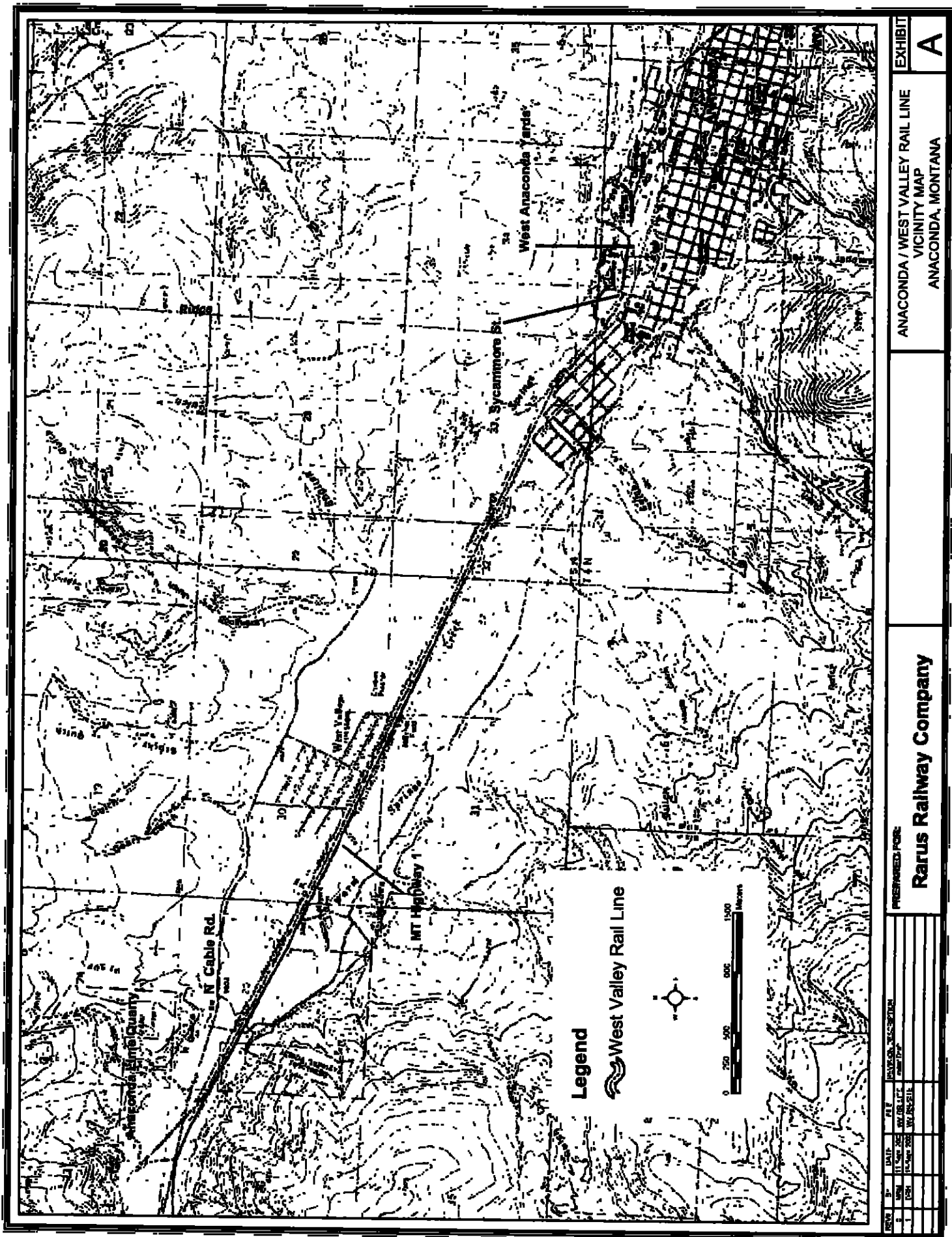


Exhibit B

Exhibit C

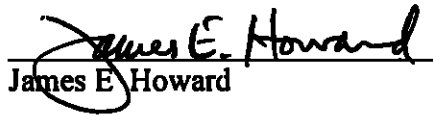
CERTIFICATION OF NOTICE AND PUBLICATION

I, James E Howard, attorney for Rarus Railway Co ("Rarus"), hereby certify, in connection with the foregoing Notice of Exemption, that:

1. The notice requirements of 49 C.F.R. 1152.50(d)(1) have been complied with by mailing, by first-class mail, a letter dated May 19, 2008, a copy of which is attached as Exhibit C-1, to each of the entities listed in 49 C F R. 1152 50(d)(1)(i)--(iv)

2 The notice requirements of 49 C.F R 1105 11 have been complied with by mailing, by first-class mail, a letter dated June 13, 2007, a copy of which is attached as Exhibit C-2, together with a preliminary draft environmental assessment describing the proposed abandonment and discontinuance and the environmental and historic effects, to each of the entities listed in 49 C F R 1105 7(b)

3 The publication requirements of 49 C F R 1105 12 have been complied with by publication on May 23, 2008 of the notice attached as Exhibit C-3, in the Anaconda Leader, a newspaper of general circulation in Deer Lodge County, Montana


James E Howard

**JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129**

**TEL (617) 886-9322
FAX (617) 886-9324
EMAIL JIM@JEHOWARDLAW.COM**

May 19, 2008

To Attached List

Re Rarus Railway Company--Exempt Abandonment and Discontinuance
Docket No AB-260 (Sub No 2X)
Anaconda/West Valley Line in Deer Lodge County, Montana

Dear Sir or Madam:

This letter is to inform you that Rarus Railway Co ("Rarus") intends to file with the Surface Transportation Board, on or about May 30, 2008, a notice of exemption to abandon and discontinue service on a rail line known as the Anaconda/West Valley Line, which is located between Pennsylvania Avenue, just west of the West Anaconda Yard in Anaconda, Montana, and North Cable Road, approximately 4.2 miles west of Anaconda, in Deer Lodge County, Montana (the "Line"). The Line is located U.S. Postal Service zip code 59711. Rarus intends to file a notice of exemption pursuant to 49 C.F.R. Part 1152, Subpart F, which permits the abandonment of and discontinuance of service on lines that have not had any local traffic for at least two years and that have not had any overhead traffic that cannot be rerouted over other lines.

Based on information in the possession of Rarus, the Line does not contain federally granted rights of way. Any documentation in the possession of Rarus will be made available promptly to those requesting it.

Very truly yours,

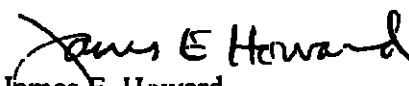

James E. Howard
Attorney for Rarus Railway Co.

Exhibit C-1

Addressee List

**Edward Beaudette, Esq
Montana Department of Transportation
2701 Prospect Ave
P O Box 201001
Helena, MT 59620-1001**

**United States Department of Defense
MTMCTEA
Attention. Railroads for National Defense Program
720 Thimble Shoals Boulevard
Suite 130
Newport News, VA 23606-2574**

**United States Department of Agriculture
Chief of Forest Service
1400 Independence Ave , S W.
Fourth Floor
Washington, DC 20250**

**Michael Snyder, Regional Director
Intermountain Region
National Park Service
12795 West Alameda Parkway
Denver, CO 80225**



Davis Graham & Stubbs LLP

June 13, 2007

To. Attached Addressee List

Re. Proposed Abandonment of Railroad Line in Anaconda/Deer Lodge
County, Montana

Dear Madam or Sir:

On approximately July 15, 2007, BGM Equipment Company, Inc. ("BGM") and Rarus Railway Company ("Rarus") expect to file with the Surface Transportation Board (the "Board") a notice of exemption pursuant to 49 CFR § 1152.50 seeking authority to abandon the approximately 4.7-mile Anaconda/West Valley Rail Line (the "AWVRL"), which is located in and near the city of Anaconda, in Deer Lodge County, Montana, to meet remediation requirements imposed by the U.S. Environmental Protection Agency ("EPA"). The AWVRL is owned by BGM and operated by Rarus. There have been no rail operations on the AWVRL since before its acquisition by BGM in 1985. Attached to this letter is a Preliminary Draft Environmental Assessment ("PDEA") describing the proposed action and any expected environmental and historic effects. There are several maps appended to the PDEA depicting the AWVRL and the affected area.

We are providing this report so that you may review the information that will form the basis for the Surface Transportation Board's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact Phillis Johnson-Ball, Section of Environmental Analysis ("SEA"), Surface Transportation Board, 395 E Street, S.W., Suite 500, Washington, D.C. 20423, (202) 245-0304, and refer to the description above. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments, if any, to SEA (with a copy to us) would be appreciated within three (3) weeks.

Your comments will be considered by SEA in evaluating the environmental and historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact me directly at the address or phone number shown on this letterhead. Thank you for your prompt attention to this matter.

Exhibit C-2

Pamela S. Sbar 303.892.7309 pam.sbar@dgsllaw.com

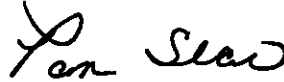
1550 Seventeenth Street • Suite 500 • Denver, Colorado 80202 • 303.892.9400 • fax 303.893.1379

www.dgsllaw.com

#782162.2

Various Agencies
June 13, 2007
Page 2

Sincerely,

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

Pamela S Sbar
for
DAVIS GRAHAM & STUBBS LLP

Attachment

cc (w/out attachments)

Phillis Johnson-Ball, SEA
James Howard, Esq.
Trey Harbert
Robin Bullock
Jean Martin, Esq
Don Booth
Gavin Scally
Paul McCarthy

ADDRESSEE LIST

Sandra Straehl, Administrator
Rail, Transit & Planning Division
-- --- Montana Department of Transportation
P.O. Box 201001
2701 Prospect Ave
Helena, MT 59620-1001

Edward G Beaudette, Esq
Montana Department of Transportation
2701 Prospect Avenue
P O Box 201001
Helena, MT 59620-1001

Kevin Kirley
Montana Dept of Environmental Quality
2209 Phoenix Avenue
Helena, MT 59620

Mary Capdeville, Esq
Montana Dept of Environmental Quality
2209 Phoenix
Helena, MT 59620

Andy Lensink, Esq.
EPA Region 8, Montana Office
155 West Granite
Butte, MT 59701

Charlie Coleman
EPA Region 8, Montana Office
Federal Building
301 So. Park, Drawer 10096
Helena, MT 59626-0096

Mark Baumler, Ph D
State Historic Preservation Officer
The Montana Historical Society
225 N. Roberts
P O Box 201201
Helena, MT 59620-1201

Bill Olsen
U S Fish and Wildlife Service
585 Shepard Way
Helena, MT 59601

Allan Steinle
Montana Program Manager
U.S. Department of the Army
Corps of Engineers, Omaha District
10 West 15th Street, Suite 2200
Helena, MT 59626

Michael Snyder, Regional Director
Intermountain Region
National Park Service
12795 West Alameda Parkway
Denver, CO 80225

Dave White, State Conservationist
Natural Resources Conservation Service
10 East Babcock Street, Room 443
Bozeman, MT 59715-4704

Dr Richard A. Snay
Chief, Spatial Reference System Division
National Geodetic Survey
DOC/NOAA
1315 East West Highway N/NGS23
Silver Spring, MD 20910

Becky Guay
Chief Executive Officer
Anaconda-Deer Lodge County
800 South Main
Anaconda, MT 59711-2999

Abandonment of the Anaconda West Valley Rail Line

Rarus Railway Co ("Rarus") hereby gives notice that on or about May 30, 2008, it intends to file with the Surface Transportation Board, Washington, D.C. 20423 (the "Board") a Notice of Exemption under 49 C.F.R. 1152 Subpart F—Exempt Abandonments permitting the abandonment of and discontinuance of service on an approximately 4.7-mile line of railroad known as the Anaconda/West Valley Line (the "Line"). The western extent of the Line corresponds with North Cable Road, approximately 4.2 miles west of the community of Anaconda, Montana (located adjacent to the Anaconda Lime Quarry). The eastern extent of the Line corresponds with Pennsylvania Avenue (located west of the West Anaconda Yards). The Line is located entirely within Deer Lodge County, Montana and traverses through United States Postal Service ZIP Code 59711. The proceeding will be docketed as No. AB 260 (Sub-No. 2X).

The Board's Section of Environmental Analysis ("SEA") will generally prepare an Environmental Assessment ("EA"), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, 395 E Street S.W., Washington, DC 20423 or by calling that office at (202) 245-0304.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E Street, S.W., Washington, DC 20423 [see 49 C.F.R. § 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [see 49 C.F.R. § 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at (202) 245-0245. Copies of any comments or requests for conditions should be served on the applicant's representative: James E. Howard, One Thompson Square, Suite 201, Charlestown, MA 02129. 56

Exhibit C-3

Exhibit D

Environmental and Historic Correspondence



Davis Graham & Stubbs LLP

June 13, 2007

To. Attached Addressee List

Re Proposed Abandonment of Railroad Line in Anaconda/Deer Lodge County, Montana

Dear Madam or Sir.

On approximately July 15, 2007, BGM Equipment Company, Inc. ("BGM") and Rarus Railway Company ("Rarus") expect to file with the Surface Transportation Board (the "Board") a notice of exemption pursuant to 49 CFR § 1152.50 seeking authority to abandon the approximately 4.7-mile Anaconda/West Valley Rail Line (the "AWVRL"), which is located in and near the city of Anaconda, in Deer Lodge County, Montana, to meet remediation requirements imposed by the U.S. Environmental Protection Agency ("EPA"). The AWVRL is owned by BGM and operated by Rarus. There have been no rail operations on the AWVRL since before its acquisition by BGM in 1985. Attached to this letter is a Preliminary Draft Environmental Assessment ("PDEA") describing the proposed action and any expected environmental and historic effects. There are several maps appended to the PDEA depicting the AWVRL and the affected area.

We are providing this report so that you may review the information that will form the basis for the Surface Transportation Board's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact Phillis Johnson-Ball, Section of Environmental Analysis ("SEA"), Surface Transportation Board, 395 E Street, S.W., Suite 500, Washington, D.C. 20423, (202) 245-0304, and refer to the description above. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments, if any, to SEA (with a copy to us) would be appreciated within three (3) weeks.

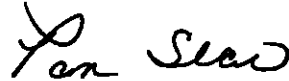
Your comments will be considered by SEA in evaluating the environmental and historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact me directly at the address or phone number shown on this letterhead. Thank you for your prompt attention to this matter.

Pamela S. Sbar 303.892.7309 pam.sbar@dgsllaw.com

Exhibit D-1

Various Agencies
June 13, 2007
Page 2

Sincerely,

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

Pamela S Sbar
for
DAVIS GRAHAM & STUBBS LLP

Attachment

cc (w/out attachments)

Phillis Johnson-Ball, SEA
James Howard, Esq
Trey Harbert
Robin Bullock
Jean Martin, Esq.
Don Booth
Gavin Scally
Paul McCarthy

ADDRESSEE LIST

Sandra Straehl, Administrator
Rail, Transit & Planning Division
Montana Department of Transportation
P.O. Box 201001
2701 Prospect Ave.
Helena, MT 59620-1001

Edward G Beaudette, Esq
Montana Department of Transportation
2701 Prospect Avenue
P.O Box 201001
Helena, MT 59620-1001

Kevin Kirley
Montana Dept of Environmental Quality
2209 Phoenix Avenue
Helena, MT 59620

Mary Capdeville, Esq.
Montana Dept of Environmental Quality
2209 Phoenix
Helena, MT 59620

Andy Lensink, Esq
EPA Region 8, Montana Office
155 West Granite
Butte, MT 59701

Charlie Coleman
EPA Region 8, Montana Office
Federal Building
301 So Park, Drawer 10096
Helena, MT 59626-0096

Mark Baumler, Ph D
State Historic Preservation Officer
The Montana Historical Society
225 N Roberts
P O Box 201201
Helena, MT 59620-1201

Bill Olsen
U S Fish and Wildlife Service
585 Shepard Way
Helena, MT 59601

Allan Steinle
Montana Program Manager
U.S Department of the Army
Corps of Engineers, Omaha District
10 West 15th Street, Suite 2200
Helena, MT 59626

Michael Snyder, Regional Director
Intermountain Region
National Park Service
12795 West Alameda Parkway
Denver, CO 80225

Dave White, State Conservationist
Natural Resources Conservation Service
10 East Babcock Street, Room 443
Bozeman, MT 59715-4704

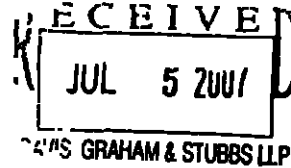
Dr. Richard A. Snay
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National Geodetic Survey
DOC/NOAA
1315 East West Highway N/NGS23
Silver Spring, MD 20910

Becky Guay
Chief Executive Officer
Anaconda-Deer Lodge County
800 South Main
Anaconda, MT 59711-2999



MONTANA HISTORICAL SOCIETY

225 North Roberts ♦ PO Box 201201 ♦ Helena, MT 59620-1201
♦ (406) 444-2694 ♦ FAX (406) 444-2696 ♦ www.montanahistoricalsociety.org ♦



July 2, 2007

Phillis Johnson-Ball
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S W , Suite 500
Washington, D C 20423

Re Proposed Abandonment of Railroad Line in Anaconda/Deer Lodge County, Montana

Dear Ms Johnson-Ball

On June 18 we received a Preliminary Draft Environmental Assessment form Davis Graham & Stubbs, LLP, acting on behalf BGM Equipment Company, Inc and Rarus Railway Company in the matter of the above proposed abandonment proceeding. After reading the report and reviewing our files, the Montana State Historic Preservation Office offers the following initial comments.

- Montana SHPO concurs that the subject property (Anaconda West Valley Rail Line) is listed in the National Register of Historic Places, as part of the Butte, Anaconda, & Pacific Railway Historic District (October 13, 1988).
- Montana SHPO also agrees that this historic property is included among those addressed in the ongoing 1994 multi-agency Programmatic Agreement Pursuant to 36CFR800 Regarding Implementation of the CERCLA Related Elements of the Upper Clark Fork Basin Regional Historic Preservation Plan for superfund cleanup activities led by the Environmental Protection Agency (EPA)
- Montana SHPO cannot confirm, however, and therefore is not able to agree with the position of the document that *off-site* mitigation under the Programmatic Agreement suffices to address the loss of the Anaconda West Valley Rail Line through proposed abandonment and subsequent remediation/removal

By way of explanation to the third point, we cannot find any specific reference to the Anaconda West Valley Rail Line in the Programmatic Agreement, while the Butte, Anaconda & Pacific (BA&P) Railroad Corridor is characterized twice, once as a property for "which no impact is expected" (Attachment B) and once as a historic property "that may be impacted, and if so, will be included in the *off-site* mitigation package (Attachment D)" Attachment A (#8) further suggests, however, that the Anaconda West Valley Rail Line is the former and not the latter inasmuch as it states in the Notes for Anaconda (as opposed to Butte) that the "railroad bed will remain, therefore should be

Exhibit D-2



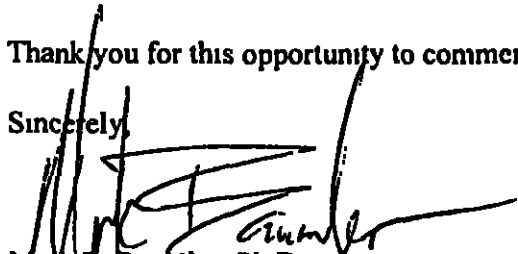
able to avoid resource " We conclude that the situation for the removal of the Anaconda West Valley Rail Line is new and potentially not mitigated

As we have received no recent annual reports since 2004 from the Environmental Protection Agency under the Programmatic Agreement, we cannot be certain if our information is current. However, we believe that the Surface Transportation Board cannot fulfill its obligations under 36CFR800, implementing regulations for Section 106 of the National Historic Preservation Act, until it can be assured that the loss of the Anaconda West Valley Rail Line has been addressed and mitigated under the EPA Programmatic Agreement.

We recommend that STB join us in requesting that the Environmental Protection Agency, with concurrence from the Anaconda Certified Local Government, clarify and document EPA's fulfillment of the stipulations of the Programmatic Agreement in the case of the Anaconda West Valley Rail Line remediation to the satisfaction of all signatories of the Programmatic Agreement.

Thank you for this opportunity to comment.

Sincerely,



Mark I. Bauml, Ph.D.
State Historic Preservation Officer

Cc John Wardell, EPA, Montana Office Director
Charlene Vaughn, ACHP, Assistant Director, Federal Permitting
Becky Guay, Anaconda-Deerlodge Co, Chief Executive Officer
Pamela Sbar, Davis Graham & Stubbs, LLP

2007061814

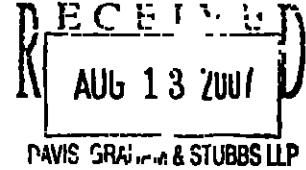
File STB/2007
EPA/Clark Fork Superfund-Anaconda/2007



REPLY TO
ATTENTION OF

**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
HELENA REGULATORY OFFICE
10 WEST 15TH STREET, SUITE 2200
HELENA MT 59626**

August 3, 2007



Helena Regulatory Office
Phone (406) 441-1375
Fax (406) 441-1380

**Subject Jurisdictional Determination –Railway Abandonment Project
Corps File No. NWO-2007-2014-MTH**

Pamela Sbar
Davis Graham and Stubbs LLP
1550 Seventeenth Street
Suite 500
Denver, Colorado 80202

Dear Ms Sbar

Reference is made to your letter requesting comments on the Anaconda/West Valley Rail Line Abandonment project. The property is located in Sections 25 and 26, Township 5 North, Range 12 West, in Deer Lodge County, Montana.

Under the authority of Section 404 of the Clean Water Act, Department of the Army permits are required for the discharge of fill material into waters of the United States. Waters of the United States include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters.

Based on the information you initially provided, the project will not affect jurisdictional waters of the U.S. under the authority of Section 404 of the Clean Water Act. Therefore, the activity is not subject to Department of the Army (DA) regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers.

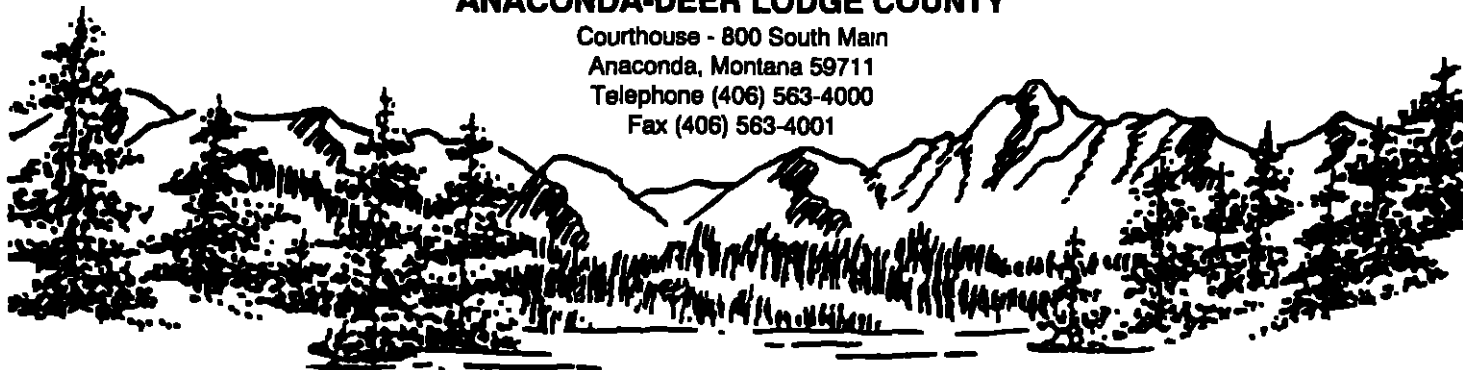
If you have any questions, please contact Deborah Blank of my staff at (406) 441-1375, and reference Corps File No. NWO-2007-2014-MTH.

Sincerely,

Allan Steinle
Montana Program Manager

ANACONDA-DEER LODGE COUNTY

Courthouse - 800 South Main
Anaconda, Montana 59711
Telephone (406) 563-4000
Fax (406) 563-4001



**ENVIRONMENTAL
PROTECTION AGENCY**

APR 25 2008

April 23, 2008

**Mr Charles Coleman
U S EPA, Region 8
10 West 15th Street, Suite 3200
Helena, MT 59626**

MONTANA OFFICE

Dear Mr Coleman.

We are writing this letter to keep you informed about planned work at RDU 5 – Active Railroad – West in the Anaconda Regional Water, Waste & Soils Operable Unit in the Upper Clark Fork Basin. Coincidentally, this letter serves as a re-introduction to Connie Daniels, a former Anaconda CHPO, who has graciously agreed to assume the position of acting CHPO. Recently hired as our city/county planner, Connie will fill the CHPO position that has been vacant for the last year.

We have recently reviewed actions proposed by Rarus Railway and the Environmental Protection Agency (EPA) regarding Butte, Anaconda & Pacific Railway's Quarry Line. Within the next few months, Rarus intends to abandon the old Quarry Line which lays between the west end of Anaconda and a lime quarry 8 miles to the west. After abandonment, ARCO, under an agreement with the EPA, will begin remediation on that line. Work will include removal of the rail, ties, ballast, and the upper 6 inches of fill. This removal action is virtually identical to ARCO's treatment of the BA&P line in Butte from the Kelly Mine yard west to Rocker and beyond.

The Quarry Line is the westernmost section of the National Register-listed BNA&P Railway Historic District. It is mentioned only briefly on the original nomination form (1984), but observers have identified it as a grade set on a very short fill section throughout most of its length. There is a single bridge on the line, a trestle across Warm Springs Creek. We know of no other exceptional design features.

As you will recall, the 2nd Programmatic Agreement regarding Superfund activity at Anaconda identifies a progression of mitigation considerations, from avoidance to on-site mitigation, then off-site mitigation. In the case of the Quarry Line, EPA and ARCO have determined that levels of arsenic and other metal contamination in the ballast exceed

Exhibit D-4

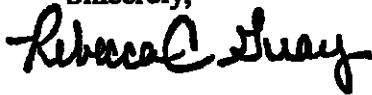
human health safety levels. Because avoidance is not possible, they have proposed a combination of on- and off-site mitigation.

All parties are very interested in developing a trail on the grade for on-site mitigation. However, we are unable to positively identify this as the end use for the Quarry Line because funding for trail development is lacking at this time, and other land use possibilities have arisen. More specifically, the Montana Department of Transportation (MDT) has long considered widening the adjacent Montana Highway 1 to four lanes. While such an improvement has yet to be programmed, placing implementation at least 10 years out, it is possible that some of the Quarry Line grade will eventually be directly impacted by that highway work, either being incorporated into the road right-of-way or as a utility corridor. As funding sources for the trail are identified and MDT planning progresses, we will keep you informed. In the meantime, the grade and Warm Spring Creek Bridge will be left in their historic positions, allowing for quality future development.

Off-site mitigation will consist of interpretive signage. The specifics of the signage are currently under consideration, but the EPA and ARCO have committed to no less than two signs relating the history of the Quarry Line and the Washoe Smelter's need for limestone as flux. These may be placed adjacent to the trail at its completion, or in Anaconda, perhaps in the vicinity of the former BA&P roundhouse.

As the acting CHPO and Anaconda-Deer Lodge site manager, we have reviewed these proposals and concur with the EPA's finding that they are appropriate and consistent with stipulations identified in the Second Programmatic Agreement regarding CERCLA and the Upper Clark Fork River Basin. Further, they are consistent with our own goals of hazardous materials remediation, community enhancements, and historic interpretation. If you have any questions about this matter, please contact us at your earliest convenience.

Sincerely,



Becky Guay
Chief Executive Officer



Connie Daniels
ADLC Preservation Officer

cc Trey Harbert, ARCO
Larry Scusa, MT DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

REC'D MAY 1 2008

Ref 8MO

April 30, 2008

Mr Mark Baumler
State Historic Preservation Office
P O. Box 201201
Helena, Montana 59620

Dear Mr. Baumler

In response to your July 2, 2007 letter regarding the proposed abandonment of the Anaconda West Valley Rail Line, EPA has attached a letter of concurrence from the Anaconda-Deer Lodge County Historic Preservation Officer (ADL-CHPO) as requested

Based on a review of the historic features and the corresponding remedial design, including a proposal (developed in coordination with DEQ, ADL and Atlantic Richfield) to provide both on and off-site mitigation, the ADL-CHPO has concurred with EPA's findings that this mitigation is appropriate and consistent with the stipulation identified in the Second Programmatic Agreement. Further, this letter and attachment is intended to document EPA's fulfillment of the stipulation of the Programmatic Agreement to the satisfaction of all the signatories of the Programmatic Agreement.

Additionally, EPA believes that this fulfills the requirements of 36CFR800, implementing regulations for Section 106 of the National Historic Preservation Act, and requests that the SHPO concur. Please advise the Surface Transportation Board of your concurrence so that they may proceed with the abandonment of the Anaconda West Valley Rail Line. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Coleman".

Charles Coleman
Anaconda Project Manager

Attachment

Exhibit D-5



Printed on Recycled Paper

cc **Phillis Johnson-Ball, STB**
 Charlene Vaughn, ACHP
 Becky Guay, ADL
 Pamela Sbar, DGS
 Trey Harbert, AR
 Paul McCarthy, Rarus
 Larry Scusa, DEQ
 Ed Beaudette, DOT