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SERVICE DATE – JANUARY 4, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-1014]

Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in
Mineral County, CO

On December 17, 2007, the City of Creede, CO (the City), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of approximately 1.0 mile of rail line, extending from near milepost 320.9 to near milepost 319.9, a run-around track, and a spur track (the Line), all located in the City, in Mineral County, CO. The Line is owned by the Denver & Rio Grande Railway Historical Foundation (D&RGHF).¹ The Line traverses United States Postal Service Zip Code 81130, and includes no stations.

The City states that there has been no rail service or request for service over the Line since approximately 1970 and claims that there is no foreseeable need for rail service. Additionally, the City asserts that, since D&RGHF acquired the Line, D&RGHF has yet to identify any shippers or operate any trains.

¹ D&RGHF acquired the Line through an offer of financial assistance (OFA). See Union Pacific Railroad Company—Abandonment Exemption—in Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (STB served May 11, 1999).

In a decision served in this proceeding on October 18, 2007, the City was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the City was granted a fee waiver; waivers of and exemptions from the notice requirements at 49 CFR 1152.20(a)(2), 49 U.S.C. 10903(a)(3)(D), 49 CFR 1152.20(a)(3), 49 U.S.C. 10903(a)(3)(B), and 49 CFR 1152.21; waivers of and exemptions from the application requirements of 49 CFR 1152.22(a)(5), 49 U.S.C. 10903(c), 49 CFR 1152.22(b) (except that the City must submit evidence on the physical condition of the Line other than information regarding cost of deferred maintenance and needed rehabilitation), 49 CFR 1152.22(d), and 49 CFR 1152.29(e)(2); waivers of and exemptions from the OFA requirements and public use procedures at 49 CFR 1152.27-28 and 49 U.S.C. 10904-05; and waiver of portions of the Federal Register notice language requirements at 49 CFR 1152.22(i).

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 City states that it also owns the land adjacent to the Line and asserts that it has reversionary interests in the Line under state law. Any documentation in the City's possession will be made available promptly to those requesting it. The City states that it filed its entire case for abandonment with its application.

The interests of affected railroad employees, if there are any employees on the Line, will be protected by the conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by January 31, 2008. The City's reply is due by February 15, 2008. Because this is an adverse abandonment proceeding, OFAs and public use requests are not appropriate and will not be entertained.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by January 31, 2008, and should address that issue. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

Persons opposing the proposed abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-1014 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; (2) Ronald M. Johnson, Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New

Hampshire Ave., N.W., Washington, DC 20036; and (3) Clyde Dooley, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) 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 SEA. 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.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Governmental and Public Affairs at (202) 245-0230 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to SEA at (202) 245-0305. [Assistance

for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: December 28, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary