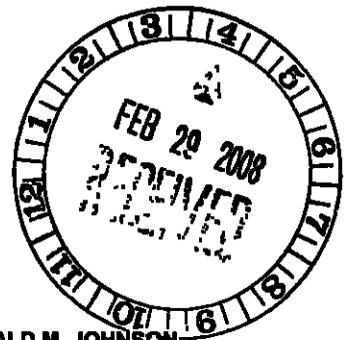


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February 29, 2008

VIA COURIER

221713

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW, Suite 1149
Washington, DC 20024

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

Dear Acting Secretary Quinlan:

Enclosed for filing are the original and 10 copies of the Reply of the City of Creede to Supplemental Letter Pleading of the Denver & Rio Grande Railway Historical Foundation.

Please time and date stamp the additional copy for our records.

Sincerely,

Ronald M. Johnson

ENTERED
Office of Proceedings

FEB 29 2008

P.J.
Public Record

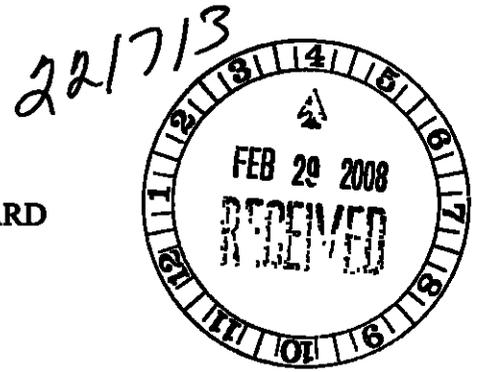
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1014



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

REPLY OF THE CITY OF CREEDE TO SUPPLEMENTAL LETTER PLEADING OF
THE DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

The Denver & Rio Grande Railway Historical Foundation (“Foundation”), by letter dated February 14, 2008, submitted a copy of a recent Board decision and asked that the Board “take official notice of its own decision in its Docket No. AB-290 (Sub-No. 286), Norfolk Southern Railway Co.-Adverse Abandonment-St. Joseph County, IL (served Feb. 14, 2008) (hereinafter “Norfolk Southern”). The Board will obviously take note of its own decisions without prompting of the parties. Clearly, by submitting this decision, the Foundation’s implicit argument is that the decision is similar to this case and requires denial of the City’s Application for Adverse Abandonment. It does not.

As a preliminary matter, 49 C.F.R Part 1114, Subpart A of the Board’s rules, which the Foundation invoked as authority for its filing after the record closed in this proceeding, did not authorize that filing. Subpart A contains the Board’s general rules on evidence. Section 1114.6, which the Foundation does not mention, is the only provision that deals with official notice and it concerns official notice of evidentiary material from other proceedings for corroborative purposes. Therefore, the Foundation’s letter pleading should be deemed to be a motion to supplement its Protest. The City does not object to the Foundation’s supplement, but believes that it should be allowed this Reply.

This most recent adverse abandonment decision does not support the Foundation for two basic reasons. First, the Board did not there announce a new test for adverse abandonment. It applied the same standards as it and its predecessor.

Second, each adverse abandonment application of course turns on its own facts, and there are significant differences between the record in that proceeding and in the instant proceeding. For example, in Norfolk Southern, the Board found that the carrier had shown that there was an actual shipper, the University of Notre Dame, which was receiving shipments of coal by truck from a transload facility, and that these shipments could potentially switch back to an all rail movement. The Board also found that these potential shipments were significant, an estimated two trains per week of 15 carloads of coal each. In contrast, as the record shows in the City's docket, the Foundation has never identified any actual shipper in Creede, there is no shipper potential in Creede, and the Foundation admitted that it has not been actively looking for shippers. Even the highly speculative freight potential belatedly asserted by the Foundation to stave off adverse abandonment of the track in Creede amounts at most to a de minimis number of carloads per year that can be counted on one hand.

The new carrier in Norfolk Southern needed the track in question to provide the freight service to the University. Again, that is a significant factual difference from the record in this proceeding. It is undisputed that the Foundation does not need any track in the City to provide the freight service on the Creede Branch that it has hypothesized.

The Board found that the owners of the land under the right of way, the Brothers and Sisters of the Holy Cross, did not need this land to perform their mission and that the City of South Bend had alternative ways to accomplish its infrastructure projects without

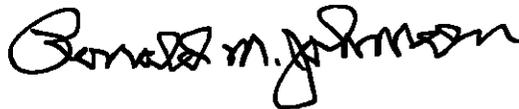
adverse abandonment. Here, it is uncontested that the City of Creede was long using the publicly owned land under the right of way for public purposes and that there are no alternatives to the adverse abandonment for Creede to achieve its goals of continuing and expanding these public uses and developing this land in ways that benefit the growth of the City.

Although the City is not relying on the Foundation's failure to rehabilitate the Creede Branch, the track in Norfolk Southern apparently requires much less rehabilitation than the Creede Branch does.

Finally, the Board in Norfolk Southern stated "that our finding is without prejudice to Applicants' seeking to reopen or file a new abandonment application, should the line transfer, rehabilitation, and restoration of operations not occur within a reasonable period of time." Decision at 5. Here, the Foundation has already had more than a reasonable amount of time to rehabilitate the Creede Branch and restore freight operations, eight years, has not been able to so, and cannot for the foreseeable future.

For these reasons, the Norfolk Southern decision does not support the Foundation: its analysis actually supports the City based on the record in this docket.

Respectfully submitted,



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Counsel for City of Creede, Colorado

Dated February 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of this Reply of the City of Creede to Supplemental Letter Pleading of the Denver & Rio Grande Railway Historical Foundation in Docket No. AB-1014 to be served upon the following individuals by UPS ground delivery, this 29th Day of February, 2008.

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Attorney For the Denver & Rio Grande Railway
Historical Foundation

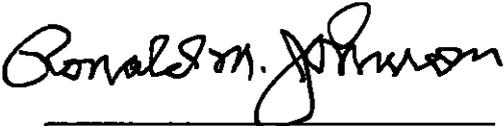
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