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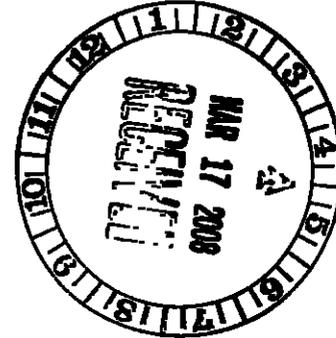
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RONALD M JOHNSON
202 887 4144/fax 202 887 4288
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March 17, 2008



VIA COURIER

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 Adornment --
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
Additional Supplemental Letters of the Denver & Rio Grande Railway Historical Foundation

Please time and date stamp the additional copy for our records

Sincerely,

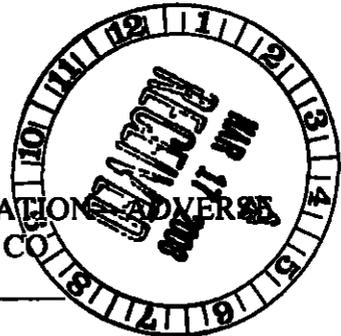
Ronald M Johnson

221839

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1014

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



REPLY OF THE CITY OF CREEDE TO ADDITIONAL SUPPLEMENTAL LETTERS OF
THE DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION

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MAR 17 2008
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Public Record

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Heidi Gunst
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1333 New Hampshire Avenue, N.W
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202-887-4114

Counsel for City of Creede, Colorado

Dated: March 17, 2008

**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 ADDITIONAL SUPPLEMENTAL LETTERS OF
THE DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION**

The Denver & Rio Grande Railway Historical Foundation (“Foundation”) has submitted two more letters in this docket, again purportedly pursuant to 49 CFR part 1114, Subpart A, in a continuing effort to attempt to shore up its position that adverse abandonment should be denied. By letter dated February 25, 2008, the Foundation asked that the Board take official notice that the Association of American Railroads (“AAR”) recently issued reporting marks and an AAR accounting code to the Denver & Rio Grande Railroad Company LLC (“D&RG”), which the Foundation describes as its “operating affiliate”. By letter dated February 29, 2008, the Foundation asked the Board to take official notice of a newspaper article about new mineral exploration planned in the Creede area as evidence that there is freight potential for the track in the City limits that is the subject of the City’s Application. The City was preparing its response to the February 25 letter when the February 29 letter was filed. To reduce filings, the City here replies to both Foundation letters. As explained, neither supplemental filing qualifies for submission under 49 C.F.R. § 1114.6. Nor does either letter provide any basis for denying the City’s Application for Adverse Abandonment.

I February 25, 2008 Letter

The Foundation repeatedly invokes “ 49 CFR Part 1114, Subpart A” to submit additional material after the close of briefing in this docket. So far, none of the Foundation’s three letters fit within Section 1114.6, which is the provision in Subpart A providing for “official notice.”¹ Section 1114.6 states as follows.

The Board may take notice of official records, records in other Board proceedings, or other materials which are otherwise subject to specific rules governing admissibility regardless of compliance with the full technical provisions of such rules, where the admissibility of the evidence is for purposes of corroboration of testimony presented or to evaluate the credibility of testimony or allegations made in proceedings where the public interest is not otherwise adequately represented by counsel capable of fully complying with such rules.

The AAR letter issuing reporting marks to the D&RG is not an official record of the Board or other records in other Board proceedings. The Foundation does not explain how the AAR letter corroborates other testimony in this docket. The Foundation states that the “Denver & Rio Grande Railroad Company” is “the operating affiliate of Denver & Rio Grande Railway Historical Foundation (the Foundation) which is the owner of the Creede Branch and Respondent in the captioned proceeding” The Foundation describes the issuance of reporting marks to D&RG as “additional evidence that the Foundation and its operating affiliate are legitimate rail carriers.” However, the City has never disputed in this proceeding that the Foundation is a class III carrier by virtue of its acquisition of the Creede Branch in Docket No. AB-33 (Sub-No. 132X). Thus, the AAR letter does not corroborate any

¹ The Foundation’s first letter post closing of briefing, dated February 14, 2008, asked the Board to take official notice of its decision in Norfolk Southern Ry. Co —Adverse Abandonment—St Joseph County, IN, Docket No. AB-290 (Sub-No. 286) (served Feb. 14, 2008). Section 1114.6, however, does not apply to “Board or ICC decisions themselves.” City of Jersey City, et al —Petition for Declaratory Order, STB Finance Docket No. 34818 (served Dec. 19, 2007), 2007 STB LEXIS 744, at * 9.

testimony about the Foundation. The AAR letter also does not corroborate any testimony regarding the D&RG, because until the Foundation's February 25 letter, there has been no mention of the D&RG in this proceeding.

Furthermore, "evidence" that the Foundation and D&RG are "legitimate" carriers is irrelevant to the City's case for adverse abandonment. The legitimacy (whatever that means) of the Foundation or the D&RG is not a basis for the City's Application. In brief, the City's case is that (1) there are no freight shippers in Creede, (2) there is no realistic potential for freight service in Creede, (3) even if there were a potential for freight service on the Creede Branch, the Foundation does not need the track in the City to provide such freight service; and (4) the City has a compelling interest in obtaining control over the publicly owned land under the right of way. These facts have never been contested and are not addressed or put in dispute by the Foundation's February 25 filing.

As the Board knows, the significance of AAR reporting marks and accounting code is simply that, if the carrier has its own freight cars, they will bear these unique reporting marks and can be interchanged with other railroads and their movement tracked by means of these marks. The fact that the D&RG has been issued reporting marks is not evidence that the Foundation (or the D&RG) has any shippers or any shipper potential and does not refute the uncontested facts of record that track in the City is not needed for any of the freight potential that the Foundation has alleged.

If the issuance of reporting marks to the D&RG "corroborates" anything, it is that the Foundation has never been serious about freight. If obtaining AAR reporting marks is supposed to be an indication of a carrier's intent to offer freight service, why has the Foundation never obtained such reporting marks, now or back in 2000, when it became a

class III carrier? The Foundation states in its February 25 letter that it was only now able to inform the Board of this new development, because the AAR issued the reporting marks after the January 31, 2008 deadline for its Protest. The D&RG, however, is not new. It was formed effective December 12, 2005 by Donald H. Shank, who is its President and Chief Executive Officer, as a limited liability company, according to the Colorado Secretary of State. See Exhibit No. 39.² Mr. Shank is also the founder and Executive Director of the Foundation.³

The Foundation describes the D&RG as a "class III" carrier and its "operating affiliate." The Board, however, issued operating authority to the Foundation, not the D&RG, when it acquired the Creede Branch in 2000 in Docket No. AB-33 (Sub-No. 132X). Indeed, in order to utilize the Board's offer of financial assistance procedure to acquire the Creede Branch, the Foundation had to represent to the Board that it was going to rehabilitate the Branch and restore and operate freight service. If the D&RG is now the "operating affiliate" of the Foundation, what has the Foundation been all of these years?

While issuance of AAR reporting marks is not relevant to the City's Application, the Foundation's letter indicates that D&RG/Foundation/Mr. Shank has either (1) misled the AAR by misrepresenting Board actions or (2) is in violation of Board requirements. The AAR only issues railroad reporting marks to a person that has been issued operating authority by the Board, i.e., the AAR only issues railroad reporting marks to a carrier. The AAR states

² Exhibit No. 39 includes the articles of organization of the D&RG. The articles are pro forma. Colorado law requires very little in the way of disclosure by limited liability corporations.

³ The D&RG and Foundation also have the same address [20 N. Broadway St., Montic Vista, CO 81144-1166], same telephone number [(719) 852-7000], and same e-mail address, dhshank@yahoo.com

in its Guide for Railroads that “[a] reporting mark will be assigned to a railroad upon receipt of authority issued by the Surface Transportation Board (STB) . . .” See Exhibit No. 40 at 5. Similarly, the AAR’s contractor, which processes applications for reporting marks, Railinc, states on its web site that “[b]efore a reporting mark can be officially assigned, the railroad must meet the following requirements’ . . . 1. Obtain operating authority from the Surface Transportation Board”⁴ According to the AAR letter submitted by the Foundation, Mr. Shank represented to Railinc that the D&RG was issued operating authority by the Board in Docket No AB-33 (Sub-No. 132X) This is not true The D&RG has no operating authority The Foundation, not D&RG, obtained operating authority in Docket No. AB-33 (Sub-No. 132X). D&RG did not even exist at that time. The Foundation has not transferred its operating authority to the D&RG and would require Board authority to do so.

Conversely, if D&RG is a class III carrier, as the Foundation asserts in its February 25 letter, then Mr Shank and/or the Foundation may be in violation of the Interstate Commerce Act. Section 11323(a)(3) provides that “[a]cquisition of control of a rail carrier by any number of rail carriers” can only be done with the prior approval of the Board. 49 U.S.C. § 11323(a)(3). The Foundation is a class III carrier The Foundation now claims to have an operating affiliate, the D&RG, which it asserts is also a class III carrier. As of the filing of the City’s Reply to these new letters, the Foundation had not yet applied to the Board for approval, or exemption from the requirement to obtain approval, to control the D&RG.⁵

⁴ www.railinc.com

⁵ Mr Shank, who controls the Foundation and the D&RG, may also be in violation of 49 U.S.C. § 11323(a)(4), which provides that prior Board approval is necessary for the “[a]cquisition of control of at least 2 rail carries by a person that is not a rail carrier.” Mr. Shank is the founder and Executive Director of the Foundation and is the founder and CEO of the D&RG.

In sum, issuance of reporting marks to the D&RG is not corroborative of any testimony in this proceeding and is irrelevant to the City's Application for Adverse Abandonment

II. February 29 Letter

The Foundation's February 29 letter submits a February 27, 2008 article from the on-line version of the Pueblo Chieftain newspaper. The article is apparently based on a press release from Hecla Mining Company announcing a joint venture to explore for silver in the Creede Mining District. The Foundation asserts that "[t]he article bears on the issue of whether there is a reasonable prospect of future traffic on the segment of the Creede Branch sought to be adversely abandoned" and asks that the Board take "official notice of this article."

This newspaper article about a press release also fails the criteria of Section 1114.6. The article does not corroborate any testimony or contention by the Foundation that the track in the City is necessary for any freight potential conjured by it, because the Foundation never denied in its Protest that this track is not required for freight shipments over the Creede Branch. The Foundation has never denied that any inbound or outbound freight that it has alleged can be transloaded from trucks at Wason or other locations on the Creede Branch, as it was in the last 15 years or so of the Branch's operation. Nothing in the newspaper article puts in issue this undisputed fact.

Even assuming for the sake of argument that this newspaper article can be considered "evidence" that (1) silver mining will resume someday, (2) the shippers of that silver decide to use rail to transport silver concentrate, (3) the Foundation is successful in rehabilitating the track and bridges to support locomotives and loaded freight cars, and (4) it is economically

practical to ship silver concentrate over the Branch, nothing in the newspaper article suggests that track in the City would be needed. As the City explained in its Application (pages 43-44) and Reply to Protests (pages 14-15), the track in the City was not used after 1970 for outbound or inbound shipments. From 1970 until 1985, when all rail service on the Creede Branch ceased, the product from the mines outside of Creede was trucked from the mines to the former Denver & Rio Grande Western Railroad Company at Wason, where it was loaded into rail cars. The attached Declaration of Eldon Seime (Exhibit No. 41), who was involved in mining right up until the Homestake Mining Company shut down the last Creede area mine in 1988, explains in more detail that silver-bearing ore was processed into silver concentrate at the mine site and the silver concentrate was trucked to Wason for loading into rail cars.⁶ As he also explains, there was no loading facility in Creede, and the trucks had no reason to come into town, but stayed on Colorado State Highway 149 to Wason.

Thus, even assuming that the newspaper article raises the possibility that new silver mining activity will lead one day to rail shipments over the Creede Branch, there is nothing in that article to suggest that silver concentrate could not be trucked to Wason as it was before all freight service over the Branch ceased.

In fact, the possibility that renewed mining will lead to any significant shipments over the Creede Branch is very speculative. The newspaper article does not corroborate the Foundation's contention that a resumption of mining is imminent or certain or would result in shipments over the Creede Branch. A careful reading of the article, and the press release upon which it is based, shows that a resumption of mining is years away and may never

⁶ Clean-up activities continued for about three years after the end in 1985 of mining and rail service on the Branch.

happen. The February 27 newspaper article is based on a February 21 news release issued by Hecla. A copy of this news release is Exhibit No. 42. As the news release and newspaper article explain, Hecla has announced intent to begin exploration for silver deposits, not to commence mining activities, as the Foundation would have the Board believe. Hecla indicates that it will initially conduct a three-year exploratory program. At the end of that exploratory period, Hecla will evaluate whether it has located sufficient deposits of silver to justify the construction of a mine (or expansion of an old mine) and processing facilities, depending upon the price of silver at that time. While the Foundation highlights the article's reference to "30 miles of ore veins," this does not mean that silver will be found in sufficient amounts justifying mining. As the Hecla release explains, the mining will be "narrow-vein mining." A vein can be as narrow as three inches in width.

As Hecla also explains in its news release, "this is a long-term play." Indeed, if, after the exploratory period, Hecla decides to build a new mine or reopen and expand an old one and construct a processing mill near the mine, it cannot begin mining until it has obtained all necessary permits from the federal, state and local governments. Mining is one of the most heavily regulated activities, because of its impact on the environment and, in this case, because the mining will take place on U.S. lands. So, mining, if it happens, is speculative and years away, not imminent, as the Foundation contends.

On top of the speculation as to whether there will be significant new silver production, it is also highly speculative whether mining, if and when it occurs, will result in shipment of silver concentrate or other mine products by rail at all or over the Foundation's Creede Branch if rail is used. As explained, the silver concentrate must start its journey from the mill by truck in any event. It is speculative whether the concentrate would move entirely

by truck to the smelter or would be transloaded to rail cars at a rail head. As the Board has observed in another abandonment proceeding, the transportation of silver concentrate by truck can be more efficient and less costly than by rail. Union Pacific Railroad R. Co.—Abandonment—Wallace Branch, ID, Docket No. AB-33 (Sub-No. 70) (served Nov 2, 1992), 1992 ICC LEXIS 228, at * 55-57, aff'd in part, rev'd on other grounds in part, State of Idaho v. ICC, 35 F 3d 585 (D.C. Cir. 1994). In that abandonment proceeding, the UP was authorized to abandon its 71-mile Wallace Branch. Mining interests, which had on-going mining activities and were using rail, had opposed the abandonment, contending that they would be forced to truck silver and zinc concentrate longer distances to a rail head causing their costs to rise. The ICC concluded that abandonment would not impose a significant burden on the mining companies, because "it appears that truck transportation is both logistically and economically feasible." Union Pacific, 1992 ICC LEXIS 228, at * 57. It is also speculative how many carloads of silver concentrate might be shipped, by whom, and to where.

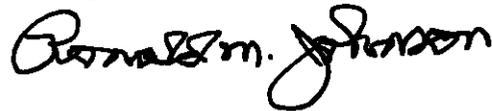
In this proceeding, abandonment of the track in the City will impose no burden on potential future shippers of silver concentrate, because of the undisputed fact that the track in the City is not needed and its abandonment will not affect any transportation option for such shippers. Potential shippers have the option of all truck. Or, they can truck silver concentrate to the nearest railhead at South Fork, about 21 miles from Creede, on the San Luis & Rio Grande Railroad Company. The record shows that the Creede Branch and its bridges still require further rehabilitation. Even if the Foundation could ever rehabilitate the Creede Branch to support modern locomotives and freight cars, without them toppling into the Rio Grande River or otherwise derailing, it can re-establish a transload facility at Wason.

Adverse abandonment of the track in the City will not interfere with any of these transportation options. Thus, contrary to the Foundation's argument, the Pueblo Chieftain article does not corroborate any contention that the track in the City is necessary for future silver mining, should such mining resume and use rail transportation.

Conclusion

For the reasons stated in this Reply, neither the February 25 nor February 29 letters and attachments submitted by the Foundation meet the criteria for official notice under Section 1114.6 and, even if they did, do not provide any new bases to deny the City's Application.

Respectfully submitted,



Ronald M. Johnson
Heidi 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: March 17, 2008

Exhibit No. 39
D&RG Articles of Organization

E-Filed

Colorado Secretary of State
Date and Time 12/12/2005 08 18 PM
Entity Id 20051461392
Document number 20051461392

Document processing fee
If document is filed on paper \$125 00
If document is filed electronically \$ 25.00

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To file electronically, access instructions
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information or print copies of filed
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Paper documents must be typewritten or machine printed

ABOVE SPACE FOR OTHER USE ONLY

Articles of Organization

filed pursuant to §7-90-301, et seq and §7-80-204 of the Colorado Revised Statutes (C.R.S.)

1 Entity name

Denver & Rio Grande Railroad Company, L L C

(The name of a limited liability company must contain the term or abbreviation limited liability company, ltd liability company, limited liability co, ltd liability co, limited llc, llc or ltd §7-90-601 C.R.S.)

2 Use of Restricted Words (if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document mark the applicable box)

- "bank" or "trust" or any derivative thereof
- "credit union" "savings and loan"
- "insurance", "casualty", "mutual", or "surety"

3 Principal office street address

20 N Broadway St

(Street name and number)

Monte Vista

(City)

CO 81144

(State)

(Postal/Zip Code)

United States

(Province - if applicable)

(Country - if not US)

4 Principal office mailing address (if different from above)

(Street name and number or Post Office Box information)

(City)

(State)

(Postal/Zip Code)

(Province - if applicable)

(Country - if not US)

5 Registered agent name (if an individual)

Shank

(Last)

Donald

(First)

H

(Middle)

(Suffix)

OR (if a business organization)

6 The person identified above as registered agent has consented to being so appointed

7 Registered agent street address

20 N Broadway St

(Street name and number)

Monte Vista

(City)

CO

(State)

81144

(Postal/Zip Code)

8 Registered agent mailing address
(if different from above)

(Street name and number or Post Office Box information)

(City) (State) (Postal/Zip Code)

(Province - if applicable) (Country - if not US)

9 Name(s) and mailing address(es)
of person(s) forming the limited
liability company

(if an individual) **Shank Donald H**
(Last) (First) (Middle) (Suffix)

OR (if a business organization)

20 N Broadway St
(Street name and number or Post Office Box information)

Monte Vista CO 81144
(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(if an individual) _____
(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street name and number or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(if an individual) _____
(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street name and number or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(If more than three persons are forming the limited liability company mark this box and include an attachment stating the true names and mailing addresses of all additional persons forming the limited liability company)

10 The management of the limited liability company is vested in managers
OR is vested in the members

11 There is at least one member of the limited liability company

12 (Optional) Delayed effective date _____
(mm dd yyyy)

13 Additional information may be included pursuant to other organic statutes such as title 12, C R S. If applicable, mark this box and include an attachment stating the additional information

Notice

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C R S, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered

14 Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

Shank Donald H
(Last) (First) (Middle) (Suffix)
20 N Broadway St
(Street name and number or Post Office Box information)
Monte Vista CO 81144
(City) (State) (Postal Zip Code)
United States
(Province - if applicable) (Country - if not US)

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box and include an attachment stating the name and address of such individuals.)

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No such paper document was filed. Consequently, no copy of a paper document is available regarding this document.

Questions? Contact the Business Division. For contact information, please visit the Secretary of State's web site.

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE

I, Mike Coffman, as the Secretary of State of the State of Colorado, hereby certify that,
according to the records of this office,

Denver & Rio Grande Railroad Company, L L C

is a

Limited Liability Company

formed or registered on 12/12/2005 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office This entity has been assigned entity identification number 20051461392

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/20/2008 that have been posted, and by documents delivered to this office electronically through 02/27/2008 @ 08 16 09

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 02/27/2008 @ 08 16 09 pursuant to and in accordance with applicable law This certificate is assigned Confirmation Number 7019124



Secretary of State of the State of Colorado

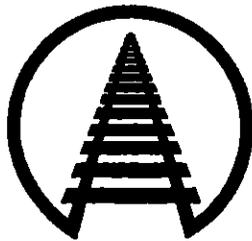
*****End of Certificate*****

Notice A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However as an option the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information visit our Web site <http://www.sos.state.co.us> click Business Center and select Frequently Asked Questions

Exhibit No. 40

Excerpt --AAR Guide for Railroads

GUIDE FOR RAILROADS



ASSOCIATION
OF AMERICAN
RAILROADS

TTCI
*Transportation
Technology Center, Inc.*

 **RAILINC**

II. ASSIGNMENT OF REPORTING MARKS AND RAILWAY ACCOUNTING RULE 260 CODE

One of the important functions managed by AAR is the assignment of the Standard Carrier Alpha Code (SCAC) which consists of 2-4 alpha characters, and the Railway Accounting Rule 260 Code which consists of 3 numeric digits. A SCAC throughout this document will be referred to as a Reporting Mark. The reporting mark is used in conjunction with the Railway Accounting Rule 260 Code as a company's identification for tariff and accounting applications. The reporting mark is stenciled on its equipment. The requirements for the assignment of all railroad reporting marks are outlined in "Circular Letter OT-5-Series"

A. REPORTING MARKS FOR RAIL EQUIPMENT

A reporting mark will be assigned to a railroad upon receipt of authority issued by the Surface Transportation Board (STB), or the Certificate of Fitness issued by the Canadian Authority, or the Concession issued by the Mexican Government and a signed interchange agreement.

Only one reporting mark will be assigned to a railroad. This is a requirement of the National Motor Freight Traffic Association (NMFTA) that is empowered by the STB to administer the assignment of reporting marks for all modes of transportation. Carriers that were merged and/or assigned equipment marks prior to the STB's transfer of responsibility to NMFTA may retain those reporting marks as equipment identifiers only.

When applying for a reporting mark, a copy of the AAR Interchange Agreement, Section 10706 Agreement and Car Service/Car Hire Agreement will be furnished. The reporting mark will not be assigned until the executed AAR Interchange Agreement is received. In addition, the applicant is to provide a brief outline of its operations and/or adoption notice identifying stations, junction points and railroad(s) that will be its interchange partner(s).

For information regarding the assignment of reporting marks please contact:

Sr. Product Manager
Railinc Business Services Division

B. REPORTING MARKS FOR TRAILERS AND CONTAINERS

Railroads that have executed an AAR Interchange Agreement and have been assigned a reporting mark and an Accounting Rule 260 Code are eligible to apply for a reporting mark consisting of four alpha characters ending in "Z" for trailers and "U" for containers.

The applicant is required to certify that it has a serviceable TOFC/COFC facility and can accept trailers, containers and chassis delivered on flat cars in train service. Such certification must be available prior to the assignment of the reporting mark.

A copy of the AAR TOFC/COFC Interchange Agreement - Trailer/Container-On-Flat-Car (TOFC/COFC) Service and the Trailer/Container Service and Reporting Agreement will be

Exhibit No. 41

Declaration of Eldon Seime

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1014

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

DECLARATION OF ELDON SEIME

I, Eldon Seime declare that, based upon my personal knowledge and belief, that the following facts are true

1 I am the Mayor of the City of Creede and a member of the Board of Trustees I have been the Mayor since April 2004 I have lived in Creede for 43 years and still reside in Creede. I am submitting this testimony in response to a contention that a recent announcement by Hecla Mining Company of new exploratory activities in the Creede area means that the track in the City would be needed for possible future shipments of silver.

2 I worked for the Homestake Mining Company for 16 years, from 1971 to 1987 Homestake Mining Company operated the Bulldog Mine, which was the last mine operating in the Creede area. The Bulldog Mine and Mill closed in 1988 I actually worked at the Bulldog Mine for 16 years My position when it closed was the Mine Foreman

3 The Bulldog Mine and Mill are located in the Rocky Mountains about 1 mile west of Creede When it was operating, the mine produced ore principally bearing silver and lead The ore was processed at the mill located adjacent to the mine The result of the milling was silver concentrate Silver concentrate has the consistency of fine gray powder The silver concentrate

was trucked from the mill to a transloading facility on the former Denver & Rio Grande Western Railroad Company at a location called Wason. Wason is about two miles south of Creede on Colorado State Highway 149. The trucks traveled from the mining areas down Batchelor Loop Road to Highway 149 at the southwest end of Creede. The trucks then traveled Highway 149 to Wason. At Wason, trucks dumped the silver concentrate into open top rail cars. The concentrate was moved by rail to a smelter for refining.

4 The dump trucks never came into Creede except to follow Highway 149, which swings through the south end of town before heading south and east to South Fork. South Fork is about 20 miles from Creede.

5 I am aware that Hecla Mining has announced that it plans to undertake exploratory activities to determine whether there are sufficient remaining deposits of silver that can be mined at a cost that makes the silver attractive at the market price for silver. Mining is a speculative enterprise. However, if Hecla finds silver deposits that justify investment in expanding an old mine or constructing a new mine and mill, the silver concentrate will still be transported by truck from the mine. Depending on where the silver concentrate is destined, the silver concentrate may move by an all truck move. Or, it could move by truck to a railhead and then by rail. How the silver concentrate would move five to seven years from now, which is about how long it could be expected for actual mining to begin, is also speculative. There is no question though that, if the silver concentrate is trucked to a rail head, the track in the City is not needed for truck/rail movement. Any silver concentrate shipped from the area where Hecla might undertake new mining will come down from the mountains via Batchelor Loop, just as it did when the Bulldog Mine was operating. The concentrate could be trucked to Monte Vista, which is the nearest railhead to which trains currently can operate on the San Luis & Rio Grande Railroad.

Company ("SLRG") Or if the SLRG reopens its mainline from Monte Vista to South Fork, the concentrate could be trucked to South Fork. The SLRG still uses its main line west of Monte Vista to store freight cars.

6 What this history shows is that, if the Denver & Rio Grande Railway Historical Foundation is ever able to rehabilitate the Creede Branch to handle freight trains, and it is economically feasible for the mining company to transport by rail over the Creede Branch, the silver concentrate could again be trucked to Wason for loading into railcars as it was in the 1970's up to 1985. The possibility that mining might resume some day does not mean that track in the City is needed to ship silver by rail. The track in the City was not needed or used when mining was still going on, and it would not be needed now or in the future. There is also no space in the City for a transloading facility.

I, Eldon Seime, 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 March 13, 2008



Eldon Seime, Mayor

Exhibit No. 42

Hecla Mining Company – News Release

News Release

Hecla Announces Right to Acquire Silver District in Colorado

COEUR D'ALENE, Idaho, Feb 21, 2008 (BUSINESS WIRE) – Hecla Mining Company (NYSE HL) today announced that its wholly owned subsidiary, Rio Grande Silver Inc., has acquired the right to earn into a 70% joint venture interest in a roughly 25-square-mile consolidated land package in one of Colorado's most prolific silver producing districts. The venture, called the San Juan Silver Mining Joint Venture, is located in the famous Creede Mining District and has an identified resource of approximately 48 million ounces of silver, with potential for considerably more through a targeted exploration program.

Hecla is entering the joint venture participation with Emerald Mining & Leasing, LLC, and Golden 8 Mining, LLC. Historically, the district has produced about 84 million ounces of silver from underground mining, the type of narrow-vein mining in which Hecla has particular expertise. A major piece of this land package includes the historic Bulldog mine, where Homestake Mining produced 25 million ounces of silver before closing in 1985 due to depressed metals prices. It will be the expansion of the historic resources of the Bulldog and North Amethyst-Equity mines that will be the initial focus for renewed exploration in the district. Significantly, the consolidated land package will encompass over 30 miles of prospective veins and vein splays, including large portions of the Bulldog, Amethyst, Equity, Alpha Corsair and OH veins that will provide exploration opportunities for many years.

Hecla Mining Company President and Chief Executive Officer, Phillips S. Baker, Jr., said, "Like our land position in Idaho's Silver Valley, this land package was a major silver-producing district that had never been consolidated into one venture. So we start with a 48-million-ounce resource outlined by Hecla from historic records and targets we have established on patented mining claims. Then, with this previous work and the consolidation of the district done by our partners, we think there is the potential to find in excess of 100 million ounces in the next few years. Development and production will follow as soon as possible thereafter. While we know this is a long-term play, we believe it will deliver significant value in terms of resource growth and high-quality, long-lived production and is consistent with our strategies for our Idaho, Alaska, Mexico and Venezuela properties."

The deal consists of a three-year buy-in with a total value of \$23.2 million made up of exploration work and cash. Hecla can earn up to a 70% interest by paying Emerald Mining & Leasing, LLC, and Golden 8 Mining, LLC, a total of \$11.2 million in common stock, by spending \$6 million in exploration on the property during the first year, and by committing to an additional total of \$6 million in exploration work over the subsequent two years.

Hecla Mining Company, headquartered in Coeur d'Alene, Idaho, mines, processes and explores for silver and gold in the United States, Venezuela and Mexico. A 117-year-old company, Hecla has long been well known in the mining world and financial markets as a quality producer of silver and gold. Hecla's common shares are traded on the New York Stock Exchange under the symbol HL.

Statements made which are not historical facts, such as anticipated payments or purchases are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, and involve a number of risks and uncertainties that could cause actual results to differ materially from those projected, anticipated, expected or implied. These risks and uncertainties include, but are not limited to, metals price volatility, volatility of metals production and costs, exploration risks and results, political risks, project development risks, labor issues and ability to raise financing. Refer to the company's Form 10-Q and 10-K reports for a more detailed discussion of factors that may impact expected future results. The company undertakes no obligation and has no intention of updating forward-looking statements.

Cautionary Note to Investors - The United States Securities and Exchange Commission permits mining companies, in their filings with the SEC, to disclose only those mineral deposits that a company can economically and legally extract or produce. We use certain terms in this news release, such as "resource," "reserve," and "inferred resource" that the SEC guidelines strictly prohibit us from including in our filing with the SEC. U.S. investors are urged to consider closely the disclosure in our Form 10-K, and they are included herein as furnished, not filed. You can review and obtain copies of these filings from the SEC's website at <http://www.sec.gov/edgar.shtml>. Hecla's Home Page can be accessed on the Internet at www.hecla-mining.com.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of this Reply of the City of Creede to Additional Supplemental Letters of the Denver & Rio Grande Railway Historical Foundation in Docket No AB-1014 to be served upon the following individuals by first-class mail, this 17th Day of March, 2008

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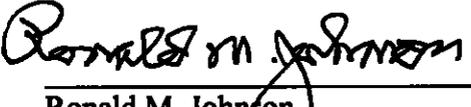
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