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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No AB-1014

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

MOTION FOR LEAVE TO FILE AND
CONTINGENT RESPONSE OF
WASON RANCH CORPORATION

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Dated: February 14 2008

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Wason Ranch Corporation respectfully requests leave to file a contingent response to a letter transmitted to the Acting Secretary of the Surface Transportation Board on February 5, 2008, by the Denver & Rio Grande Railway Historical Foundation ("the Foundation") relating to matters pending in this docket.

MOTION

It is unclear whether the Foundation intends for its letter to be accepted as part of the record in this docket and considered by the Board as it proceeds with its consideration of Creede's application and Wason's related requests. But if that is the Foundation's purpose, the letter is an unauthorized document¹ and, since the letter is not accompanied by a motion seeking leave to file, it should be rejected by the Board. If, however, the Board is inclined to accept the letter as evidence or argument in this proceeding, then, in that contingency, Wason respectfully requests leave to submit this response. Permitting the Foundation to challenge Wason with an

¹ The Foundation's letter is not authorized by Part 1152 of the Board's Regulations or in the procedural notice the Board issued on January 4, 2008.

unauthorized document without permitting Wason to respond would clearly be unfair to Wason and would violate the most basic principles of procedural due process

CONTINGENT RESPONSE

The Foundation's purpose in filing its letter is not altogether clear. The Foundation does not dispute any of the factual assertions contained in Wason's Protest, and it does not contend that the relief Wason seeks is in any way inconsistent with the public interest. Neither does it seek to strike any or all of Wason's Protest. In fact, the Foundation does not ask for any relief at all.

Wason is seeking to participate in this proceeding as a party supporting the application filed by Wason's friends and neighbors in and around the City of Creede. Wason believes that Creede's application for an adverse abandonment is compelling and should be approved by the Board. Moreover, Wason believes that, in the interest of administrative economy and efficiency, the Board should expand the geographic scope of the abandonment Creede seeks to include those portions of the line that adjoin Wason property located just south of Creede. Wason argued that much of the evidence and all of the argument offered by Creede to support its application applied equally with respect to those portions of the line adjacent to Wason property, and Wason contended that it would be wasteful and serve no useful purpose for the Board to proceed with two or more independent proceedings when the matters sought to be considered by Wason were so closely related to those already before the Board through the Creede application.

Wason readily acknowledged that it had not done everything the Board's regulations require to place Wason before the Board as an applicant, but Wason assured the Board that it would proceed to qualify in that regard if its procedural proposal were acceptable to the Board.

In its letter, the Foundation argues -- without the benefit of precedent^{2/} or logic^{3/} -- that the Board does not have the authority to control its own dockets in the manner Wason proposes. The Foundation's argument is specious and should be rejected. Under the Administrative Procedure Act, all regulatory agencies are given broad discretion to control their dockets *efficiently and economically and to conduct their affairs in the manner best suited to the interests of the public* assuming no party is prejudiced by the procedures the agency adopts.

The Foundation recites gratuitously the Board's procedural regulations applicable to abandonment applications and declares that Wason has neither complied with those regulations nor sought a waiver of them. Wason acknowledged that obvious fact in its Protest and indicated its intention to come into full compliance with the Board's regulations in due course. See Wason Protest at page 8. The Foundation fails utterly to advance any argument suggesting that Wason's proposal would not serve the best interests of the Board and all parties before it, and it does not even suggest that it would be prejudiced in any way if the relief Wason seeks were granted.

The Foundation may have misunderstood Wason's arguments on page 6 of its Protest. There Wason contended that Creede has fully satisfied its burden of proof under well established precedents governing adverse abandonment cases and that its application should be approved. Wason also suggested that under those same precedents, a party situated in the same geographic area with the same demographics and the same rail transportation circumstances could fairly rely

^{2/} There is nothing "elemental" in the suggestion that the Board does not have authority to control its own proceedings, and the Foundation offers no citation for such a suggestion.

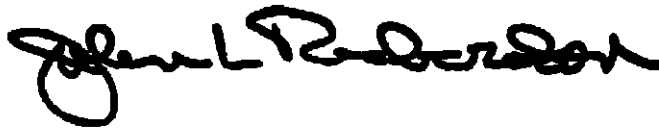
^{3/} The Foundation contends that since neither 49 U.S.C. § 10903 nor 49 C.F.R. Part 1152 expressly authorizes consolidation and contemporaneous consideration, the relief Wason seeks may not be provided. Following the Foundation's reasoning would lead to the conclusion that since adverse abandonments are not expressly sanctioned in § 10903 or in Part 1152, the Board may not entertain them.

upon the evidence submitted by the principal applicant to support, in part, its request for approval of the abandonment it is seeking. The Foundation presented nothing in its unauthorized letter effectively to challenge this self evident proposition.

In conclusion, Wason would point out that whatever may have been the purpose of the Foundation's unauthorized document, it apparently was not to contest or otherwise dispute the essential and important assertions Wason presented to the Board in its Protest. The Foundation does not ask the Board to deny to Wason the relief it seeks, and it does not even address Wason's essential contentions (1) that there have been no rail operations over the portion of the line traversing Wason's property for decades, (2) that there is no likelihood that there will ever be a need for such operations in the future, and (3) that the Foundation has not conducted itself as the steward of the rail line in the public interest as the Board should expect it to do. Finally, the Foundation does not dispute Wason's argument that the public convenience and necessity permit or require abandonment of the line in Creede and, beyond Creede, those portions of the line that adjoin Wason property.

For all these reasons, the Foundation's effort to interfere with the well justified processes Wason is proposing to the Board should be rejected and Wason should be permitted to proceed as it proposes.

Respectfully submitted,

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

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

Counsel for Wason Ranch Corporation

Dated February 14, 2008

CERTIFICATE OF SERVICE

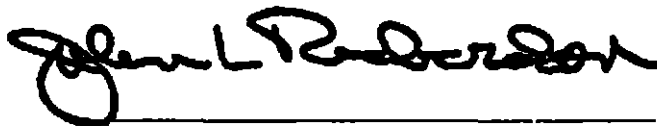
I certify that I have, this 14th day of February 2008, caused a true and correct copy of the foregoing Motion for Leave to File and Contingent Response to be served upon the following individuals by email or United States mail.

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