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THOMAS F. MCFARLAND

January 30, 2008

By UPS overnight mail

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

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JAN 31 2008

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

Dear Mr. Williams

Enclosed please find an original and 10 copies of a Protest for filing with the Board in the above referenced matter.

Very truly yours,

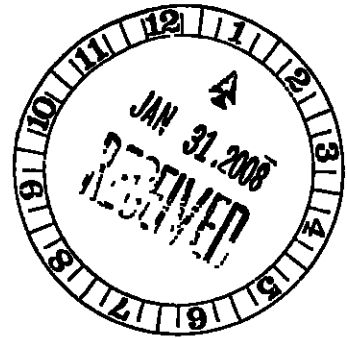
Tom McFarland

Thomas F. McFarland
*Attorney for Denver & Rio Grande
Historical Foundation*

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DENVER & RIO GRANDE RAILWAY)
HISTORICAL FOUNDATION --) DOCKET NO
ADVERSE ABANDONMENT -- IN) AB-1014
MINERAL COUNTY, CO)



PROTEST

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Office of Proceedings

JAN 31 2008

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DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
20 North Broadway
Monte Vista, CO 81144

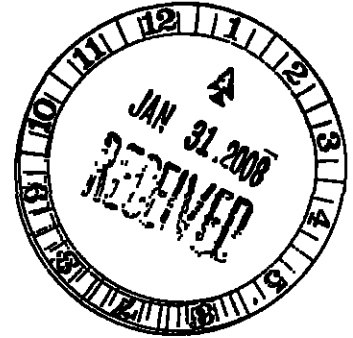
Protestant

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Attorney for Protestant

DUE DATE: January 31, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD



DENVER & RIO GRANDE RAILWAY	)	
HISTORICAL FOUNDATION --	)	DOCKET NO
ADVERSE ABANDONMENT -- IN	)	AB-1014
MINERAL COUNTY, CO	)	

PROTEST

I

Pursuant to 49 C.F.R. § 1152.25(a)(1) and the Board's procedural decision served January 4, 2008, DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION (the Foundation) hereby protests the adverse abandonment application filed by the City of Creede, Colorado (the City) on December 17, 2007.^{1/}

The Foundation is a Class III rail carrier authorized by the Board to operate the 1-mile line segment for which adverse abandonment is sought. The Foundation acquired the 21.6-mile Creede Branch, of which that segment is a part, pursuant to an offer of financial assistance in 2000. *See Union Pacific R. Co. -- Aband. Exempt -- in Rio Grande and Mineral Counties, CO*, 1999 STB LEXIS 248.

^{1/} Shortly before the due date for its Protest, the Foundation began to receive copies of letters filed with the Board by small businesses and residents of Creede, uniformly expressing the opinion that there is no need for rail freight service in Creede. Those filings are obviously the product of a letter-writing campaign by the City. There is no provision for such filings in the Board's procedural schedule. The letters should be stricken on that ground. If those letters are not stricken, they should be given no weight inasmuch as they represent the unsupported opinion of unqualified individuals.

The Foundation's case in opposition to the proposed adverse abandonment is tabbed as follows

- Tab No. 1 - Applicable Legal Standards
- Tab No. 2 - Facts - Verified Statement of Donald H. Shank
- Tab No. 3 - Attachments to Mr. Shank's Verified Statement
- Tab No. 4 - Argument - Application of Legal Standards to the Facts

APPLICABLE LEGAL STANDARDS

The City's case for abandonment fails because it is predicated on legal standards that do not apply to the essential facts of this matter. Thus, at pages 33-34 and 55-59 of the Application, the City argues that abandonment should be granted based on lengthy nonuse of the rail line, as it was in *Chelsea Property Owners - Abandonment - The Consolidated Rail Corporation*, 81 C.C.2d 773 (1992) (*Chelsea*), *aff'd sub nom. Conrail, Inc. v ICC*, 29 F.3d 706 (D.C. Cir. 1994) (*Conrail*), and *Modern Handcraft, Inc. - Abandonment*, 363 I.C.C. 969 (1981) (*Modern Handcraft*). Adverse abandonment was granted in *Modern Handcraft* where there had been no rail operations for 12 years and no rail carrier was attempting to restore service (363 I.C.C. at 971). ("Nor has there been any serious effort on the part of Freight Operation to solicit traffic or reinstitute rail service") Adverse abandonment was granted in *Chelsea* where there had been no operations for at least 10 years and the rail carrier opposed abandonment only in an attempt to avoid a major expense for dismantling a tunnel that would be required if the rail line were to be abandoned. (81 C.C.2d at 792). ("The trash haulage proposal appears to be nothing more than an effort by Conrail to avoid an obligation to dismantle the Highline"). The City contends that the case for adverse abandonment is stronger in the matter at hand because there have been no rail operations over the involved rail line in nearly 30 years (Application at 34). It is clear, however, that dormancy of that length does not result in a de facto abandonment. *See Phillips Co v Denver & Rio Grande W. R. Co*, 97 F.3d 1375 (10th Cir. 1996).

The essential difference in the case at hand is that the Foundation is attempting in good faith to restore rail freight service over the line. In that situation, the Board denies adverse abandonment "if there is a potential for future operation on the (subject) line and the carrier has

taken reasonable steps to attract traffic.” *New York Cross Harbor Railroad v STB*, 374 F.3d 1177 (D.C. Cir. 2004) at 1182, emphasis added by the Court (*Cross Harbor*), citing *Salt Lake City Corp. - Adv. Aband. - in Salt Lake City, UT*, 2002 STB LEXIS 150 at *12 (*Salt Lake City*), and quoting from *Conrail, supra*, 29 F.3d at 711.

Thus, in *Riverview Trenton R. Co. - Pet. for Exempt. from 49 USC 10901*, 2007 STB LEXIS ____, (Finance Docket No. 34040, decision served Nov. 30, 2007) (*Riverview Trenton*), the Board refused to revoke a rail carrier’s federal operating authority where (1) the carrier’s delay in completing track rehabilitation and in beginning to operate the rail line were due to conditions beyond its control; and (2) reasonable steps had been taken by the carrier to restore rail service on the line (at 3-4). The Board found that the following actions by the carrier constituted reasonable steps to restore rail service (*id.* at 3-4, note 6).

- (1) engaging a company to study track conditions and rehabilitation costs;
- (2) beginning to clean slag, coal, and ballast from tracks to allow assessment of their condition;
- (3) hiring a company to address a problem with water leakage and caustic contamination;
- (4) obtaining permission from the State to reopen a grade crossing and removing trackage in preparation for such reopening;
- (5) prevailing upon an entity to rehabilitate an easement track that had been damaged by that entity in demolition of buildings;
- (6) entering into an agreement with a nearby Class I rail carrier for maintenance of an overpass crossing; and

(7) holding initial discussions with officials of other railroads

As will be shown, *Riverview Trenton* compels denial of adverse abandonment in the case at hand because reasonable steps taken by the Foundation to restore rail freight service on the subject rail line far exceed the steps taken by the carrier in *Riverview Trenton* for that purpose

The Board has a statutory duty to preserve and promote rail freight service. *Cross Harbor, supra*. 374 F.3d at 1187, citing *Western Stock Show Assn - Aban Exemption - in Denver, CO*, 1 S.T.B. 113, 131 (1996), *Salt Lake City, supra*, at *12; and *Chelsea, supra*, at 779. That duty outweighs the more narrow public interest associated with state or municipal public works projects. As stated by the Court in *Cross Harbor, supra*. 374 F.3d at 1184-1185, citing *Salt Lake City, supra*, at *20-21, and quoting from *Chelsea, supra*, at 779:

... The impediments to State and local government projects (that would result from denial of adverse abandonment), although entitled to some weight, are nevertheless required to give way to our statutory duty to preserve and promote continued rail service, where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic ...

The alleged "compelling interests" put forth by the City in this matter (Application at 53-55) are thus outweighed by the Federal interest in reestablishing rail freight service over the line. *Accord City of Colorado Springs - Pet for Declar Order - The Denver and Rio Grande Western R Co*, 1989 ICC LEXIS 78 at *16-17 (City of Colorado Springs) ("Although the City no longer supports this project, the State and Federal interests in preserving rail service are broader and must be accommodated").

Contrary to the City's primary argument (Application at 34-43), the absence of shippers currently moving rail freight traffic over the line is not meaningful, let alone controlling. Thus, in *Seminole Gulf Rwy - Adv. Aband. - in Lee County, FL*, 2004 STB LEXIS 742, (*Seminole*

Gulf), the County argued that an adverse abandonment should be granted because the rail line had no shippers who would be adversely affected; because the property owners adjacent to the rail line did not plan uses for their property that would involve rail service, and because the public interest would be served by avoidance of an expenditure of public funds that would be required to remove and reconstruct a grade crossing if abandonment were to be denied (*id* at *4). In denying adverse abandonment in that case, the Board emphasized that the rail carrier was actively seeking new business for the line, and stated (*id* at *11-12):

Even though Seminole Gulf's efforts to attract new shippers to the line have not proven successful, they demonstrate some prospects for continued rail service Given Seminole Gulf's efforts, we cannot say that there is no potential for continued rail service over this line (emphasis added).

The "reasonable steps to attract rail traffic" in the *Seminole Gulf* case consisted of contacting Ringling Bros. and Barnum & Bailey for potential circus traffic and inquiries from various shippers about potential use of the rail line (*id* at 6). As will be shown, the Foundation's efforts in the case at hand have been far more extensive than that

There is no legal support for the City's contention that rail freight service will not be restored in Crcede because there will not be enough freight traffic to make such restoration economic. It is a rail carrier's intent and efforts to restore rail service that are important in an adverse abandonment case, not whether the restored freight service would be profitable See *Wisconsin Dept of Transp - Aband. Exempt*, 1988 ICC LEXIS 359 at *12 ("(T)here is nothing in the rail transportation policy that directs the Commission to force an abandonment because a line may be presently unprofitable and opportunity costs have little weight in the context of a forced abandonment . . .")

The law refutes the City's contention that the Foundation does not have a need for the rail line that overrides the City's interest in the line's removal because the Foundation can conduct its rail operations over the remainder of the Crecde Branch that is not proposed for abandonment. (Application at 43-44). A rail carrier is not required to establish any such overriding need because any such requirement would unlawfully shift the burden of proof from the City to the rail carrier. *Cross Harbor, supra*, 374 F.3d at 1186. It is up to the City to prove that the Foundation does not intend to restore rail freight service on the line and that the Foundation has not taken reasonable steps to restore such service. Nothing filed by the City comes close to sustaining that burden

Contrary to the City's position (Argument at 45-49), the Foundation's acknowledged intent to perform intrastate rail passenger transportation over the line is in no way inconsistent with its intent to perform interstate rail freight transportation over the same line. Indeed, the proposed passenger operations are very much in furtherance of freight operations because the Foundation would use revenues from passenger operations to help fund the level of track rehabilitation that is necessary to accommodate rail freight traffic. *Compare Roaring Fork - Exem - in Garfield, Eagle & Pitkin Counties, CO*, 4 S T B 116 (1999), where future reinstitution of rail freight service was likely as an adjunct to rail passenger service (*id.* at 121, notes 18 and 19)

A rail carrier has a legal right to reinstitute rail service over a previously dormant rail line regardless of a claim by local government that the restored rail service would adversely affect public safety and quality of life The case at hand is by no means the first time that a City has opposed reactivation of rail service on a dormant rail line on "not-in-my-backyard" grounds.

Thus, in denying adverse abandonment of a previously dormant rail line in *Salt Lake City, supra*, the Board said (at *20-21)

We have weighed the safety, traffic and quality of life concerns raised by the community and find that they do not outweigh the overriding Federal interest in maintaining this Line as part of the interstate rail network. Rail operations were previously conducted on the Line, and the Line was never authorized to be abandoned Thus, as discussed above, UP's reactivation - which it can undertake without our approval - will merely continue rail operations by UP on the same line While the community's concerns are understandable, they are not unique to this Line. Similar concerns are shared by communities on other rail lines throughout the nation. UP also has worked with the community to ameliorate problems associated with the reactivation, and we encourage UP to continue to do so (Emphasis added).

In summary, the dispositive issue in the case at hand is whether there is a potential for future rail freight operations on the line for which the Foundation is taking reasonable steps to attract rail freight traffic If so, the adverse abandonment application is to be denied, notwithstanding any impediment to the City's public projects that might result from rail operations

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1014

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

VERIFIED STATEMENT OF DONALD H. SHANK

I, Donald H. Shank, declare that, based upon my personal knowledge and belief, that the following facts are true and correct.

I am the President and Executive Director of the Denver & Rio Grande Railway Historical Foundation, hereinafter referred to as "the Foundation". I founded the Foundation in 1997, have held the aforementioned positions since its founding and it is an active Colorado non-profit corporation in good standing.

The Foundation acquired the former 21.7 mile-long Creede Branch from the Union Pacific Railroad during May 2000, as approved by the Surface Transportation Board (STB) during 1999, with the intent to rehabilitate the line and operate both freight and passenger trains.

The Foundation does hereby formally declare its opposition to the Adverse Abandonment Application as filed in behalf of the City of Creede by Ronald M. Johnson of the Law Firm; Akin, Gump, Strauss, Hauer & Feld LLP.

The underlying motives of the City of Creede do not support Mr. Johnson's findings. At page 4, footnote 2, Mr. Johnson states that the City of Creede is only interested in gaining control of the publicly owned land underlying the right-of-way within the city limits of Creede. If this were the case, why then did the City attempt, not once, but twice, to convince the STB to

reverse the sale of the entire 21.7 mile railroad during the past six years. The true fact is that the City of Creede has been attempting to do away with the railroad since the day the Foundation purchased it

The primary intent of the adverse abandonment application is to gain control of land within the City of Creede, supposedly to enable the City to determine what its highest and best use might be. Creede contends that the fee simple interest beneath our right-of-way within the city limits belongs to them, yet the Colorado State Land Board ("CSLB") and the Colorado Attorney General's Office ("AGO") cannot definitively state whether or not that is the case. This ambiguous position is relevant to the portion of our right-of-way that lies within Section 36. The railroad's two hundred foot-wide right-of-way in Section 25 was acquired in 1891 through a U.S. Congressional Grant via the Railway Act of March 3, 1875. The Patent to the fee interest in Section 25 transferred to the City in 1901 and is not in dispute, other than the subsequent encroachments that have occurred, however, Section 36 is a much different situation. The fee simple title to the land under our right-of-way remains unclear to this very day and according to Mr. Ed Hammerich of the AGO it will remain unclear until the City of Creede initiates a Quiet Title Action in District Court and a Judge determines to whom the fee interest is vested. Therefore, it is premature at best for the City of Creede to lay claim to land that may still belong to the State of Colorado. Further, it is grossly unfair for the City of Creede to assert fee ownership of this land in an attempt to force an adverse abandonment of the Foundation's "burdening" right-of-way for the benefit of its residents and businesses when the fee title clearly remains in question.

In the first paragraph on page 5, Mr. Johnson makes the assertion that once Board jurisdiction is lifted via adverse abandonment, the Foundation's right-of-way will be extinguished by the terms of the state right-of-way agreement (#1757-17) from 1969 and federal law. Here Mr Johnson is referring to paragraph 16 of the 1969 agreement (at page 362 of the abandonment application) regarding the twelve month inactivity clause. During a meeting on February 22, 2000, Robert (Bob) Opal, General Commerce Counsel for Union Pacific Railroad established the fact that only an abandonment initiated at the STB would provide extinguishments or abandonment of the right-of-way and this termination clause was federally preempted. The Union Pacific and the AGO entered into an agreement dated May 18, 2000, which stated at (1) that the CSLB would not assert any claim as to reversion, abandonment or extinguishments of the right-of-way. Had the State not agreed to make no assertions, the Foundation would not have closed on the purchase one week later.

Mr Johnson makes several statements regarding the rehabilitation of the entire line, including our efforts within the city limits of Creede. I will now respond to these statements and assertions year-by-year.

2000 - Initial track inspections reflected a serious amount of deferred maintenance for nearly fifteen years between South Fork and Wasson. The line between Wasson and Creede was maintenance deferred from 1972, but remained intact other than two areas removed by the City of Creede in 1989. At an elevation ranging from 8,180' at South Fork to 8,850' at Creede, the freeze/thaw cycle alone creates several problems for jointed track. Temperature swings exceeding forty degrees or more within a twenty-four hour period are common. This creates a significant case of expansion and contraction resulting in rail shifting longitudinally, combined

with the constant movement within rail joints and the movement of rail on the surface of the wooden cross-ties beneath. This results in the ties skewing, or shifting at an angle, which in turn narrows the distance between the rails and creates tight gauge. Re-gauging the railroad is an ongoing process throughout the year, every year. This is combined with rock-fall prompted by the same freeze/thaw cycle. The constant movement of the rail within the bolted joint is hard on track bolts, thus broken bolts and pull-apart joints are a source of constant maintenance. Much of the 2000 season was spent removing rock, rock-slides, and gauging the track. Rock critical areas were the primary focus.

2001 This year brought about the systematic removal of overgrown brush, trees and debris ranging from weed abatement to the removal of hundreds of trees that had grown between the rails, beginning in South Fork and progressing west towards Creede. This year also brought the initiation of legal proceedings against the Foundation by the City of Creede, which required attentions being diverted rehabilitation to defending our purchase. In spite of this, physical work continued. It was slow going and difficult work, but it continued throughout the spring, summer and fall. Progress was made and segments were made operational to M-O-W equipment.

2002 - A portion of every spring is necessary to reverse the negative effects of winter. Rock removal and gauging consumes a large amount of time. Summer brings the weed and brush growth that is always present on the Creede Branch. Cutting and mowing and spraying require a considerable amount of time, restorative track work continued to be our primary focus. 2002 provided several additions to our inventory of equipment including a Nordberg automatic spiker/gauger that greatly increases productivity and additional motorcars and pushcarts made the movement of track materials more convenient. We focused on gauging and tie replacement.

where clusters of rotted ties were preventing track from holding gauge and temporarily welded broken rails providing contiguous movement from strategic staging areas in South Fork and Wagon Wheel Gap. 2002 also brought about changes in the highway grade crossings

CDOT crews opened up nearly all the crossings with the exception of the 149 crossing in Creede. The Foundation didn't press CDOT to open this grade crossing as it would require extensive work to roto-mill the asphalt back several hundred feet in both directions, and we were focusing our attentions further down the line. We made the conscious decision to not do anything disruptive in Creede, and continue the systematic work from east to west. Broken rails were replaced, more ties installed and equipment maintenance performed, combined with the ongoing legal issues with the City of Creede, used the bulk of the 2002 season. The entire Creede Branch also was placed on the State and National Historic Register as a National Historic District in November 2002.

2003 –This year brought about significant improvement of the line and its level of operability increased. Our core group of volunteers increased and as a result the line became navigable from South Fork to Wagon Wheel Gap. Work on the roadbed increased with the addition of a backhoe. Legal issues with the City of Creede began to take a serious toll on Foundation membership and our ability to raise funds. The perception of the venture was that the overwhelming legal problems were going to end the Foundation's ability to continue. Through it all we continued to work as time and money permitted and much was accomplished. We began to see real potential in the operation of the Creede Branch and several inquiries were made in hopes of identifying some potential shippers. A few viable contacts were developed and their understanding of the necessity for patience established.

2004 – Creede really stepped up its attack on the railroad with additional legal filings in district court and the STB. For the second time they attempted to force the STB to reverse or overturn the sale of the railroad to the Foundation from the Union Pacific. Work continued on the line and the level of operability increased. Additional ties were replaced, angle bars replaced or bolts holding the bars and track joints reinstalled. Rockwork continued and drainage issues were improved. The Foundation acquired a Nordberg personnel carrier, which is capable of moving larger numbers of volunteers and equipment to the various job sites. Public interest along the line continues to grow and numerous residents and visitors ask how they can get a ride on the railroad.

2005 – A bittersweet year In May of '05, the STB ruled against the City of Creede in their repeated attempt to overturn the sale of the railroad. The volunteer group dramatically increased with the addition of volunteers from the Rocky Mountain Division of NARCOA. Work sessions were now augmenting the Foundation's regular work and much was being accomplished. More and more equipment would arrive making heavier tasks easier and quicker. Motor car excursions were now a reality as the level of operability provided safe movement over the line. Track gauging issues became less and less of a problem, virtually all broken or damaged rails had now been replaced. A Labor Day '05 fund-raising excursion was successfully run with an overwhelmingly positive response. Tragedy struck during October 2005 with the loss of my Daughter in a senseless traffic accident.

2006 – During December 2005 I was contacted by Ed Ellis, president of Permian Basin Railways. He informed me that he was purchasing the San Luis & Rio Grande Railroad from RailAmerica and invited my Foundation to participate in a passenger train operation on the San

Luis & Rio Grande Railroad, the line to the east of the Creede Branch that we interchange with in South Fork. I spent the bulk of 2006 promoting and developing that operation and proving to myself that I was capable of accomplishing the development of a passenger business on an operating freight railroad. I withdrew from the operation at the end of the 2006 season to re-focus my attention to the Foundation's Creede Branch. It should be noted that during 2006, work on the track did continue, as did more and more fund raising motorcar excursions. The line was becoming increasingly popular and we were receiving more positive press.

2007 – This was a banner year for the railroad. Organized and scheduled excursions were executed flawlessly. A great deal of work was accomplished on the line including the long-awaited replacement of the Hwy 149 grade crossing in Creede. CDOT crews accompanied by the Foundation's contractor installed the new crossing with welded rail that provides a nearly maintenance-free crossing. This was installed in October, after the tourist season has passed and traffic is considerably lighter. The Hwy 149 grade crossings northern connection with the existing track towards town was completed by the volunteer group during our four-day October work session that also provided the opening of three of the grade crossings within Creede. Weeds, brush, debris and dirt were also removed from our tracks and the depot site's appearance was dramatically improved. Motorcars and a 35,000 # hi-rail boom truck ran the line from Wagon Wheel Gap to the depot in Creede. The only complaint we are receiving on the motorcar excursions is that we had to stop at the bottom of Creede, leave the motorcars and walk twelve blocks to downtown for lunch and shopping. This was very difficult for some folks not used to the thin air at 8,850' elevation. We didn't press the necessity to open the Creede rail yard until we knew the Hwy 149 crossing was going forward with CDOT. Once they had committed both

funds and scheduling, continuing on into Creede made logical sense. Creede became aware of the schedule in July during the PUC/CDOT meeting on the 16th and they were informed via letters from me during August and September. During the October work session, care was taken to minimize the effect on the citizens and businesses of Creede. The Hwy 149 grade crossing at Wagon Wheel Gap is scheduled with CDOT for replacement in Spring 2008, prior to the commencement of excursion operations in June and before the arrival of the tourist season. During 2007, the Foundation had the bridges inspected by Osmose Railroad Services, a professional bridge inspection company. A detailed report is due in the very near future. The engineers performing the inspections felt the bridges were basically all functional with some needed repairs, but nothing of a catastrophic nature as suggested by some. A licensed, certified weed-spraying company is already scheduled for weed control this summer.

During mid-2007, the Foundation received the donation of the former D&RGW Hooper depot building built in 1893. This building is in remarkably good condition considering it hasn't been used as a depot since 1959. The Foundation has invested over \$27,000 to construct a new 16' x 49' concrete basement foundation to receive the historic depot. The basement will serve as a museum displaying numerous historic artifacts, memorabilia and ephemera. It is located next to the tracks in South Fork, just off and visible from Hwy 149 and will be placed into service as our base of operations early 2008. The tracks of the D&RG reached South Fork in 1881, the depot arrived 127 years later! The nomination package for the inclusion of the depot on the Historic Register is nearly complete and will be submitted in February.

2008 –Once the depot is placed on the Register, the Foundation will apply for a grant from the Colorado Historic Fund for its restoration. Plans for 2008 include the construction of a

siding and re-erection of a Foundation owned 55' x 100' shop building in South Fork and the continued rehabilitation of the line including the yard in Creede. We will continue with excursion operations as a means of raising funds to further our progress rehabilitating the track and bridges and increase the level of operability to include freight operations, hopefully by the end of 2008. Our main focus during rehabilitation efforts this year is to implement a large-scale tie replacement program.

In summary, the Foundation's good faith effort to rehabilitate the Creede Branch for rail freight operation, including the segment in Creede, is beyond dispute. The Foundation and its volunteers have:

- made hundreds of maintenance-of-way trips over the Branch (*see, e.g., Exhibits 4-5, 7-8*),
- replaced thousands of spikes;
- replaced approximately 300 crossties,
- replaced dozens of rails and angle bars,
- cleared numerous rockslides,
- removed tons of brush,
- pruned or removed hundreds of trees;
- stabilized countless fill areas,
- re-gauged hundreds of rail locations;
- restored critical grade crossings, including crossings located on the segment in Creede proposed for abandonment; and
- cleared the yard tracks in Creede

As a result, the entire Creede Branch is now operable for rail passenger service and more durable maintenance vehicles, including the segment in Creede proposed for abandonment. All that is left to achieve compliance with FRA Class I safety standards for freight and passenger operations is to restore another crossing (which the State will do this coming Spring) and to install additional crossties

As mentioned above, the Foundation has already installed hundreds of crossties at critical locations. By virtue of its own actions in the past, the City is not in a position to contend that the Foundation will not be able to obtain and install the additional crossties that are required for FRA Class I compliance. The Creede Branch is listed on the Colorado and National Register of Historic Places. In 2002, the Foundation applied to the Colorado State Historic Fund for a grant of more than \$200,000, which would have been used to install approximately 12,000 secondhand crossties in the Creede Branch. The Foundation had the opportunity at that time to acquire the used ties for about \$7.50 apiece. That would have gone a very long way toward achieving FRA Class I crosstie compliance. The grant was heading toward approval until the City instituted a letter-writing campaign against it. The resulting controversy caused denial of the grant.

Nevertheless, it is likely that governmental funding for crosstie replacement on the Creede Branch will be available if the City's application for adverse abandonment is denied. Federal and State funding of track rehabilitation by Class III rail carriers continues to be available. In that respect, reference is made to excerpts from the shortline railroad newsletter attached to my statement as Exhibit 6 showing grants and loans for that purpose by several states. It is likely that the Foundation will be able to obtain governmental funding for a

sufficient number of secondhand crossties to achieve FRA Class I compliance for the Creede Branch.

I own a locomotive that is serviceable for freight transportation. It is a 3,000-horsepower, GE B30-7, now located at Alamosa, CO, not far from the Creede Branch.

In the seven years that the Foundation has owned the Creede Branch, five years have been plagued with expensive and time-consuming defenses of legal actions bought by the City both in Colorado and U S District Courts and before this Board. Tens of thousands of dollars have been spent defending the Foundation's legal position that could have been spent on track rehabilitation. The City has created these legal quagmires, delayed the progress of reopening of the rail line, interfered with the Foundation's attempt at governmental funding, and now has the audacity to allege that the Foundation has not made enough progress in reinstituting rail service!

Of particular interest to the railroad is the reopening of mines throughout several areas in Colorado. Creede's history is focused on the mining industry. Mining and the railroad built the town and was its basis for existence for nearly a century. Only after the last mine closed in 1985 did the town recognize the necessity to promote tourism to stay alive. Now with the resurgence in mining, talk of the mines in Creede reopening has become much more than just talk. Within the past few weeks, one wealthy individual named Brian Egolf has purchased over seven hundred (700) mining claims with plans to press several into production. The potential for ore shipments by rail is very real. Creede was a huge silver, zinc and lead producing area. Metals prices have risen dramatically and have remained much higher than a few years ago, in fact silver has more than tripled in the past three years. They are expected to continue to increase and remain high for the next several years.

Mr. Johnson in his application at pg 13 (D) makes several bold assertions, none of which are factual. As previously stated, it took some time to arrange and coordinate the Hwy 149 crossing replacement with CDOT. The joint collaboration between the Foundation and CDOT had been planned for some time. It was unclear if the weather was going to hold and allow the proposed four-day volunteer work session to take place. As the 25th of October approached, we notified the Mineral County Sheriff's Office about our upcoming work session and what we intended to accomplish. This was done in advance which provided them with adequate time to make any necessary logistical preparations within the City of Creede. It should be noted that the Sheriff's Office is also the law enforcement for the City of Creede. I have been over the issue about opening the crossings several times throughout this response, however, for the record, I never said "I was coming to town to remove the children's park and clear the right-of-way no matter what the City thought and that no one could stop me." I wouldn't be so blatantly brash, nor did we come "storming into town bent on destroying public property." Instead, a group of caring, considerate volunteers made up from all walks of life arrived, systematically planned and implemented a process whereby we were able to minimally open our tracks and the blocked crossings, and at all times doing so with regard for the general public, their safety and to retain full operability of their streets. Mr. Johnson's statement that I had the Sheriff contact the STB is simply untrue. No one was more surprised than I when the Sheriff came by the work area to give us a copy of paperwork he had initiated, generated, sought and received from the STB. I had no knowledge whatsoever of his contact with the STB and simply complimented the Sheriff for the foresight to have done so. I applaud his tenacity. I had personally notified the City of Creede in writing during August and September that we would be coming to work within the Creede rail

yard in the very near future. The City knew we were coming. Unlike Mr. Johnson's villainous depiction of our activities, which took place entirely within the railroads right-of-way, we did not tear up the city's only park or the children's playground. We cut through one (1) sprinkler line while the city manager stood there telling us it's o k to do so. Considering the waterline crossed our mainline about an inch above the top of the rail and was installed after the Foundation purchased the railroad, it never should have been installed there in the first place.

Mr. Johnson attempts to make an issue over the Day's of '92 Events Center. The Foundation maintains an excellent working relationship with Ken Wyley, the event's Chairman and the fact remains that he was totally supportive of removing the bleachers and grandstand. Please refer to his letter supporting this position. The redundant assertion of "being on publicly owned land" begs for the rebuttal, in fact we are "on railroad property". The repetitious assertion of the fee title land under the right-of-way being vested in the City of Creede remains in doubt, but none-the-less it does remain railroad property although the City of Creede fails to recognize this and has repeatedly violated our property rights. No repairs are necessary for the safe operation of a motor vehicle across our tracks. As previously stated, we left the crossings fully operational and I have been back to check on them several times, making sure that the City's snowplowing efforts are not hampered. They are not.

Page 15 of the application contains Mr. Johnson's bold assertion that the Foundation's reason for sudden activity during our October work session is "transparent" is ridiculous at best. Once again, the Foundation coordinated the Hwy 149 crossing with CDOT after the tourist season was over and traffic was considerably lighter. The fact that we were able to now enter Creede provided the logical opportunity to continue on to the depot, the point where passengers

are to disembark and find good food and shopping without the burden of walking a half-mile plus at elevation. After all, by its own admission, Creede is a tourist oriented town dependant upon those tourist dollars for its survival. Whether they arrive by automobile or by rail is, or should be inconsequential. The mere fact that they are present with money to spend should be enough. Mr. Johnson's assertion that we were there to "punish the City for pursuing this proceeding" is once again, blatantly absurd. We purchased the railroad with one goal in mind, to rehabilitate and operate freight and passenger trains, nothing more, and nothing less. This is what we have been working towards the past seven years and this is what we will continue to work towards. Throughout the application, much has been made over our ability to collect rent from businesses or individuals occupying portions of our right-of-way. These businesses used to pay rent to the D&RGW and its successors, and the Foundation is in succession. We find it particularly interesting that elsewhere on the Creede Branch, leasing portions of the right-of-way and the collection of rent continues much as it has for decades. Only in Creede has our attempt to collect rent in exchange for utilization of railroad property caused such an uproar. Mr Johnson refers to the "Right of Way Encroachment Settlement Proposal" prepared by the Foundation and presented on February 22, 2007 to the business people with encroachment issues and to the City of Creede as a "non-starter." It was promptly rejected. The settlement proposal is included in the City's abandonment application as Exhibit 18 at page 222. Its rejection came as no surprise, since the City of Creede enticed the business owners with the offer to sell each owner the fee simple interest under the encroached portion of the right-of-way in exchange for

supporting the City's application adverse abandonment. And why wouldn't they? Here they get clear title to land that has never belonged to them under approximately the back third (more or less) of most of their buildings for the sum of ONE DOLLAR (\$1.00), subject to the railroad right-of-way that the City assured them would be going away. How did the City's gift of land to these businesses for \$1.00 serve the rest of the town's taxpaying citizens? The railroad would have gladly offered twice that amount for the fee interest under of right-of-way

On page 27 of the application Mr Johnson makes a naked assertion claiming the former D&RIGHT-OF-WAY relinquished its federal right-of-way behind the buildings on the west side of Main Street in 1989. The railroad did not make such a relinquishment and is totally unsupported. The only portion of right-of-way relinquished was that portion the D&RGW filed for and was granted abandonment of in 1969, above MP 320.88. The railroad yard remained intact except for the rails removed by the City of Creede during 1989. No such documents exist from the D&RGW, nor any successors authorizing or supporting the removal of any rails/tracks anywhere within the city limits of Creede. A reference in the minutes of a city council meeting from 1989 suggested permission had been granted by the D&RGW to remove the rails in what is now being used as an alley. I placed a call to Ron Phillips, current Manager of Train Operations (MTO), Union Pacific Railroad in Grand Junction, Colorado. Ron was Superintendent for the D&RGW in Alamosa, Colorado, during 1989 and as such had control over the Creede Branch. Per Ron, the D&RGW never authorized any rail or track removal within the city limits of Creede as this

would have required abandonment authorization from the Interstate Commerce Commission (ICC) predecessor to the STB. The fact that the City claims they were authorized to do so by the railroad is most definitely not supported by any such written authorization as none exists

Mr Johnson repeatedly makes the claim of no shippers, thus no freight to support his public necessity or convenience argument. The rehabilitation of the Creede Branch has been greatly hampered by the endless legal attacks upon the Foundation and the railroad. The years of litigation have taken an enormous toll financially. In the early years, the Foundation was entering into a partnership with a group of Texas investors. Upon Creede's filing of the first attempt to overturn or reverse the sale of the railroad to the Foundation, the attorneys representing the investors advised them to step back and re-evaluate their involvement. Given the duration of the case, their attorney advised them against the investment and they withdrew altogether. Their investment would have been \$4.5 Million Dollars of which nearly three million was to purchase two fully operational historic steam locomotives, a complete passenger train, two diesel-electric locomotives and several freight cars. The remaining \$1.8MM was to be spent on rehabilitation of the track and bridges and facilities development.

In 2002 I prepared the nomination package and successfully placed the Creede Branch on the State and National Historic Register. The Foundation then applied for a grant from the State Historic Fund in excess of \$200,000 to purchase 12,000 used railroad ties (relays) and have them installed by a railroad contractor. The grant request was well received and moving towards a positive award until the last moment when letters from Creede came into the State Historic Fund asking them how they could consider a grant when the railroad was involved in lengthy litigation with the City of Creede and may not survive. Since funds were tight in the SHF, any

controversy surrounding a grant applicant meant denial, and so it was, the Foundation's grant request was denied.

Since the Foundation purchased the railroad from the Union Pacific in May 2000, the City of Creede has been involved in an attempt to cripple or kill the railroad on three separate occasions and attempted to undermine our activities with numerous regulatory agencies, i.e. the Public Utilities Commission (PUC), the Forest Service (USFS), the Army Corps of Engineers, just to name a few. They filed several frivolous complaints against the Foundation requiring hundreds of man-hours at taxpayers expense to investigate, only to find the Foundation innocent of their allegations.

In spite of the endless attempts and attacks upon the Foundation and myself personally, we're still here and we're still moving forward with our original plan to rehabilitate the historic line and prepare it for its next century. Given the enormous costs to the Foundation for the legal defense, our rehabilitation progress has been slowed considerably. We have taken the position that until we can definitively establish a date whereby we can offer freight service, and the heavy tonnage associated with it, we will not beat the bushes seeking shippers until we know we can reliably and safely deliver. Creede talks about "uncertainty" over the railroad. We at the railroad have existed under the same cloud of uncertainty at the hands of the City of Creede. The ever-present threat of yet another legal attack keeps would-be donors and investors at bay with the proverbial "wait-and-see" philosophy.

I have touched on the recent news surrounding the mining industry in Creede and around Colorado. The huge mine at Climax, served by a rail line that was sold years ago into the private sector is re-opening. The sixteen mile-long railroad will now be hauling freight, in addition to

its daily tourist train out of Leadville. Leadville connects to the Union Pacific's line over Tennessee Pass that has been dormant for the past ten+ years. Much has been said over the fact that Brian Egolf recently purchased an estimated seven hundred mining claims in and around Creede and has already staked a large number of them, with plans to begin mining activity in the near future. The sale of this huge number of mining claims was validated in a conversation with the Mineral County Clerk and Recorder's Office in Creede and Rio Grande / Mineral Title Company in Del Norte, CO, that prepared all the deeds. The Creede mines were known worldwide for their silver, lead and zinc production. They represent significant future rail freight potential.

With the distinct possibility that some of the mines in Creede going active, it's only logical to keep the Creede Branch intact through Creede to service what many see as a vital resurgence in mining activity in Creede. Jack Morris of Canon City, CO, owns the famous "Last Chance Mine" in Creede. Jack anticipates shipping 100+ carloads annually of bulk rock, specialty rock and rock products annually to markets in Texas and New Mexico, and for export to China, as development and production increase over the next few years. GMCO of Rifle, CO, remain interested in shipping their magnesium chloride by rail in one hundred ton tank cars all the way into Creede for both Mineral County and the U.S. Forest Service. See accompanying letter from GMCO. Mineral County feels that they will increase the amount of "mag" to spread with the readily available product in Creede.

Steven Baxter of Creede remains a potential recipient of cedar logs potentially shipped by rail from a shipper in Tennessee. Though Steve's company, "Tenco Red Cedar Logs" is in the formative stage as he refers to it in his letter to Clyde Dooley, he represents potential freight

from out of state. His emails to me reflect his desire to "keep things local" and likes the idea of receiving logs on the Foundation's bulkhead flatcar # DRGR 2359. He did receive a rate from CSX after inquiring

The Foundation understands the foregoing freight traffic volumes may be somewhat modest initially. That is to be expected in any new enterprise but the underlying potential for significant freight movement in and out of Creede from that traffic and ore traffic from the mines is a very real possibility. For passenger operations, Creede is the destination, with its great restaurants, unique shops and quaint charm. We at the Foundation and most everyone we speak with cannot understand the opposition to the railroad. By its own admission, the town is dependant upon tourism. Somehow the few, powerfully vocal and well financed opponents seem to have adopted the philosophy that tourists arriving by car are embraced, while those arriving by train are after only "bubble gum and rubber tomahawks" and frowned upon.

The attached printouts and photographs created by the Foundation's several loyal volunteers indisputably document much of the work accomplished to bring the railroad to its current level of operability. Also attached is an excerpt from the Colorado Timetable, a Colorado railroad newspaper with worldwide circulation. Look at the full-page article about the 2007 season on the Creede Branch. Think about this, yesterday I received a phone call from Phil Johnson, the General Manager of the Canon City & Royal Gorge Railroad, one of the most successful and busiest tourist railroads in Colorado, or the U.S. Phil read the article in the Timetable, called me and stated that he had no idea that so much has been accomplished on the Creede Branch and vowed he would be down this spring to volunteer. This commitment from a

gentleman that is extremely busy. We are gaining momentum and notoriety. With the press reflecting the resurgence of mining in Colorado, our future looks bright and filled with real potential. The entire Creede Branch must be retained.

The Creede Branch is far from abandoned. Pictures speak louder than words. There are a number of spreadsheets from individual volunteers reflecting their investment of time, materials, equipment and their costs to attend the work sessions. Their photos clearly support the immense amount of work accomplished to date. These loyal volunteers have spent a great deal of time and energy preparing their supporting documents.

The Foundation continues to pay its taxes to both Rio Grande and Mineral Counties as well as to the City of Creede. We receive a tax bill for the tracks within the City of Creede. The formula by which the City determined the value of our tracks might yield some interesting reading, since they consider them to be totally worn out. It is my understanding that the formula was derived from operating railroads located elsewhere. Perhaps our taxes are miscalculated at a much higher rate.

The City of Creede has repeatedly violated the property rights of the railroad. During a project a few years ago that rehabilitated the drainage system, the City engaged the services of a professional engineering firm in Denver to design changes to their existing system. The owner of the firm and the chief design engineer informed me after the fact that he had been told by the mayor of Creede to disregard the railroad. Of the eleven separate stations within the project, nine of them were within our right-of-way. When the excavating company (Gardner Excavating of Alamosa, CO) was told to tear out two grade crossings on the railroad at Wall Street, Merritt Gardner called my office and expressed his concern. According to Mr. Gardner, he was told to,

"ignore the railroad, tear out their tracks and I (Mayor B.J. Myers) will deal with Shank." She never even placed a courtesy call to the Foundation. After the call from Mr Gardner, I temporarily stopped the work until some redesign work could be done to protect the track and roadbed from potential washout. I was then referred to by the mayor as an "obstructionist."

Further, Clyde Dooley, the current Creede City Manager has issued building permits for residential improvements on property clearly within the railroad's right-of-way without even a courtesy call to our office. Do railroads simply have no property rights? I believe they do. Ours have simply been ignored and repeatedly violated.

In conclusion, as reflected on Mr Johnson's "Reasons for Filing the Application 1152 (a)(6)" found on page 16 of the application, the City is pursuing adverse abandonment to gain control over the "publicly owned land under the railroad" Once again, publicly owned by whom? It most definitely could be the State of Colorado, or perhaps the City of Creede, subject to a Quiet Title Action in a court of law, but non-the-less subject to the enforceable Right of Way Agreement between the State and the Railroad. We continue to work to improve the operability of our railroad. We will continue to pursue potential shippers. We pay our taxes to both Counties and the City of Creede. Yes, we have made some innocent mistakes along the way and we will do our best to rectify those errors and omissions, but we have no hidden agenda. The Denver & Rio Grande Railway Historical Foundation's Creede Branch is definitely not abandoned. It is an active railroad currently in rehabilitation. For the reasons stated herein, the Foundation humbly requests the Board deny and/or reject the City's Application for adverse abandonment of the track in the city limits of Creede.

VERIFICATION

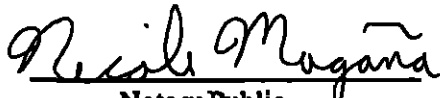
STATE OF COLORADO)
) SS:
COUNTY OF RIO GRANDE)

DONALD H. SHANK, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.

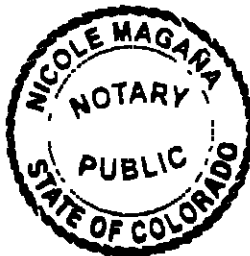


DONALD H. SHANK

SUBSCRIBED AND SWORN to
before me this 18 day
of January, 2008.



Notary Public



My commission expires:

Expires 7-31-2010

ATTACHMENTS TO MR. SHANK'S VERIFIED STATEMENT

- EXHIBIT 1 - Letter from Randy Parsons, Operations Manager, GMCO Corporation, to DRGW Historical Foundation, dated January 15, 2008, anticipating rail shipment of magnesium chloride to Creede.
- EXHIBIT 2 - Letter from U.S. Congressman Scott McInnis (Ret), dated January 14, 2008, supporting preservation of the South Fork-Creede rail line
- EXHIBIT 3 - Equipment Inventory of the Foundation as of January 1, 2008.
- EXHIBIT 4 - Creede Branch Work Party Documentation by Chris Weaver, 2005 and 2006
- EXHIBIT 5 - Photos by Brian Delaplaine of Work on the Creede Branch.
- EXHIBIT 6 - Excerpts from American Short Line & Regional Rail Association Views & News, January 8, 2008 and January 21, 2008, reflecting Federal and State funding of Class III track rehabilitation projects.
- EXHIBIT 7 - Draft article from Timetable, relating to the Creede Branch
- EXHIBIT 8 - Statements showing expenses of volunteers donated to the Foundation
- EXHIBIT 9 - Letter from Upper Rio Grande Economic Development Council, dated January 14, 2008, supporting operation of the Creede Branch for passenger travel and freight transportation.
- EXHIBIT 10 - Letter from Del Norte Economic Development Council, dated January 15, 2008, supporting opening of the Creede Branch for passenger and freight service
- EXHIBIT 11 - Letter from Colorado State Mining Championship to Mr. Shank, supporting the Foundation's use of the right-of-way in Creede for the purpose for which it was acquired (rail freight and passenger service)
- EXHIBIT 12 - Letter from Ms Liz Curry, dated January 17, 2008, supporting rail freight and passenger service on the Creede Branch.

EXHIBIT 1

Letter from Randy Parsons, Operations Manager, GMCO Corporation, to DRGW Historical Foundation, dated January 15, 2008, anticipating rail shipment of magnesium chloride to Creede

GMCO Corporation

0228 Powerline Road
P O Box 1480
Rifle, CO 81650

(970) 625-9100
Fax (970) 625-9101
email gmco@sopris.net
www.gmcocorp.com

January 15, 2008

DRGW Historical Foundation
20 N. Broadway
Monte Vista, CO 81144

GMCO Corporation anticipates that if rail freight where available to Creede, CO we would ship three to five 100 ton tank cars of magnesium chloride dust control material per year to that location to treat roads in Mineral County

In addition we would ship thirty plus cars to South Fork to service Archuleta County.

Please let me know if you have any questions.

Thank you,



Randy Parsons
Operations Manager

EXHIBIT 2

**Letter from U.S. Congressman Scott McInnis (Ret.), dated January 14, 2008,
supporting preservation of the South Fork-Creede rail line.**



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

SCOTT MCINNIS (RET)
COLORADO

January 14, 2008

To Whom It May Concern

I am a 5th Generation Colorado native and very much interested in preserving our great state's history. One of my passions is Colorado railroad history. I am very interested with the preservation of the rail line from South Fork, Colorado to Creede, Colorado. The opportunity exists to have a world wide "Railroad Mecca" in this area of the state with tourist railroads as the Cumbres and Toltec, La Veta Pass and the Creede Branch. This area offers three railroads in a small area of the Colorado Rockies all going in three different directions, all with distinct differences, all with their own history. I live in the Grand Junction area where rail line is active and has a great history. Everything that can be done to continue restoring this railroad in South Fork should be done. I look forward in working to continuing to share this wonderful area of Colorado with the world railroad and scenic buffs for many generations to come.

Sincerely,

A handwritten signature in dark ink, appearing to be "SC" or "SM", written in a cursive style.

Scott McInnis

EXHIBIT 3

Equipment Inventory of the Foundation as of January 1, 2008.

DENVER & RIO GRANDE RAILROAD

AMENDED EQUIPMENT INVENTORY

AS OF JANUARY 1, 2008

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>VALUE</u>
<u>Motive Power</u>			<u>In Dollars</u>
1942 G.E. 44 ton former D&RGW #40 – for static display		1	7,000
1952 G.E. 44 ton former Utah Central #1244 - needs head gaskets to operate 12,000		1 *	
1979 G.E. B30-7 3,000 h.p. former Southern Pacific #7863 – operable		1 *	175,000
1920 Alco 4-6-2 Pacific steam locomotive former FEC #148 – partially rebuilt 145,000		1 *	
<u>Rolling Stock – Passenger & Non-Revenue</u>			
1942 Pullman built D&RGW Caboose #01423 – fully operational		1	16,000
1939 Budd Stainless Round-end Observation Car PPCX-6401 – rare S.C.L. car		1	45,000
1967 Budd Stainless Railway Post Office Car (Concession Car) D&RG #5904 75,000		1 *	
1924 Pullman Business Car – AT&SF Car 36 – Static office and quarters		1	35,000
1920's CN Pullman/Sleeper/Diner "WHITECOURT" – located in Strasburg		1	20,000
1929 Pullman Private Car "FRIENDSHIP" 50,000		1 *	
<u>Rolling Stock – Freight</u>			
D&RGW Box Car - 50' double door - operable – located in Monte Vista, CO		1	10,000
D&RGW Box Car - 50' double door – operable – located in Monte Vista, CO		1	10,000
D&RGW Gondola - 60' – operable – located in Monte Vista, CO		1	6,000
D&RG Bulkhead Flat Car #2359 50' – operable – located in Monte Vista, CO		1	10,000

D&RG Mill Gondola Car #0132 72' – operable – friction bearings – Monte Vista	1	6,000
D&RG Flat Car #2304 - 50' – operable – friction bearings – located in Monte Vista	1	6,000
UP Box Car #361139 – 60' double door – operable – storage in Monte Vista	1	10,000

Maintenance-Of-Way Equipment

Motor Cars and Trailers

D&RG #PC 01 – 12 man personnel carrier – diesel powered – hydraulic drive W/air brakes, lights – in regular service	1	10,000
Fairmont MT-19 Motor Car – 2 man car – restored – in service	1	3,000
Fairmont A-4 Motor Car – gang car - needs complete rebuild – restorable	1	1,000
Fairmont A-5 Motor Car – gang car – needs complete rebuild – restorable	1	1,000
Fairmont TT – Trailer # T0001 – new	1 *	2,500
Fairmont TT – Trailer # T0002 – new – w/fire fighting tank and pump	1 *	2,800
Fairmont TT – Trailer # T0100 – w/weed sprayer tank	1	1,500
Fairmont TT – Trailer # T0200 –	1 *	2,500
Fairmont TT – Trailer frames only – one heavy duty – one light duty	2 @ 300/200	500

Track Maintenance Machinery

Fairmont Model “A” Automatic Spiker/Auto-gauger – operable - in use	1	20,000
Nordberg Model “B” Automatic Spiker/Auto-gauger – operable – in use	1	18,000
Canron/Tamper Track Scarifier – operable – in use	1	27,000
Kershaw B-26 Ballast Regulator w/power broom – operable – in use	1	25,000
Racine Rail Anchor Machine – operable	1 *	5,000
Canron/Tamper Mark II Track Tamper w/torsion beam and dollies – bad motor	1	7,000
Nordberg Power Spike Puller – operable – in use	1	5,000

Power Track Wrench w/new motor	1	*	4,500
RMC Zapper Power Spiker – needs motor work	1		1,500
Holley Pneumatic Spike Carrier w/air brakes and dump – operable	1	*	4,000
Track Maintenance Machinery, continued			
Power Rail Plate Lifter – operable	1		4,250
Rail Grinder – electric – operable	1		1,200
Racine Powered Rail Saws – operable – in use	2 @	500ea	1,000
Stumec Powered Rail Drills – operable – in use	2 @	1,500ea	3,000
Axsom Tie Inserter – rebuildable	1		800
Axsom Tie Inserters – inoperable – parts units	2 @	250ea	500
Fairmont W115-B-1-1 Tie Remover – rebuildable	1		4,000
Fairmont W115-B-1-1 Tie Remover – inoperable – parts unit	1		1,500
Axsom Rail Anchor Machines – inoperable – parts	3 @	300ea	900
Spare Battery Boxes – new – used on all machines to secure battery 120	3	@	40ea

Track Tools and Components

65# and 90# surplus rail in 30', 33', and 39' lengths	several		4,250
65# tie plates – one pallet	300 @	4ea	1,200
Bridge Timber bolts - 55 gallon drum 1,100	1		
Track Spikes – 55 gallon drums	20 @	600ea	12,000
Tie Plugs – wooden – bundles 300	numerous		
Switch Stands	6 @	150ea	900

65# angle bars – good used – all six bolt	98@ 15ea	1,470
Assorted Track Tools – track bars, angle bar wrenches, etc	numerous	4,650
Rail Drill Bits – New – large assortment	numerous	3,400
Welding Rod – New - in sealed cans	15 @ 50ea	750
Track Jacks – for lifting rail/track assembly	3 @ 80ea	240
Track Tools and Components, continued		
Rail Benders – for use on curves	2 @ 375ea	750
Rail Joint Tighteners – tighten rail joint gap	4 @ 700ea	2,800
Pick Heads and Spike Mauls	numerous	950
Rail Tongs – two-man manual lift	numerous	1,150
Crane Tongs – for use with crane or back-hoe	1	350
Chain Lifts	2 @ 175ea	350
5 Ton come-along 450	1 *	
Ingersol-Rand Air Impact Wrenches – ½” ¾” and 1” drives	5 @ 115ea*	575
Acetylene Torch – new – w/hoses, gauges and moveable rack 250	1 *	
Insulated Track Gauge Bars – new	10 @ 55ea.	550
Maintenance-of-way parts – assorted	numerous	3,000
Flange Oiler Heads – new – used on curves to reduce wear	7 @ 800ea.	5,600
Derail Assembly – bolt on to track	2 @ 200ea	400
Wooden Cross-Ties – new	35 @ 28ea	980
Gauge Bars – new – used to maintain proper gauge	18 @ 40ea	720
Wooden Grade Crossing – new – used to cross track at highway	1 *	1,600

Rail Car Parts

Car Springs – Coil – new	24 @ 25ea *	600
Car Springs – Elliptical - new	12 @ 50ea *	600
Car Brake Cylinders – new	4 @ 100ea	400
Train Line Air Hoses – new	10 @ 30ea	300
Car Jacks – pneumatic – 50 ton each	1 pair	3,000

Rail Car Parts, continued

Jack Stands – Various Capacities – 25 ton, 50 ton	8 @ 110ea	880
Stainless Steel Holding Tanks – new – used w/Microphor chemical toilets	8 @ 90ea	720
Brass Couplings – new – used on train lines, plumbing, etc.	100's	1,500
Bolts and Fittings – new – 3 pallets with 3' x 3' x 4' boxes	1,000's	14,000
Amtrak Locomotive Seat – like new – for Locomotive #7863	1 *	600
Propane Cabinet – Under Car – w/2 bottles	1 *	500

Vehicles

1993 Ford F250 Pick-up – 273,000 miles – good condition – hi-rail equipped automatic transmission – 5.8 litre V-8 – fully operational for rail/hwy use	1	5,000
JCB Tractor/Back-Hoe – w/extend-a-hoe option	1 *	7,500
Hi-Rail Equipment – to allow pick-up trucks to run on railroad tracks (1) Chevy and (2) Ford	3 @ 400ea	1,200

Miscellaneous

Cross-Bucks – Railroad Crossing Signs – new 1,500	10 @ 150ea	
Fire Extinguishers	8 @ 45ea	360
Building – 55' x 100' steel bolt together – used and disassembled in South Fork	1	<u>7,500</u>

To be erected as shop in South Fork - 2008

TOTAL FOR FOUNDATION OWNED INVENTORY	402,990
TOTAL FOR PRIVATELY OWNED INVENTORY	<u>490,975</u>
TOTAL FOR COMPLETE EQUIPMENT INVENTORY	\$893,965

*** Denotes private ownership, readily available to D&RG Historical Foundation**

EXHIBIT 4

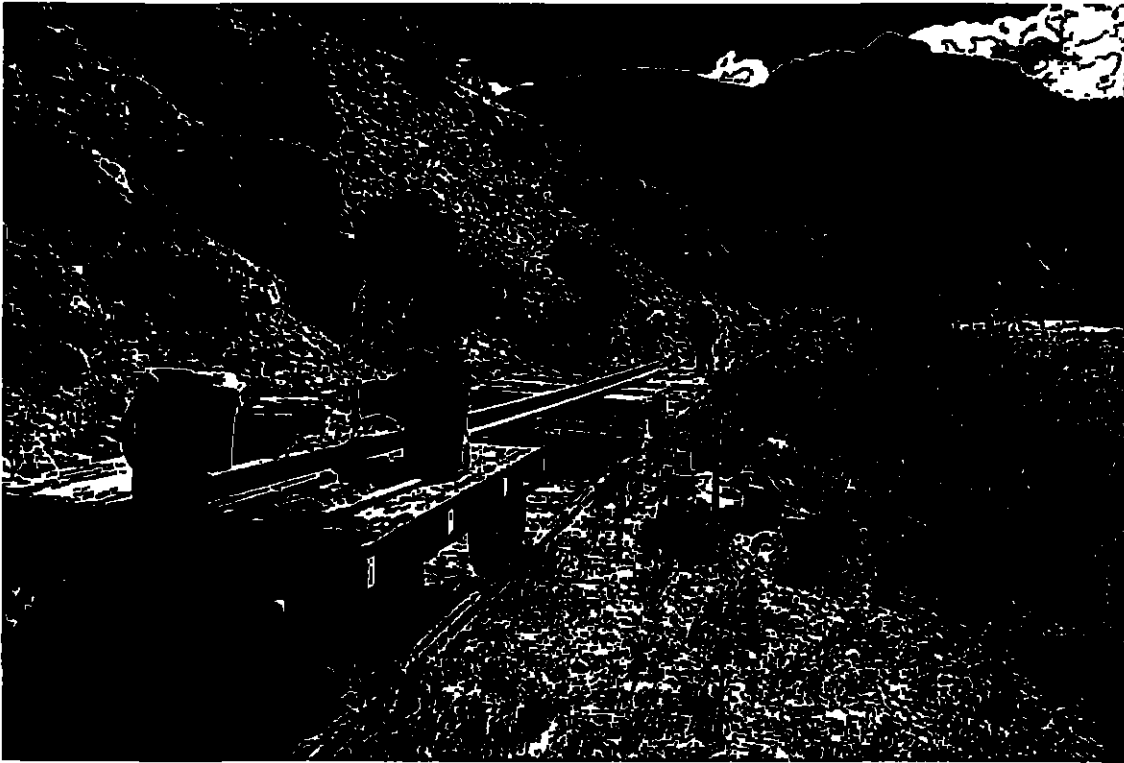
Creede Branch Work Party Documentation by Chris Weaver, 2005 and 2006



Creede Branch work party documentation
by
Chris Weaver

I can't remember mile posts but here is some documentation of activity on the Creede Branch last summer:

June 2nd, 2005 - Replaced rails (2?) approximately 1 mile east from WWG, photos:



this shows the equipment out on the line

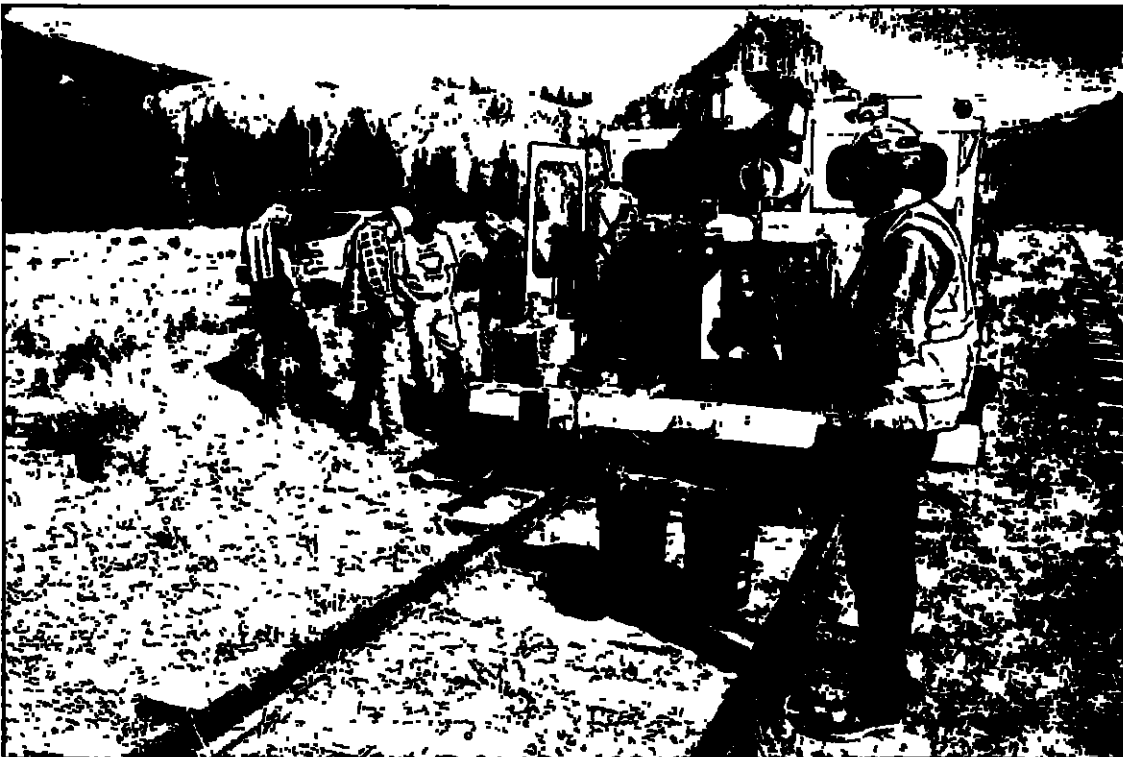
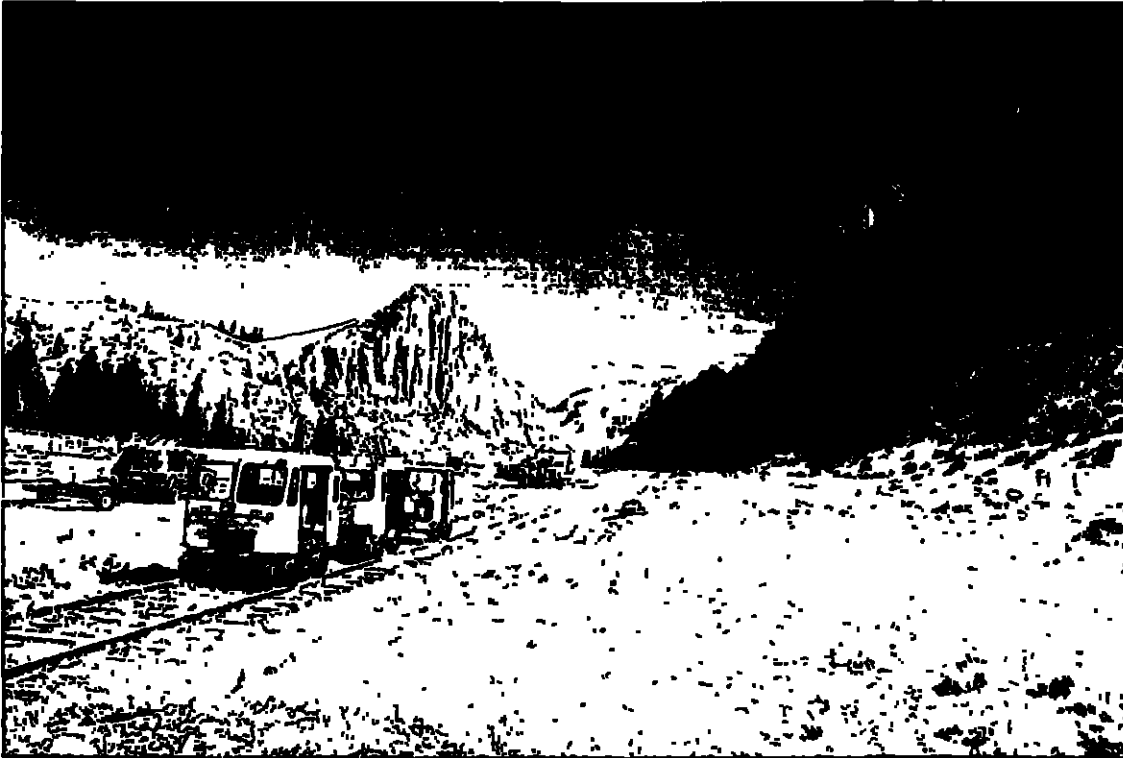


We next unstuck the spiker (heavy maintenance equipment on the line)

We also cleared the line of rocks and debris courtesy of CDOT.

Sunday, June 3rd, 2006:

Here's equipment on the line at WWG:



Spiker and crews at WWG:

We replaced a bent rail at the 2mph Rio Grande slow order:

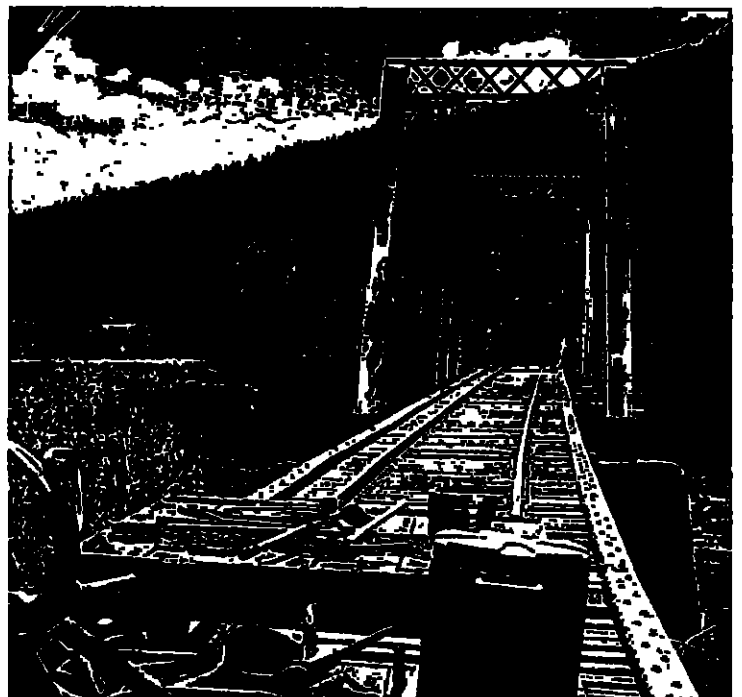


Monday, June 4th, 2006:

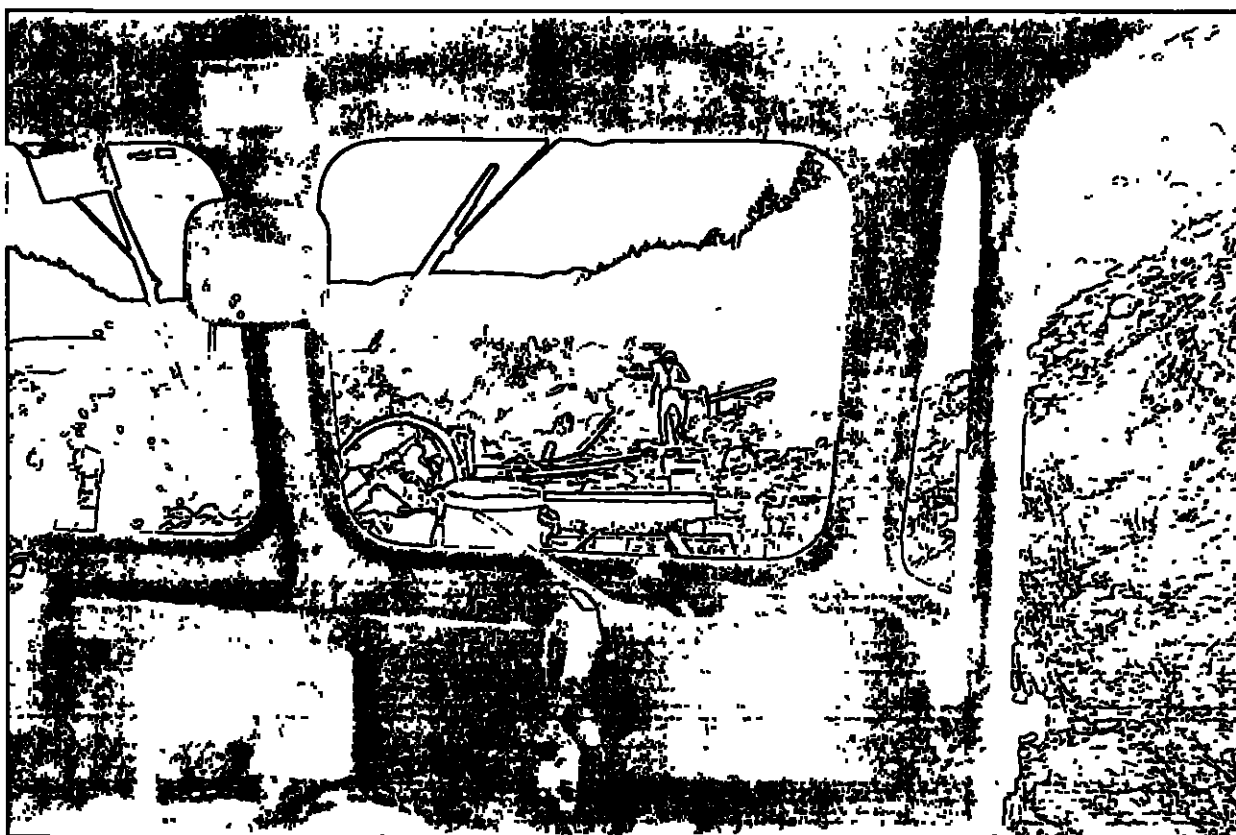
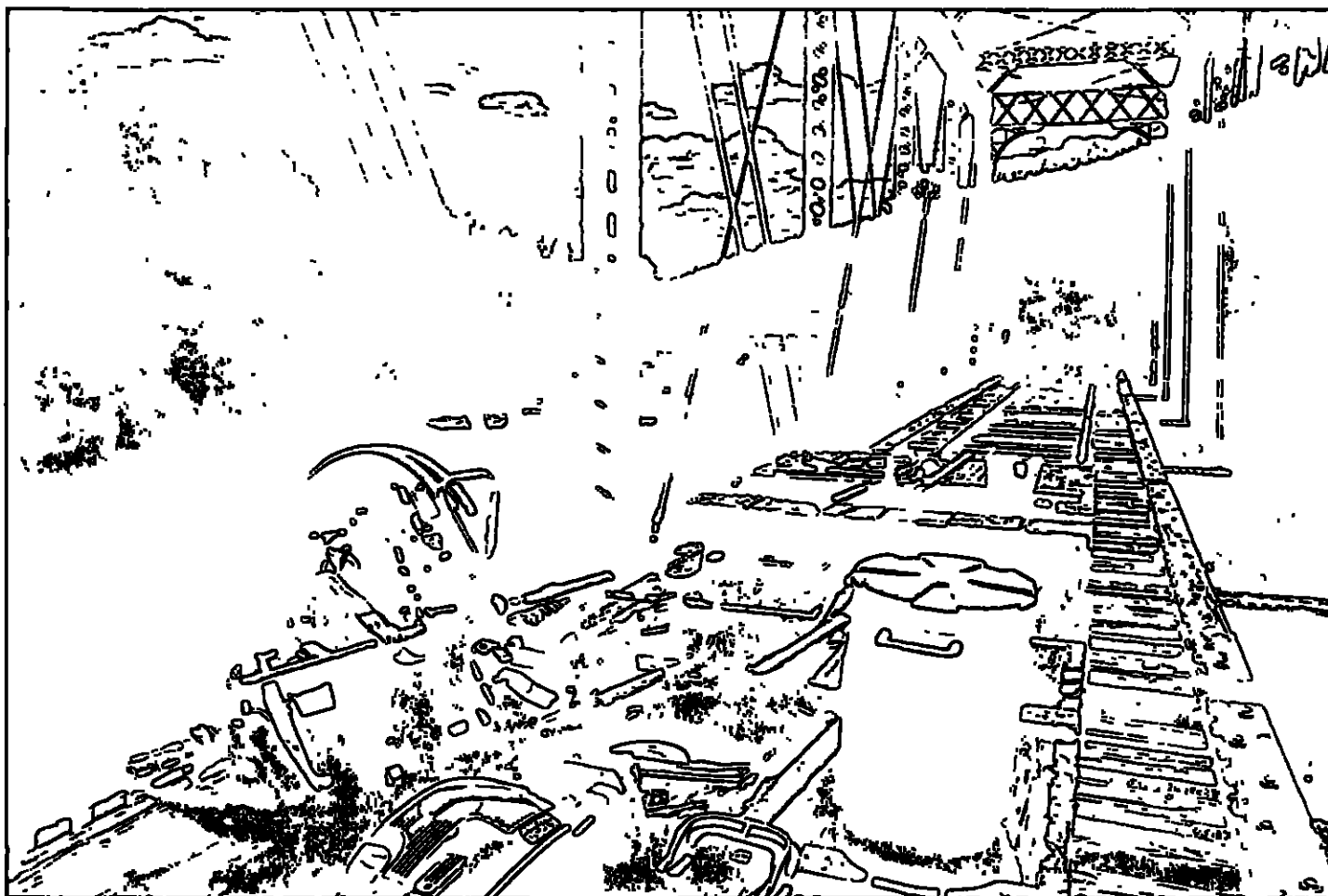
Traversed the line east from WWG to escort the spiker to South Fork, and left track materials along the route for work this summer:



equipment, personnel, and materials along the line:



This gives you an idea of the tools involved:



I also have copies of the pictures Jerry sent out. You could extrapolate cost based on this list of people:

Participants included:

Jon Keeling
Doug Davlin
Brian Delaplaine
Len Jones
Adam Glazier
Jerry Geiger
Doug Summer (sunday)
Shawn (sp?) Summer (sunday)
The gentleman who owns the spiker (sunday)

Total:

\$22.59 Gas
\$24.01 Gas
\$265.80 Lodging, South Fork
\$240 24 hours labor x 10 bucks an hour (on a railroad, I qualify as unskilled)

\$552.40

Now for July:

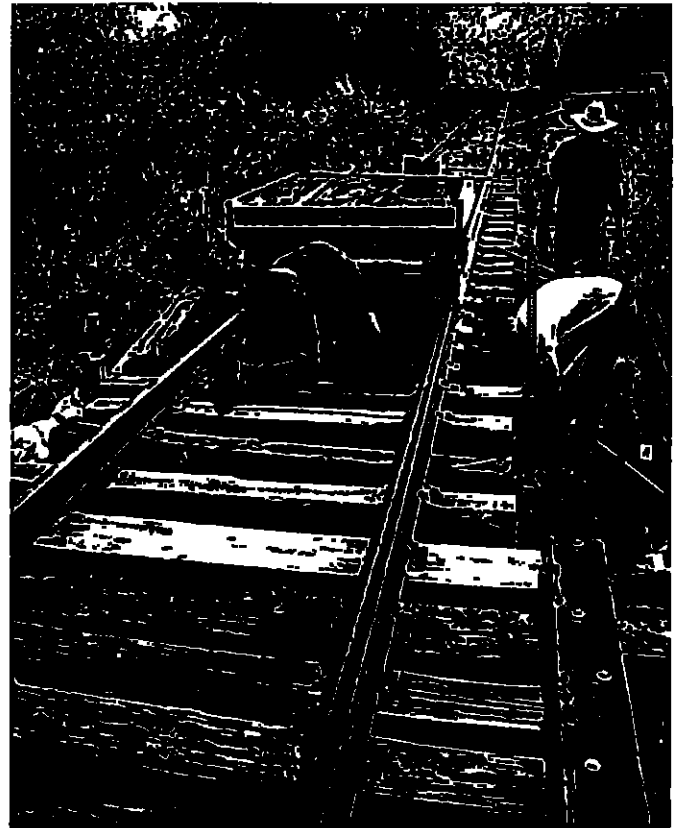
Friday, July 21, 2006

Projects included fixing gauge problems at various points along the line:

Saturday, July 22nd, 2006

Built a retaining wall at the east end of the steel bridge. We also had to put in new ties for this section of track:





replacement of ties, spiking, leveling, gauging and filling with ballast

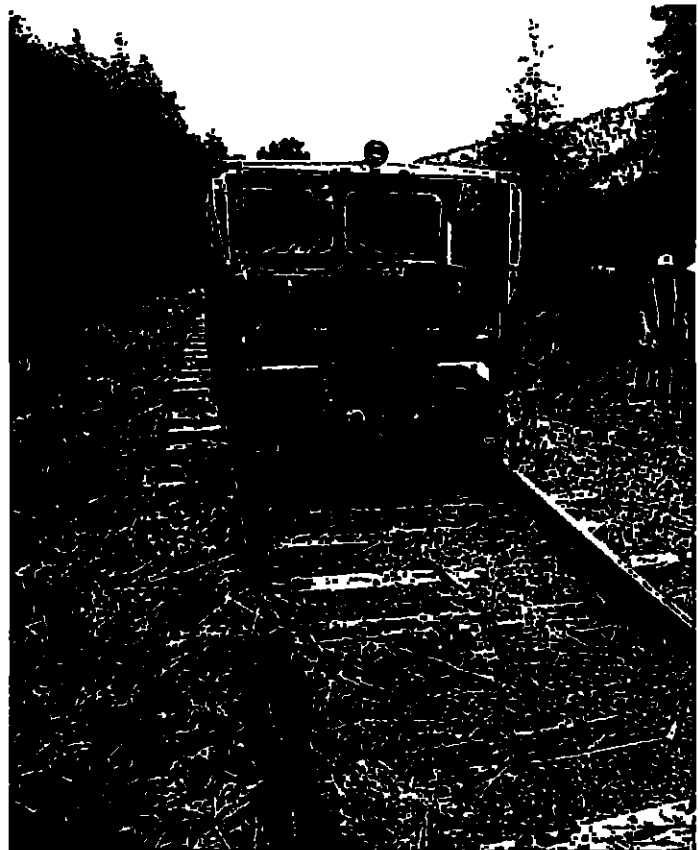
and some MASSIVE vegetation control along the line:
before vegetation control:



Many miles of track have required clearing the willows, aspens, pines and other vegetation to enable us to navigate the tracks.

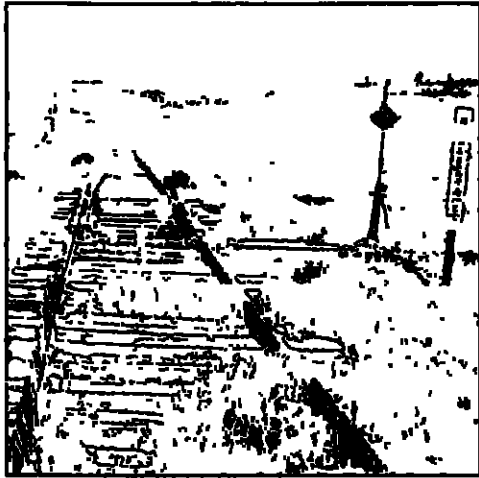
We have used weed eaters, loppers, lawn mowers, chain saws, etc.

After



Sunday, July 23rd, 2006

track inspection westbound into Creede:



Crossing the Rio Grande River at Wason



Mile 317 and headed toward Creede



Preparing to cross Hwy 149 at Wagon Wheel Gap

Included:

Jerry Geiger
Chris Weaver
Brian Delaplaine
Doug Davlin
Don Shank
Don's Brother (I can't remember his name)
Jon Keeling

Total cost:

I didn't provide lodging; that bill would come from The WWG Depot.

\$39.56 1 tank of Gas (Brian bought southbound, I bought north)

\$240 = 24 hours x 10 dollars per hour unskilled labor

=====

\$279.56

Operations on the line, Sunday, September 3rd, 2006.



Motorcars crossing the Rio Grande River in Wagon Wheel Gap.



Work party members and their motorcars at the depot in Wagon Wheel Gap.

Some people stayed in the depot, some in the caboose, and others camped!



A motorcar on the Wye south of Creede ... near Wason

Unfortunately I was too busy operating to get many pictures; someone else will have them I'm sure.

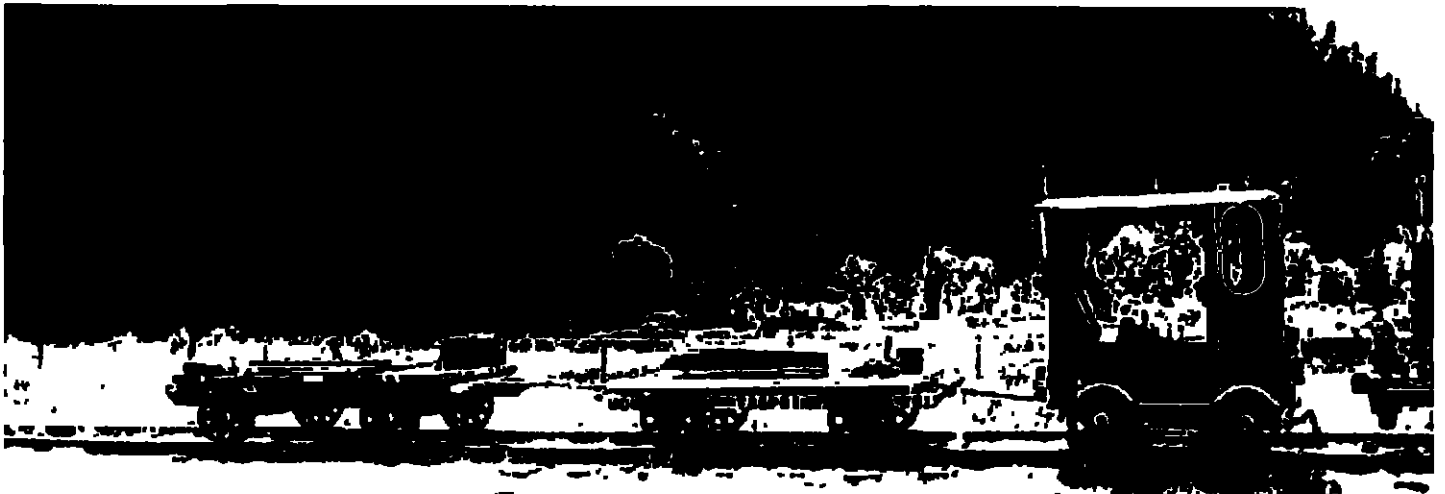
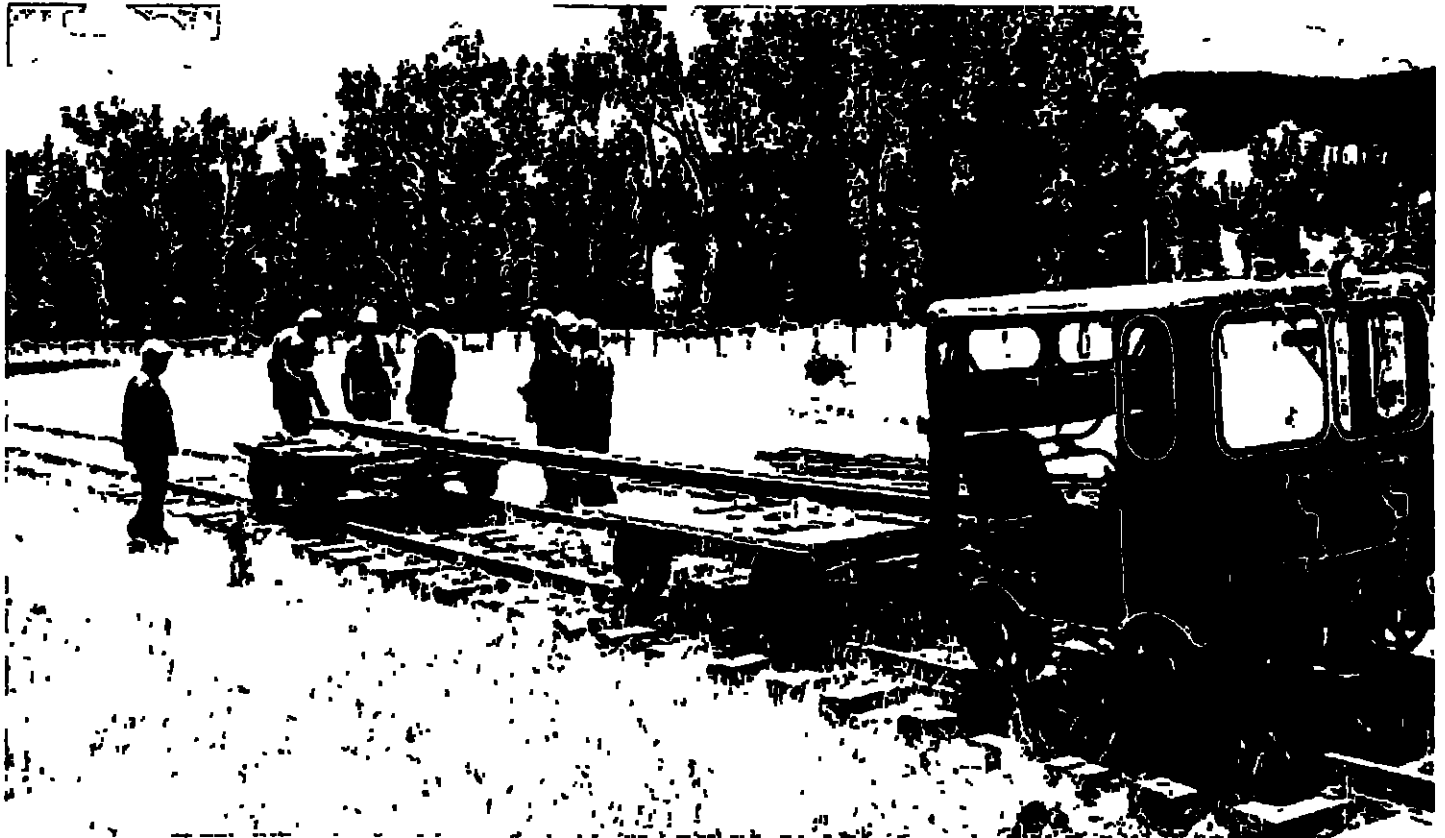
June and July work sessions: \$831.96

Hope this helps. It was interesting to go back and look at all the work we did, at least. I figure most everyone else is worth a skilled labor rate plus equipment, so this should be the lowest number you get by far.

EXHIBIT 5

Photos by Brian Delaplaine of Work on the Creede Branch.

Photos
by
Brian Delaplaine
of work on the Creede Branch



Doug Davlin's motorcar pulling two pushcars with equipment.



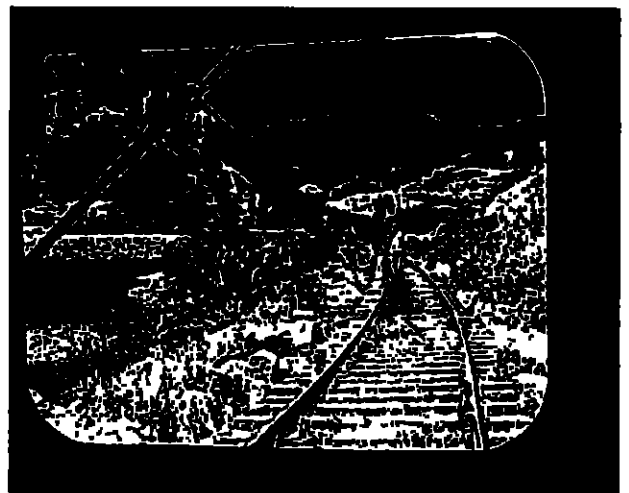


EXHIBIT 6

**Excerpts from American Short Line & Regional Rail Association Views & News,
January 8, 2008 and January 21, 2008, reflecting Federal and State funding of
Class III track rehabilitation projects**

CBRC RECEIVES RRIF LOAN

The Federal Railroad Administration announced that the Columbia Basin Railroad Company, Inc. (CBRC) is receiving a \$3 million loan under the Railroad Rehabilitation and Improvement Financing (RRIF) program. The CBRC will use the loan funds to purchase 73 miles of track it currently leases from the BNSF Railway between Connell and Moses Lake in eastern Washington State. The line acquisition is expected to increase efficiency and lower costs, allowing the CBRC to upgrade its track to handle heavier carloads for the benefit of its customers and the communities of McDonald, Grow, Sieler, Wheeler, Bassett Junction, Schrag, Warden, Warden Junction, Othello, Bruce, and Shano. The CBRC primarily hauls agricultural products such as potatoes, wheat, soybean oil, frozen and packaged foods, as well as chemical commodities and fertilizer components used in agriculture.

G&W COMPLETES PURCHASE OF MARYLAND MIDLAND

Genesee & Wyoming Inc. (GWI) now is the majority owner of Maryland Midland Railway Inc. Yesterday, GWI announced it completed the acquisition of 87.4 percent of Maryland Midland for \$29.1 million in cash per a deal reached in October.

Lehigh Cement, Maryland Midland's largest customer, retains a 12.6 percent stake in the 63-mile short line. Maryland Midland operates between Glyndon and Highfield, and Walkersville and Taneytown, Md., and interchanges with CSX Transportation.

GWI owns and operates 48 regionals and short lines in the United States, Canada and Australia, and owns a minority interest in a Bolivian railroad.

G&W HOSTS FUNDRAISER FOR DEFazio



Genesee & Wyoming Executive Chairman Mort Fuller (left) and Vice President, Government & Industry Affairs, Oregon Region Robert Grossman (right) flank Congressman Peter DeFazio (D, OR-4) at the congressman's recent fundraiser. Photo courtesy of Robert Grossman.

The Genesee & Wyoming Inc. PAC hosted a fundraising event on December 10, 2007 for Congressman Peter DeFazio, Democrat representing the 4th District of Oregon. The dinner event held in downtown Portland was attended by approximately forty guests, including representatives of railroads, rail shippers, rail suppliers and contractors, unions and consultants. Adam Nordstrom flew in from Washington, D.C. to represent the ASLRRA PAC. Congressman DeFazio is a member of the House Transportation and Infrastructure Committee, Chairman of the Subcommittee on Highways and Transit, as well as, a member of the Subcommittee on Aviation, Railroads, Pipelines and Hazardous Materials. He is also a member of the House Committee on Homeland Security and the Natural Resources Committee. Everyone at the dinner had a chance to introduce themselves and describe what the company they work for does. Mort Fuller mentioned some of the issues the rail industry was facing. Robert Grossman introduced the Congressman, who then gave an overview of the committees that he is a member of. He discussed how important he felt railroads are to the future of our nation's transportation system in the movement of goods and people. Attendees then had time to ask questions. There was very lively discussion and the Congressman was very supportive of the rail industry. Congressman DeFazio will be a key person when Congress deliberates on reauthorization of the Transportation Bill this year and next.

IANR FORMS LOGISTICS PARTNERSHIP

GWR RECEIVES \$4 MILLION LOAN FROM FRA

The Great Western Railway (GWR) is receiving a \$4 million loan from the Federal Railroad Administration (FRA) under the Railroad Rehabilitation and Improvement Financing (RRIF) Program. The GWR, a subsidiary of Omnitrac, is a short line carrier that primarily provides freight service for eleven shippers to and from a 700 acre Industrial Park located between Windsor and Greeley, Colorado. The loan funding will be used to construct a new track connecting to the Front Range Ethanol Plant, create a new interchange with the Union Pacific Railroad at Greeley, rebuild 2½ miles of track allowing the railroad to safely accommodate more and longer unit trains, and rehabilitate track between Fort Collins and the facility. Sand, lumber, and grain are the three largest commodities transported by the railroad.

PENNSYLVANIA PROVIDES GRANTS TOTALING \$20 MILLION

The commonwealth of Pennsylvania has approved grants totaling \$20 million to help seven railroads and five businesses fund freight-rail infrastructure improvement projects. The grants are administered by the Pennsylvania Department of Transportation's Bureau of Rail Freight, Ports & Waterways.

Among the grants, the commonwealth will provide

- \$3.33 million to CSX Transportation to improve overhead clearances at 16 locations to accommodate double-stack trains carrying containers to and from Philadelphia,
- \$2.5 million to the Reading Blue Mountain & Northern Railroad Co. to build the Nesquehoning Bridge over the Lehigh River to connect the railroad's Lehigh division and Carbon & Schuylkill branch,
- \$2.24 million to the Pittsburgh and Ohio Central Railroad Inc. to rehabilitate track and repair bridges,
- \$2.24 million to the Buffalo & Pittsburgh Railroad Inc. to continue rehabilitating track to handle transformer and coal shipments for a Homer City power station,
- \$2.1 million to United States Gypsum to build an industrial rail yard adjacent to a power plant,
- \$1.5 million to the SEDA-COG Joint Rail Authority to rehabilitate track for a Lycoming Valley Railroad intermodal facility at Newberry Yard and build a bulk transfer facility, and an additional \$1.33 million to the authority to rehabilitate track for the Juniata Valley Railroad,
- \$1.25 million to Sunnyside Ethanol L.L.C. to rehabilitate track serving a new ethanol facility,
- \$1.02 million to the Allegheny Valley Railroad Co. to rehabilitate three bridges, including the replacement of bridge timbers on the Allegheny River Bridge, and
- \$1 million to Westmoreland County Industrial Development Corp. to remove and reconstruct a siding on the Southwest Pennsylvania Railroad to improve an interchange with Norfolk Southern Railway.

OHIO RAIL COMMISSION APPROVES RAIL FUNDING PLAN

The Ohio Rail Development Commission (ORDC) had a busy board meeting last week, approving a 2008 rail action plan and authorizing funds for two rail projects

The action plan calls for seeking funds for freight- and passenger-rail infrastructure and safety, accelerating efforts to develop intercity passenger rail by exploring opportunities for Amtrak start-up services and continuing to pursue corridor-based passenger trains under the Ohio Hub Plan; developing a state rail strategy in cooperation with the Ohio Department of Transportation (ODOT) and other agencies to identify choke points and other capacity constraints, and continuing the state's commitment to improve rail safety.

ORDC approved a \$200,000 matching grant for Case Farms to build a 2,500-foot rail spur to serve a feed mill near Massillon. Case Farms, the Wheeling & Lake Erie Railway Co. and other sources will provide \$100,000 in matching funds.

The commission also authorized a \$300,000 loan to MGQ Inc. to help fund the construction of 4,200 feet of track to accommodate unit trains of aggregates at a quarry near Maple Grove. The project will improve operations for MGQ and the Norfolk Southern Railway, eliminate the need to store empty hopper cars several miles away from the quarry and increase carloads from 750 to 4,000, ORDC said.

OHIO DOD EXTENDS DIESEL EMISSIONS REDUCTION GRANT DEADLINE

The Ohio Department of Development recently announced that it is extending its deadline for applications for the Diesel Emissions Reduction Grant (DERG) Program to Monday, February 11th. For more details on the DERG program, [click here](#).

TRUCKER WASTE PROVIDES OBSTACLE TO GOLDEN STATE TAXPAYERS

A recent Redding.com article outlined the latest source of headaches for taxpayers in the state of California – and it's coming from an unusual source – “trucker bombs.” These seemingly innocuous sport drink bottles are filled with urine, which makes the job a dirty one indeed for all who clean up after them. In a period of only a few days in 1999, 350 gallons of urine were collected off a 67-mile stretch of Interstate 5 in northern California. To view the entire article, [click here](#).

RMI RAILCONNECT INDEX OF SHORT LINE TRAFFIC

For the week ending 1/5/2008

Week Number 1

Number of Railroads: 310*

	Current Week			Year-To-Date		
	2008	2007	% Change	2008	2007	% Change
Carloads Handled						
Coal	12,172	14,056	-13.40%	12,172	14,056	-13.40%
Grain	14,451	13,157	9.84%	14,451	13,157	9.84%
Farm & Food (Exc. Grain)	4,740	4,363	8.64%	4,740	4,363	8.64%
Ores	2,649	2,503	5.83%	2,649	2,503	5.83%
Stone, Clay, Aggregates	6,716	7,902	-15.01%	6,716	7,902	-15.01%
Lumber/Forest Prods	3,589	4,902	-26.78%	3,589	4,902	-26.78%
Paper Products	7,911	9,728	-18.68%	7,911	9,728	-18.68%
Waste & Scrap Materials	4,331	4,382	-1.16%	4,331	4,382	-1.16%

EXHIBIT 7

Draft article from Timetable, relating to the Creede Branch.

Year in Review – Creede Branch

A late October work session capped off a 2007 season that saw more activity on the former D&RGW branchline than has been seen since the last Rio Grande freight left the outskirts of Creede just over 20 years ago

The Creede branch line runs 22 miles, roughly northwest from the town of South Fork to Creede. Although the D&RGW continued to run freight into the mid 1980s, in the last few years they only went as far as Wasson, a siding about 1.5 miles east from Creede itself. Ore was trucked to Wasson and transferred to gondolas for shipment east. The track west from Wasson into the town of Creede itself was last used in the 1970s. Since then, hard-packed dirt, brush, and asphalt at several paved-over crossings have encroached on the railroad right of way within the town. In addition, several switch stands have disappeared, and in the late 1980s the city removed (without permission!) the run-around stub switch at the extreme western end of the line.

The Denver and Rio Grande Historical Foundation purchased the line from the Union Pacific in 2000 with the intent of restoring freight and passenger service. Since then work on the line has focused on opening the line to lightweight traffic. Work has included filling washouts, opening every crossing on the line, cutting down a small aspen forest grown between the tracks, removing major rockslides at Wagon Wheel Gap as well as countless smaller rocks and boulders, replacing broken and bent rails, fixing gauge problems, and miles of vegetation and weed control. Gauge bars, tie clips, and ballast are all rare along the line, and no substantial work has been done in many years, so there is plenty to be done.

In 2006, the line was open for speeder traffic and Labor Day Weekend, the Rocky Mountain Division (RMD) of NARCOA became the first paying traffic on the line in 20 years! The line is extremely scenic and has been very popular with speeder operators.

2007 began with an early work session focused on fixing a number of trouble spots along the entire railroad, and left the line open for speeder traffic during the 2007 season - a good thing since multiple excursions were already planned. In June 2007, a NARCOA group from Iowa visited the line, and RMD sponsored trips both in July and September. Operators brought their speeders from around the country to attend these trips, including California, Texas, Ohio and Michigan.

With most of the line passable, attention turned to bigger projects. Among these were two Hwy 149 crossings paved over by CDOT, with the understanding that CDOT would have to help rebuild the crossings if and when the railroad reactivated. One of the crossings is located within the town of Creede and the other is halfway along the line, just west of Wagon Wheel Gap. Both new crossings would need to be fully FRA compliant, so the railroad provided 115lb, thermite welded rails long enough for each crossing. In September, after panel track construction, the Creede crossing was rebuilt. CDOT's shoo-fly around the crossing left about a 30 foot gap in the track on the north side of the crossing, but the major work was done. Work on the Wagon Wheel Gap crossing is scheduled for early 2008.

The next big project was moving another DRGHF locomotive from the Omnitrax servicing facility in Loveland, CO to the line. The 44 ton switching engine is in good shape and may see service during the 2008 season.

Finally, the October work session focused on the westernmost part of the line within the city limits of Creede, with a goal of reopening this part of the railroad for traffic. About a dozen volunteers donated time over four days

The Creede yard consists of three tracks with a roughly north-south orientation - from west to east, a siding, the mainline, and a run-around "house" track. The mainline and house tracks run on the west and east sides of the Creede Depot respectively, and connected just north of the depot with a stub switch until the late 1980s. This was possibly the last stub switch in standard gauge mainline service anywhere! The line originally continued several miles up the canyon beyond Creede.

Projects for the weekend included reopening two paved over crossings at 3rd Street and Loma Avenue. Volunteers removed the pavement, dug out the rails (buried under several inches of road base), and cleaned the flangeways. Next up were the switches to the house track and siding. The siding switch was complete minus a stand so we dug out the points and put in a new switch stand. The house track switch was missing its throw rod so we cleaned until the points were movable and will address it further at a future work session.

Creede's "Days of 92" mining event, which takes place during Fourth of July festivities, uses several pieces of mining machinery, a large boulder for jacking competitions, several sets of bleachers, and a judging tower - all of which was located directly on top of the railroad's mainline! So, all of the festival's material was moved off of the mainline and into storage. The festival will continue to use the right of way for the two day event in the summer but the tracks will remain clear otherwise.

Reconnecting the newly rebuilt crossing HWY 149 was another major project. Volunteers had to rebuild about 30 feet of track including road base, leveling, and ballast. Rails had to be cut to length and drilled as the new welded crossing rails changed joint bar position, not to mention the new need for a 115 to 85 lb transition! Even with the help of a rail saw and drill, boom truck, and a decent-sized crew, the project still ended up taking two full days of work.

Finally, much time and effort went into removing dirt, vegetation, and debris from the tracks throughout the Creede Yard. Digging the tracks from underneath many years of hardpack was a difficult process, even with an air compressor to help clean flangeways.

At the end of the weekend, the Rio Grande mainline was passable straight to the Creede Depot! Plans for 2008 include several work sessions, at least four speeder excursions, replacement of the Wagon Wheel Gap crossing, and possibly heavier equipment operating. Hopefully 2008 will be an even busier year for a railroad line that has been dormant far too long.

EXHIBIT 8

Statements showing expenses of volunteers donated to the Foundation.

From: Kathy Lenihan <klenihan@amertech.net>

To: Tom McFarland <mcfarland@aol.com>

Subject: Fwd FW. Donated work

Date: Fri, 11 Jan 2008 12:01 am

Attachments: CreedeExp_charges.pdf (50K), 72529.pdf (79K)

DO NOT REPLY TO THIS E-MAIL

Note forwarded message attached

Attached Message

From: Donald Shank <dhshank@yahoo.com>

To: Tom McFarland <klenihan@amertech.net>

Subject: Fwd FW. Donated work

Date: Thu, 10 Jan 2008 15:53:04 -0800 (PST)

More figures from another volunteer Great format!

Don

Note forwarded message attached.

Never miss a thing Make Yahoo your homepage.

Attached Message

From: Philip H. Walters <pwalters@frontier.net>

To: 'Donald Shank' <dhshank@yahoo.com>, 'Doug Davlin' <dwdavlin@comcast.net>, 'Brian Delaplaine' <btd1972@msn.com>, 'Lynn French' <lf450@aol.com>, 'Adam Glazier' <aglazier@boulder-systems.com>, 'Rod Holloway' <rod_120@msn.com>, 'Jon Keeling' <jkeelingmt14@yahoo.com>, 'Rob Small' <robmsmall@comcast.net>, 'John Spiro' <gscaler@aol.com>, 'Douglas Summer' <doug.summer@colostate-pueblo.edu>, 'John Tremblay' <gpwspullup@aol.com>, 'Philip H. Walters' <pwalters@frontier.net>, 'Chris Weaver' <plugak@yahoo.com>

Subject: FW. Donated work

Date: Mon, 7 Jan 2008 23:05:14 -0700

If it helps as a guide, Here is what I sent Don on my time and expenses and equipment I sent a CD with my photos to his Monte Vista address

Philip

Philip H. Walters

Box 57

Mancos, CO 81328

Voice: (970) 533-7177

Fax: (970) 533-7192

Cell: (970) 946-3806

From: Philip H. Walters [mailto:pwalters@frontier.net]

Sent: Monday, December 17, 2007 11:22 AM

To: Donald Shank

Subject: Donated work

Hi Don,

The CreedeExp Charges.pdf is detail for 72529.pdf.

72529.pdf summarizes all of my donated expenses and services to the D&RGRyHF

Have a great Holiday Season,

Philip

Philip H Walters
Box 57
Mancos, CO 81328
Voice : (970) 533-7177
Fax: (970) 533-7192
Cell: (970) 946-3806

East Canyon Services--CREEDE BRANCH EXPENSE DETAIL				
Acct Number	Trade Date	"Amount"	Description	
86D11561	8/7/2006	-\$28.69	KIP'S GRILL 719-6580220	RESTAURANTS
86D11561	8/7/2006	-\$69.74	GIANT PAGOSA SPRING	SERVICE STATIONS
	Subtot	-\$98.43		
86D11561	5/24/2007	-\$45.31	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	5/24/2007	-\$101.65	RIO GRANDE CLUB SOUTH FORK	RESTAURANTS
86D11561	5/28/2007	-\$75.00	STOP N SHOP 7 SOUTH FORK	SERVICE STATIONS
	Subtot	-\$221.96		
86D11561	8/30/2007	-\$51.72	COX CONOCO 00821892 MANCOS	SERVICE STATIONS
86D11561	8/30/2007	-\$16.76	STOP N SHOP 7 SOUTH FORK	SERVICE STATIONS
86D11561	8/30/2007	-\$3.93	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	8/30/2007	-\$97.15	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	9/4/2007	-\$44.18	COX CONOCO 00821892 MANCOS	SERVICE STATIONS
	Subtot	-\$213.74		
86D11561	10/24/2007	-\$56.72	TOMKINS TRUE VALUE CREEDE	MERCHANDISE
86D11561	10/24/2007	-\$59.92	CITY-MARKET #0421 S1H DURANGO	MERCHANDISE
MVB Checking	10/27/2007	-\$108.00	REIMBURSEMENT FOR PAVEMENT SAW RENTAL TO DON SHANK	
	Subtot	-\$224.64		

Philip Walters d b a

east canyon services

INVOICE

Post Office Box 57
Mancos, CO 81328
Phone (970) 533-7177 Fax (970) 533-7192

DATE: 12/17/2007
INVOICE # 72529

Bill To:
Name D&RGryHF
Company
Address 20 N Broadway St
City, State ZIP Monte Vista, CO 81144
Phone 719-852-7000

Ship To:
Name Same
Company
Address
City, State ZIP
Phone

Comments or Special Instructions: Donated Value Invoice - This documents the value of track work contributed to D&RGryHF by Philip Walters doing business as East Canyon Services

SALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
Walters	Creede Br	NA			Donation
QUANTITY	DESCRIPTION			UNIT PRICE	AMOUNT
6	Hours Travel Mancos-Creede-Mancos 8/4/06 to 8/7/06			\$ 10 00	\$ 60 00
	Expenses Creede Branch 8/4/06 to 8/7/06				98 43
18	Hours Backhoe with operator 8/4/06 to 8/7/06			90 00	1,440 00
6	Hours Travel Mancos-Creede-Mancos 5/24/07 to 5/28/07			10 00	60 00
	Expenses Creede Branch 5/24/07 to 5/28/07				221 96
18	Hours Backhoe with operator 5/24/07 to 5/28/07			90 00	1,620 00
6	Hours Travel Mancos-Creede-Mancos 8/30/07 to 9/4/07			10 00	60.00
	Expenses Creede Branch 8/30/07 to 9/4/07				213 74
24	Hours mowing and weed cutting 8/30/07 to 9/4/07			20 00	480 00
6	Hours Travel Mancos-Creede-Mancos 10/24/07 to 10/27/07			10 00	60 00
	Expenses Creede Branch 10/24/07 to 10/27/07				224 64
18	Hours Backhoe with operator 10/24/07 to 10/27/07			90.00	1,620 00
	LESS DONATION				(6,158.77)
				SUBTOTAL	\$ -
				TAX RATE	8 60%
				SALES TAX	-
				SHIPPING & HANDLING	-
				TOTAL	\$ -

Make all checks payable to **Philip H. Walters**

If you have any questions concerning this invoice, contact Philip Walters at (970) 533-7177, or pwalters@frontier.net

THANK YOU FOR YOUR BUSINESS!

East Canyon Services--CREEDE BRANCH EXPENSE DETAIL

Acct Number	Trade Date	"Amount"	Description	
86D11561	8/7/2006	-\$28.69	KIP'S GRILL 719-6580220	RESTAURANTS
86D11561	8/7/2006	-\$69.74	GIANT PAGOSA SPRING	SERVICE STATIONS
	Subtot	-\$98.43		
86D11561	5/24/2007	-\$45.31	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	5/24/2007	-\$101.65	RIO GRANDE CLUB SOUTH FORK	RESTAURANTS
86D11561	5/28/2007	-\$75.00	STOP N SHOP 7 SOUTH FORK	SERVICE STATIONS
	Subtot	-\$221.96		
86D11561	8/30/2007	-\$51.72	COX CONOCO 00821892 MANCOS	SERVICE STATIONS
86D11561	8/30/2007	-\$16.76	STOP N SHOP 7 SOUTH FORK	SERVICE STATIONS
86D11561	8/30/2007	-\$3.93	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	8/30/2007	-\$97.15	CITY-MARKET #0445 S1H PAGOSA SPRING	MERCHANDISE
86D11561	9/4/2007	-\$44.18	COX CONOCO 00821892 MANCOS	SERVICE STATIONS
	Subtot	-\$213.74		
86D11561	10/24/2007	-\$56.72	TOMKINS TRUE VALUE CREEDE	MERCHANDISE
86D11561	10/24/2007	-\$59.92	CITY-MARKET #0421 S1H DURANGO	MERCHANDISE
MVB Checking	10/27/2007	-\$108.00	REIMBURSEMENT FOR PAVEMENT SAW RENTAL TO DON SHANK	
	Subtot	-\$224.64		

Boulder Systems Cost Report

PURPOSE:	Maintain and Repair the Creede Branch	STATEMENT NUMBER:	CB-MOW-001	PAY PERIOD:	From _____ To _____					
PERSONAL INFORMATION:										
Name	Adam L. Glazier	Position	Chief Executive Officer	Mileage Rate	\$0.50					
Project	Creede Branch Maintenance of Way	Manager		Employee ID						
Date	Account	Description	Hotel	Mileage	Mile Charge	Meals	Phone	Transportation	Misc.	Total
5/27/2005	CBMOW	Travel to Creede		286.00	\$ 143.00					\$ 143.00
5/27/2005	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/27/2005	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/27/2005	CBMOW	Labor			\$ -				\$ 200.00	\$ 200.00
5/28/2005	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/28/2005	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/28/2005	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/29/2005	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/29/2005	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/29/2005	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/30/2005	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/30/2005	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/30/2005	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/31/2005	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/31/2005	CBMOW	Labor			\$ -				\$ 200.00	\$ 200.00
5/31/2005	CBMOW	Travel to Boulder		286.00	\$ 143.00					\$ 143.00
					\$ -					\$ -
					\$ -					\$ -
					\$ -					\$ -
					\$ -					\$ -
			\$ -	\$ 572.00	\$ 286.00	\$ 425.00	\$ -	\$ -	\$ 1,600.00	\$ 2,311.00
APPROVED:			NOTES:		Subtotal			Advances		Total
										\$ 2,311.00

Boulder Systems Cost Report

PURPOSE:	Maintain and Repair the Creede Branch	STATEMENT NUMBER:	CB-MOW-007	PAY PERIOD:	From	To				
PERSONAL INFORMATION:										
Name	Adam L. Glazier	Position	Chief Executive Officer	Mileage Rate	\$0.50					
Project	Creede Branch Maintenance of Way	Manager		Employee ID						
Date	Account	Description	Hotel	Mileage	Mile Charge	Meals	Phone	Transportation	Misc.	Total
10/25/2007	CBMOW	Travel to Creede		286.00	\$ 143.00					\$ 143.00
10/25/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
10/25/2007	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
10/25/2007	CBMOW	Labor			\$ -				\$ 200.00	\$ 200.00
10/26/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
10/26/2007	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
10/26/2007	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/28/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/28/2007	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/28/2007	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/29/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/29/2007	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/29/2007	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/30/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/30/2007	CBMOW	Labor			\$ -				\$ 400.00	\$ 400.00
5/30/2007	CBMOW	Lodging per Diem			\$ -	\$ 75.00				\$ 75.00
5/31/2007	CBMOW	Meal per Diem			\$ -	\$ 25.00				\$ 25.00
5/31/2007	CBMOW	Labor			\$ -				\$ 200.00	\$ 200.00
5/31/2007	CBMOW	Travel to Boulder		286.00	\$ 143.00					\$ 143.00
					\$ -					\$ -
			\$ -	\$ 572.00	\$ 286.00	\$ 525.00	\$ -	\$ -	\$ 2,000.00	\$ -
									Subtotal	\$ 2,811.00
APPROVED:				NOTES:					Advances	
									Total	\$ 2,811.00

From **To**

Name	Adam L. Glazier
Project	Creede Branch Maintenance of Way

Position	Chief Executive Officer
Manager	

Mileage Rate	<u>\$0.50</u>
Employee ID	

[illegible]

APPROVED:

NOTES:

Doug's and Ginni's work on the Creede Branch approximate

—— Motorcar use priced at \$50/day —— Labor valued at \$20/hr. or \$160/day

Work Parties 2005

May 27 - May 31 5 days 160 + 50 =
\$210/day \$1050

July 29 - July 31 3 days \$630

Aug. 19 - Aug 22 3 days \$630

Individual Work – Doug 2005

May 22 --- Sept. 10

2 days per week = 32 days - 11 days of Work P = 21 days =
\$4,410

Individual Work – Ginni 2005

May 22 — Sept. 10th 14 days \$20/hour x 6 = \$120/day = \$1,680

—— **2005 total = \$8,900**

Work Parties 2006

June 1 - June 5 4 days \$840

July 20 - July 24 4 days \$840

August 4 - Aug. 8 4 days \$840

Sept. 1 - Sept. 4 3 days \$630

NARCOA excursion

Sept. 3 1 day

Individual Work – Doug 2006

2.5 days/wk = 40 - Work Party days = 25 days = \$5,250

Individual Work – Ginni 2006

May 22 — Sept. 10th 14 days \$1,680

—— 2006 total = \$10,680

Work Parties 2007

May 25 - May 29 4 days \$840

June 29 - June 30 2 days \$420

July 1 - July 4 3 days \$630

**Aug. 15 - 16 2 days Cleaning logs from WWG bridge
\$420**

Oct. 25 - Oct. 28 3 days \$630

EXCURSIONS —2007

May 3FID (First Iowa Division)

July 3 and 4 RMD (Rocky Mountain Division)

Sept. 3 RMD (Rocky mountain Division)

Individual Work – Doug 2007

4.5 days/wk = 72 - Work Party days = 60 days \$12,600

Individual Work – Ginni 2007

May 22 — Sept. 10th 14 days \$1,680

—— 2007 total = \$18,720

Expenses

2005 ... Gas, travel, tools, \$300 + food & beverage (\$500)

2006 gas, travel, tools \$600 + food & beverage (\$600)

2007 gas, travel, tools, welding, hotel/ Board meetings \$800 + food & beverage (\$700) = 1500

Total = \$38,300.⁰⁰

Jerry G Geiger

These figures represent only straight costs for labor and mileage. Costs of meals and other miscellaneous costs are not included. Labor costs are based on the use of 1 person, motorcar, tools and other necessary equipment. Travel costs are based on two and at times three vehicles. Mileage costs are adjusted when a single vehicle was used from \$0.50/mile to \$ 0.33/mile. This report reflects that the following costs were donated to the Creede Branch:

Labor and other costs. \$7150.00

Man-hours: 146

Vehicle mileage: 1800

Robert M Smal'

Donated work by Rob Small on the Creede Branch 2007 The work consisted of photography of events, light labor, and consultation. Meal and other expenses are not included in this report. Total volunteer man hours for 2007 is 190.5, Total cost was \$3680.91 and total mileage was 2208. Robert M Small

Aspen Adobe, LLC
5041 Kim Rd
Rio Rancho, NM 87144
505-301-4320 N M License #354427

Invoice No. 10079

INVOICE

Customer

Name D&RGRyHF
Address 20 N Broadway St.
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 10/31/2007
Order No 0079
Rep JT
FOB MT

Qty	Description	Unit Price	TOTAL
1	Repisioning of MOW equipment for Creed Branch track renewal FOB Great Falls, MT via Old Dominion Freight Line, Inc Loaded Items (2) Heavy Duty Tie Carts (1520lbs) Unloading Loaction and Positioning will be Directed by John Trembly 505-301-4320	\$ 1,230 00	\$ 1,230 00
		SubTotal	\$ 1,230 00
		Shipping	
		Tax Rate(s) 8.60%	\$ 105 78
		TOTAL	\$ 1,335 78

Payment Select One

Comments Donated Value Invoice

Name _____
CC # _____
Expires N/A

Tax Rate(s)

Office Use Only

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contact John Trembly at 505-301-4320*

THANK YOU FOR YOUR BUSINESS!

Aspen Adobe, LLC
5041 Kim Rd.
Rio Rancho, NM 87144
505-301-4320 N.M. License #354427

Invoice No. 10046

INVOICE

Customer

Name D&RGryHF
Address 20 N Broadway St
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 10/25/2007
Order No 0046
Rep JT
FOB NM

Qty	Description	Unit Price	TOTAL
1	Reposition Crane Truck from Belen, NM to Creed, CO 300 miles	\$ 400 00	\$ 400 00
1	Expenses Creed Branch	\$ 234 87	\$ 234 87
13	Truck/Crane Operation per/hr @13 hours 10/25/07 to 10/28/07	\$ 400 00	\$ 5,200.00
1	Reposition Crane Truck from Creed CO to Rio Rancho NM 260 miles	\$ 346 67	\$ 346 67
2	Rail cutting (Rail Saw Cut)	\$ 110.00	\$ 220 00
Positioning will be Directed by Mr Don Shank			
SubTotal			\$ 6 401 54
Shipping			
Tax Rate(s) 8 60%			\$ 550 53
TOTAL			\$ 6,952 07

Payment

Select One

Comments Donated Value Invoice

Name

CC #

Expires N/A

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Aspen Adobe, LLC
5041 Kim Rd
Rio Rancho, NM 87144
505-301-4320 N M. License #354427

Invoice No. 10043

INVOICE

Customer

Name D&RGRyHF
Address 20 N Broadway St
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 9/18/2007
Order No 0043
Rep JT
FOB MS

Qty	Description	Unit Price	TOTAL
1	Repisioning of MOW equipment for Creed Branch track renewal FOB Gloster Mississippi via lowboy Loaded Items (1) Pettibone Speedswing Model # 441B Ser# 2253 (1) Brush Cutter Attachment (1) 3 yd Loader Bucket (1) Fixed Boom Attachment (1) Track Laying Telescoping Boom Attachment with Hoist Unloading Location and Positioning will be Directed by John Trembly 505-301-4320	\$4,300 00	\$ 4 300 00
		SubTotal	\$ 4,300 00
		Shipping	
		Tax Rate(s) 8.60%	\$ 369 80
		TOTAL	\$ 4,669 80

Payment Select One

Comments Donated Value Invoice

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CC # _____
Expires N/A _____

Tax Rate(s)

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Aspen Adobe, LLC
5041 Km Rd
Rio Rancho, NM 87144
505-301-4320 N.M. License #354427

Invoice No. 10039

INVOICE

Customer

Name D&RGRyHF
Address 20 N Broadway St
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 8/1/2007
Order No 0039
Rep JT
FOB CO

Qty	Description	Unit Price	TOTAL
2	Repisioning of MOW equipment for Creed Branch track renewal FOB Denver CO via Two Lowboy Trucks Loaded and unloaded by Crane Loaded Items (2) Jimbo Cartop Unloading Cranes (32,000lbs each) (2) Grapple Attachments (4) Spare Grapple Jaws	\$ 1,830 00	\$ 3,660 00
1	Crane service for loading and unloading Unloading Location and Positioning will be Directed by John Trembly 505-301-4320 Two trucks with one loader Each	\$ 1,250 00	\$ 1,250 00
		SubTotal	\$ 4,910 00
		Shipping	
		Tax Rate(s) 8 60%	\$ 422 26
		TOTAL	\$ 5,332 26

Payment Select One

Comments Donated Value Invoice

Name

CC #

Expires N/A

Office Use Only

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contact John Trembly at 505-301-4320

THANK YOU FOR YOUR BUSINESS!

Invoice No. 10032**Customer**

Misc

[illegible]

Payment	Select One
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Tax Rate(s)	8.60%	\$ 359 91
TOTAL		\$ 4,544 91

Comments Donated Value Invoice

Name _____
CC # _____
Expires N/A

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THANK YOU FOR YOUR BUSINESS!

Aspen Adobe, LLC
5041 Km Rd
Rio Rancho, NM 87144
505-301-4320 N.M License #354427

Invoice No. 20036

INVOICE

Customer

Name D&RGryHF
Address 20 N. Broadway St
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 7/1/2006
Order No 20036
Rep JT
FOB CO

Qty	Description	Unit Price	TOTAL
44	June Labor for scheduled work (4 days @11Hr/day) on the D&RGryHF	\$ 85 00	\$ 3,740 00
	Travel Expenses to and from South Fork and from South Fork, CO		
1	10/20/06 Hotel(\$95@4nights), Meals(\$55) Milage(600@ 75/mile)	\$ 885 00	\$ 885 00
2	Rail Saw cut @ \$110/cut	\$ 110 00	\$ 220 00
		SubTotal	\$ 4,845 00
		Shipping	
		Tax Rate(s) 8.60%	\$ 416 67
		TOTAL	\$ 5,261 67

Payment Select One

Comments Donated Value Invoice

Name
CC #
Expires N/A

Office Use Only

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THANK YOU FOR YOUR BUSINESS!

Aspen Adobe, LLC
5041 Kim Rd
Rio Rancho, NM 87144
505-301-4320 N M. License #354427

Invoice No. 20061

INVOICE

Customer

Name D&RGryHF
Address 20 N. Broadway St
City Monte Vista State CO ZIP 81144
Phone 719-852-7000

Misc

Date 12/19/2006
Order No 20061
Rep JT
FOB CO

Qty	Description	Unit Price	TOTAL
	Equipment Inspection cost on site South Fork CO		
	Travel Expenses for monthly equipment inspection		
1	4/10/06 Hotel(\$115), Meals(\$65), Milage(600@ 75/mile), 8 hours labor@ \$85 00/hr	\$ 1 310 00	\$ 1,310 00
1	7/24/06 Hotel(\$120), Meals(\$65), milage(600@ 75/mile) 5 hours labor@ \$85 00/hr	\$ 1,060 00	\$ 1,060 00
1	10/20/06 Hotel(\$95), Meals(\$55), Milage(600@ 75/mile), 3 hours laybor@ \$85 00/hr	\$ 855.00	\$ 855 00
1	Miscellaneous Equipment Repairs Hydraulic hoses Welding, Glass replacement Cable repair/replace, battery's, oil, grease ect	\$ 620 00	\$ 620 00
		SubTotal	\$ 3,845 00
		Shipping	
		Tax Rate(s) 8 60%	\$ 330 67
		TOTAL	\$ 4,175 67

Payment Select One

Comments Donated Value Invoice

Name _____
CC # _____
Expires N/A _____

Office Use Only

Make all Checks Payable to Aspen Adobe LLC. If you have any questions concerning this invoice
contact John Trembly at 505-301-4320

THANK YOU FOR YOUR BUSINESS!

To the Denver & Rio Grande Railway Historical Foundation,

Here is a detailed list of the time & material that my wife, Donna & I have donated to the Denver & Rio Grande Railway Historical Foundation for the year 2006

Labor Day Weekend, August 31 thru September 4, 2006

Traveled from Peyton CO to Wagon Wheel Gap CO in our motor home to assist the Foundation in a work party to clear brush, small trees, rocks & debris from the railroad roadway between South Fork CO & Creede CO

I worked Friday & Saturday, September 1 & 2 using a weed whacker & various loppers & shears that we brought with us to help clear the roadbed of the railroad for a speeder excursion put on by the Rocky Mountain Division of NARCOA. We camped in the motor home at Wagon Wheel Gap. Expenses are as follows

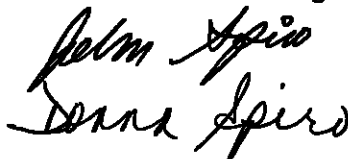
Travel to & from Wagon Wheel Gap, 6 hours at \$7.00 an hour equals \$42.00

Two tanks of fuel for the motor home, 100 gallons total at \$2.00 a gallon equals \$200.00

18 hours of labor clearing the railroad line at \$7.00 equals \$126.00

Total donation for physical year 2006, \$368.00

We would like to thank the Foundation for inviting us to help work on this historic & beautiful railroad. Sincerely,

Handwritten signatures of Edmundo and Donna Spiro. The signature 'Edmundo Spiro' is written in a cursive script above the signature 'Donna Spiro', which is also in cursive.

11485 Dallas Road
Peyton CO 80831

To the Denver & Rio Grande Railway Historical Foundation,

Here is a detailed list of time & material that my wife Donna & I have donated to the Denver & Rio Grande Railway Historical Foundation for the year 2007.

Memorial Weekend, May 25 thru May 29, 2007

Traveled from Peyton Colorado to Wagon Wheel Gap CO to participate in a work party on the Creede Branch of the Denver & Rio Grande Railway Historical Foundation. This work party focused on repairing or replacing bad section of rail & rail joints. We also fixed a dozen or so out of gauge sections of track. We camped at Wagon Wheel Gap CO in our motor home & our expenses are as follows.

Travel to & from Wagon Wheel Gap, 6 hours at \$7.00 an hour equals \$42.00

Two tanks of fuel for the motor home, 100 gallons total at \$3.00 a gallon equals \$300.00

30 hours of labor working on the rail at \$7.00 an hour equals \$210.00

Total donation for this work session equals \$552.00

October 24 thru October 28, 2007

Traveled from Peyton CO to Southfork CO to participate in a work party on the Creede Branch of the Denver & Rio Grande Historical Foundation. This work party focused on uncovering the yard tracks in the town of Creede & opening all of the paved over road crossings within the city of Creede. I shared a motel room another volunteer in South Fork & we commuted daily to the work site in Creede. My expenses for this work party are as follows.

Travel to & from South Fork CO, 6 hours at \$7.00 an hour equal \$42.00

60 gallons of fuel for my personal vehicle at \$3.00 a gallon equals \$180.00

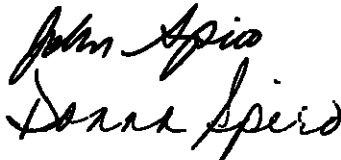
My half of the motel fee for 4 nights equals \$125.00

30 hours of labor working on the railroad at \$7.00 equals \$210.00

Total donation for this work session is \$557.00

Our total donation to the Denver & Rio Grande Railway Historical Foundation for the physical year 2007 is \$1109.00

We would like to thank the Foundation for inviting us to help work on this historic & beautiful railroad. Sincerely,


11485 Dallas Road
Peyton CO, 80831

To the Rio Grande Railway Historical Foundation

My wife Donna & I are writing this letter in response to the city of Creede Colorado asking the Federal Surface Transportation Board to grant an Adverse Abandonment of your railroad property within the city limits of Creede. This is just plain wrong & we are very much against this action by the city of Creede. I would urge the Federal Surface Transportation Board to rule against the city of Creede & rule in favor of the Rio Grande Historical Foundation. My wife & I are supporters of the Foundation & we have spent a lot of time in the city of Creede. Everyone in Creede that we have spoken with is in favor of the Foundation someday operating an excursion train into the city. The business owners that we have talked with about the railroad are most supportive of opening up the rail line into town again. These business owners feel it could only help the economy of the city & the small business owners by bringing in a few more tourists. The owners of Kip's Grill & the owners of The Dog Pound, a small hot dog & ice cream parlor & many other small business within the city limits are in favor of the railroad operating again.

We feel that the current Creede city fathers are misguided in their attempts to remove this beautiful & historic railroad line from the city limits. We wonder if they may be unduly influenced by a few rich detractors & not really listening to the general population of the city. For more than 100 years, since shortly after the mines opened, this railroad has always been a part of this town & could again help this struggling mountain town grow economically if allowed to operate. The Rio Grande Railway Historical Foundation has fought long & hard to rehabilitate & open the line but has had to spend way too much time & money fighting a few detractors. This railroad line is a part of history & it's all still there, just waiting to once again help serve the general populace of Creede. We strongly urge the Federal Transportation Board to disallow the Adverse Abandonment & rule in favor of the Rio Grande Railway Historical Foundation.

Sincerely,

John Spier
Donna Spier

11485 Dallas Road
Peyton CO 80831

1-01-08

To whom it may concern; The next 4 pages following this page are a record of my time and expense, donated happily to aid the D&RGHF restore the Creede Branch of the railroad formerly known as the D&RGW.

Over the past 7 + years I have been following the plight of the D&RGHF as it fought to restore the railroad. I read accounts of the legal battle for control of the railroad in the newspapers and in Colo. Rail news- The Colorado Timetable.

In 2005, having gotten involved with the NARCOA organization, I approached Mr. Shank about our group, the Rocky Mountain Division, running our Motorcars on the Creede Branch. The answer was positive, and we operated there for the first time in late 2005.

The railroad we found had been neglected by the D&RG and the U.P. railroads, but it was complete. The line is still complete from South Fork to the station at Creede. The D&RGHF had worked diligently to open the line, but the huge costs of legal bills and lack of support from the two communities that would benefit most from operation had taken their toll.

The RMD, seeing as a group, that here was history, in its most pure form decided to help Mr. Shank put the RR back into shape, if possible. The railroad community had not, even though it was apparent that this was the last complete RR in Colo. to escape the scrapper, offered any real help at all. My goal, that was shared by the other members of our club, was put the RR back into good enough shape to run any kind of M.O.W. equipment on to facilitate rebuilding. We have accomplished that goal. We (NARCOA members) have run several very successful excursions on this branch, with more to come as the word gets out more and more. We had hoped to have the RR in good enough shape to help attract investor money to develop it further, but again here came the Town of Creede, crying for tourist dollars, using RR land without permission, and giving it away before they own it, with a scheme to have the RR given over to them through adverse abandonment. We have the track ready, but no one will invest where there is so much legal entanglement. Had the D&RGHF been left alone to repair and run the RR, it could have spent its money on repair instead of lawyers and courts.

The way forward is never easy, but as tomorrow comes, gas goes up and up, railroads are doing the job they have always done, move people and freight easier and cheaper than cars and trucks. The people of Creede we speak to, the good folks of South Fork agree, except for a few in leadership roles, that they need the railroad. I have talked to literally hundreds of folks that gather around our work or excursions and they love the idea of having the Creede fatcats, who can bankroll legal opposition, stopped by a group of folks who support the railroad, and do it as volunteers. The RMD is determined to continue to volunteer and each year the group grows, as folks hear about this battle over our history and the practical need of a railroad for the area.

1-1-08

As I added up the time and expense my wife and I have had working to save this railroad, I think of the railroads that have been torn up in recent history for whatever reason that will be nearly impossible to replace. Ecologically they make more sense, in terms of tourism , and economic development, they make sense, but if you are covering your backside to gain some form of forgiveness for giving away something you don't own, it makes no sense. Therefore, we ask for the Creede Branch to remain complete, a railroad with a destination, Creede.\

I have taken many folks for a ride at 15 miles an hour on this railroad as we have repaired it and all have marveled at the beauty of the Rio Grande valley above South Fork. Not having to travel 60 M.P.H. brings all the setting home to you. Please let the slow trip up or down the Creede Branch continue for another generation.

Thank You
Sincerely, Jon Keeling
P.O.Box 721
La Veta, Colorado, 81055
719-742-3863

Creede Branch Work Sessions for 2005

6/26/05-First time RMD members opened Creede Branch-M.P. 300-309.

Travel time-round trip -4hrs x 25.00 \$ per hr.=	100.00\$
244 miles x .40 \$ per mile transport M.O.W. car & tools =	48.80\$
12 hrs. x 50.00\$ per hr. =	600.00\$
	=748.80\$

7-29-05-7-31-05 Work session M.P. 310-309.

7-28-05 travel 122 miles x .40 =	48.80\$
7-28-05 travel time 2hrs x 25.00\$ per hr.=	50.00\$
7-29-05 track work M.P. 310-12hrs.x50.00\$ per hr.=	600.00\$
7-30-05 track work M.P. 310- 13 hrs. x 50.00\$ per hr.=	650.00\$
7-31-05track work M.P. 310-309 8 hrs..x 50.00 per hr. =	400.00\$
7-31-05 travel time 2hrs.x 25.00\$ per hr. =	50.00\$
7-31-05 travel-122 miles x .40 =	48.80\$
	=1797.60

8-20-05-8-22-05 Work sessions M.P. 310-309

8-19-05 travel 122 miles x .40 =	48.80\$
8-19-05 travel time 25.00\$ per hr. x 2 =	50.00\$
8-20-05 track work M.P. 310 12hrs. X 50.00\$ per hr.=	600.00\$
8-21-05 track work M.P. 310-309 12 hrs .x 50.00\$ per hr.=	600.00\$
8-22-05 track work M.P. 309 - 10 hrs x 50.00\$ per hr. =	500.00\$
8-22-05 travel 122 miles x .40 =	48.80\$
8-22-05 travel time- 2 hrs .x 25.00\$ per hr.=	50.00\$
	=1897.60

Total =	4444.00\$
---------	-----------

Creede Branch Work Sessions for 2006

5-20-06- Open Creede Branch for 2006 and assist Len Jones with bridge inspection.

Travel time 4 hrs.x 25.00\$ =	100.00\$
Work time 10 hrs. x 50.00=	500.00\$
	=600.00\$

6-1,2,3&4-06 Work Sessions

6-01-06-Travel time 2hrs. X 25.00\$ =	50.00\$
6-01-06-Travel mileage 122 x .485\$=	59.17\$
6-02-06 Track work-M.P.309, 12 hrs. x 50.00\$ per hr.=	600.00\$
6-03-06 Track work- M.P. 309 ,12 hrs. x 50.00\$ per hr.=	600.00\$
6-04-06 Track work-M.P. 309, 4 hrs.x50.00\$ per hr.=	200.00\$
6-04-06 travel 2x25.00\$ per hr.=	50.00\$
6-04-06 travel mileage 122x.485\$=	59.17\$
	=1618.34\$

7-20,21,22&23-2006 Work Sessions

7-20-06 travel 2hrs. X 25.00\$ per hr.=	50.00\$
7-20-06 travel mileage 122 miles x .485 =	59.17\$
7-20-06 Track work M.P. 309 4 hrs. x 50.00\$ per hr. =	200.00\$
7-21-06 Track work M.P. 309 12 hrs. x 50.00\$ per hr. =	600.00\$
7-22-06 Track work M.P.307 12 hrs. x 50.00\$ per hr. =	600.00\$
7-23-06 Track work M.P 307 4 hrs. x 50.00\$ per hr. =	200.00\$
7-23-06 travel time 2 hrs. x 25.00\$ per hr. =	50.00\$
7-23-06 travel mileage 122x .485 =	59.17\$
	=1818.34\$

8-4,5,6&7-2006 Work Sessions

8-03-06 Travel time 2 hrs. x 25 .00\$ per hr.=	50.00\$
8-03-06 Travel mileage 122x .485 \$=	59.17\$
8-04-06 Track work M.P.307 - 11 hrs.x 50.00\$ per hr.=	550.00\$
8-05-06 Track work M.P.305- 12 hrs. x 50.00\$ per hr. =	600.00\$
8-06-06 Track work M.P.303-302- 12 hrs. x 50.00\$ per hr.=	600.00\$
8-07-06 Travel time 2 hrs. x 25.00\$ per hr.=	50.00\$
8-07-06 Travel mileage 122x .485\$ =	59.17\$
	=1968.34

9-02-06 Work session

2006 Work Sessions on Creede Branch Cont.

9-02-06 Travel time- 2hrs.x 25.00\$ per hr. =	50.00\$
9-02-06 Travel mileage- 122 miles x .485\$=	59.17\$
9-02-06 Work session 10 hrs. x 50.00\$ per hr. =	500.00\$
9-03-06 First N.A.R.C.O.A. excursion from South Fork to Creede -no charge	
9-04-05 Travel mileage 122miles x .485\$ =	59.17\$
9-04-06 Travel time 2 hrs x 25.00\$ per hr.=	50.00\$
	=718.34\$

Total Charges 2006=6723.36\$

Please note that all travel mileage is pulling M.O.W. car both ways from LaVeta to Wagon Wheel Gap.

Please note that 50.00\$ per hr. charge is for M.O.W. car with all necessary tools and competent operator/track repairman.

2007 Creede Branch Work Sessions

4-28-07 Open Creede Branch ,Wagon Wheel Gap to South Fork M.P. 312 to M.P. 300	
4-28-07 - Travel- 4 hrs x 25 .00\$ per hr.-Jon Keeling =	100.00\$
4-28-07 Travel mileage 244 miles round trip x .485\$ per mile =	118.34\$
4-28-07 Open line 312 to 300-rock & debris removal 8hrs x 50.00\$ per hr. =	400.00\$
4-28-07 1 helper @ 15.00\$ per hr. x 8 hrs.=	120.00\$
4-28-07 3 helper @ 10.00\$ per hr. x 8 hrs.=	240.00\$
Total=	978.34\$

5-25-29-07 Work Session

5-25-07 Travel time 2 hrs. x 25.00\$ per hr. =	50.00\$
5-25-07 Travel mileage-122 x .485\$ =	59.17\$
5-26-07 Work session- M.P. 313-315 -12 hrs..x 50.00\$ per hr.=	600.00\$
5-27-07 Work session -M.P. 308- 11 hrs. x 50.00\$ per hr.=	550.00\$
5-28-07 Track work- M.P. 307- 11 hrs. x 50.00\$ per hr. =	550.00\$
5-29-07 Track work-M.P. 307- 3 hrs. x 50.00\$ per hr.=	150.00\$
5-29-07 Travel time 2 hrs x 25.00\$ per hr.=	50.00\$
5-29-07 Travel mileage- 122x .485\$=	59.17\$
Total=	2068.34

6-03-07 Host First Iowa Division of NARCOA

6-03-07 Travel time 4 hrs. x 25.00\$ per =	100.00\$
6-03-07 Travel mileage 244 round trip x .485\$=	118.34\$
6-03-07 Lead excursion w/ M.O.W car 50.00\$ per x 10 hrs.	500.00\$
	=718.34\$

7-03-04-07 Lead RMD NARCOA excursion No Charge

9-03-07 Lead RMD NARCOA Excursion No Charge

Note mileage charge is for pulling M.O.W. car both ways between LaVeta and Wagon Wheel Gap.

Note ; 50.00\$ per charge is M.O.W car + operator and tools.

Total charges-3765.02\$

Len Jones

From: Len Jones [len.jones@thedoodler.com]
Sent: Wednesday, December 26, 2007 10:38 AM
To: Don Shank
Cc: Doug Davlin
Subject: Don Shank



Creede Branch
labor & expense.

or,

Here is an accounting of the services I have provided to your railroad.
Hope this helps with your rebuttal of the Adverse Abandonment litigation.
If there is anything more I can do please don't hesitate to ask.
Best of luck.
Hope all goes well in the New Year.
Len

1-3-8

DON

I'M HAVING EMAIL ISSUES SO DON'T
KNOW IF YOU READ THIS.

Len

Don Shank
Denver & Rio Grande Railway Historical Foundation
20 N Broadway St
Monte Vista, CO 81144

Len Jones
6065 Del Paz Drive
Colorado Springs, CO 80918
Home 719-633-0217

December 26, 2007

Following is an accounting of the value of the services and the associated personal expenses that I have provided to your railroad

May 20, 2006

- 1 Inspect all bridges to determine condition with regard to use by speeders (light railroad maintenance-of-way vehicles)
- 2 Assist in clearing trees and boulders and inspecting track between Creede (approx MP 131) and the crossing of highway 149 in South Fork to determine condition and plan future maintenance work

Professional time	5 hours @ \$100.00 =	\$ 500 00
Labor time	5 hours @ \$20.00 =	\$ 100 00
Travel time	8 hours @ \$20 00 =	\$ 160 00
Travel mileage	488 miles @ \$ 485	\$ 237 00
Meals	Breakfast, Lunch, Dinner	\$ 42 00
Maintenance-of-way vehicle & transport		<u>\$ 100 00</u>
Subtotal		\$1,139 00

June 2 thru 4, 2006

Assist in removal and replacement of broken and missing rail Expand side clearance by moving boulders

Labor time	12 hours @ \$20.00 =	\$ 240 00
Travel time	8 hours @ \$20.00 =	\$ 160.00
Travel mileage	488 miles @ \$ 485	\$ 237 00
Meals		\$ 33.00
Groceries contributed to group meals		\$ 60 00
Lodging	2 nights @ \$92 00 =	\$ 184 00
Maintenance-of-way vehicle & transport		<u>\$ 200 00</u>
Subtotal		\$1,114.00

August 4 thru 6, 2006

Clear brush and boulders from right-of-way. Perform quick check of bridges

Labor time	12 hours @ 20.00 =	\$ 100 00
Travel time	8 hours @ 20.00 =	\$ 160 00
Travel mileage	488 miles @ \$ 485	\$ 237 00
Meals		\$ 20 00
Maintenance-of-way vehicle & transport		<u>\$ 200 00</u>
Subtotal		\$ 717.00

TOTAL		\$2,970.00
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Submitted by: Len Jones, BSCE

EXHIBIT 9

Letter from Upper Rio Grande Economic Development Council, dated January 14, 2008, supporting operation of the Creede Branch for passenger travel and freight transportation.



January 14, 2008

Surface Transportation Board
1925 K Street N.W.
Washington D.C. 20432

RE: Denver Rio Grande Railway Historical Foundation
Mineral and Rio Grande Counties, Colorado

To Whom It May Concern,

WHEREAS, the Upper Rio Grande Economic Development Council, (URGEDC), is a 501(c)(6) non-profit Corporation with the purpose of encouraging economic and community development and economic stability in Mineral, Rio Grande, and Alamosa Counties by representing the business community to municipal, county, state, and federal government and undertaking a leadership role by supporting programs for the benefit of the business community in this geographic area, and

WHEREAS, the Upper Rio Grande Economic Development Council, in December 2004, gave its support to the Transportation Board to deny the petition to overturn the original sale of the rail line in Doc# AB-33-SUB#-132X, and

WHEREAS, the Denver Rio Grande Railway Historical Foundation is the legal owner of the rail line located in Mineral and Rio Grande Counties, Colorado and has provided historical rail line service connecting the Towns of South Fork and Creede, Colorado, and

WHEREAS, the Denver Rio Grande Railway Historical Foundation and Union Pacific has operated said rail line for more than 100 years and been a cornerstone of passenger travel and freight transportation including mine ore products in the Upper Rio Grande region, and

WHEREAS, said rail line connects to interstate rail line serving Del Norte, Monte Vista, and Alamosa, Colorado, and



WHEREAS, the Denver Rio Grande Railway Historical Foundation has acquired the inherent private property rights associated with the purchase of said rail line from Union Pacific, and

WHEREAS, tourism is a major industry in the Upper Rio Grande region and all transportation sources are of the utmost importance to the traveling public in visiting Southwest Colorado, and

NOW, THEREFORE, BE IT RESOLVED, that the Upper Rio Grande Economic Development Council

- Supports the repair, service, and continued operations of this rail line for passenger travel and freight transportation
- Supports maintaining continuous rail line service from Creede, Colorado to interstate rail lines at Walsenburg, Colorado.
- Supports the direct and indirect jobs a fully operating rail line service would bring to the economically depressed area in the Upper Rio Grande region.
- Supports the Denver Rio Grande Railway Historical Foundation working closely with local economic development councils, Chambers of Commerce, and local government entities in providing beneficial rail line operations.
- Supports a mutually beneficial operating agreement between the Denver Rio Grande Railway Historical Foundation and the Town of Creede, Colorado.

ADOPTED, THIS 15TH DAY OF JANUARY, 2008

Don Van Wormer, President

Marty Asplin, Secretary

EXHIBIT 10

**Letter from Del Norte Economic Development Council, dated January 15, 2008,
supporting opening of the Creede Branch for passenger and freight service**

Del Norte Economic Development Council

925 6th Street, Room 207

Del Norte, CO 81132

January 15, 2008

Don Shank

20 N Broadway

Monte Vista, Co 81144

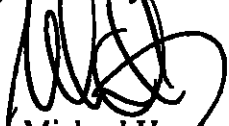
The Del Norte Economic Development Council (DNEDC) is an arm of the Chamber of Commerce that works exclusively on economic development issues for Del Norte, Colorado. The DNEDC considers the railroad through town a liability, given its current status as a place to park old railroad cars. The spur can not be used for any beneficial use as it stands today. While the spur through Del Norte is not part of the Rio Grande Railway Historic Foundation, it will influence the line between South Fork and Walsenburg, Colorado.

We support Denver and Rio Grande Railway Historic Foundation and his Creede railroad line for a number of reasons:

1. The line would carry passengers to Creede from South Fork making South Fork a Tourist Destination. The destination status brings tourist dollars to the entire region, increasing retail traffic in Del Norte.
2. The depot in South Fork will become an additional attraction, stopping transit tourist traffic. Any time a transit tourist is stopped in either South Fork or Del Norte, an opportunity to retain that tourist exists. There is little benefit from transit tourist traffic passing through town without stopping.
3. An operating railroad in South Fork will provide jobs to local families and opportunities for local businesses.
4. If the line were operating with passenger service, the spur from South Fork to Alamosa may become more valuable to rail operators. The change in use may instigate the parked railcars to be moved and the spur to open up to additional traffic.

Our hopes at the DNEDC are that a mutually beneficial agreement can be reached between the City of Creede and railway to allow the spur to open up again to passenger and freight service.

Sincerely,



Michael Hurst
DNEDC President

EXHIBIT 11

Letter from Colorado State Mining Championship to Mr. Shank, supporting the Foundation's use of the right-of-way in Creede for the purpose for which it was acquired (rail freight and passenger service).



COLORADO STATE MINING CHAMPIONSHIP DAYS OF '92 MINING COMPETITION

**P.O. BOX 498
CREEDE, COLORADO 81130**

**Mr. Donald Shank, President and Executive Director
Denver and Rio Grande Railway Historical Foundation
20 N. Broadway Street
Monte Vista, CO 81144**

Dear Don,

The purpose of this letter is to support the rights of the Denver and Rio Grande Railway Historical Foundation to use it's Right-of-Way for the purpose for which it was acquired.

The Colorado State Mining Championships and Days of '92 Mining Competition appreciate the support we have received from the Foundation and from you personally, Don. Granting permission for the use of the arena which is located on your right-of-way makes it possible for these historical mining events to happen year after year. Your personal appearance each year to support these events is very meaningful.

In October of 2007 we were asked to remove all equipment from the arena for the special purpose of working on the right-of-way with the understanding that we will have permission to move back into the arena in June of 2008 and will have Don's help setting up the arena for this summers events.

Clyde Doolye told people that the events would be moved to the fair grounds near the airport. I (Ken Wyley) asked Clyde why he was telling people this on the second day of Don's clearing of the right-of-way. His response was that he was just thinking ahead. I had already told him on the first day that Don was working with the Days of '92 committee and that we would be allowed to move back onto his property in June, 2008 and that Don would help with the re-setup of the arena downtown in the original place.

As it stands the CSMC and Days of '92 Mining events plan to hold the 2008 mining competition where we have always held it in downtown Creede on the Foundation's right-of-way with Don's permission and his help.

Sincerely,

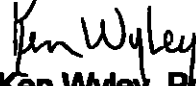

**Ken Wyley, President
Days of '92 Committee**

EXHIBIT 12

Letter from Ms. Liz Curry, dated January 17, 2008, supporting rail freight and passenger service on the Creede Branch.

January 17, 2008

Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street SW
Washington, DC 20423-0001

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

Dear Secretary Williams:

Please consider this letter as my opposition of the application for adverse abandonment filed by the City of Creede

I am a resident of Creede and have lived here for 49 years. The railroad was always a part of my life and it definitely is the reason Creede is here.

My address is: 219 Wood Road
P.O. Box 172
Creede, CO 81130

I am writing in opposition of the City's application for many reasons of which some are listed

- 1) With the price of silver going up, there is rumor the mines may reopen. The railroad line will be needed to haul the ore from these mines. It would be devastating to lose that ability and have to put additional semis on the already congested highway that comes into Creede.
- 2) With promotion, agreements, etc., the train can haul freight into Creede which would help take the semis off the already congested highway. I know the County has written a letter in support of mag chloride being hauled into Creede by train cars which would save money, time, etc. for the County.
- 3) Parking is limited in Creede in the summer months. The Mining Museum Board Members have discussed the possibility of creating a huge parking area in the canyon and bringing the tourists into town by train cars. This will not only help the Mining Museum but will also be an attraction to the young and old.
- 4) The entrance into Creede is a 2-lane highway which can become dangerous at times especially in the summer months. Several groups have stated an interest in riding on the train instead of bringing vehicles through the canyon. This will alleviate a great deal of traffic, reduce the maintenance needed on the highway and can create a business for someone to do a shuttle service
- 5) The train could bring a variety of visitors to Creede which would help the economy, tax base, etc. Since the mines closed in 1985, Creede has become a tourist town and the ones that have to survive here would be grateful for more business.

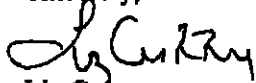
- 6) The line has no adverse affect in Creede except to the squatters who have built on the property or are using the railroad property that doesn't legally belong to them. The last time the railroad came to Creede in the mid 70's, it brought up the materials for our gymnasium that is still standing today. After that, people began using the railroad property knowing that one day the railroad company may stop them from using it. At that time, the people using the railroad property including the County and the City paid a lease to the railroad company. I know this as a fact because I worked for the City and presently work for the County.
- 7) The history of Creede needs to be preserved. If this line is abandoned, a part of history is lost and I can't believe anyone would want to see that happen.

I could go on and on about the benefits of the railroad but the bottom line is when the time comes for freight to be hauled from the mines, the line will not be available if abandonment is agreed to by the Service Transportation Board.

I implore you to understand that the railroad line is not a hindrance to our community as it is except maybe to a few individuals but the loss of it will have adverse affects in the future. The railroad line will be needed to haul ore when the mines reopen but if abandonment is agreed to, the railroad line is lost forever.

I appreciate your work in this matter and hope you look at the situation as being a part of preserving a community. Thank you for your time.

Sincerely,



Liz Curry
Lifelong resident

APPLICATION OF LEGAL STANDARDS TO THE FACTS

The City's rambling 360-page filing notwithstanding,¹¹ the controlling legal standards can be applied to the relevant facts of this matter simply and briefly

As established by the Court in *Cross Harbor, supra*, 374 F.3d at 1182, the dispositive issue is whether there is a potential for future operation of the subject rail line for which the Foundation has taken reasonable steps to attract traffic.

Simply stated, the adverse abandonment should be denied because the potential for future operation of the rail line in Creede, and the Foundation's efforts to attract freight traffic to that line, greatly exceed the future operating potential and rail carrier efforts to restore service on other rail lines for which adverse abandonment applications or petitions to revoke operating authority were denied.

Thus, there is a realistic potential for rail shipments of ore from mines in the Creede area. There is evidence to support that potential. A wealthy individual, Mr. Brian Egolf, recently purchased approximately 700 mining claims in and around Creede. Mr. Egolf has already staked a large number of those claims. He plans to begin mining activity in the near future. The realistic nature of that potential is also shown by the fact that a large long-inactive mine at Climax, CO, barely 150 miles from Creede, recently reopened. A rail carrier currently operating a daily tourist passenger train near that mine now will be transporting freight shipments of ore from that mine in addition to passengers. That 16-mile rail line connects to Union Pacific's Tennessee Pass rail line that has been dormant for approximately 10 years since the *Union Pacific-Southern Pacific* merger (VS Shank at 17-18).

¹¹ Not to mention hundreds of additional pages of repetitive letters that the City orchestrated

In addition, there is specific evidence of potential freight traffic at Creede, consisting of inbound shipments of magnesium chloride, inbound shipments of cedar logs from Tennessee, and outbound shipments of bulk rock, specialty rock, and rock products to Texas and New Mexico, and for export to China (VS Shank at 18).

That potential is much stronger than existed in *Seminole Gulf, supra*, in which adverse abandonment was denied, and in which the Board equated the rail carrier's effort to attract traffic with sufficient traffic potential (*viz.* at 11-12)

Even though Seminole Gulf's efforts to attract new shippers to the line have not proven successful, they demonstrate some prospects for continued rail service. Given Seminole Gulf's efforts, we cannot say that there is no potential for continued rail service over this line.

Inasmuch as that very general prospect for future traffic warranted denial of adverse abandonment in *Seminole Gulf, supra*, surely the stronger and more specific potential for freight traffic on the rail line at Creede warrants denial of adverse abandonment.

Where, as here, rail service is proposed to be reinstituted over a long dormant rail line, "reasonable steps to attract traffic," as that term is used in Board decisions on the subject matter, consist primarily of track rehabilitation to enable restoration of train service. The Foundation's efforts and achievements in that respect are undeniable. Utilizing volunteered labor, the Foundation has made hundreds of maintenance trips over the Creede Branch, replaced thousands of spikes, replaced approximately 300 cross-ties; replaced dozens of rails and angle bars; cleared numerous rockslides; removed tons of brush; pruned or removed hundreds of trees; stabilized countless fill areas; re-gauged hundreds of rail locations; restored critical grade crossings; and dug out the yard tracks in Creede (VS Shank at 9).

As a result, the Creede Branch is now operable for rail passenger operations into Creede, and for more durable maintenance equipment. The Branch will be ready for rail freight operations when a final grade crossing is restored, which the State of Colorado will do this coming Spring, and upon replacement of additional crossties. (VS Shank at 10).

The City should not be heard to argue that the Foundation will not be able to replace those crossties. It was the City's orchestration of opposition that caused denial of the Foundation's grant application to the Colorado State Historic Fund for more than \$200,000 that would have enabled the Foundation to replace approximately 12,000 crossties in the Creede Branch. Crosstie replacement of that magnitude would have gone a long way toward FRA Class I track compliance. Nevertheless, Federal and State grants and loans are available to Class III rail carriers to fund track rehabilitation. The Foundation will apply for such grants or loans to fund the crosstie replacement necessary for FRA Class I track compliance. (VS Shank at 10-11)

Neither should the City be heard to argue that the Foundation has unreasonably delayed in reinstituting rail service on the Creede Branch. In the seven years during which the Foundation has owned the Branch, five of those years have been plagued with expensive and time-consuming defenses of legal actions brought by the City in both Colorado and United States Courts, and before this Board. Tens of thousands of dollars have been spent defending the Foundation's legal position that could have been spent on crosstie replacement. The City has created these legal quagmires; interfered with the Foundation's attempt to obtain governmental funding for track rehabilitation, done all in its power to thwart reopening of the rail line, and yet now has the audacity to allege that the Foundation has not made sufficient progress in reinstituting rail freight service on the Branch!

The extensive steps taken by the Foundation to rehabilitate the Crecde Branch to FRA Class I condition, and thus to attract rail freight traffic to the Branch, are much stronger in both quantity and quality than the steps taken by the rail carrier in *Riverview Trenton, supra*, which the Board there found to constitute reasonable steps to restore rail service sufficient to dictate denial of a petition to revoke that rail carrier's operating authority (Finance Docket No. 34040, *supra*, decision served Nov. 30, 2007 at 3-4). The rail carrier in that case had only begun to plan for track rehabilitation. The carrier had not replaced a single spike or crosstie. In contrast, in the case at hand, the Foundation has accomplished substantial rehabilitation of the Crecde Branch trackage.

Inasmuch as mere planning for track rehabilitation warranted denial of revocation of the carrier's operating authority in *Riverview Trenton, supra*, surely the extensive track rehabilitation actually accomplished by the Foundation dictates denial of adverse abandonment in the case at hand.

The Board's liberal interpretation of 49 U.S.C. § 10903(d) to deny adverse abandonment in *Seminole Gulf*, *Riverview Trenton*, and in other decisions cited earlier in this Protest, stems from the Board's statutory duty to preserve and promote rail freight service. That duty was recently crystallized in *Cross Harbor, supra*, in which the Court of Appeals set aside and remanded a Board decision that had granted a City's application for adverse abandonment. (374 F.3d at 1187).

The Board's statutory duty in that respect outweighs the more narrow public interest associated with state or municipal public works projects. *Cross Harbor, supra*, 384 F.3d at 1184-1185. That statutory duty in large part explains recent decisions denying efforts by Cities

to adversely abandon rail lines or revoke railroad operating authority, i.e., *Salt Lake City, supra*; *City of Colorado Springs, supra*; *Riverview Trenton, supra*; *Cross Harbor, supra*

In view of the Board's statutory duty to preserve and promote rail freight service, a City has a highly stringent burden of proof in order to obtain an adverse abandonment. It is evident that for all its length and bluster, the City's filing comes nowhere near sustaining that burden of proof. On the contrary, unassailable evidence of the Foundation's good faith progress toward rehabilitation of the Creede Branch for rail freight service, and of a realistic potential for future rail freight traffic to and from Creede, dictate denial of adverse abandonment in the case at hand.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the application for adverse abandonment should be denied.

Respectfully submitted,

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
20 North Broadway
Monte Vista, CO 81144

Protestant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Protestant

DUE DATE January 31, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2008, I served the foregoing document, Protest, on
Ronald M. Johnson, Esq. and Heidi L. Gunst, Esq., Akin, Gump, Strauss, Hauer & Feld, LLP,
Robert S. Strauss Building, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564,
by UPS overnight mail.

Thomas F. McFarland

Thomas F. McFarland