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**Access to Filings.** An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filing party to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's Web site at <http://www.stb.dot.gov> under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. The application in STB Finance Docket No. 35081 is accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. This decision is effective on January 4, 2008.

Decided: December 21, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

**Vernon A. Williams,**

*Secretary.*

**APPENDIX A: PROCEDURAL SCHEDULE**

September 10, 2007.	Motion for Protective Order filed.
September 21, 2007.	Protective Order issued.

**APPENDIX A: PROCEDURAL SCHEDULE—Continued**

October 5, 2007.	Prefiling notification and Motion to Establish Procedural Schedule filed.
November 8, 2007.	Notice of receipt of prefiling notification published in the <b>Federal Register</b> .
November 29, 2007.	Proposed procedural schedule published in the <b>Federal Register</b> .
December 5, 2007.	Application filed.
January 4, 2008.	Board notice of acceptance of application to be published in the <b>Federal Register</b> .
January 25, 2008.	Notices of intent to participate in this proceeding due. Descriptions of anticipated responsive applications (including inconsistent applications) due. Petitions for waiver or clarification with respect to such applications due.
February 4, 2008.	Proposed SIP to be filed with SEA and FRA. Environmental comments due, addressed to the attention of SEA.
March 4, 2008	All responsive applications, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
April 18, 2008	Replies to responsive applications, requests for conditions, and other opposition due. Rebuttal in support of the application due. Response of DOJ and DOT to other parties' comments due.
April 25, 2008	Applicants' response to responsive comments of DOJ and DOT due.
May 19, 2008	Rebuttals to responsive applications, requests for conditions, and other opposition due.
TBD .....	A public hearing or oral argument may be held.
July 2, 2008 ...	Final briefs, if any, due.
September 30, 2008.	Date of service of final decision.
October 30, 2008.	Effective date of final decision.

[FR Doc. E7-25480 Filed 1-3-08; 8:45 am]

**BILLING CODE 4915-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[STB Docket No. AB-1014]

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

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

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

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

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

A portion of the track is on a Federally issued right-of-way. According to the City, the land underlying the Federal right-of-way in the city limits was deeded to the City by the United States in 1901, subject to the right-of-way grant. The City states that it also owns the land adjacent to the Line and asserts that it has reversionary interests in the Line under state law. Any documentation in the City's possession will be made available promptly to those requesting it. The City states that it filed its entire case for abandonment with its application.

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

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

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

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

All filings in response to this notice must refer to STB Docket No. AB-1014 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; (2) Ronald M. Johnson, Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Ave., NW., Washington, DC 20036; and (3) Clyde Dooley, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's

<http://www.stb.dot.gov> Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Governmental and Public Affairs at (202) 245-0230 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to SEA at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: December 28, 2007.

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

**Vernon A. Williams,**  
Secretary.

[FR Doc. E7-25588 Filed 1-3-08; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 8)]

#### Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between

BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP<sup>1</sup> over BNSF's line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.<sup>2</sup>

The transaction is scheduled to be consummated on January 20, 2008.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 6) to further extend the expiration date to on or before December 31, 2008. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

<sup>1</sup> UP submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 9), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, wherein UP, with the support of BNSF, requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2008. That petition will be addressed by the Board in a separate decision.

<sup>2</sup> The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), on March 23, 2006, in STB Finance Docket No. 34554 (Sub-No. 5), and on March 13, 2007, in STB Finance Docket No. 34554 (Sub-No. 7), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on February 11, 2005, in STB Finance Docket No. 34554 (Sub-No. 4), served on March 3, 2006, and in STB Finance Docket No. 34554 (Sub-No. 6), served on January 12, 2007, to expire. At the time of the last extension, it was anticipated by the parties that the rights would expire on or about December 31, 2007. However, this authority has not yet been exercised.