

October 2, 1995

VIA TELEFAX - (202) 927-5984

Vernon A. Williams, Secretary
Interstate Commerce Commission
Case Control Branch
12th & Constitution Ave, NW
Washington DC 20423

Douglas M. Durbano
Walter T. Merrill
Wyoming and Colorado Railroad
Company, Inc.
c/o Durbano and Associates
Harrison Professional Plaza
3340 Harrison Blvd, Ste 200
Ogden UT 84403

Re: Docket No. AB-307 (Sub-No. 2X) Wyoming and Colorado
Railroad, Inc. — Abandonment Exemption — Jackson County,
Colorado.

Dear Mr. Williams and Mr. Durbano:

This is a comment and petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of the Colorado Division of Parks and Outdoor Recreation, a government agency interested in transportation, natural resources and recreation, which is hereinafter referred to as "Commenter."

Although Commenter takes no position on the propriety of discontinuance of current rail service, Commenter does oppose unconditioned abandonment and requests issuance of a Notice of Interim Trail Use rather than an outright abandonment authorization. These comments pertain to the rail line of the Wyoming and Colorado Railroad, Inc., more particularly described as the Coalmont Branch, between milepost 67.47 at the Colorado-Wyoming state line and milepost 94.5 near Walden, Colorado.

A. Public Use Conditions.

Under 49 U.S.C. § 10906, the Interstate Commerce Commission ("ICC") must determine whether a line which is otherwise abandonable is also suitable for public use. As more completely indicated in this letter, this line is suitable for public use, and Commenter requests the ICC to so find. Commenter further requests ICC to issue the following two public use conditions pursuant to 49 U.S.C. § 10906:

Barring non-public disposition.

1. Condition sought: an order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, other than for public use on reasonable terms.
2. Justification for condition: The rail line in question passes through a high mountain valley ecosystem and into a mountainous area rich in wildlife. Approximately half of the mileage is through USDA Forest Service land. Scenic views, forested areas, steady elevation gain, and a curving right-of-way are all factors which would contribute to the attractiveness of the line for recreation purposes.
3. Time period sought: 180 days from the effective date of the abandonment authorization.
4. Justification for time period: Commenter has not had an opportunity to assemble or to review title information or to fully evaluate structures on the corridor. Moreover, Commenter has not yet had time to commence negotiations with the carrier. Although Commenter expects to proceed expeditiously, assembling the required information, negotiating with the carrier, and obtaining the necessary approvals will necessarily consume a minimum of 180 days.

Preserving trail-related structures.

1. Condition sought: an order barring removal or destruction of trail-related structures such as bridges, culverts and tunnels, but not removal of tracks, ties and signal equipment.
2. Justification for condition: Bridges, culverts and tunnels have considerable value for, and would certainly facilitate, recreational trail purposes, which are the purposes for which the Commenter seeks the corridor. On the other hand, such structures generally have negative salvage value for a railroad so their preservation poses no burden on interstate commerce. ICC customarily bars their removal upon request where a public recreational trail use is sought.
3. Time period requested: 180 days from the effective date of the abandonment authorization.
4. Justification for time period: see justification for first condition sought above.

B. Interim Trail Use.

The railroad right-of-way in this proceeding is suitable for rail banking. In addition to the public use conditions sought above, Commenter also requests that ICC apply section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), to this corridor. In accordance with 49 C.F.R. § 1152.29, Commenter accordingly makes the following statement:

STATEMENT OF WILLINGNESS
TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, the Colorado Division of Parks and Outdoor Recreation is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability) and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the Wyoming and Colorado Railroad Company, Inc.

The property, known as the the Coalmont Branch, extends between milepost 67.47 at the Colorado-Wyoming state line and milepost 94.5 near Walden, Colorado. The right-of-way is part of a line of railroad proposed for abandonment in ICC Docket No. AB-307 (Sub-No. 2X).

1. A map depicting the right-of-way is attached.
2. The Colorado Division of Parks and Outdoor Recreation acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.
3. A copy of this statement is being served on the railroad on the same date it is being served on the ICC.

C. Environmental Issues.

Unconditioned abandonment of this rail line and failure to apply section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) may have an adverse impact on historic bridges that are at least 50 years old, may result in destruction of wildlife habitat, may prevent the future reconstruction of a railroad line to ship proven nationally-significant reserves of low-sulfur coal, and is inconsistent with serving community transportation and recreation needs. Unless these impacts can be mitigated by entry of the public use conditions requested as well as application of Section 8(d), Commenter requests that ICC stay the effectiveness of this abandonment pending resolution of the environmental issues through a full and complete analysis of historic impacts and consultation with the Advisory Council on Historic Preservation, as provided by section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, and a full and complete environmental analysis evaluating these adverse impacts and mitigative alternatives under section 102 of the National Environmental Policy Act, 42 U.S.C. § 4332.

By my signature below, I certify service upon the Wyoming and Colorado Railroad Company, Inc., Attn.: xxx, General Attorney, xxx, by U.S. Mail, first class postage pre-paid, this xxx day of 1995.

Respectfully submitted,

Stuart H. Macdonald
for Colorado Division of Parks and Outdoor Recreation

Enclosures

cc: Jackson County Board of County Commissioners
Colorado State Senator Dave Wattenburg
Colorado State Representative Jack Taylor
Larry Kallenberger, Colo. Dept. of Local Affairs
Jim Lochhead, Colo. Dept. of Natural Resources
Guillermo Vidal, Colo. Dept. of Transportation
Larry DeClaire, Attorney General's Office