Civil Action No. 20-cv-01930

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PITKIN, COLORADO, a body corporate and politic,

Plaintiff,

v.

ROCK CREEK ASSOCIATION, INC., a Colorado non-profit corporation; UNITED STATES FOREST SERVICE, an agency of the United States Department of Agriculture; and ALL UNKNOWN PERSONS who claim any interest in the in the subject matter of

ALL UNKNOWN PERSONS who claim any interest in the in the subject matter of this action.

Defendants.

#### **COMPLAINT**

COMES NOW the Plaintiff, the Board of County Commissioners of Pitkin County, Colorado ("Pitkin County" or the "BOCC"), by and through the Pitkin County Attorney's Office, and for its Complaint against the above-named Defendants, states and alleges as follows:

#### **PARTIES**

- 1. Plaintiff is the duly constituted Board of County Commissioners (the "BOCC") of the County of Pitkin, a home rule county and political subdivision of the State of Colorado, whose address is 530 E. Main Street, Suite 302, Aspen, Colorado 81611. The BOCC is fully authorized to bring suit in its name on behalf of the County in this action.
- 2. Defendant Rock Creek Association, Inc. (the "RCA") is a Colorado non-profit corporation, having a principle office street address of 900 Dorais Way, Redstone, Colorado 81623.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT Page 2

- 3. Defendant United States Forest Service is an agency of the United States Department of Agriculture, whose address is United States Attorney's Office for the District of Colorado, Civil Division, 1801 California St. #1600, Denver, CO 80202.
  - 4. All Unknown Persons who claim any interest in the subject matter of this action.

#### **JURISDICTION**

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 2201–2202, 1331, 1346(f), 2409a(a), and 1367.

#### **GENERAL ALLEGATIONS**

- 6. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs through 5 above as though fully set forth herein.
- 7. The Wild Rose Ranch Subdivision is located in the Crystal River Valley area of Pitkin County, Colorado, north of the unincorporated Townsite of Redstone ("Redstone").
- 8. The Wild Rose Ranch Subdivision is accessed by Dorais Way, a public road, which generally follows the alignment of what was first the right-of-way for the Pitkin County, Rock Creek Wagon Road and later portions of the old Crystal River Railway grade.
- 9. Upon information and belief, various property owners in the Wild Rose Ranch Subdivision and properties in the vicinity of the Wild Rose Ranch Subdivision formed the RCA on November 9, 2009 and are members of the RCA.
- 10. On August 25, 2015, the Mid-Continent Minerals Corporation and Mid Continent Coal & Coke Company, both Delaware Corporations (collectively "Mid-Con"), by a certain

Civil Action No. 20-cv-

COMPLAINT

Page 3

Quitclaim Deed conveyed their interest, if any, in what is described in the deed as "[a] strip of land

100 feet in width being 50 feet in width on each side of the center line of the main track of the

Crystal River Railroad Company as formerly located and constructed over and across [a township

and range description follows and then continues] ending at the Northeast boundary of Redstone

Boulevard, the strip of land being approximately 2,000 feet in length and containing 4.59 acres,

more or less." The Quitclaim Deed from Mid-Con to the RCA ("the Mid-Con QCD") is recorded

in the real property records of the Pitkin County Clerk and Recorder's Office at Reception No.

624328. A Copy of the Mid-Con QCD is appended hereto as **Exhibit 1**.

11. Upon information and belief, Mid-Con received no consideration in connection

with the grant described in the Mid-Con QCD.

12. The Mid-Con QCD conveyed to the RCA only whatever property interest, if any,

Mid-Con had in the property described therein.

13. The RCA has only color of title to the property described in the Mid-Con QCD and

has no legal right or property interest in the same.

14. The Mid-Con QCD purports to convey property, as described and characterized

therein, that generally follows Dorais Way along the alignment of what was first the right-of-way

for the Pitkin County, Rock Creek Wagon Road and later portions of the old Crystal River Railway

grade starting from the south at Redstone Boulevard and continuing in a northerly direction toward

the Wild Rose Ranch Subdivision.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-

**COMPLAINT** 

Page 4

15. Mid-Con acquired whatever interest it conveyed to the RCA on January 19, 1956

from Pearl E. Thomson and R. James A. Thomson in addition to other portions of the right-of-way

for the Crystal River Railway, consisting of substantially all portions of said right-of-way south of

the Garfield County line located in Pitkin County by a quitclaim deed recorded in the real property

records of Pitkin County Clerk and Recorder's Office at Reception No. 103318 (the "Thomson

QCD"). A copy of the Thomson QCD is appended hereto as **Exhibit 2**.

16. Pearl E. Thomson and R. James A. Thomson acquired their interest in the former

right-of-way for the Crystal River Railway from Rich R. Thomson who acquired the same from

the Crystal River Railroad Company on June 11, 1947 by a quitclaim deed recorded in the real

property records of Pitkin County Clerk and Recorder's Office at Reception No. 94909 (the "CRR

QCD"). A copy of the CRR QCD is appended hereto as **Exhibit 3**.

17. The Crystal River Railway Company acquired its interest in the portion of the

railroad right-of-way at issue here from A.H. Horoney on March 27, 1893 by a certain "Quit-Claim"

Deed" recorded in the real property records of Pitkin County, Colorado at Reception No. 51726

(the "Horoney QCD"). A copy of the Horoney QCD is appended hereto as **Exhibit 4**.

18. A.H. Horoney ("Horoney") acquired his interest in the property – 160 acres in total

- from the United States of America on November 17, 1894 by means of a patent deed (the

"Horoney Patent"). A copy of the Horoney Patent is appended hereto as **Exhibit 5**.

19. The Crystal River Railway Company and the Crystal River Railroad Company are,

upon information and belief, are different entities, but related. The Crystal River Railway

Civil Action No. 20-cv-

COMPLAINT

Page 5

Company is the grantee identified in the Horoney QCD. In contrast, the Crystal River Railroad

Company, the successor in interest to the Crystal River Railway Company, is the named Grantor

in the June 11, 1947 CRR QCD to Rich R. Thomson.

20. At best, the RCA has only whatever property interest was conveyed by the Horoney

QCD, if any, to the Crystal River Railway Company in 1893, unless that interest never vested, was

abandoned, or otherwise became divested.

21. Upon information and belief, the Crystal River Railway Company became defunct

and inoperative on April 26, 1912.

22. Upon information and belief, the Crystal River Railroad Company became defunct

and inoperative on or before July 26, 1945.

23. The Crystal River Railroad Company formally applied for abandonment of the

railroad line between Carbondale and Placita and from Placita south to Marble, Colorado on June

23, 1941, and the Interstate Commerce Commission issued the Certificate of Abandonment on

September 22, 1941. A copy of the Certificate of Abandonment is appended hereto as **Exhibit 6**.

24. Prior to abandonment, the Crystal River Railroad line was utilized primarily for

hauling stone from the marble quarry located in Marble, Colorado and for hauling ore from coal

mining operations west of Redstone, although, in the years leading up to abandonment, use of the

railroad fell off, and the railroad mostly hauled potatoes and livestock from the agricultural lands

in the Crystal River Valley.

Civil Action No. 20-cv-

COMPLAINT

Page 6

25. The track along the railroad right-of-way was pulled up for salvage in 1942 in

response to the need for steel to support the war effort during the Second World War.

26. The United States acquired the property described in the Horoney Patent on August

27, 1941 through a land exchange with Mrs. L.R. MacDonald – daughter of John C. Osgood.

27. A road for public travel and thoroughfare has existed in the Crystal River Valley

connecting Carbondale to various properties and recreational opportunities located in the Crystal

River Valley and beyond since at least 1885, and evidence exists that a public road has existed on

the ground following the Crystal River for transportation and commerce for many years before

that time.

28. An 1885 "Plat of the Rock Creek Wagon Road" is recorded in the real property

records of the Pitkin County Clerk and Recorder's Office in Plat Book 1, Page 18. The Plat depicts

a pubic road known as the "Rock Creek Wagon Road" as it substantially existed in 1885 in the

Crystal River Valley of Pitkin County, Colorado. A copy of the 1885 Plat is appended hereto as

Exhibit 7.

29. An 1888 "Map of County Road from North Line of Pitkin County up Rock Creek

or Crystal River connecting with B and M Grade" is recorded in the real property records of the

Pitkin County Clerk and Recorder's Office in Plat Book 1, Pages 27 & 28. The 1888 map depicts

the Pitkin County Rock Creek Wagon Road in substantially the location that it existed in as of

1888. A copy of the 1888 Map of the County Road is appended hereto as **Exhibit 8**.

Civil Action No. 20-cv-

COMPLAINT

Page 7

30. The Crystal River is also known and identified as "Rock Creek" in the late eighteen

hundreds into the early nineteen hundreds.

31. A Surveyor General's Office Survey of Township No. 10 South, Range No. 88

West of the 6<sup>th</sup> Principal Meridian dated July 29, 1890 ("1890 Survey") depicts a road following

"Rock Creek" in the vicinity of present day Redstone. A copy of the 1890 Survey is appended

hereto as Exhibit 9.

32. The 1890 Survey depicts the Rock Creek Wagon Road traversing the entirety of

Section No. 9 of Township No. 10 South, Range No. 88 West of the 6th Principal Meridian

("Section No. 9") from north to south on the east side of the Crystal River a/k/a Rock Creek and

passing "Horony's [sic] House."

33. The road traversing Section No. 9 on the 1890 Survey is the only road depicted as

being located in Section No. 9 on the 1890 Survey and crosses the property described in the 1894

Horoney Patent.

34. Various road petitions were submitted to the BOCC, beginning in 1886, to construct

and maintain a County Road from the northerly point of the Pitkin County line in a southerly

direction along the west side of the Crystal River also known as Rock Creek.

35. On April 7, 1893, the BOCC, by official action, appointed a "Special Attorney" to

take such action as may be necessary to prevent the Crystal River Railway Company from

obstructing and continuing to obstruct "the County Road along Rock Creek in Pitkin County."

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-

**COMPLAINT** 

Page 8

36. Since at least 1885, members of the public have utilized the Rock Creek Wagon

Road, including in the location of the road as it crosses Section 9, for public travel, commerce, and

recreation in the Crystal River Valley.

37. Members of the public have used the Rock Creek Wagon Road through Section 9

for travel, commerce, and recreation without interruption since at least 1885 until August 28, 2019

when the RCA closed and locked a gate at approximately the intersection of Redstone Boulevard

– also part of the historic Rock Creek Wagon Road – and the southerly terminus of Dorais Way.

38. At all relevant times and beginning in at least 1885, the owners of the property

located in Section 9 traversed by the Rock Creek Wagon Road have had actual or implied

knowledge of the public's use of the road.

39. Upon information and belief, the United States Postal Service has provided mail

delivery service utilizing a public road through Section 9 until at least August 28, 2019.

40. On January 24, 1983, the BOCC reviewed and approved the "plat of Wild Rose

Ranch" in connection with Janet R. Edwards's and Thomas H. Fulker's land use application for

subdivision approval of the Wild Rose Ranch Subdivision. A copy of the Wild Rose Ranch

Subdivision Plat is appended hereto as **Exhibit 10**.

41. On August 28, 2019, the RCA sent the Board of County Commissioners of Pitkin

County, Colorado a letter regarding "Notice of Permanent Closure of Dorais Way, Redstone, to

Public Access," whereby it informed the BOCC, among other things, of its belief that it "possesses

a fee simple title" to the Dorais Way section of the Rock Creek Wagon Road and of the RCA's

Civil Action No. 20-cv-

**COMPLAINT** 

Page 9

intent to "permanently close it to public use." A copy of the August 28, 2019 Notice to Pitkin

County is appended hereto as **Exhibit 11**.

42. On August 28, 2019, the RCA sent the Redstone Community Association a letter

informing the Redstone Community that "Dorais Way is now closed to all public access, including

vehicle, pedestrian and bicycle traffic." The August 28, 2019 letter to the Redstone Community

Association states that "[t]he RCA recognizes that friends and neighbors in the Redstone

community use Dorais Way occasionally for pleasant walks or to visit residents who live along

Dorais Way." A copy of the August 28, 2019 letter to the Redstone Community Association is

appended hereto as Exhibit 12.

43. Pitkin County is the fee simple owner of certain real property general known as the

Filoha Meadows Nature Preserve ("Filoha Meadows"). Pitkin County acquired its interest in

Filoha Meadows through multiple transactions in 1999, 2001, and 2003 respectively.

44. Filoha Meadows is approximately 185 acres and is located in the Crystal River

Valley, north of Redstone and the Wild Rose Ranch Subdivision. Public access to Filoha Meadows

is accomplished by means of the Rock Creek Wagon Road from Redstone Boulevard via Dorais

Way through the Wild Rose Ranch Subdivision. Pitkin County provides information regarding

Filoha Meadows Nature Preserve here: https://pitkincounty.com/1102/Filoha-Meadows.

45. Filoha Meadows is subject to the "Filoha Meadows Nature Preserve Management

Plan," which was adopted by Pitkin County on September 2, 2008.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT Page 10

46. The RCA's August 28, 2019 Notice to Pitkin County and the Redstone Community Association expressly recognizes that the public and Pitkin County utilize and rely on the Rock Creek Wagon Road and Dorais Way to access Filoha Meadows as well as for recreation.

# FIRST CLAIM FOR RELIEF Declaratory Judgment – Limited Fee (Against All Defendants)

- 47. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1 through 46 above as though fully set forth herein.
- 48. Pitkin County is entitled to a declaration of rights pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201, et seq.
- 49. 28 U.S.C. §§ 2201 provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."
- 50. On its face, the Horoney QCD is a quitclaim deed as that form of deed is defined by C.R.S. § 38-30-113(d).
- 51. The Horoney QCD purports to grant a limited fee to the Crystal River Railway for the construction, operation, and maintenance of a railroad with a single or double track.
- 52. The Horoney QCD is a quitclaim deed that attempts to convey a limited fee, not a fee simple absolute, for the purposes stated therein.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT Page 11

53. Pitkin County is entitled to a declaration pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201, *et seq.* that the Horoney QCD is a quitclaim deed and that the Horoney QCD is an attempt to convey a limited fee for the purposes stated therein, not a conveyance of fee simple absolute.

## SECOND CLAIM FOR RELIEF Declaratory Judgment – After-Acquired Title (Against All Defendants)

- 54. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1 through 53 above as though fully set forth herein.
- 55. The Horoney QCD purports to grant a limited fee to the Crystal River Railway for the construction, operation, and maintenance of a railroad with a single or double track.
  - 56. The Horoney QCD is dated March 27, 1893.
- 57. Horoney obtained the patent from the United States for the real property underlying the Rock Creek Wagon Road as it traverses Section 9 on November 17, 1894.
- 58. Horoney by the Horoney QCD conveyed whatever present interest that he had in the property described in the deed, which interest was none because title to the property he sought to convey had not vested in Horoney at the time of the conveyance.
- 59. A quitclaim deed by its definition and by operation of law does not convey after-acquired title. C.R.S. § 38-30-113(d).
- 60. Because the Horoney QCD was a quitclaim deed, which cannot convey after-acquired title and Horoney had no title to convey as of March 27, 1893, the Crystal River Railway

Civil Action No. 20-cv-

**COMPLAINT** 

Page 12

Company did not acquire any interest in the property described in the Horoney QCD by

conveyance of that instrument.

61. Any interest obtained by the Crystal River Railway, or its successor the Crystal

River Railroad, in Section 9 could only be established through use pursuant to the attempted, but

ineffective, grant described in the Horoney QCD.

62. Any interest obtained by the Crystal River Railway, or its successor the Crystal

River Railroad, established by use in Section 9 has not been perfected or vested in the Crystal

River Railway or any successor in title to that entity.

63. The RCA's interest, if any, in the Dorais Way section of the Rock Creek Wagon

Road, as described in the Mid-Con QCD, was derived through a series of mesne conveyances that

at best originated from the Horoney QCD; or, as is the likely alternative, any interest that RCA has

in the Dorais Way section of the Rock Creek Wagon Road is derived from an unperfected and

undefined interest conveyed by a series of mesne conveyances derived from the Crystal River

Railroad by virtue of the CRR QCD.

64. Pitkin County is entitled to a declaration pursuant to Fed. R. Civ. P. 57 and C.R.S.

§§ 13-51-101, et seq. that the Horoney QCD did not convey any interest or title to the property

described therein because Horoney did not have title to the property at the time of the conveyance.

65. Pitkin County is entitled to a declaration pursuant to Fed. R. Civ. P. 57 and 28

U.S.C. §§ 2201, et seq. that any interest that the Crystal River Railway or the Crystal River

Railroad may have established by use has not been perfected or vested in any individual or entity.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-

COMPLAINT

Page 13

66. Pitkin County is entitled to a declaration that the interest conveyed by the Mid-Con

QCD, if any, could only be an interest, if any, that the Crystal River Railway or Crystal River

Railroad established through use of the railroad track through Section 9 from approximately 1893

through August 27, 1941.

67. Pitkin County is entitled to a declaration that use of the railroad track through

Section 9 by the Crystal River Railway and Crystal River Railroad, at best, resulted in the creation

of a nonexclusive, prescriptive easement right to maintain track and operate a railroad line through

Section 9.

THIRD CLAIM FOR RELIEF

Declaratory Judgment – Abandonment and Sovereign Immunity (Against All Defendants)

68. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1

through 67 above as though fully set forth herein.

69. Any interest that the Crystal River Railroad had in a right-of-way through Section

9 was abandoned, at the latest, in 1942 when the track was removed from the right-of-way and

nonuse of the right-of-way for the purpose of operating a railroad line began.

70. Since abandonment of actual use in 1942, the right-of-way through Section 9 has

not been used for that purpose.

71. In addition to nonuse, intent to abandon the railroad line through Section 9 can be

evidenced from the Crystal River Railroad's petition to for abandonment and the subsequent

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT

Page 14

Certificate of Abandonment issued by the Interstate Commerce Commissioner on September 22, 1941.

- 72. The Unites States became the owner of the property underlying the right-of-way through Section 9 on August 27, 1941.
- 73. Upon abandonment, any interest that the Crystal River Railroad had in Section 9 merged with and reverted to the owner of the right-of-way or the property underlying the right-of-way.
- 74. Because the Crystal River Railroad abandoned the right-of-way through Section 9, the Crystal River Railroad had no property interest to convey to Rich R. Thomson on June 11, 1947.
- 75. Because Rich R. Thomson had no interest in the right-of-way through Section 9, his heirs had no interest in Section 9 to convey to Mid-Con on January 19, 1956.
- 76. Because Mid-Con had no interest in the right-of-way through Section 9, it had no property interest to convey to the RCA on August 25, 2015.
- 77. After August 27, 1941, the ability to establish a private prescriptive right-of-way for access over and across the property owned by the United States in Section 9 was unavailable to property owners in the Crystal River Valley.
- 78. The Wild Rose Ranch Subdivision was reviewed and approved by Pitkin County on January 24, 1983 as evidenced by the Wild Rose Ranch Subdivision Plat recorded in the real property records of the Pitkin County Clerk and Recorder's Office at Reception No. 247681.

Civil Action No. 20-cv-

**COMPLAINT** 

Page 15

79. The individual members of the RCA and the RCA do not have private prescriptive

rights to access their property because there is no right to establish a private prescriptive easement

through hostile use against Pitkin County or the United States.

80. At all times prior to 1941 and since 1941, members of the public, including the

RCA and its individual members, have utilized and relied on a public road through Section 9 to

access their property and for recreation and travel through Section 9.

81. Pitkin County is entitled to a declaration pursuant to Fed. R. Civ. P. 57 and 28

U.S.C. §§ 2201, et seq. that the Crystal River Railroad abandoned any interest it had in the right-

of-way at the latest in 1942 and that nonuse has continued to the present day resulting in legal

abandonment of any interest in the right-of-way.

82. Pitkin County is entitled to declaration that, upon abandonment, any interest in the

right-of-way merged with and reverted to the property owner underlying the right-of-way.

83. Pitkin County is entitled to a declaration that, because the right-of-way was

abandoned, Mid-Con had no property interest to convey to the RCA.

84. Pitkin County is entitled to a declaration that the RCA and its individual members

do not have private prescriptive rights to a right-of-way through Section 9.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment/Quiet Title – Public Highway Pursuant to C.R.S. § 43-2-201(1)(e) and R.S. 2477 Public Road

(Against All Defendants)

85. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1

through 84 above as though fully set forth herein.

Civil Action No. 20-cv-

COMPLAINT

Page 16

86. The federal Quiet Title Act ("QTA") constitutes a limited waiver of the United

States' sovereign immunity in civil actions brought "to adjudicate a disputed title to real property

in which the United States claims an interest . . . . " 28 U.S.C. § 2409a(a).

87. Colorado Revised Statute, Section 43–2–201(1) (e), originally enacted in 1883,

provides that "[a]ll roads over the public domain, whether agricultural or mineral," are declared to

be public highways.

88. R.S. 2477 serves as an express dedication of a right of way for roads over public

domain lands, acceptance of which by the public results from use by those for whom it was

necessary or convenient.

89. The burden of proof necessary to establish a public highway pursuant C.R.S. § 43-

2-201(1)(e) and R.S. 2477 is essentially the same.

90. A public road on the east side of the Crystal River through Section 9 has existed

since at least 1885.

91. Members of the public, including members of the RCA, have used the Rock Creek

Wagon Road through Section 9 for travel, commerce, and recreation without interruption since at

least 1885 until August 28, 2019 when the RCA closed and locked a gate at approximately the

intersection of Redstone Boulevard – also historically part of the Rock Creek Wagon Road – and

the southerly terminus of Dorais Way.

92. The patent from the United States to Horoney is dated November 17, 1894.

Civil Action No. 20-cv-

**COMPLAINT** 

Page 17

93. Members of the public used the Rock Creek Wagon Road through Section 9 for

travel, commerce, and recreation prior to the Horney Property leaving the public domain on

November 17, 1894.

94. A road may be a public highway though it reaches but one property owner.

95. The United States reacquired the property underlying the Rock Creek Wagon Road

in Section 9 on August 27, 1941.

96. After August 27, 1941 and until at least August 28, 2019, members of the public,

including the RCA and its individual members, have utilized and relied on a public road through

Section 9 to access their property and for recreational and travel use through Section 9.

97. Pitkin County is entitled to a declaration pursuant to Fed R. Civ. P. 57 and 28 U.S.C.

2201, et seq. that a right-of-way for a public highway exists on the east side of the Crystal River

through Section 9 and that portion of the Rock Creek Wagon Road generally in the location of

Dorais way is a public highway open for public use, travel, and recreation.

98. Pursuant to 28 U.S.C. § 2409a(a), Pitkin County is entitled to a complete

adjudication of the rights and interests of all parties hereto with respect to the Rock Creek Wagon

Road and that portion of Dorais Way that traverses Section 9, specifically including a decree that

a public highway exists on the east side of the Crystal River through Section 9 and that portion of

the Rock Creek Wagon Road generally in the location of Dorais way is a public highway open for

public use, travel, and recreation.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-

**COMPLAINT** 

Page 18

99. Pitkin County is not seeking a declaration or adjudication of rights with respect to

the real property that was the subject of District Court, Pitkin County, Case No. 2003CV87 and

Colorado Court of Appeals, Case No. 2007CA1499.

FIFTH CLAIM FOR RELIEF

Declaratory Judgment/Quiet Title – Public Highway Pursuant to C.R.S. § 43-2-201(1)(c) (Against All Defendants)

100. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1

through 99 above as though fully set forth herein.

101. C.R.S. § 43–2–201(1)(c) provides that "[a]ll roads over private lands that have been

used adversely without interruption or objection on the part of the owners of such lands for twenty

consecutive years" are declared to be public highways.

102. Members of the public have used the Rock Creek Wagon Road through Section 9

for travel, commerce, and recreation without interruption since at least 1885 until August 28, 2019.

103. Members of the public have used the Rock Creek Wagon Road through Section 9

for travel, commerce, and recreation without interruption since at least 1885 until August 28, 2019

pursuant to a claim of right.

104. Members of the public have used the Rock Creek Wagon Road through Section 9

for travel, commerce, and recreation without interruption since at least November 17, 1894 until

August 28, 2019 in a manner that is adverse to the property interest of the underlying property

interest holder.

Civil Action No. 20-cv-

COMPLAINT

Page 19

105. Members of the public have used the Rock Creek Wagon Road through Section 9

for travel, commerce, and recreation without interruption since at least 1885 until August 28, 2019

with the actual or implied knowledge of the underlying property interest holder.

106. Pitkin County is entitled to a declaration pursuant to Fed. R. Civ. P. 57 and 28

U.S.C. §§ 2201, et seq. that a public highway exists on the east side of the Crystal River through

Section 9 and that portion of the Rock Creek Wagon Road generally in the location of Dorais way

is a public highway open for public use, travel, and recreation

107. Pursuant to 28 U.S.C. § 2409a(a), Pitkin County is entitled to a complete

adjudication of the rights and interests of all parties hereto with respect to the Rock Creek Wagon

Road and that portion of Dorais Way that traverses Section 9, specifically including a decree that

a public highway exists on the east side of the Crystal River through Section 9 and that portion of

the Rock Creek Wagon Road generally in the location of Dorais way is a public highway open for

public use, travel, and recreation.

108. Pitkin County is not seeking a declaration or adjudication of rights with respect to

the rea; property that was the subject of District Court, Pitkin County, Case No. 2003CV87 and

Colorado Court of Appeals, Case No. 2007CA1499.

SIXTH CLAIM FOR RELIEF

Trespass to Chattel/Civil Theft Pursuant to C.R.S. § 18-4-405

(Against the RCA)

109. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1

through 108 above as though fully set forth herein.

Civil Action No. 20-cv-**COMPLAINT** 

Page 20

110. On or about August 28, 2019, the RCA intentionally and unlawfully removed and

took signs and other property owned by Pitkin County in the vicinity of the intersection of Dorais

Way and Redstone Boulevard and, thereby, interfered with Pitkin County rights in its property.

As a result of the RCA's dispossession of property owned by Pitkin County, Pitkin 111.

County has been damaged in an amount to be proven at trial and for which Pitkin County is entitled

to compensation.

Additionally, pursuant to C.R.S. § 18-4-405, a property owner may maintain an 112.

action to recover all property obtained by theft and such property shall be restored to the owner.

113. The RCA has committed theft by intentionally and unlawfully removing and taking

signs and other property owned by Pitkin County in the vicinity of the intersection of Dorais Way

and Redstone Boulevard.

114. Pitkin County is entitled to recover three times the amount of actual damages

sustained as a result of such theft as well as its costs and attorney fees to the fullest extent permitted

by law.

SEVENTH CLAIM FOR RELIEF

Injunction (Against the RCA)

115. Plaintiff hereby incorporates by reference the allegations stated in Paragraphs 1

through 113 above as though fully set forth herein.

Pitkin County is entitled to a permanent injunction enjoining the RCA and any other 116.

third party acting on behalf or through the RCA from interfering with the public right to use that

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-

COMPLAINT

Page 21

portion of the Rock Creek Wagon Road located on the east side of the Crystal River in Section 9

along the general alignment of what is presently referred to as Dorais Way as a public highway.

117. Pitkin County is entitled to a preliminary injunction enjoining the RCA and its

members from interfering with the public's right to use that portion of the Rock Creek Wagon

Road located on the east side of the Crystal River in Section 9 along the general alignment of what

is presently referred to as Dorais Way as a public highway, and, in connection therewith, Plaintiff

asserts the following:

a. Pitkin County can establish a reasonable probability of success on the merits

of its claims set forth herein; and

b. There is a danger of real, immediate, irreparable, and ongoing injury to

Pitkin County and members of the public, which can only be eliminated

through issuance of an injunction against the RCA and its members; and

c. Pitkin County has no plain, speedy, and adequate remedy at law with respect

to the claims set forth herein; and

d. The balance of the equities in this action favors the issuance of injunctive

relief in favor of Pitkin County; and

e. The issuance of a preliminary injunction enjoining the RCA and its

members from interfering with Pitkin County's and the public's right to use

that portion of the Rock Creek Wagon Road located on the east side of the

Crystal River in Section 9 along the general alignment of what is presently

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT Page 22

referred to as Dorais Way as a public highway will preserve the *status quo* pending trial on the merits.

118. Pitkin County is entitled to the entry of a Preliminary Injunction and a Permanent Injunction as set forth above and a judgment awarding Plaintiff their reasonable attorney fees, expenses and court costs necessarily incurred in bringing this action to the fullest extent permitted by law.

### PAYER FOR RELIEF

**WHEREFORE**, Plaintiff the Board of County Commissioners of Pitkin County, Colorado respectfully requests that the Court enter judgment in its favor as follows:

- Declare that the Horoney QCD is a quitclaim deed and that the Horoney QCD is an attempt to convey a limited fee for the purposes stated therein, not a conveyance of fee simple absolute; and
- 2. Declare that the Horoney QCD did not convey any interest or title to the property described therein because Horoney did not have title to the property at the time of the conveyance; and
- 3. Declare that any interest that the Crystal River Railway or the Crystal River Railroad may have established by use has not been perfected or vested in any individual or entity; and
- 4. Declare that the interest conveyed by the Mid-Con QCD, if any, could only be an interest, if any, that the Crystal River Railway or Crystal River Railroad established

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT

Page 23

through use of the railroad track through Section 9 from approximately 1893 through August 27, 1941, after which the United States was the owner of the property underlying the right-of-way through Section 9; and

- 5. Declare that use of the railroad track through Section 9 by the Crystal River Railway and Crystal River Railroad, at best, resulted in the creation of a nonexclusive, prescriptive easement right to maintain track and operate a railroad line through Section 9; and
- 6. Declare that any interest the Crystal River Railroad had in a right-of-way through Section 9 was abandoned at the latest in 1942 and that nonuse has continued to the present day resulting in legal abandonment of any interest in the right-of-way; and
- 7. Declare that, because the right-of-way was abandoned, Mid-Con had no property interest to convey to the RCA; and
- 8. Declare that the RCA and its individual members do not have private prescriptive rights in the property owned by Pitkin County or the United States in Section 9; and
- 9. Declare that a public highway exists on the east side of the Crystal River through Section 9 and that portion of the Rock Creek Wagon Road generally in the location of Dorais way is a public highway open for public use, travel, and recreation; and
- 10. Enter a decree completely adjudicating the rights and interests of all parties hereto with respect to the Rock Creek Wagon Road and that portion of Dorais Way that traverses Section 9, specifically including a decree that a public highway exists on

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT

Page 24

the east side of the Crystal River through Section 9 and that portion of the Rock Creek Wagon Road generally in the location of Dorais Way is a public highway open for public use, travel, and recreation; and

- 11. Declare that a public highway exists on the east side of the Crystal River through Section 9 and that portion of the Rock Creek Wagon Road generally in the location of Dorais Way is a public highway open for public use, travel, and recreation; and
- 12. Enter monetary judgment in favor of Pitkin County and against the RCA and its members for the RCA's and its members' interference with and theft of property owned by Pitkin County, including monetary damages three times the amount of actual damages sustained as a result of such theft as well as its costs and attorney fees; and
- 13. Enter a preliminary and permanent injunction against Defendant Rock Creek Association, Inc. hereto enjoining Defendant from interfering with the public right to use that portion of the Rock Creek Wagon Road located on the east side of the Crystal River in Section 9 along the general alignment of what is presently referred to as Dorais Way as a public highway; and
- 14. Pitkin County is not seeking a declaration or adjudication of rights with respect to the real property that was the subject of District Court, Pitkin County, Case No. 2003CV87 and Colorado Court of Appeals, Case No. 2007CA1499; and
- 15. Grant such other relief as the Court deems just and proper.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 20-cv-COMPLAINT Page 25

Dated June 30, 2020.

Respectfully submitted,

PITKIN COUNTY ATTORNEY'S OFFICE

s/Richard Young Neiley III Richard Young Neiley III 530 East Main, Suite 301 Aspen, Colorado 81611 Telephone: (970) 920-5190

FAX: (970) 445-3471

Richard.Neiley@pitkincounty.com

Attorney for Plaintiff

RECEPTION#: 6243281;20-1709221/20115 tat Fit 201/2/40:590 PM plo Page Fit 44, R \$26.00 DF \$0.00 Janice K. Vos Caudill, Pitkin County, CO

## **EXHIBIT 1**

## **QUITCLAIM DEED**

THIS DEED is made this a stay of August, 2015, between MID-CONTINENT RESOURCES, INC., a Delaware corporation, whose legal address is 20600 Chagrin Blvd. #850 Cleveland, OH 44122, MID-CONTINENT MINERALS COPRORATION, a Delaware corporation whose legal address is 20600 Chagrin Blvd. #850 Cleveland, OH 44122 and MID-CONTINENT COAL & COKE COMPANY a Delaware corporation whose legal address is 20600 Chagrin Blvd. #850 Cleveland, OH 44122, collectively "Grantors," and ROCK CREEK ASSOCIATION, a Colorado nonprofit corporation, "Grantee," whose legal address is 111 Mountain Lion Drive, Redstone, Colorado 81623;

Grantors, for and in consideration of TEN DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby quitclaim to Grantee all their right, title, interest, and claim which Grantors have in and to the property, if any, together with improvements, if any, in the County of Pitkin, State of Colorado, described as follows:

A strip of land 100 feet in width being 50 feet in width on each side of the center line of the main track of the Crystal River Railroad Company as formerly located and constructed over and across the NW-1/4 SW-1/4 and the northern half of the SW-1/4 SW-1/4 of Section 9, Township 10 South, Range 88 West of the 6th Principal Meridian; said strip of land beginning at the northern boundary of the SW-1/4 of Section 9, Township 10 South, Range 88 west of the 6th Principal Meridian, and ending at the Northeast boundary of Redstone Boulevard, the strip of land being approximately 2000 feet in length and containing 4.59 acres, more or less.

also known by street address as: NA and assessor's schedule or parcel number: NA

To have and to hold the same, together will all appurtenances and privileges thereunto and all the estate, right, title, interest and claim whatsoever, of Grantors.

As part of its consideration, and as evidenced by its signature below, Grantee agrees to indemnify, defend and hold harmless Grantors, their officers, directors, shareholders and successors, whether in law or in equity, from any and all claims, demands, contingencies or liabilities, including taxes and assessments, arising from or regarding the property described in this Deed, whether such claims, demands, contingencies or liabilities, including taxes and assessments arose before, after or on the date of this Deed.

[signatures on following page]

MID-CONTINENT RESOURCES, INC., a Delaware corporation

RECEPTION#: 624328<sup>1:20-</sup>Y-01/22/25/2015<sup>ent</sup> at Fig27/2/40:559<sup>C</sup> PM, 3agoFf 44, Janice K. Vos Caudill, Pitkin County, CO MID-CONTINENT COAL & COKE COMPANY, a Delaware corporation By: Donald Joyce, Jr. Its: President STATE OF OHIO SS. County of Cuyahoga The foregoing instrument was acknowledged before me this August 25, 2015, by Donald Joyce, Jr. as President of Mid-Continent Coal & Coke Company, a Delaware corporation. Notary Public: Witness my hand and official se My commission expires ROCK CREEK ASSOCIATION, a Colorado nonprofit corporation By: EMERICK STATE OF (0) County of The foregoing instrument was acknowledged before me this August 19, 2015, by John Emerick of Rock Creek Association, a Colorado nonprofit corporation. as <u>President</u>

LIYIN L FREE

Notary Public State of Colorado

Notary ID 20074025496
My Commission Expires Jul 2, 2019

Notary Public: Defin

Witness my hand and official seal.

My commission expires: July 2, 2019.

On motions made and duly seconded the following resolution was unanimously adopted:

## RESOLUTION

## August 25, 2015

Be it Resolved that the Boards of Directors of the following companies; Mid-Continent Minerals Corporation, Mid-Continent Resources Corporation and Mid-Continent Coal and Coke Company do hereby approve the grant of a Quit Claim Deed to Rock Creek Association, a Colorado nonprofit corporation and do hereby appoint and designate the following officers of their respective companies to sign any and all necessary documents and deeds necessary to effectuate the granting of the quit claim deed:

- John Reeves Jr., President of Mid-Continent Resources, Inc.,
- o Harold Geiss, President Mid-Continent Minerals Corporation and,
- Donald Joyce, Jr., President of Mid-Continent Coal & Coke Company.

Thomas E. Gibbs, Secretary of Mid-Continent Resources Corporation and and Donald Joyce Jr., Secretary of Mid-Continent Minerals Corporation certify that the above is a true and correct copy of the resolution that was duly adopted at a meeting of the boards of directors of Mid-Continent Minerals Corporation, Mid-Continent Resources Corporation and Mid-Continent Coal & Coke Company held 97/August 25, 2015.

Signature of Secretary

8/25/15

Thomas E. Gibbs

Secretary of Mid-Continent Resources Corporation and Mid-Continent Coal & Coke Company

Donald Joyce, Jr.

Secretary of Mid-Continent Minerals Corporation

Casc	1.20	-CV-U
<b>EYHI</b>	RIT	2

Recorded at 1:05 Reception No. 103318

23 d THIS DEED, Made this

November. in the year of our Lord one thousand nine hundred and fifty-five

PEARL E. THOMSON

of the

County of Garfield

and State of Colorado, of the first part, and MID-CONTINENT COAL AND COKE COMPANY, A Corporation licensed to do XXXXX business in the XXXXXXX

MikState of Colorado, of the second part,

WITNESSETH, That the said part y of the first part, for and in consideration of the sum of Ten Dollars and other valuable considerations to the said part y of the first part in hand paid by the said part y of the second part, the receipt whereof is hereby confessed and acknowledged, haS remised, released, sold, conveyed and QUIT CLAIMED, and by these presents do es remise, release, sell, convey and QUIT CLAIM unto the said part y of the second part, Airis, successors and assigns, forever, all the right, title, interest, claim and demand which the said of the first part has in and to the following described lots or parcels of land County of Pitkin situate, lying and being in the Colorado, to-wit: A strip of land 100 feet in width being 50 feet in width on each side of the center line of the main track of the Crystal River Railroad Company as formerly located and construction over and across the  $SE\frac{1}{4}SW\frac{1}{4}$  of Section 4; the  $W\frac{1}{2}$  of Section 9, and the  $NW\frac{1}{4}NW\frac{1}{4}$  of Section 16, Tp. 10 S., R. 88 W. of the 6th P.M.



TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said part y of the first part, either in law or equity, to the only proper use, benefit and behoof of the said

part y of the second part, 108/ newsand assi	
IN WITNESS WHEREOF, The said part y	of the first-part ha S hereunto set her hand
and seal the day and year first above written.	Lewe & Thomson ISEAL
Signed, Sealed and Delivered in the Presence of	DEAL
	[SEAL
	[SEAL
	[SEAL
STATE OF COLORADO,	)
County of Garfield	SS.

The foregoing instrument was acknowledged before me this 230 day of November

D. 01.955, by Pearl E. Thomson.

ly commission expires

COURTS,

, 19 . Witness my hand and official seal.

May Commission expires July 8, 1953

me of person as executor, a ich officer or officers, as the

#94909

506 T .- P.-QUIT-CLAIM DEED-Out West Printing and Stationery Co., Colorado Springs, Colo. C1185

rersuu-byvirt	THE CRYST	, between AL RIVER RAILROAL of the State of C			
		x of the first part, and			
the County of Kinzik Witnesseth, The One	ield and State of Colorado, at the said part y of Dollar (\$1,00)	RICH R. THOMSON of the second parts the first part, for and in a and other valuabl	consideration of the sum o	f	DXXXXXS
lged, ha th remised not the said part Y of the first prounty of Pitkin and St	, released, sold, conveyed of the second part,	paid by the said partyd and Quit-Claimed, and hisheirs and assione following described	d by these presents do the gas, forever, all the right, real property	lremise, release, sell, title, interest, claim an situat	convey and Quit-Claim d demand which the said e, lying and being in the
wheresoever s	ituate in the Co	therein now owne ounty of Pitkin a s or rights to us	nd State of Color	rado, together	<b>;</b>
			`		
			<del>.</del>		
	er.				
					,
•	+ **				
pertaining, and all the per use, benefit and b In Witness Whe xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	estate, right, title, interpetate, right, title, interpetation of the said party. ed its corporatorate seal to be example and the said party.	A-C-	of the said partyof t hisheirs and as kereuntwisetxxxxxxx unto subscribed t d, attested by it e written.	the first part, either in lasigns, forever.  XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Exthexday xand xweek first sident, and its le day and year  EROAD COMPANY  esident.  Seal
pertaining, and all the oper use, benefit and be in Witness When we caus corp	estate, right, title, interpetate, right, title, interpetation of the said party. ed its corporatorate seal to be example and the said party.	rest and claim whatsoever, yof the second part, of the first part hath e name to be here e hereunto affixe were xxx first abov	of the said partyof to hisheirs and as heirs and as hereway wetxxxxxxxx unto subscribed he attested by it to written.	the first part, either in lasigns, forever.  XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and its are day and year  EROAD COMPANY  esident.  Seal
per use, benefit and he in Witness When caus corp corp that is a corp to the corp. The	estate, right, title, interpretate of the said party. ed its corporate orate seal to be exercised. Secretar Secretar Secretar OF COLO County of Denver	rest and claim whatsoever,  yof the second part,  of the first part hath e name to be here e hereunto affixe exercises abov  y  RADO, r }ss.	of the said part	the first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  EXTREMENTAL AND SEAL SEAL SEAL SEAL SEAL
retaining, and all the per use, benefit and he in Witness When caus corp in the second corp in the second corp. The corp is the corp. Th	estate, right, title, interpretate of the said part	rest and claim whatsoever, yof the second part, of the first part hath e name to be here e hereunto affixe www.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	of the said partyof to the said partyof to his	the first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and are sident, and its are day and year  EROAD COMPANY  Seal  Seal  Seal  Seal  Seal
ertaining, and all the per use, benefit and has been use, benefit and has been used to be corporated to be c	estate, right, title, interpeloof of the said part	rest and claim whatsoever, yof the second part, of the first part hath e name to be here e hereunto affixe were to affixe the abov  y.  RADO, r sixx The f 19.47, by hand and official seal.	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and its sident, and its are day and year  EROAD COMPANY  Seall
ertaining, and all the per use, benefit and has been benefit and has been been been been been been been bee	estate, right, title, interpeloof of the said part	rest and claim whatsoever, yof the second part, of the first part hath e name to be here e hereunto affixe were to affixe the abov  y.  RADO, r sixx The f	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and are sident, and its are day and year  EROAD COMPANY  esident.  Seall  ethis 11th  and  apany, a Corporat
retaining, and all the per use, benefit and he in Witness When caus corp in the second co	estate, right, title, interpetation of the said part	rest and claim whatsoever, yof the second part, of the first part hath e name to be here e hereunto affixe were to affixe the abov  y.  RADO, r sixx The f 19.47, by hand and official seal.	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractor and its sident, and its he day and year EROAD COMPANY Scale  Scale  Scale  this llth and hpany, a Corporat
City and Consideratio STATE OF COLOR	estate, right, title, interpelor of the said part	RADO, rxixx The first seal. don expires April 26,	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and its sident, and its are day and year scale.  EROAD COMPANY scale.  Scale
City and Consideratio County of Pitk	estate, right, title, interpelon of the said part	rest and claim whatsoever.  yof the second part of the first part hath e name to be here e hereunto affixe were to affixe were to be here e hereunto affixe abov  y.  RADO, ss. The f  19.47, by hand and official seal. ion expires April 26,  O. No Revenue Sta	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  EXMENDED AND SEARCH SEAR
City and Consideratio  County of Pitk	estate, right, title, interpeloof of the said part	rest and claim whatsoever.  yof the second part of the first part hath e name to be here e hereunto affixe werexex first abov  y.  RADO, r sinx The f  19.47, by hand and official seal. ion expires April 26,  O. No Revenue Sta	of the said partyof the his	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  EXEMPTED AND COMPANY  ESIGENT.  Seall  State  Seall  State  Seall  State  Seall  State  Seall
City and Consideratio  County of Pitk	estate, right, title, interpeloof of the said part	RADO, ss. The formula and official seal. ion expires April 26, o. No Revenue Sta	of the said part	che first part, either in lasigns, forever.  Example forever.  Example forever.  Example forever.  Example fore fore fore fore fore fore fore for	aw or equity, to the only  Extractory and are sident, and its are day and year  EROAD COMPANY  Sident. Seal  Seal  State  The sident of the said instrument of the said instrument of
City and Consideratio County of Pitk	estate, right, title, interpelon of the said part.  ereof, The said part. end its corporat orate seal to be exampled and seal to be end of the seal to be end of the seal to be end of the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be the permethic day in persent writing as the seal to be end of the seal to be the permethic day in persent writing as the seal to be end of the sea	RADO, ss.  The f  The first part hath the name to be here the hereunto affixe the here	of the said part	che first part, either in lasigns, forever.  EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	aw or equity, to the only  Extractory and are sident, and its are day and year  EROAD COMPANY  Sident. Seal  Seal  State  The sident of the said instrument of the said instrument of

Whig Appel Mode this 27	day of Mules in the year of our Lord one
thousand eight hundred and ninety Earle	RETWEEN
thousand eight hundred and minery 222222	7
of the County of Dithin	and State of Colorado, of the first part, and
The Oristal River Bailway Company	a Carparation authorized and existing under
and by virtue of the laws of the	
of the County of and State of Colore	ado, of the second part,
	n consideration of the sum of
Swohundredand fifty and 20100	Dollars,
had remised, released, sold, conveyed and QUIT-CLAIMED, and by the said party of the second party And QUELLASTY hours and assign	the second part, the receipt whereof is hereby confessed and acknowledged, less presents do Aremise, release, sell, convey and QUIT-CLAIM unto the ns forever, all the right, title, interest, claim and demand which the said situate, lying and being in the County of
and State of Colorado, to wit:	
for the Construction, operation and maintenance	of a rail road with dingle or double track and
for all side backs, platforms, Otations, water	tanks, or other accessories desired by the party
	vand maintenauce of such road, a strip of
	e particularly described as follows own.
	Vine of the Raid Orystal River Railway
	ding white following field notes: - Beginning
at Station 182 +88, on the M. line of the M.W.	
S.626 W. 948 feet to Station 783+82.8, Thence	rof said N.W. Mof S.W. 14, and running thence
0.0 26 W. 948 feet to Station 180+8200, Mence	ma 10 degree curve to me regar 10 1 feet, to alling
784+89.8, Thence S. 17°08'W. 186.2 feet to estatu 455 feet to station 791+31; Thence \$2.8°22'6.14	
10 Speer to encum 1917-01; miner to 20 25 250.12	tin 196+12.6; thence 8.12°04/0.180.6 feet to
Station 704+03.2: thence on a 10 dance Pu	we to the right 230.5 feet to Station 800+23.
thenced 350 y W. 124.4 feet to Station 801+40	P. I: there on a 12 dearn curve to the left 220
Let to station 803+71.9: thence of 732 W.51	9.4 feet to Station 808+94.3; thenee on a lode of
Curreto the right 322.2 feet to Station 812+19	and the alphanical and all the design
+27 on the west line of the NW 14 of the MUSIA	of Section 16 and 193 feet South of the M.W.
+27 on the west line of the NW 14 of the MUSIA	of Section 16 and 193 feet South of the M.W.
+27 on the west line of the NW 14 of the MUSIA	of Section 16 and 193 feet South of the M.W.
+27 on the west line of the 10 W4 of the M.W.M. Comer of said M.W. 14 of the M.W. 14 and Containing	of Section 16 and 193 feet South of the 10.W.
TO HAVE AND TO HOLD THE SAME, together with all and sing the renture appertaining, and all the estate, right, title, interest and claim to the only proper use, henefit and behoof of the said part A. of the second	sular the appurtenances and privileges thereunto belonging or in anywise in whatsoever, of the said party of the first part, either in law or equity, and party of Milles of the first part, either in law or equity, and party of Milles of the first part.
TO HAVE AND TO HOLD THE SAME, together with all and sing the renture appertaining, and all the estate, right, title, interest and claim to the only proper use, henefit and behoof of the said part A. of the second	Following 16 and 193 feet South of the 10.00.  Sular the appurtenances and privileges thereunto belonging or in anywise in whatsoever, of the said party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity.
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part 4. of the second IN WITNESS WHEREOF, the said part 4. of the first part here.	in whatsoever, of the said party of the first part, either in law or equity, and party of the first part and assigns forever.  The hereunto set had and seal the day and
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF	For Section 16 and 193 feet South of the 10.10.  Soular the appurtenances and privileges thereunto belonging or in anywise on whatsoever, of the said party of the first part, either in law or equity, and party of the said assigns forever.  As hereunto set here and assigns forever.  As hereunto set hand and seal the day and
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.	Selection 16 and 193 feet South of the 10.10.  Soular the appurtenances and privileges thereunto belonging or in anywise in whatsoever, of the said party of the first part, either in law or equity, and party sufficient and assigns forever.  And hereunto set here hand and seal the day and  Of Hereunto set seed to see hand and seal the day and
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF	Sular the appurtenances and privileges thereunto belonging or in anywise in whatsoever, of the said party of the first part, either in law or equity, and party successful here and assigns forever.  And hereunto set the said party of the first part, either in law or equity, and party successful hand and seal the day and hereunto set the said party successful hand and seal the day and seal the day and seal the day and seal the said party successful hand and seal the day and seal the said party successful hand and seal the day and seal the said party successful hand seal the said party successf
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF	Selection 16 and 193 feet South of the 10.10.  Soular the appurtenances and privileges thereunto belonging or in anywise in whatsoever, of the said party of the first part, either in law or equity, and party sufficient and assigns forever.  And hereunto set here hand and seal the day and  Of Hereunto set seed to see hand and seal the day and
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF	Total Section 16 and 193 feet South of the 10.00.  Soular the appurtenances and privileges thereunto belonging or in anywise on whatsoever, of the said party of the first part, either in law or equity, and party of Meeting and assigns forever.  All hereunto set Hest hand and seal the day and  SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, County of Millian.	Seatta autany Public
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part hyear first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF	Seatta autany Public
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part he year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, and the State aforesaid, do hereby certify that the personally known to me as the person we are the pe	SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part he year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  County of Sealed County, and the State aforesaid, do hereby certify that personally known to me as the person we this day in person, and acknowledged that	SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part he year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  County of Sounds, and the State aforesaid, do hereby certify that personally known to me as the person we this day in person, and acknowledged that writing as held, free and voluntary and the season of the season with the said person, and acknowledged that the said in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held.	SEAL  SEAL  Section 16 and 193 feet South of the 10.10.  Section 16 and 193 feet South of the 10.10.  Section whatsoever, of the said party of the first part, either in law or equity, and party and assigns forever.  And hereunto set 144 hand and seal the day and  SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part he year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  County of Sounds, and the State aforesaid, do hereby certify that personally known to me as the person we this day in person, and acknowledged that writing as held, free and voluntary and the season of the season with the said person, and acknowledged that the said in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held, free and voluntary and the said say in person, and acknowledged that writing as held.	SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as the person while say in person, and acknowledged the writing as the person while say in person, and acknowledged the writing as the person where the said part of the first part in say the said county and the State aforesaid, do hereby certify that writing as the person where say in person, and acknowledged the writing as the person where say in this day in person, and acknowledged the writing as the person where the said part of the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second part of the second part of the second part of the second part of the said part of the second part of the said part of the second part of the second part of the said part of	Patta references and privileges thereunto belonging or in anywise my whatsoever, of the said party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said assigns forever.  SEAL SEAL SEAL SEAL SEAL SEAL SEAL SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and clair to the only proper use, benefit and behoof of the said part of the first part he year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as 1212 free and voluntary and this day in person, and acknowledged that writing as 1212 free and voluntary and the Isaac under my hand and 1212 A. D. 1892	Patta references and privileges thereunto belonging or in anywise my whatsoever, of the said party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said assigns forever.  BEALL  SEALL  SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as the person while say in person, and acknowledged the writing as the person while say in person, and acknowledged the writing as the person where the said part of the first part in say the said county and the State aforesaid, do hereby certify that writing as the person where say in person, and acknowledged the writing as the person where say in this day in person, and acknowledged the writing as the person where the said part of the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second part of the second part of the second part of the second part of the said part of the second part of the said part of the second part of the second part of the said part of	Patta references and privileges thereunto belonging or in anywise my whatsoever, of the said party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said assigns forever.  SEAL SEAL SEAL SEAL SEAL SEAL SEAL SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that this day in person, and acknowledged the Given under my hand and Little A. D. 1893  My Commission expires Office 1896	Patta references and privileges thereunto belonging or in anywise my whatsoever, of the said party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said assigns forever.  SEAL SEAL SEAL SEAL SEAL SEAL SEAL SEAL
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as the person while say in person, and acknowledged the writing as the person while say in person, and acknowledged the writing as the person where the said part of the first part in say the said county and the State aforesaid, do hereby certify that writing as the person where say in person, and acknowledged the writing as the person where say in this day in person, and acknowledged the writing as the person where the said part of the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second part of the second part of the second part of the second part of the said part of the second part of the said part of the second part of the second part of the said part of	Patta references and privileges thereunto belonging or in anywise my whatsoever, of the said party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said party of the first part, either in law or equity, and party of the said assigns forever.  And hereunto set hand and seal the day and seal the seal the seal the seal of the seal of the seal of the seal of the said instrument of ot, for the uses and purposes therein set delivered the said instrument of ot, for the uses and purposes therein set forth.  Publicanty Stables.  Publicanty Stables.
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as the person while say in person, and acknowledged the writing as the person while say in person, and acknowledged the writing as the person where the said part of the first part in say the said county and the State aforesaid, do hereby certify that writing as the person where say in person, and acknowledged the writing as the person where say in this day in person, and acknowledged the writing as the person where the said part of the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second part of the second part of the second part of the second part of the said part of the second part of the said part of the second part of the second part of the said part of	Catta Contest Subscribed to the annexed Deed, appeared before me to signed, sealed and delivered the said instrument of the said particular subscribed and delivered the said instrument of the said particular subscribed and delivered the said instrument of the said instrument of the said instrument of the said instrument of the said this subscribed subscribed to the said instrument of the said this subscribed to the said instrument of the said this subscribed subscribed to the said instrument of the said this subscribed subscribed to the said instrument of the said this subscribed subscribed to the subscribed to the said instrument of the said this subscribed subscribed to the subscribed to the said instrument of the said this subscribed subscribed subscribed subscribed to the subscribed to the said instrument of the subscribed subscrib
TO HAVE AND TO HOLD THE SAME, together with all and sing thereunto appertaining, and all the estate, right, title, interest and claim to the only proper use, benefit and behoof of the said part of the first part in WITNESS WHEREOF, the said part of the first part in year first above written.  SIGNED, SEALED AND DELIVERED IN PRESENCE OF  STATE OF COLORADO, ss.  County of the said county, and the State aforesaid, do hereby certify that in and for said County, and the State aforesaid, do hereby certify that writing as the person while say in person, and acknowledged the writing as the person while say in person, and acknowledged the writing as the person where the said part of the first part in say the said county and the State aforesaid, do hereby certify that writing as the person where say in person, and acknowledged the writing as the person where say in this day in person, and acknowledged the writing as the person where the said part of the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second way in person, and acknowledged the writing as the person within the said part of the second part of the second part of the second part of the second part of the said part of the second part of the said part of the second part of the second part of the said part of	Seat Signed Subscribed to the annexed Deed, appeared before me to signed and purposes therein set forth.  Signed Signed Subscribed to the annexed Deed, appeared before me to signed purposes therein set forth.  Signed Signed States Signed and delivered the said instrument of the first further set forth.  Signed Signe

## THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, Greeting:

Ute Derris CERTIFICATE No. 1184

ado

th

Manereas A. 26. Horoney of Pitkin County Colorado

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Ilenwood Springs Colorado whereby it appears that full payment has been made by the said A. Ho Toroney

according to the provisions of the

Let of Congress of the 24th of April, 1820, epittled "An Act making further provision for the sale of the Bublic Sands," and the acts supplemental theyeto, for the West half of the South West quarter and the South West quarter of Section nine and the North West quarter of the Worth West quarter of Section sixteen in Hownship ten South of Range beighty eight West of the Dirth Principal Morridian in Colorado, containing one hundred and sixty acres.

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said A. H. Horoney

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case, made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT unto the said A. Ho voney

and to his heirs, the said Fract above described: TO HAVE AND TO HOLD the same, together with all the rights, princileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said A. Horoney

and to Ne's heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or tode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof I. Drover Cleveland

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the Deventeenth day of November in the year of our Lord one thousand eight hundred and ninety four and of the Independence of the United States the one hundred and nineteenth

By the President: Grover bleveland

284 M. ME Kean, Secretary. L. Z. E. Lamar, Recorder of the General Land Office.

SEAL.

240

INTERSTATE COMMERCE COMMISSION REPORTS

## FINANCE DOCKET No. 13356 CRYSTAL RIVER RAILROAD COMPANY ET AL. ABANDONMENT

Submitted September 12, 1941. Decided September 22, 1941

Certificate issued permitting (1) abandonment, as to interstate and foreign commerce, by the Crystal River Railroad Company and the Crystal River & San Juan Railroad Company of lines of railroad, and (2) abandonment of operation of the Crystal River Railroad Company by the Crystal River & San Juan Railroad Company, in Garfield, Gunnison, and Pitkin Counties, Colo.

Fred Farrar, Walter W. Blood, and Ezra Brainerd, Jr., for applicants.

#### REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

The Crystal River Railroad Company and The Crystal River and San Juan Railroad Company, hereinafter sometimes referred to as the Crystal River and the San Juan, respectively, or collectively as the line, on June 23, 1941, jointly applied for permission (a) to the former to abandon its line of railroad extending from Carbondale south to Placita, approximately 20.66 miles, and (b) to the latter (1) to abandon operation of the line of the former, and (2) to abandon its line of railroad extending from Placita south to Marble, approximately 7.33 miles, all in Garfield, Gunnison, and Pitkin Counties, Colo. No representations have been made by any State authority, and no objection to granting the application has been presented.

The railroad of the Crystal River between Carbondale and Avalanche was purchased in 1898, and that part into Placita was constructed several years later. The track is laid with 57-, 61-, and 75-pound rail with a maximum curvature and grade of 20° and 2.5 percent, respectively. Its condition is fair to poor. The line of the San Juan was constructed about 1906 mainly to serve stone quarries at Marble. The track is laid with 75- and 85-pound rail and is in a fair state of maintenance. The estimated net salvage value of the recoverable property of each road, exclusive of right-of-way land, is about \$27,417 and \$15,000, respectively. The latter estimate

includes certain units of equipment. No value has been shown for the real estate owned by either, although the Crystal River, which owns in fee only 12.13 miles of its right-of-way, the balance being used under an easement, has a definite though undisclosed value for highway purposes.

The stations situated along the line, the populations at each (according to the 1940 census and estimates made on the ground), and the distances by highway to the nearest other railroad are Carbondale, 437, 0; Redstone, 12, 17; Placita, 20, 20; and Marble, 240, 27. Redstone and Placita are nonagency stations. The station at Carbondale is used jointly with the Denver & Rio Grande Western Railroad. The line serves practically no population outside the stations named. Train service consists of a mixed train operating three round trips weekly between Carbondale and Marble.

An earth-surfaced State highway parallels the line for its entire length. There is no common-carrier bus or truck service available at any of the stations, but certain truck operators maintain a "call-and-demand" service.

The Crystal River was originally built by a predecessor of the Colorado Fuel & Iron Corporation, which now owns all the capital stock except directors' qualifying shares. The purpose of the construction was to serve coal-mining and coking operations of the parent company. Its roadway property has been leased to and operated by the San Juan since 1922. The lease is now on a year-to-year basis at an annual rental of \$1,500. The San Juan was built by a predecessor of the Yule Colorado Marble Company, which latter now owns all the capital stock except directors' qualifying shares. The line was built to serve marble quarries and mills of the parent company at Marble. The principal industry for which each road was built has since been abandoned, and the small volume of traffic remaining, consisting principally of outgoing shipments of sheep and lambs, is insufficient to pay the costs of operations. During 1936-40 the San Juan's losses have averaged \$14,243 annually, while the rental received by the Crystal River has been barely sufficient to pay the taxes on the property.

It is apparent that the territory served has no further need for the lines of railroad involved herein. Abandonment of these lines will not cause serious inconvenience to the public, while continued operation would impose an undue burden upon the applicants and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment, as to interstate and foreign commerce, by The Crystal River Railroad Company and The Crystal River and San Juan Railroad Company of their respective lines of railroad in

.....17

Case 1:20-cv-01930-MEH Document 1-6 Filed 07/01/20 USDC Colorado Page 2 of 2

Garfield, Gunnison, and Pitkin Counties, Colo., and abandonment of the operation by said Crystal River and San Juan Railroad Company of the properties of The Crystal River Railroad Company, as described herein. An appropriate certificate will be issued, effective from and after 15 days from its date, in which suitable provisions will be made for the revocation of concurrences and powers of attorney and for the cancelation of tariffs applicable to interstate and foreign commerce.

COMMISSIONER PORTER did not participate in the disposition of this proceeding.

249 I. C. C.

## FINANCE DOCKET No. 13365

## ATLANTIC COAST LINE RAILROAD COMPANY ABANDONMENT

Submitted September 12, 1941. Decided September 23, 1941

Certificate issued permitting abandonment by the Atlantic Coast Line Rail Company of part of a branch line of railroad in Lee County, S. C.

R. B. Gwathmey for applicant.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

The Atlantic Coast Line Railroad Company applied on June 1941, for permission to abandon the part of a branch line of rail extending northwest from Bishopville to Lucknow, approxima 7.1 miles, in Lee County, S. C. No representations have been n by State authorities, and no objection to granting the application been presented.

The railroad proposed to be abandoned is part of the application branch continuing southeast from Bishopville to a system connec at Elliott, S. C. It was built by a previous owner in 1890-91. reasons assigned for the proposal to abandon the segment are tha small volume of traffic handled thereover has been insufficient to the expenses of operation and that there is no prospect of fi development in the territory tributary to the line.

The total population of this territory is estimated at 400. principal industry is farming, and the farmers are dependent upon railroad only to the extent of an occasional carload of fertilizer ing the growing season. Most of the fertilizer is handled by ti from Bishopville and adjacent points, although the territory has unpaved State and county roads. With the exception of these tr the territory has no motor-carrier service.

By highway two nonagency stations called Thursa and Collie and 7 miles, respectively, from Bishopville. The stations are m sidings used for unloading fertilizer, and there are no residen either point. Lucknow, about 8.5 miles by highway from Bis ville, is a small unincorporated rural community having a po tion estimated not to exceed 50.

249 I. C. C.

Case 1:20-cv-01930-MEH Document 1-8 Filed 07/01/20 USDC Colorado Page 1 of 2 Reception #6 **EXHIBIT 8** 

# MAPOF'COUNTYROAD From North Line of Pitkin County up Rock Creek

or Crystal River connecting with Band M Grade.

•	G f	F e	E	d	D	c	C	7	В	a	A						
				1.4								F	Meanders of				
			4 40 A	3.							1		Posts Courses Char	Chs Posts Cour	ses Chalka	Posts Courses Ch.*Li	ik!
				Het Spring													
			80 A	Slatter BOA	1												
	Sec. 6.	Sec. 5.	Wy.c	Sec. 4.		Sec. 3.		Sec. 2.		Sec. 1.	· y						-
			W. Carlotte	D.M. Durant													
			160	100 - Wyc 33.06	N 4 20.005 -												
			Se un 13	W.c.33,06 W.													
			THE PERSON NAMED IN	1 3	30'E						· · Y	-					
			2:11	M.E.Giffs 160A													
			The leaves of the last of the						21198								-
	. Sec. 7.	. Sec. 8	- Janua	Sec. 9.		Sec.10.		Sec. II.		Sec. 12.	· x						-
			William I	1													
		. J60A	Morony furth	A log													
		1	State of State of	1/20/2								-					
		10000	E 1.978 VE 1.627.0	yw.		4:38.7					· X		-				
	s.c.	Sanitali, May	160A														
	र व	22.40 S ALOOE	(1)									-					
	68.04 Sec 182	Sec. 17.	- ( K	Sec.16.		Sec.15.		Sec. 14.		Sec. 13.	·w						
	Heloen	Manager	- fear fees &														
	. 160 A	8	2000														
	- 2" 77 541	200															
	twis	sax sit in	1.67W								W						
	. 160A	Jeaning Herry Dridge															
	2	1608							30								
	Sec.19.	. Sec. 20	C 20.00W	Sec. 21.		Sec. 22.		Sec.23.		Sec.24.	· v						
		The state of the s															
		160 A 160 A															
		8 00											•				-
-0'		WE TO 15 5 000 8 W.C. 35. 64W									· V						
	7631	2 0 mm 60	A														
		160 A															
	Sec.30.	Secreta 943N430	OOOW	Sec. 28.		Sec. 27.		Sec. 26.		Sec. 25.	·u						
		w Kline's House															
	160 A 1994	160A			71. 20.30												-
	The Contract of the Contract o																
											·U						1
	Trail of the state	We14 5.3									9						-
	1604	160A \					1				. 9						
	Sec. 31.	Sec.32.		Sec.33.		Sec. 34.		Sec. 35.		Sec. 36.	·t						
		4															1
	. 160A	160 A	R.				47.										
	The state of the s	1 E	20								eridia						
	n Va 14.80		製P 目標	sipe con	Q i	g	$\dot{R}$	r	Ś		Tue	-		1	. "		
ys Des	ignated By Whom Surveyed	Date of Contract Ame		when Surveyed				, , , , , , , , , , , , , , , , , , ,	10 3 0	Scale 40 Chains to a	n Inch.						
-	lines	M.	ount of Surveys Chs Lks	Januar Gureyat				The above May the Principal notes of the survey	of Journs	hep. 1.0 10	South of	Rang	ge N.O SS He	st of the			
		Nov. 23" 1889 12-	-10-13	pril 27 May 2	7890		-	notes of the surve	thereof o	n file in this	Hice which	have	leg conformable	nd approve	,		
		No 761			1902	136		CP C	0	011.	Ens		,	gginiea			
		THE REAL PROPERTY.						Surveyor ?	eneral's C	ffice,	atthen	refo	Lur. Ge	,			

### **EXHIBIT 11**

# **Rock Creek Association**

**Date:** August 28, 2019

**To**: Pitkin County Board of County Commissioners,

Pitkin County Open Space and Trails Board of Directors

From: Board of Directors, Rock Creek Association, LLC

# **RE:** Notice of Permanent Closure of Dorais Way, Redstone, to Public Access

This Notice, effective as of the date referenced above, is pursuant to the following circumstances:

**Whereas**, the Rock Creek Association, LLC ("RCA") is a nonprofit Colorado corporation established to own common real property and to maintain the roadway known as Dorais Way, which commences at Redstone Blvd. and proceeds northward nearly to Filoha Meadows, and

**Whereas**, the membership of the RCA consists of the twelve (12) landowners/homeowners having property access via Dorais Way, and

**Whereas**, the RCA purchased from Mid-Continent Companies the 100'-wide strip of land comprising the first 0.4 miles of Dorais Way from Redstone Blvd. northward, and further obtained a survey of the property and submitted the deed to Pitkin County including a plat map, both of which have been duly recorded by the County, and

**Whereas**, the RCA possesses fee simple title to this section of roadway, and is liable for the safety of those who use it, and is responsible for its maintenance and upkeep, and

**Whereas**, RCA member homeowners whose properties abut Dorais Way have experienced privacy violations, intrusion, vandalism, littering and the deposit of human and animal waste by members of the public,

**Then**, the RCA exercises its prerogative as owner of this private roadway property to permanently close it to public use.

\* \* \*

The RCA recognizes that Pitkin County has erroneously deemed this parcel of land a public right-of-way in the past and, as such, indicated to the public that Filoha Meadows could be accessed via Dorais Way. That was never the case. Fortunately, the timing of this closure coincides with Pitkin County's announced acquisition of property at the north end of Dorais Way, which will serve as public access to Filoha Meadows.

# **Rock Creek Association**

Further, the RCA acknowledges Pitkin County's history of vehicular access to Dorais Way for official County business and will continue to grant the County that access as needed. Gate code to allow access can be obtained by contacting one of the Directors of the RCA.

Yours sincerely,

Board of Directors, Rock Creek Association:

By: 1em Rhom	M	
Terry R. Knapp, Director & Acting co-President	700 Dorais Way	970-963-5877
Phil Youngman, Director & Acting co-President	900 Dorais Way	970-963-5512
B. J. Blocker, Director	Mountain Lion Drive	970-963-0322
Mary Dorais, Director	511 Dorais Way	970-963-3862
Todd Nickoley, Director	531 Dorais Way	970-510-7159

### **EXHIBIT 12**

August 28, 2019

Dear Friends and Neighbors:

The Rock Creek Association, LLC (RCA), consisting of landowners served by Dorais Way from its origin at Redstone Blvd, wishes to inform you that Dorais Way is now closed to all public access, including vehicle, pedestrian and bicycle traffic. This closure was necessitated by the following circumstances:

The RCA has purchased the segment of Dorais Way from Redstone Blvd. north to the pre-existing private segments of the roadway. RCA homeowners now collectively bear liability for this property, which involves substantial risk due to traffic on the road and its proximity to the Crystal River. Proximity to the River seems to invite unauthorized and often quite reckless access to the water's edge, which presents an unacceptable liability risk to the RCA membership. Moreover, member homeowners of the RCA have experienced not only frequent unauthorized vehicular traffic, but incidents of vandalism and littering of their properties with trash as well as human and animal waste. These circumstances require the permanent closure of Dorais Way to public access.

As you may know, the Redstone Campground near the Redstone Blvd. entry of Dorais Way brings visitors from all over the country, many of whom will not appreciate the dangers of rapidly moving water. Because the southern segment of Dorais Way cannot be monitored 24/7, the RCA has voted unanimously to place vehicle and pedestrian gates at the Redstone Blvd. entrance to Dorais Way and to post signage indicating that the road is private and that trespassing is prohibited. The RCA recognizes that friends and neighbors in the Redstone community use Dorais Way occasionally for pleasant walks or to visit residents who live along Dorais Way. This type of pedestrian access may continue if an RCA member will provide access and take responsibility for you as a guest.

Members of the Dorais Way community thank you for your understanding of our concerns and for your observance of this closure.

Sincerely,

The Board of Directors of the Rock Creek Association, LLC

JS 44 (Rev. 09/19)

District of Colorado

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil d	ocket sheet. (SEE INSTRUC	TIONS ON NEXT TAGE C	n misro	KWI.)					
I. (a) PLAINTIFFS				DEFENDANTS	S				
BOARD OF COUNTY CO		THE COUNTY OF		ROCK CREEK A ALL UNKNOWN			TES FORES	T SER	RVICE;
<b>(b)</b> County of Residence of (E.	of First Listed Plaintiff FAXCEPT IN U.S. PLAINTIFF CA		County of Residence of First Listed Defendant Pitkin  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				OF		
(c) Attorneys (Firm Name, John M. Ely, Laura C. Ma Pitkin County Attorney's CO 81611 970.920.5190	akar, Richard Y. Neile Office, 530 E. Main St	y III	pen,	Attorneys (If Known Ryan M. Jarvis, S 932 Cooper Aven Attorney's Office	Steven M. E nue Glenwo				
II. BASIS OF JURISDI	ICTION (Place an "X" in C	One Box Only)		TIZENSHIP OF I		AL PARTIES		-	
☐ 1 U.S. Government Plaintiff	☐ 3 Federal Question (U.S. Government)	Not a Party)			PTF DEF	Incorporated or Pr		or Defenda PTF □ 4	DEF
■ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizensh	ip of Parties in Item III)	Citize	en of Another State	<b>]</b> 2	Incorporated and I of Business In A		<b>5</b>	□ 5
				en or Subject of a freign Country	3 3 3	Foreign Nation		□ 6	□ 6
IV. NATURE OF SUIT	-	•	I E			here for: Nature			
CONTRACT	PERSONAL INJURY	ORTS PERSONAL INJUR		ORFEITURE/PENALTY		NKRUPTCY	OTHER:		ES
<ul> <li>□ 110 Insurance</li> <li>□ 120 Marine</li> <li>□ 130 Miller Act</li> <li>□ 140 Negotiable Instrument</li> </ul>	□ 310 Airplane □ 315 Airplane Product Liability	□ 365 Personal Injury - Product Liability □ 367 Health Care/		25 Drug Related Seizure of Property 21 USC 881 00 Other	☐ 423 With	eal 28 USC 158 idrawal JSC 157	☐ 376 Qui Tam 3729(a)] ☐ 400 State Rea	n (31 USC )	
☐ 150 Recovery of Overpayment	☐ 320 Assault, Libel &	Pharmaceutical				RTY RIGHTS	☐ 410 Antitrust	t	
& Enforcement of Judgment  151 Medicare Act	Slander  ☐ 330 Federal Employers'	Personal Injury Product Liability			☐ 820 Copy ☐ 830 Pater		☐ 430 Banks ar ☐ 450 Commer		ıg
☐ 152 Recovery of Defaulted	Liability	☐ 368 Asbestos Persona	1		□ 835 Pater	nt - Abbreviated	☐ 460 Deportat	tion	
Student Loans (Excludes Veterans)	☐ 340 Marine ☐ 345 Marine Product	Injury Product Liability			New ☐ 840 Trad	Drug Application	☐ 470 Racketee	er Influend Organizat	
☐ 153 Recovery of Overpayment	Liability	PERSONAL PROPEI	RTY	LABOR		SECURITY	□ 480 Consum		ions
of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 370 Other Fraud	<b>-</b> 71	0 Fair Labor Standards	□ 861 HIA		•	C 1681 or	
☐ 160 Stockholders' Suits ☐ 190 Other Contract	☐ 355 Motor Vehicle Product Liability	☐ 371 Truth in Lending ☐ 380 Other Personal	<b>□</b> 72	Act O Labor/Management		k Lung (923) 'C/DIWW (405(g))	☐ 485 Telephor		ner
☐ 195 Contract Product Liability	☐ 360 Other Personal	Property Damage		Relations	☐ 864 SSII	O Title XVI	☐ 490 Cable/Sa		
□ 196 Franchise	Injury  ☐ 362 Personal Injury -	☐ 385 Property Damage Product Liability		0 Railway Labor Act 1 Family and Medical	□ 865 RSI	(405(g))	☐ 850 Securitie Exchang		odities/
	Medical Malpractice	Treduct Emellity		Leave Act			□ 890 Other Sta		tions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIO		00 Other Labor Litigation		AL TAX SUITS	□ 891 Agricult		
<ul><li>210 Land Condemnation</li><li>220 Foreclosure</li></ul>	☐ 440 Other Civil Rights☐ 441 Voting	Habeas Corpus:  ☐ 463 Alien Detainee	□ 79	11 Employee Retirement Income Security Act		es (U.S. Plaintiff Defendant)	☐ 893 Environ		
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate	e	meeme seeding ries	□ 871 IRS-	—Third Party	Act		
<ul><li>240 Torts to Land</li><li>245 Tort Product Liability</li></ul>	☐ 443 Housing/ Accommodations	Sentence  ☐ 530 General			26 U	JSC 7609	☐ 896 Arbitrati ☐ 899 Adminis		ocedure
■ 245 Fort Froduct Elability  290 All Other Real Property	☐ 445 Amer. w/Disabilities -	☐ 535 Death Penalty		IMMIGRATION				iew or Ap	
	Employment  ☐ 446 Amer. w/Disabilities -	Other:  ☐ 540 Mandamus & Oth		52 Naturalization Application 55 Other Immigration	on		Agency 1  950 Constitu	Decision	·f
	Other	☐ 550 Civil Rights	101 1140	Actions			State Sta		)1
	☐ 448 Education	☐ 555 Prison Condition							
		☐ 560 Civil Detainee - Conditions of							
		Confinement							
V. ORIGIN (Place an "X" i									
	moved from	Remanded from Appellate Court	□ 4 Rein Reo <sub>l</sub>	1 14115	ner District	☐ 6 Multidistr Litigation Transfer	1 -	Multidis Litigatio Direct Fi	on -
	Cite the U.S. Civil Sta	ntute under which you a 28 U.S.C. § 2409a	re filing (1	Do not cite jurisdictional st	atutes unless d	iversity):			
VI. CAUSE OF ACTION	Brief description of ca	ause:		d road (R.S. 2477 &	& State pub	lic highway pe	r statute	AP Do	ocket
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	N D	EMAND \$		CHECK YES only URY DEMAND:		complai <b>M</b> No	
VIII. RELATED CASI									
IF ANY	(See instructions):	JUDGE			DOCKI	ET NUMBER			
DATE		SIGNATURE OF AT	TORNEY (	OF RECORD					
07/01/2020		/s Richard You	ıng Neil	ey III					
FOR OFFICE USE ONLY									
RECEIPT # AM	MOUNT	APPLYING IFP		JUDGE		MAG. JUI	OGE		

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-01930

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PITKIN, COLORADO, a body corporate and politic

PLAINTIFF.

v.

ROCK CREEK ASSOCIATION, INC.; a Colorado non-profit corporation; UNITED STATES FOREST SERVICE; an agency of the United States Department of Agriculture; ALL UNKNOWN PERSONS who may have an interest in this matter.

DEFENDANTS.

# **SUMMONS IN A CIVIL ACTION**

To the above named Defendant:

ROCK CREEK ASSOCIATION, INC. 900 Dorais Way, Redstone, CO 81623

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Richard Y. Neiley III Pitkin County Attorney's Office 530 E. Main Street, Suite 301 Aspen, CO 81611

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

	CLLKK OF COOK!
Date:	
	Signature of Clerk or Deputy Clerk

CLERK OF COURT

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 20cv-

# PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

		me of individual and title, if any)						
	I personally served the summons on the individual at (place) on (date)							
	I left the summons at the individual's residence or usual place of abode with (name) , a person of suitable age and discretion who resi							
on	on (date) , and mailed a copy to the individual's last known address; or							
	I served the summ	ons on (name of individual)		, who i				
de	esignated by law to	accept service of process on behalf	of (name of organization)					
			on (date)	; or				
	I returned the summons unexecuted because							
	y fees are \$	for travel and \$	for services, for a total of					
I d	leclare under penalt	y of perjury that this information is	true.					
			Server's signature					
			Printed name and title					
			Server's address					

Additional information regarding attempted service, etc:

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-01930

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PITKIN, COLORADO, a body corporate and politic

PLAINTIFF.

v

ROCK CREEK ASSOCIATION, INC.; a Colorado non-profit corporation; UNITED STATES FOREST SERVICE; an agency of the United States Department of Agriculture; ALL UNKNOWN PERSONS who may have an interest in this matter.

DEFENDANTS.

# **SUMMONS IN A CIVIL ACTION**

To the above named Defendant:

UNITED STATES FOREST SERVICE United States Attorney's Office for the District of Colorado Civil Division 1801 California St. #1600 Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Richard Y. Neiley III Pitkin County Attorney's Office 530 E. Main Street, Suite 301 Aspen, CO 81611

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:	
	Signature of Clerk or Deputy Clerk

CLERK OF COURT

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 20cv-

# PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

was re		is summons for (name of ed by me on (date)							
			summons on the individual a						
		sides there,							
	on	_							
		, who is							
	de	designated by law to accept service of process on behalf of (name of organization)							
	-			on (date)	; or				
		; or							
	My \$_	y fees are \$	for travel and \$	for services, for a total of					
	I d	eclare under penalty of	perjury that this information	is true.					
Date:				Server's signature					
				Printed name and title					
				Server's address					

Additional information regarding attempted service, etc: