

EXHIBIT B

**January 25, 2007 Letter from Pam Sbar to Phillis Johnson-Ball Requesting
Alternative Environmental Review**



D a v i s G r a h a m & S t u b b s L L P

January 25, 2007

Phyllis Johnson-Ball
Environmental Project Manager
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W, Suite 500
Washington, D.C. 20423

Re: Abandonment of Section of Anaconda/West Valley Rail Line Located Within Anaconda-Deer Lodge County, Montana

Dear Ms. Johnson-Ball:

Thank you for taking the time to have a conference call on January 11, 2007 with Rarus Railway Company and BGM Equipment Company's (BGM) counsel, Jim Howard, and me regarding the environmental review process for the abandonment of the Anaconda/West Valley Rail Line (the "AWVRL") located within Anaconda-Deer Lodge County, Montana. We write to request an alternative environmental review process for the abandonment of this line, as provided for by 49 C.F.R. Section 1105.2. Before describing the requested alternative process, however, we would like to provide some relevant background information, some of which we have previously discussed by telephone.

General Background Information

The AWVRL extends from the east shoulder of North Cable Road east to the railroad intersection on Pennsylvania Avenue in Anaconda, Montana and is entirely contained within Anaconda-Deer Lodge County, Montana. The AWVRL was acquired in 1985 by BGM Equipment Company, Inc. ("BGM"), and BGM leased the line to Rarus Railway Company ("Rarus"), an affiliate of BGM. Rarus has authority to operate the AWVRL, but, as explained below, there have been no rail operations on the line since prior to its acquisition by BGM. Attached to this letter is a map depicting the total length of the AWVRL right-of-way and the current layout of the line (Attachment A).

The entire AWVRL lies within the boundaries of the Anaconda Smelter Superfund Site (the "Site"), more specifically within the Active Railroad Beds Remedial Design Unit ("RDU") of the Anaconda Regional Water, Waste & Soils Operable Unit ("ARWW&S OU") portion of the Site. The United States

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Environmental Protection Agency ("EPA") issued an administrative order to several parties, including Atlantic Richfield and Rarus, to conduct cleanup activities on railroad beds in and around Anaconda, including the AWVRL, as part of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9601 *et seq.*, activities in that area. EPA, in consultation with the Montana Department of Environmental Quality ("MDEQ"), has ordered remediation of the AWVRL. EPA understands that in order to carry out the cleanup plan, we first must seek the Board's permission to abandon the AWVRL line and remove the rails, ties and ballast. The Superfund process affecting the AWVRL is discussed in greater detail below.

BGM and Rarus will be the applicants and will request the Board's permission to abandon and discontinue operations over the AWVRL. The application will be filed pursuant to the notice of exemption procedures under 49 CFR 1152.50, because there has been no traffic on the line for more than 25 years. As information, the Montana Department of Transportation will be acquiring the right of way for highway purposes after it has been remediated. Furthermore, there is some evidence that the line is actually a spur within the meaning of 49 U.S.C. 10906 and, as a consequence, that abandonment authority would not be necessary. If such evidence becomes sufficiently developed, BGM and Rarus may file a motion to dismiss the notice of exemption. At this time, however, all interested parties intend to proceed with the notice of exemption and the development and submission of the environmental information discussed below.

Also, as a preliminary matter and as we have discussed by telephone, you should be aware that we represent Atlantic Richfield Company ("AR"). Pursuant to the Administrative Order for Remedial Action (EPA Docket No. CERCLA-08-2003-0018) (the "Order") issued by EPA under CERCLA on November 20, 2003, AR and Rarus are responsible for performing remedial activities at the Active Railroad Beds RDU. AR has assumed the lead role for purposes of the remediation activities and is providing support and assistance to BGM and Rarus in the abandonment process. BGM and Rarus will be represented by Jim Howard, who is located at 1 Thompson Square, Suite 201, Charlestown, MA 02129, telephone 617.886.9322. The EPA Region 8 representative for this project is Andy Lensink, Esq., counsel with EPA Region 8, who is located at 999 18th Street, Suite 200, Denver, CO 80202, telephone 303.312.6908.

Historical Context

The AWVRL was originally part of the Butte, Anaconda & Pacific Railway Company ("BA&P"), which consisted at the inception of its operations in 1893 of a rail line extending approximately 25 miles between Butte and Anaconda, Montana. BA&P was owned by the Anaconda Company, which operated a copper smelter in Anaconda. The Anaconda Company also acquired a lime quarry approximately 5 miles west of Anaconda, known as the Brown's Quarry. In 1898, a 5-mile spur was constructed by

BA&P in order to connect the smelter in Anaconda with the Brown's Quarry, which became the principal source of limestone for the Anaconda Smelter. Historically, limestone was transported by rail from the Anaconda Brown's Quarry to the Anaconda Smelter on the AWWRL line. At some point in the 1970s, however, all of the limestone shipped from the Brown's Quarry moved by truck, rather than rail.

In the early 1980's, several mines and smelter ceased operations, which substantially decreased the demand for the BA&P services. In March 1985, the BA&P and the State of Montana entered into an agreement by which the BA&P donated a portion, and sold the remainder, of the line to the State of Montana. Also in March 1985, the State of Montana leased the former BA&P line to Rarus, with an option to purchase the line. The railroad property was purchased by BGM, which is commonly controlled with Rarus, from the State of Montana in 1990.

Rarus currently operates the rail line between Anaconda and Butte, a distance of 25.7 miles. In Silver Bow, Rarus has interchanges with the Union Pacific and Burlington Northern railroads. The 4.7-mile section of rail line that BGM seeks to abandon, the AWWRL, represents the westernmost portion of the former BA&P property in Anaconda. It generally extends from west of the West Anaconda Yard (located in the north-central portion of Anaconda) to near the Brown's siding located at the Anaconda Lime Quarry. Rarus has not run a train on the AWWRL since it began operation of the former BA&P lines in 1985. The Brown's Quarry, or as it is now known, the Anaconda Lime Quarry, is currently owned and operated by AR, and lime from the Anaconda Lime Quarry is primarily used as soil amendment for the Site reclamation projects. Such lime is hauled exclusively by truck, as the quarry is located in close proximity to Montana Highway 1.

Environmental Background

The entire AWWRL lies within the boundaries of the Site. The Site was established to address contamination related to mining and mining-related activities in and around Anaconda. The Site is located at the southern end of the Deer Lodge Valley, at and near the location of the former Anaconda Minerals Company ("AMC") smelting facilities. These facilities were developed to remove copper from ore mined in Butte from about 1884 through 1980, when the smelters closed. The Site was initially listed on the National Priorities List in September 1983¹ and encompasses approximately 300 square miles. The Site was divided into smaller units called "operable units" based on geography and risk to human health and the environment. The AWWRL is located in the ARWW&S OU, which is divided into RDUs or

¹ 48 Fed Reg. 40658

geographic areas.: The Active Railroad Bed and Adjacent Railroad Bed RDUs² The AWVRL is located in the Anaconda Active Railroad Bed, RDU 5. The Anaconda Active Railroad Bed RDU was further divided into two portions. East and West. The AWVRL lies within the West portion of the Anaconda Active Railroad Bed RDU 5. A number of environmental studies and investigations have been conducted within the Site over approximately the past twenty years pursuant to the CERCLA. In the course of conducting these environmental investigations and studies, much data and other environmental information have been collected. As shown on the attached map (Attachment B) the Site is one of three related and contiguous Superfund sites in southwestern Montana.

BGM and Rarus seek the Board's authority for discontinuance and abandonment of the AWVRL as part of the cleanup activities mandated by EPA under EPA's Order. Because the AWVRL and other railroad rights-of-way in and around the Anaconda area have been identified as containing elevated levels of arsenic and heavy metals that may present an environmental concern, EPA's Order requires AR and Rarus to address potential or actual threats to public health and the environment posed by the release of contaminants from waste rock and ballast historically used to construct the railroad lines. Upon abandonment and as part of EPA-approved remediation, it is contemplated that the AWVRL railroad right-of-way will be made available as a transportation corridor for highway purposes. The cleanup plan, approved by EPA, will achieve EPA's performance standards as established in the ARWW&S OU Record of Decision ("ROD") (EPA, 1998) and the Final Remedial Design Unit 5 Anaconda Active Railroad Beds RAWP/FDR (the "Work Plan") (Atlantic Richfield 2003).

The Work Plan applicable to the AWVRL includes removal of the rails, ties and ballast including rails, ties and ballast beneath asphalt and dirt/gravel street crossings and access road spurs leading to residential driveways. Engineered covers and barriers will be installed to stabilize driveways and/or portions of street, as necessary. Upon removal areas will be graded to match existing ground contours. The trestle, which crosses Warm Springs Creek, will remain in place. However, as noted above, abandonment authority is required before any such cleanup actions can proceed.

Request and Proposal for an Alternative Environmental Review Process

On behalf of BGM and Rarus (the "Applicants"), we request the concurrence of the Section of Environmental Analysis ("SEA") in an environmental review process under which the Applicants will draft and submit a preliminary draft environmental assessment in lieu of the environmental and historic report required under 49 C.F.R. §§ 1105.7 and 1105.8 The preliminary draft environmental assessment submitted by

² The "Active Railroad Bed" is somewhat of a misnomer as it includes active and inactive railroad lines.

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the Applicants would serve as an administrative draft to SEA in preparing the environmental assessment to be issued for public comment. Applicants' request is based upon the unique factual circumstances surrounding the proposed abandonment of the A WVRL, and upon informal discussions with you concerning those circumstances.

The Board regulations establishing procedures for implementation of environmental laws provide that if the SEA employs a third-party contractor to assist it in preparing the environmental documentation necessary for Board action, the requirement that a formal environmental report be filed is waived. *See* 49 C.F.R. § 1105.10(d). Applicants request that the SEA retain a third-party contractor to assist it in preparing the necessary environmental documentation. Applicants understand that they will be required to pay for the third-party contractor.

Additionally, the Council on Environmental Quality National Environmental Policy Act regulations provide that an environmental assessment may be prepared by the Applicants. *See* 40 C.F.R. § 1506.5(b). Based upon the Board's environmental regulations (*see* 49 C.F.R. § 1105.6(b)(2)), and given that the proposed abandonment and salvage will be part of an environmental cleanup action directed and overseen by EPA and MDEQ, an environmental assessment appears to be the appropriate type of environmental documentation for the proposed abandonment, rather than an environmental impact statement. Applicants request SEA to confirm that conclusion.

Applicants propose to use the information that has been collected to date in the course of the CERCLA activities in and around Anaconda to compile the preliminary draft environmental assessment for abandonment of the A WVRL. Applicants propose to use the consulting firm of TREC, Inc., of Bozeman, Montana to provide assistance drafting the preliminary draft environmental assessment on behalf of the Applicant. TREC prepared the preliminary draft EA for the Abandonment Exemption for the Missoula Gulch and Butte Hill ("MGBH") Line in Silver Bow County Montana, Docket No. AB-597X (STB Identification No. 32803). The MGBH EA was prepared under circumstances similar to those for the A WVRL. Additionally, TREC was a subcontractor to the third-party contractor (Public Affairs Management) preparing the "Supplement to the Final Environmental Impact Statement, Finance Docket No. 30186 (Sub - No 3), Tongue River Railroad Company - Construction and Operation of the Western Alignment in Rosebud and Big Horn Counties, Montana." TREC was also the primary third-party contractor for the State of Montana (through the Department of Natural Resources and Conservation) preparing the state EA/EIS for the Miles City to Decker Alignment of the Tongue River Railroad. TREC has performed work on a number of the CERCLA operable units within the Site, and is familiar with the site conditions, contaminants, and remedial design issues involved with the Site. TREC will not perform any of the salvage or construction work on the A WVRL. Applicants also

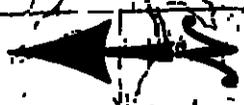
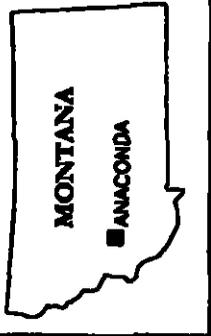
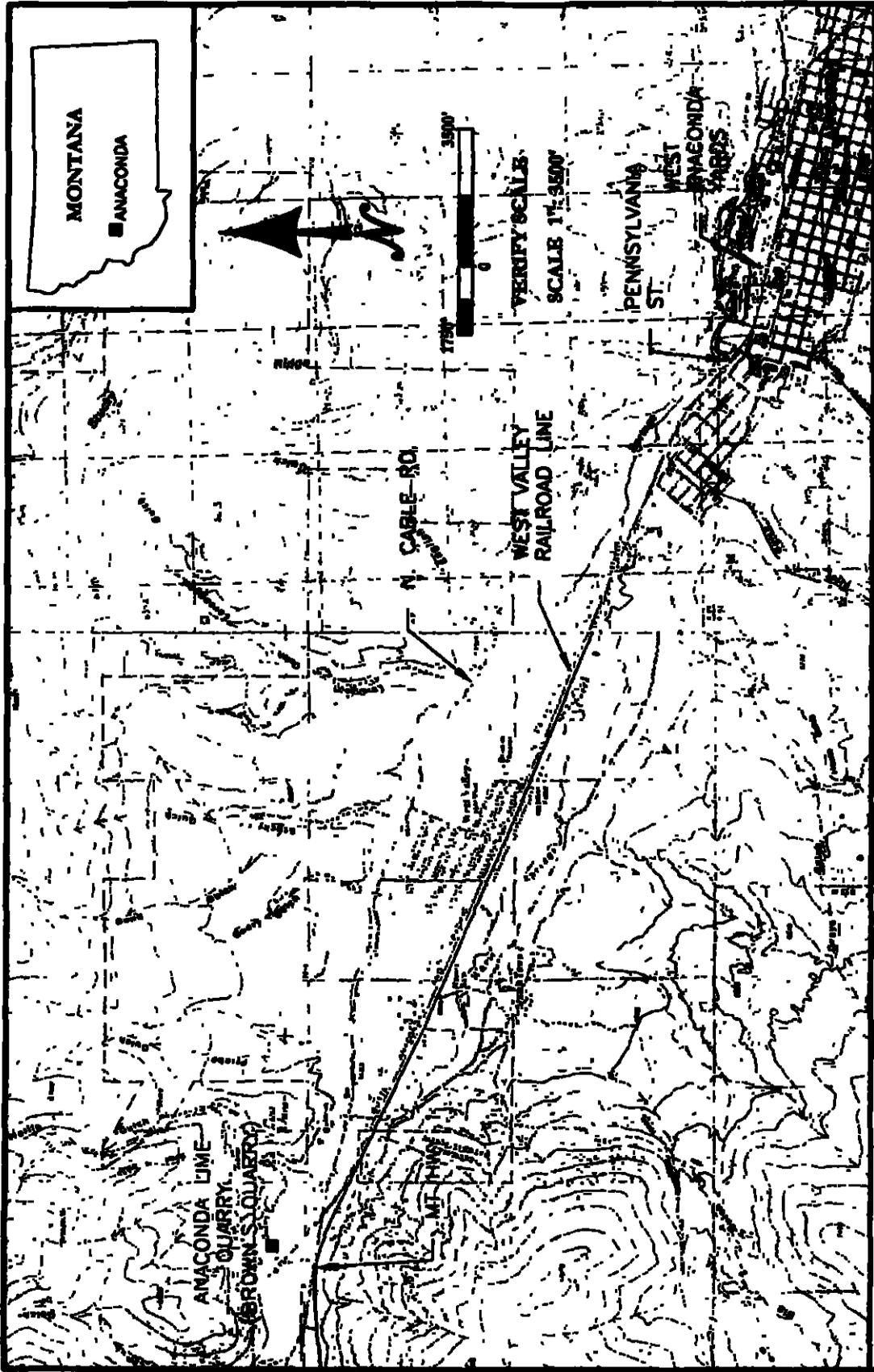
proposes that the preliminary draft environmental assessment be filed concurrently with or following filing of the abandonment application.

Applicants anticipate that SEA, with the assistance of TREC as the third-party contractor, will verify the information submitted in the preliminary draft environmental assessment and evaluate the environmental effects of the proposed abandonment of the AWVRL independently. Applicants will, nevertheless, strive to submit a document of such quality, accuracy, and conformity with SEA's own requirements that SEA will be able to adopt the preliminary draft environmental assessment as its own environmental assessment with a minimum number of revisions. Applicants and TREC will work with SEA once the preliminary draft environmental assessment is submitted to address any questions or concerns SEA may have with the document. Once SEA is satisfied with the draft environmental assessment, SEA will issue it for public comment, and ultimately finalize the environmental assessment for the abandonment of the AWVRL.

In sum, Applicants request that SEA approve of its proposal for an alternative environmental review process comprised of the following components:

- Drafting of an environmental assessment, rather than an environmental impact statement;
- A preliminary draft environmental assessment that will be prepared by the Applicants, with the assistance of TREC, Inc.;
- The preliminary draft environmental assessment will be prepared utilizing and incorporating the extensive data and other information collected to date as part of the CERCLA activities at the Superfund Site;
- The preliminary draft environmental assessment will be submitted to the Board/SEA concurrently with the filing of the notice of exemption for the abandonment;
- The preliminary draft environmental assessment will be independently reviewed, considered, and adopted (with any changes required) by SEA, using its own contractor paid for by the Applicants; and
- The Applicants and TREC will provide any further assistance at SEA's request as necessary to convert the preliminary draft environmental assessment into a final environmental assessment that is satisfactory to SEA and adequate for release for public comment.

Once SEA has had the opportunity to consider this request, please advise us whether the proposal is acceptable. Please do not hesitate to contact me with any questions, or to discuss this request further. I can be reached by telephone at (303) 892-7309, or by email at pam.sbar@dgsllaw.com. I appreciate your consideration of this proposal



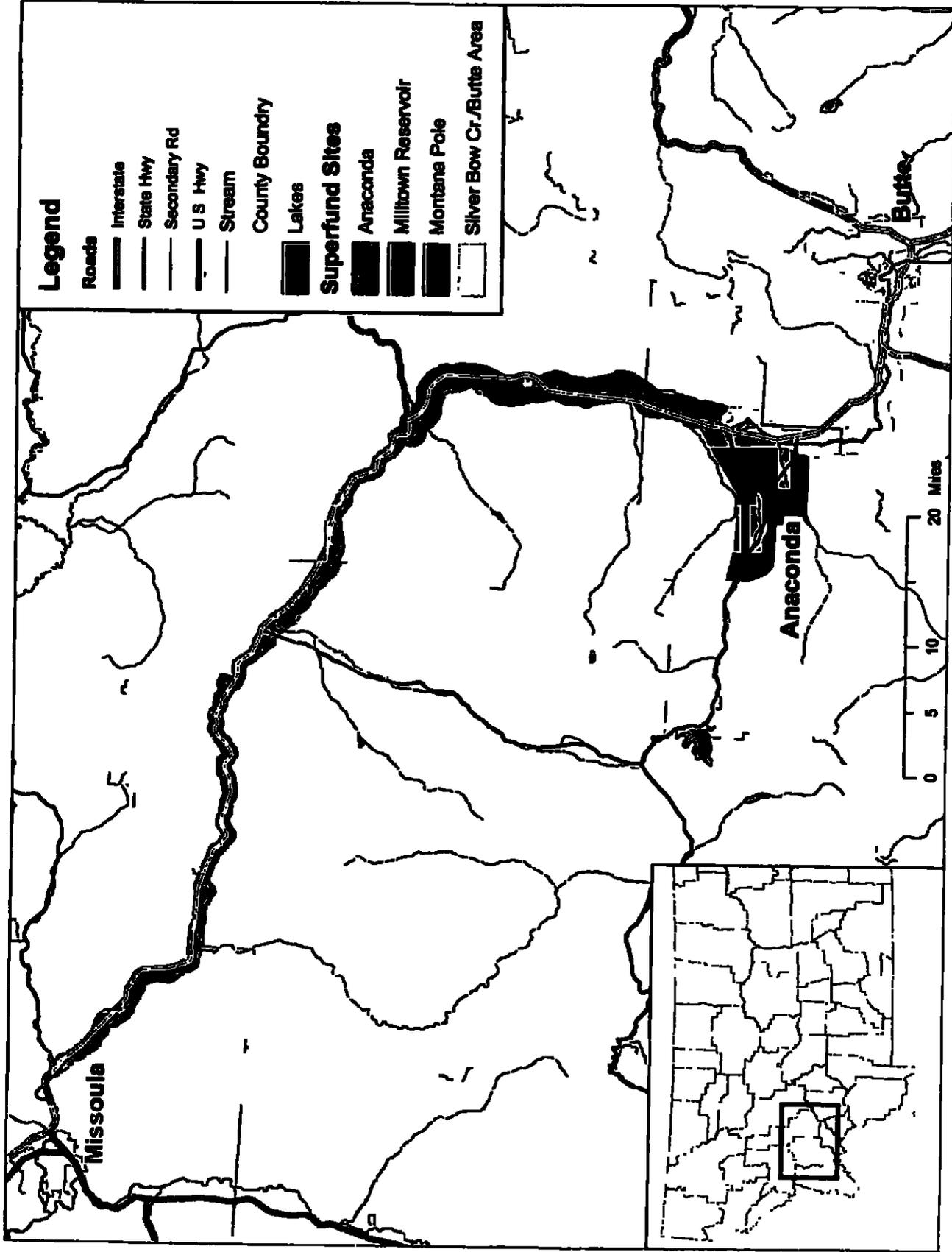
VERIFY SCALE
SCALE 1"=950'

LOCATION MAP	
WEST VALLEY RAILROAD LINE	
DATE	ATTACHMENT
APPROVED BY: MJK	DATE: 07/2007
CHECKED BY: JPF	
DRAWN BY: JPF	

APPROVED BY: MJK	ATLANTIC RICHFIELD BUTTE, MONTANA
CHECKED BY: JPF	

1800 W. Koch, Suite 6
Butte, MT 59715
Phone: (406) 586-8364
Fax: (406) 522-8460
www.trec.com

TREC, Inc.
Environmental Management Consultants



Attachment B

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Sincerely,



Pamela S. Sbar
for
DAVIS GRAHAM & STUBBS LLP

Attachments

cc: **Andy Lensink, Esq., EPA Region 8**
Charlie Coleman, EPA Region 8
Mary Capdeville, Esq., MDEQ
Kevin Kirley, MDEQ
Larry Scusa, MDEQ
Steve Ferry
Robin Bullock
Jean Martin, Esq
Don Booth
Gavin Scally
Jim Howard, Esq.
Paul McCarthy
Ed Beaudette, MDT
Matt Yovich

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 26, 2007

Ms. Pamela S Sbar
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Dear Ms. Sbar:

I am responding to your letter of January 25, 2007, in which you propose an alternative environmental review process for a proposed abandonment and discontinuance of service of the Anaconda/West Valley rail line. Specifically, you request that the Section of Environmental Analysis (SEA) permit the Rarus Railway Company and BGM Equipment Company (collectively referred to as Applicants) to submit to SEA a Preliminary Draft Environmental Assessment (PDEA)¹ in lieu of the environmental and historic report required under 49 CFR 1105.7 and 1105.8 when filing a notice of exemption for abandonment and discontinuance of service.

Based on our discussions and the supporting documentation submitted with your proposal, SEA concurs with your request to submit a PDEA in lieu of the environmental and historic report for the proposed abandonment and discontinuance of service. We understand that Applicants have agreed to submit the PDEA to SEA at least two months prior to formally filing the notice of exemption with the Board to allow SEA time to adequately review the PDEA. SEA will review the PDEA and determine whether SEA requires a third-party contractor, to be retained at Applicant's expense, to assist us in an independent review and verification of the PDEA. SEA will notify you of any decision regarding the retaining of a third party contractor.

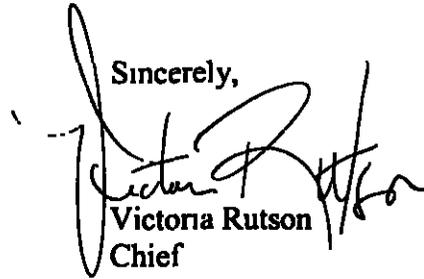
At this time, based on information available to date, we believe that preparation of an Environmental Assessment (EA) appears to be the appropriate level of environmental documentation for this proposal. This approach is consistent with the Board's environmental rules, which contemplate that an EA and not a full Environmental Impact Statement (EIS) typically is adequate in rail abandonment and discontinuance of service cases. Nevertheless, if it becomes clear that potentially significant adverse environmental effects would result from the project and could not be adequately mitigated, SEA could determine that an EIS was warranted.

¹ CEQ regulations at 40 CFR 1506.5(b) permits Applicants to prepare Environmental Assessments. The PDEA must include the information required by the Board's regulations at 49 CFR 1105.7 and 1105.8

Finally, the environmental review process you propose should avoid duplicative efforts by the Applicants and SEA. However, as you are aware, these efforts toward efficiency are not in lieu of SEA's ultimate responsibility and authority for the environmental document. Therefore, the extent to which the PDEA will be adopted as the Draft EA that is put out for public review and comment will be determined after the PDEA is submitted to and reviewed by SEA.

Thank you for initiating early consultation for the proposed undertaking. If you have any questions or concerns, please feel free to contact me or Ms Phillis Johnson-Ball of my staff at 202-245-0304.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is stylized with a large initial "V" and a long horizontal stroke.

Victoria Rutson
Chief

Section of Environmental Analysis