

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

Docket No. 10A-409R

---

IN THE MATTER OF THE CITY OF FOUNTAIN FOR AUTHORITY TO CREATE  
ALTERNATIVE AT-GRADE ROADWAY RAILROAD CROSSINGS FOR DUCKWOOD  
ROAD AND TO CLOSE THE EXISTING MESA ROAD RAILROAD CROSSINGS

---

**RESPONSE TO QUESTIONS FROM ADMINISTRATIVE LAW JUDGE**

---

Applicant files this Response to Questions From Administrative Law Judge in response to Decision No. R12-1448-I entered on December 18, 2012, to assist the Commission to consider the parties' proposed settlement documents filed herein:

17. The Parties have been ordered to respond to the following questions and to provide the information requested below on or before January 11, 2013:

a. The Application at 14 states that Applicant anticipates starting construction of the proposed Duckwood crossing in 2011, anticipates completing construction of that crossing in 2013, and anticipates opening that crossing in 2013. Despite the passage of time since the Application was filed in 2010, the Settlement neither addresses nor updates the construction-related dates. The Commission needs the most current information. What is the date (at a minimum, month and year) on which Applicant anticipates: (1) commencing construction of the proposed Duckwood crossing; (2) completing construction of the proposed Duckwood crossing; and (3) opening the proposed Duckwood crossing to traffic?

**RESPONSE: (1) Estimated Start of Construction: June 2014; (2) Completion of Construction: July 2015; (3) Open Traffic on Duckwood Crossing/Close Mesa Road Crossing: by August 2015.**

b. The Duckwood Stipulation at ¶ 11.i provides:

Fountain agrees and understands that it must apply for and be granted a CDOT Access Permit prior to connecting the new Duckwood Road to US 85. Fountain further agrees and understands that, prior to connecting the new Duckwood Road to US 85, [Fountain] must also receive a CDOT “Notice to Proceed” and [must] agree to and follow all terms and conditions contained therein.

With respect to this provision: (1) what is a CDOT Access Permit; (2) what is a CDOT “Notice to Proceed”; (3) if the referenced documents are related, how are they related to one another; and (4) if the referenced documents are not related to one another, must Fountain make a separate application for each of the referenced documents?

Identify which, if any, of the dates provided in response to the questions posed in ¶ 17.a are dependent on Applicant’s obtaining a CDOT “Notice to Proceed” and, if different, a CDOT Access Permit.

With respect to this provision, provide the most current information on Applicant’s application for the referenced CDOT Access Permit.

With respect to this provision, provide the most current information on Applicant’s application for the referenced CDOT “Notice to Proceed.”

**RESPONSE:** (1) **The CDOT Access Permit is a document issued to the Applicant by CDOT granting conditional approval of a proposed access to a State Highway. Conditions typically include, but are not limited to, payment of applicable Access Permit Fees, submittal of Final Construction Plans/Specifications, submittal of proof of ownership/easement rights for the subject access road and work zone safety provisions;**

(2) **The CDOT “Notice to Proceed” is a document prepared by CDOT granting permission to start construction of the proposed access to State Highway after the**

**Applicant has met all specified preconstruction conditions of the applicable “Access Permit”;**

**(3) The CDOT Access Permit and Notice to Proceed are directly related. Application for the Access Permit is the first step. Obtaining the Notice to Proceed is a subsequent step. As such they are part of a single but sometimes lengthy process.**

**(4) Not Applicable.**

c. The Duckwood Stipulation at Exhibit C at page 15 shows the signage at the proposed Duckwood crossing, including “No Train Horn” signs. With respect to the “No Train Horn” signs: (a) are the Parties aware that those signs may not be posted until someone has obtained quiet zone approval through the Federal Railroad Administration (FRA) process; (b) which party will take steps to obtain the required quiet zone approval from FRA; (c) has the identified party begun the process of obtaining the required quiet zone approval from FRA; (d) if not, when does the identified party plan to begin the process of obtaining the required quiet zone approval from FRA; and (e) do the Parties anticipate that the required quiet zone approval from FRA will be obtained in time to meet the dates provided in response to the questions posed in ¶ 17.a?

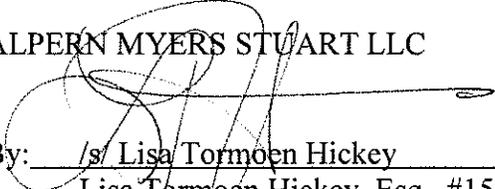
**RESPONSE: The City of Fountain plans to work with UPRR and BNSF to initiate FRA quiet zone application for the new Duckwood Crossing after receipt of PUC order approving the Duckwood Crossing and applicable RR Crossing Easements and CDOT Access Permit are secured. The subject “No Train Horn” signs as shown on the construction plans will not be installed until such time as FRA “Quiet Zone” approvals are secured. The City is hopeful that FRA conditional approval might be secured in time for installation of subject signs prior to opening of the new crossing. However, the subject**

crossing can readily be opened for public use prior to establishment of the "Train Horn Quiet Zone". Actual establishment of a "Quiet Zone" cannot officially be accomplished until all of the planned new crossing safety improvements are in place.

Respectfully submitted this 11th day of January, 2013.

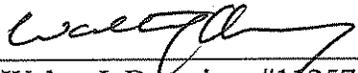
APPLICANT:

ALPERN MYERS STUART LLC

  
By: /s/ Lisa Tormoen Hickey  
Lisa Tormoen Hickey, Esq., #15046  
14 North Sierra Madre, Suite A  
Colorado Springs, CO 80903  
(719) 471-7955 x 124  
lisahickey@coloradolawyers.net  
Attorneys for Applicant, City of Fountain

BNSF:

HALL & EVANS, L.L.C.

By:   
Walter J. Downing, #11257  
1125 - 17th Street, Suite 600  
Denver, CO 80202  
(303) 628-3300  
Attorneys for Intervenor, BNSF Railway  
Company

UNION PACIFIC:

UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
Kathleen M. Snead, Esq., #9969  
1331 Seventeenth St., Suite 406  
Denver, CO 80202  
(303) 405.5407  
Attorney for Intervenor, Union Pacific  
Railroad Company

CDOT:

OFFICE OF ATTORNEY GENERAL:

By: Gregg E. Carson

Gregg Carson, #25450

Assistant Attorney General

1525 Sherman Street, 7th Floor

Denver, CO 80203

(303) 866-5129

Attorney for Intervenor, Colorado

Department of Transportation