

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35813

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**Fillmore & Western Freight Service, LLC d/b/a Fillmore & Western Railway, Inc.,
Emergency Petition for Declaratory Order**

**VERIFIED RESPONSE OF THE VENTURA COUNTY TRANSPORTATION
COMMISSION TO FILLMORE & WESTERN FREIGHT SERVICE, LLC'S
EMERGENCY PETITION FOR DECLARATORY ORDER**

Communications with respect to this pleading should be addressed to:

Charles A. Spitulnik
W. Eric Pilsk
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: epilsk@kaplankirsch.com

Counsel for the Ventura County Transportation
Commission

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INTRODUCTION

This case is a lease dispute between the Ventura County Transportation Commission (“VCTC”), which owns a 31.73 mile line of railroad in Ventura County, California, known as the Santa Paula Branch Line (the “Line”), and the Fillmore & Western Railroad (the “F&W”), which leases the entire Line for intrastate passenger excursion and non-freight movie production operations, and the eastern portion of the Line for freight service. The Union Pacific Railroad (“UPRR”) retains exclusive freight operating rights on the western portion of the Line.

This lease dispute is the subject of two lawsuits currently pending in California state courts. The F&W filed one lawsuit in November 2013, which it subsequently withdrew and refiled on March 17, 2014, in which it seeks to prevent VCTC from exercising its rights to terminate the lease for the entire Line, as well as damages and injunctive relief. The court has already denied the F&W’s request for a preliminary injunction finding that the F&W is not likely to succeed on the merits. The second lawsuit is an unlawful detainer action in which VCTC seeks to evict the F&W from a terminated sublease under which the F&W was allowed to conduct only intrastate passenger excursion operations on a portion of the Line; no freight or interstate passenger operations are at issue in that case. The F&W has indicated that it will vigorously contest that action.

Apparently seeking to end-run around the state court’s denial of its preliminary injunction, and seeing that it is unlikely to prevail in either suit, the F&W has filed an Emergency Petition asking the Board to extricate the F&W from the predicament in which it has placed itself by enjoining both pending state court actions, including the action the F&W renewed just two weeks ago, and enjoining VCTC from enforcing its lease rights against the F&W. The F&W cites very little law to support its claims, and appears to rest its case on the general principle that the ICCTA preempts VCTC lease enforcement actions because those

actions threaten the F&W's ability to use the Line. Unable to cite legal support for its theory, the F&W relies on invective, leavened by an incomplete and misleading statement of the facts, in an attempt to demonize VCTC and its staff and create the appearance of an emergency justifying this Board's intervention. No amount of invective, however, can overcome the plain fact that the F&W is wrong as a matter of fact and law.

The crux of the F&W's claim of emergency is that VCTC has wrongfully imposed an "embargo" on the F&W operations. That is false. The claim of an "embargo" is based on an April 9, 2013, letter instructing the F&W to stop its freight operations on the western portion of the Line on which the F&W has no freight operating rights until the F&W secures the appropriate interchange agreement with the UPRR, which holds the exclusive freight operating rights on that portion of the Line. The letter has had no real impact on the F&W because the F&W conducts virtually no freight operations in general, and the letter simply instructed the F&W to limit its occasional, unscheduled freight operations to that portion of the Line for which the F&W had lease rights to conduct freight operations. The letter did not restrict the F&W's excursion and film operations at all.¹ Fundamentally, there is nothing improper about instructing the F&W to comply with the terms of its lease. Further, the F&W has the power to resolve the issue by simply entering into an interchange agreement with the UPRR or interchanging at the lease line, and has had over a year to do so. The F&W's unwillingness, or inability, to pursue either practical option, however, is not the result of any wrongdoing by VCTC and does not warrant emergency action by the Board.

¹ Due to the lack of freight traffic on the F&W's leasehold, VCTC intends to abandon that portion of the Line, and seek the adverse discontinuance of the F&W's operating authority, including the revocation of its Notice of Exemption. VCTC intends to initiate those proceedings as soon as practical following the resolution of the state court proceedings in which VCTC seeks confirmation of its right to terminate the F&W's leases.

The F&W also points to the unlawful detainer action, and the imminent threat of eviction from that lease, as the basis for an “emergency.” But that action involves a sublease that only allows the F&W to conduct intrastate passenger excursion service on a portion of the Line. That action does not implicate the F&W’s freight operations at all. The Board has no jurisdiction over those intrastate excursion operations and therefore no basis to grant any relief. Moreover, the F&W’s reliance on the unlawful detainer action, and the threat to its intrastate excursion service, demonstrates that the F&W is using its nominal freight authority (there are no freight operations on the Line) as a pretext to invoke Board jurisdiction to shield the intrastate excursion and movie operations from the lease enforcement actions. That sham use of Board authority is not permitted and should be rejected out of hand.

Nor does the F&W face a risk of irreparable injury. Despite the termination of the leases, the F&W remains in possession of the leaseholds and continues to operate while it litigates its claim of wrongful lease termination. In that litigation, the state court will either rule that VCTC improperly terminated the leases, allowing the F&W to remain on the Line, or rule that the terminations were valid and that the F&W has no legal right to use the Line. Either way, however, the F&W will not suffer a legally cognizable injury because the state court will adjudicate the F&W’s legal right to use the Line.

As a matter of law, the F&W’s efforts to obtain Board relief fail for the fundamental reason that the ICCTA does not preempt lease enforcement actions and the Board has been very clear that it does not resolve lease or other contract disputes involving the right to use a rail line. The F&W may disagree with VCTC’s position on the leases, but the Board is not the forum to resolve that disagreement. The F&W must rely on the state court process it initiated, and in which it is engaged, to vindicate its lease rights. Even though the F&W has regulatory authority

to operate on some of the Line, that authority does not enable the F&W to actually use the Line unless the F&W has a valid lease or other property right to use the Line. Accordingly, the F&W can only obtain resolution of the lease dispute that is at the heart of this case in the state court proceedings, and not from the Board.

Fundamentally, the F&W has filed the Petition on false pretenses because there is no emergency, no risk of irreparable injury, and no legal issue that the Board can or should address. For the reasons set forth in detail below, the Board should decline to institute the declaratory proceeding or should simply dismiss the Petition outright. In the alternative, the Board should hold the proceeding in abeyance pending the outcome of the state court proceedings, at which time the Board can assess the need for further Board action.

FACTUAL BACKGROUND

The Petition is long on adjectives and rhetoric, but short on facts. Furthermore, those facts that the F&W asserts are largely incorrect, incomplete, or misleading. In order to set the record straight, and provide the Board with an accurate factual record on which to base its decision, VCTC provides the following verified statement of facts.

A. Ownership and Rights to Use the Line

VCTC owns the Santa Paula Branch Line, which extends approximately 31.73 miles from MP 403.34 in Montalvo to MP 435.07 at the Ventura County line near Piru (the “Line”). VCTC acquired the Line in 1995 from the Southern Pacific Transportation Co. By local convention and as reflected in the leases discussed below, the Line is divided into two portions. The western portion of the Line, from MP 403.35 (Montalvo) to MP 414.95 (Santa Paula), is referred to as the “Santa Paula Segment.” The eastern portion of the Line, from MP 414.95 (Santa Paula) to MP 435.07 (at the Ventura County line near Piru), is referred to as the “Fillmore

Segment.” The tracks at the eastern end of the Line, from MP 431.59 to 435.07, were removed many years ago.

In February 1998, after it acquired the Line, VCTC filed a belated Notice of Exemption. The Board published the exemption on March 24, 1998. *Ventura Cnty. Transp. Comm’n – Acquisition Exemption – S. Pac. Transp. Co.*, FD No. 33553 (Service Date Mar. 24, 1998). Pursuant to that exemption, VCTC has the common carrier obligation over the entire Line and the SP retained the right to continue to provide freight common carrier service over the Santa Paula Segment. The SP’s rights in the Line were subsequently assumed by the UPRR.

Between 1996 and June 2001, VCTC leased the Line to the F&W, including freight rights in the Fillmore Segment. The SP, succeeded by the UPRR provided freight service on the Santa Paula Segment. VCTC also leased the Fillmore Segment to the City of Fillmore Redevelopment Agency (“FRDA”), for tourist/excursion services. The Fillmore Redevelopment Agency, in turn, subleased those limited rights to the F&W. Ultimately, all three leases were terminated and replaced by a new set of leases that are the operative documents to determine the parties’ current rights to use the Line.

On June 6, 2001, VCTC and the FRDA entered into a lease for the Fillmore Segment from MP 414.95 to MP 435.07 (the “RDA Lease”). Under the FRDA Lease, the FRDA was permitted to use the Fillmore Segment only for “Public/Tourist Excursion” purposes, including dinner trains and similar intrastate passenger services, and for the placement of information/direction signs. The FRDA Lease expressly prohibited the F&W from using the Fillmore Segment for any other purpose. The FRDA Lease was terminable by either party without cause upon six months written notice. A true and correct copy of the FRDA Lease is attached as Exhibit 3 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A.

On or about June 25, 2001, VCTC and the F&W entered into a new lease for the Line, from MP 403.35 to MP 435.07 (the “Direct Lease”). The Direct Lease gave the F&W specific operating rights in specific portions of the Line, as follows:

Freight Services	MP 414.95 – MP 435.07 (Fillmore Segment)
Still and Motion Picture Productions	MP 405.31 – MP 435.07 (Line)
Public/Tourist Excursions	MP 403.35 – MP 414.45 (Santa Paula Segment)
Mail and Express Service	MP 403.35 – MP 435.07 (Line)

Thus the F&W’s freight operating rights were limited to the Fillmore Segment and Public/Tourist Excursion rights were limited to the Santa Paula Segment, where the UPRR retained freight rights. The Direct Lease made the F&W responsible for maintenance of the Line, and provided the F&W with an annual “allowance” to underwrite some of those repairs. A fundamental principle of the Direct Lease was that it would be “revenue neutral” to VCTC, such that the maintenance allowance would not exceed rent and other lease revenues. The Direct Lease was terminable “for cause” upon six months written notice. A true and correct copy of the Direct Lease is attached as Exhibit 2 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A.

On July 1, 2001, the FRDA entered into a sublease with the F&W under which the F&W assumed FRDA’s right to conduct Public/Tourist Excursion operations on the Fillmore Segment (the “FRDA Sublease”). The sublease was also terminable without cause upon six months written notice. A true and correct copy of the FRDA Sublease is attached as Exhibit 4 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A. Subsequently, the FRDA was dissolved as a matter of state law and the City of Fillmore stepped into its shoes with respect to the FRDA Lease and the FRDA Sublease.

On April 3, 2002, the F&W filed a Notice of Exemption “to lease and operate a line of railroad owned by [VCTC] between approximately milepost 403.2 at Ventura and milepost 435.1 at Rancho Camulos, a total distance of approximately 31.9 miles in Ventura County, CA.”

Fillmore & W. Freight Serv., LLC – Lease and Operation Exemption – Ventura Cnty. Transp. Comm’n, FD No. 34173, Slip Op. at 1 (Service Date May 3, 2002). In a footnote, the F&W stated that “[t]he Union Pacific Railroad Company currently provides freight service over a portion of the line. Also, an affiliate to the F&W presently provides excursion passenger service and specialized rail related services to the motion picture industry over a portion of the line”

Id. The Board accepted the Notice with the standard warning that “[i]f the verified notice contains false or misleading information, the exemption is void ab initio.” *Id.*

Accordingly, from approximately July 1, 2001, until the current controversy, the rights to use the Line were allocated as follows:

Operating Entity	Rights to Use the Santa Paula Segment MP 403.34 – MP 414.95	Rights to Use the Fillmore Segment MP 414.95 – MP 435.07
Union Pacific	Freight	None
Fillmore Redevelopment Agency	None	Excursion/Tourist and Signs
Fillmore & Western Freight Railway	Excursion/Tourist Film Production (from MP 405.31) Mail/Express	Excursion/Tourist (FRDA Sublease) Film Production Mail/Express Freight

B. Operation of the Line

Between 2001 and early 2014, there were limited freight operations on the Line. On the Santa Paula Segment, UPRR provided service to International Paper and a handful of other

customers, which VCTC believes amounted to an average of three cars per week. VCTC understands, however, that the International Paper facility has closed and that there are no customers on the Santa Paula Segment receiving regular service and only occasional traffic, if any, is now moving on the Santa Paula Segment.

On the Fillmore Segment, the F&W conducted virtually no freight operations. There are no existing freight customers on the Fillmore Segment and no regular freight traffic. Based on information from F&W personnel, VCTC understands that the only freight movements on the Fillmore Section were movements of wind turbine components from the Santa Paula Segment to a roundtable in Fillmore to enable the cars to be turned 180 degrees to facilitate delivery by the UPRR to customers not located on the Fillmore Segment.

The F&W has, however, operated a regular passenger excursion train, including a “dinner train” and a variety of themed excursion rides along the Fillmore Branch. Those excursion services operate entirely on the Fillmore Segment in the State of California and do not interconnect with any other passenger services and do not provide interstate transportation. *See <http://www.fwry-blog.com/>*. The F&W also provides non-freight rail services to the film industry, primarily providing trains as “sets” for movie scenes. *Id.*

C. The F&W’s Failure To Maintain and Repair the Line and the Subsequent Termination of the Direct Lease, FRDA Lease, and FRDA Sublease

By 2010, VCTC became very concerned that the F&W was not meeting its maintenance obligations under the Direct Lease. Part of the concern reflected the fact that portions of the Line, including a number of bridges and road crossings, had fallen into serious disrepair. Part of the concern reflected the fact that VCTC had provided the F&W a maintenance allowance to make repairs, yet the repairs had not been performed. Moreover, the maintenance allowance

VCTC provided the F&W was in excess of rent and other lease revenues, causing VCTC to operate at a loss rather than being revenue neutral.

VCTC believed that the F&W's repeated failures to maintain the Line and effect timely repairs constituted a breach of the Direct Lease. VCTC further believed that the maintenance allowance had been overpaid and that more funds had been paid to the F&W than the Direct Lease required, particularly given the apparent lack of repair and maintenance work being performed. Between approximately 2010 and 2013, VCTC and the F&W engaged in extensive discussions and negotiation over these issues. Despite good faith efforts by VCTC to reach a mutually satisfactory arrangement to address maintenance and repair costs, and to assure that the F&W completed repairs in a timely manner, the parties were unable to resolve their differences. Most importantly, the F&W continued to fail to perform necessary repair and maintenance work on the Line, leading to serious safety concerns. For example, attached as Exhibit 9 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A, is a true and correct copy of a January 4, 2013, letter from the California Public Utilities Commission alerting VCTC to a number of serious maintenance and repair issues on the Line.

Unable to resolve the maintenance and repair issues, and believing that the F&W was in breach of its lease obligations, VCTC took steps to terminate the Direct Lease. On May 14, 2013, VCTC set a letter to the F&W providing notice under the Direct Lease that the F&W was in breach of the Direct Lease and that VCTC was terminating the Direct Lease effective on December 1, 2013. A true and correct copy of the May 14, 2013, Direct Lease Termination Letter is attached as Exhibit 20 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A. VCTC sent a second letter, dated June 4, 2013, providing details for the basis of the termination notice and reiterating that the Direct Lease would terminate effective December 1,

2013, a true and correct copy of which is attached as Exhibit 23 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A.

Also on May 14, 2013, VCTC sent a letter to the City of Fillmore, as successor to the FRDA, terminating the FRDA Lease for the Fillmore Segment effective December 1, 2013. A true and correct copy of the May 14, 2013, FRDA Sublease Termination Letter is attached as Exhibit 21 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A. The City of Fillmore subsequently terminated the FRDA Sublease with the F&W, also effective December 1, 2013. A true and correct copy of the May 14, 2013, FRDA Sublease Termination Letter is attached as Exhibit 22 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A.

D. The F&W's Use Of The Santa Paula Segment For Freight Operations Without Property Rights

In early 2013, VCTC learned that the F&W had used the Santa Paula Segment for occasional freight operations. Specifically, VCTC learned the F&W had made arrangements with UPRR Logistics staff in Montalvo to move wind turbine components from a point near Montalvo to the turntable in Fillmore and back to the UPRR in Montalvo. At the time, the F&W had no interchange or other agreement with the UPRR, and no lease or contract right with VCTC to operate on the Santa Paula Segment. UPRR staff were, apparently, unaware of the informal, local arrangement between the F&W and UPRR Logistics.

The F&W's conduct created a serious liability concern for VCTC because the F&W's operation on the Santa Paula Segment was not, apparently, covered by the F&W's indemnification agreement with VCTC and UPRR was in the position of being able to deny responsibility for the unauthorized actions of local UPRR Logistics staff. In order to avoid any potential liability, and to assure correct enforcement of the existing leases and operating agreements, VCTC sent a letter to the F&W on April 9, 2013, directing the F&W to stop all

freight operations on the Santa Paula Segment unless and until it entered into a formal interchange agreement or other appropriate lease agreement and obtained all necessary approvals from state and federal agencies to operate on the Santa Paula Segment. A true and correct copy of the April 9, 2013, letter is attached as Exhibit 19 to the Declaration of Darren M. Kettle, attached hereto as Exhibit A.

The April 9, 2013, letter made clear that the F&W remained free to conduct freight operations on the Fillmore Segment, on which it did have operating rights and authority, and the letter did not purport to limit or interfere with the F&W's ability to conduct freight operations on the Fillmore Segment. Moreover, VCTC offered to work with the F&W and the UPRR to help the F&W obtain the necessary interchange agreement. Indeed, VCTC provided the F&W a letter supporting the F&W's effort to acquire the operating rights on the Santa Paula Segment from the UPRR. To the best of VCTC's knowledge, however, the F&W has not obtained an interchange agreement with the UPRR.

E. Litigation over the Direct Lease and the FRDA Lease/Sublease

On November 18, 2013, less than two weeks before the Direct Lease was to terminate pursuant to the May 14, 2013 letter, the F&W filed suit in California state court claiming that VCTC had breached the Direct Lease by, among other things, wrongfully terminating the Direct Lease and wrongfully directing the F&W to stop freight operations on the Santa Paula Segment in the April 9, 2013, Letter. *Fillmore & W. Ry., Inc. v. Comm'rs of the Ventura Cnty. Transp. Comm'n*, Case No. 56-2014-00450239 (Ventura Cnty. Super. Ct., filed Nov. 18, 2013). Subsequently, the F&W sought a preliminary injunction to prevent VCTC from taking any action to terminate the Lease or enforce the April 9, 2013, letter. That motion was denied on January 7, 2014. A true and correct copy of the Order denying the Injunction is attached as Exhibit B.

While that action was pending, on March 6, 2014, VCTC filed an unlawful detainer action to evict the F&W from the FRDA Sublease, which had terminated on December 1, 2013. *Ventura Cnty. Transp. Comm'n v. Fillmore & W. Ry., Inc.*, Case No. 56-2014-00449769 (Ventura Cnty. Super. Ct., filed March 6, 2014) (the “Unlawful Detainer Action”). A true and correct copy of the Unlawful Detainer Action Complaint is attached as Exhibit C. The F&W has indicated that it will contest VCTC’s right to terminate the FRDA Lease and FRDA Sublease. No trial date has been set.

On March 17, 2014, the F&W voluntarily dismissed its November 18, 2013, breach of lease suit and filed a new lawsuit repeating the claims from the November 18 action and adding an additional defendant, as well as a handful of tort claims. *Fillmore & W. Ry., Inc. v. Comm’rs of the Ventura Cnty. Transp. Comm’n*, Case No. 56-2014-00450239 (Ventura Cnty. Super. Ct., filed March 17, 2014) (the “Second Breach of Contract Action”). A true and correct copy of the Complaint is attached as Exhibit D. VCTC intends to vigorously defend itself, but has not yet filed its formal response. No trial schedule has been set.

ARGUMENT

The F&W’s Petition is based entirely on the consequences of VCTC enforcing the Direct Lease, the FRDA Lease, and the FRDA Sublease. The F&W claims that VCTC improperly terminated the leases, improperly changed the repair and maintenance allowance under the Direct Lease, improperly limited the F&W’s freight operations to the Fillmore Segment as specified in the Direct Lease, and that VCTC Executive Director Darren Kettle acted improperly in pursuing those actions. Even though the F&W’s objections to those actions are currently pending in state court litigation in which the F&W is vigorously contesting VCTC’s actions, the F&W seeks Board intervention because if VCTC prevails and the leases are terminated, the

F&W will no longer have any property right to use the Line, thereby ending the F&W's operations on the Line.

The fatal flaw with the F&W's case is that questions of a railroad's property or contract right to use a line are matter of state property and contract law over which the Board does not have, and will not exercise, jurisdiction. The Board relies on the parties, and on courts, to resolve disputes about property and contract rights. Fundamentally, the F&W cannot exercise any Board-granted regulatory authority to use the Line unless it also has a property or contract right to use the Line, but the Board cannot grant those property or contract rights and cannot resolve disputes regarding the existence or extent of those rights. Although the F&W makes some creative arguments, it fails to show that its dispute with VCTC is anything more than a lease dispute that must be resolved by the California state court proceedings currently underway. Because there is no issue over which the Board can or should exercise jurisdiction, the Board should decline to initiate a declaratory proceeding, or it should dismiss the Petition out of hand.

A. The Board Should Exercise Its Discretion and Decline To Initiate A Proceeding Because The Issues Raised By The F&W Are State Law Lease And Contract Issues That The State Court Should Resolve And There Is No Emergency That Warrants Board Intervention

The F&W invokes the Board's authority under 49 U.S.C. § 721(b)(4) to seek emergency relief, including injunctive relief, to prevent what the F&W asserts is irreparable injury. Petition at 3.² The Board has the authority under 49 U.S.C. § 721(b)(4) "to issue an appropriate order" to "prevent irreparable harm." The Board's Authority under Section 721 is discretionary, however;

² Although the F&W has styled its Petition as an Emergency Petition, it does not expressly request preliminary relief, including a preliminary injunction. To the extent the F&W does seek preliminary relief, it has failed to cite, much less meet the standards of, the Board's familiar *Holiday Tours* test for preliminary relief, and therefore cannot obtain an injunction. *BP Amoco Chem. Co. v. Norfolk S. Ry. Co.*, No. NOR 42093, Slip Op. at 4 (Service Date June 6, 2005); *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, NOR No. 42110, Slip Op. at 4 (Service Date Dec. 22, 2008) (denying request for injunctive relief and explaining that "some showing of each of the *Holiday Tours* factors is necessary"). In any event, as detailed below, the Petition fails to demonstrate any risk of irreparable injury or likelihood of success on the merits, and fails utterly to even address the other factors, thereby precluding entry of preliminary relief.

the Board is not compelled to institute a proceeding or provide relief at the request of a petitioner. *See Nat'l Solid Wastes Mgmt. Ass'n – Petition for Declaratory Order*, FD No. 34776, Slip Op. at 4 (Service Date Mar. 10, 2006) (declining to exercise discretion to institute a proceeding, noting the Board's broad discretion in determining whether to issue a declaratory order). In this case, the Board should decline to exercise that discretion for two reasons. First, the Board should defer to the state court because resolution of those cases will either obviate the need for Board action or clarify the issues for later Board consideration. Second, there is no emergency or other urgent need for the Board to act while the parties litigate the lease issues in state court.

1. The Board Will Not Institute A Declaratory Order Proceeding When There Are Pending State Court Proceedings That Can Address The Issues

The Board has made clear that it will not, as a rule, institute a declaratory order proceeding when there is a pending court proceeding that is capable of addressing the issues raised in the petition. *Id.* at 4-5 (declining to institute a declaratory order proceeding given pending litigation that could address potential preemption issues); *Green Mountain RR. Corp. – Petition for Declaratory Order*, FD No. 34052, Slip Op. at 4 (Service Date May 24, 2002) (same).

The Board's unwillingness to initiate a proceeding is particularly strong when the underlying issue relates to property and contract rights under state law. Indeed, the Board has stated that will not exercise jurisdiction to adjudicate contract and lease disputes because the interpretation of agreements to clarify rights in the track "lies within the purview of the courts, not with us." *Delaware-Lackawanna Cnty. RR. Co., Inc. – Operation Exemption – F&L Realty, Inc.*, FD 33905, Slip Op. at 6 (Service Date Oct. 22, 2001). *See also James Riffin – Petition for Declaratory Order*, FD No. 35245, slip op. at 6 (Service Date Sept. 15, 2009), *aff'd*, No. 09-

1277 (D.C. Cir. Nov. 30, 2010) (declining to institute declaratory proceeding stating that “[d]isputes over the validity or enforcement of such voluntary contracts raise issues of state law best left to state courts.”); *Jie Ao and Xin Zhou – Petition for Declaratory Order*, FD 35539, Slip Op at 7-8 (Service Date June 6, 2012) (declining to consider whether landowner secured a prescriptive easement or whether such easement was preempted because “that is the type of determination the state court can appropriately address.”).

The primary basis for F&W’s claims is the contention that VCTC wrongfully terminated the Direct Lease and the FRDA Lease/Sublease and wrongfully limited the F&W’s freight operations to the Fillmore Segment based on the Direct Lease. Those issues are pending before California state courts, which are the appropriate forum in which to resolve those issues.

That result does not change just because the F&W argues (incorrectly, as detailed below) that VCTC’s lease enforcement actions are preempted. The Board has made it clear that state and federal courts can and should adjudicate issues of preemption in the first instance, particularly when the preemption issue is bound up in state law issues. *See Nat’l Solid Wastes Mgmt. Ass’n, supra* at 14; *Green Mountain RR. Corp., supra* at 14. That result is particularly appropriate here because the lease issues will be decisive. If the state courts determine that the leases are terminated, the F&W will no longer have any property or contract right to use the Line, making moot any remaining issues relating to the F&W’s regulatory authority to use the Line. *See Delaware-Lackawanna Cnty. RR. Co., Inc., Slip Op.* at 6 (discussing distinction between property rights and regulatory authority). Because the issues raised in the Petition are fundamentally questions of state law under leases, the Board should decline to initiate a proceeding and let the state court resolve the issues.

2. There Is No Threat Of Irreparable Harm, No Emergency, and No “Embargo” of The F&W’s Freight Rights

In an apparent effort to gloss over the predominance of state law lease issues in the case, the F&W spends considerable rhetorical energy trying to show that there is an emergency warranting immediate Board action. A brief examination of even the limited facts presented by the F&W demonstrates that there is no threat of immediate irreparable injury and no emergency warranting any Board action.

a. The F&W Will Not Suffer Irreparable Harm Because The State Court Litigation Will Guard Against Wrongful Termination Of The Direct Lease

The basic premise of the Petition is that the F&W will suffer irreparable harm if its leases are terminated and it is evicted from the Line. This position fails to withstand the slightest scrutiny, however. As detailed above, all of the F&W’s alleged injuries turn on whether VCTC properly terminated the leases and appropriately stopped the F&W’s freight operations on the Santa Paula Segment based on the Direct Lease. *See* Exhibit D at 12-17. The F&W is vigorously contesting VCTC’s attempt to terminate the Direct Lease, and is similarly contesting the Unlawful Detainer Action by which VCTC seeks to enforce the FRDA Lease and FRDA Sublease. *Supra* at 11-12. If the F&W is successful in those efforts, it will not suffer any irreparable harm, and any interim harm could be addressed through damages. *See Ark. Elec. Coop. Corp. – Petition for Declaratory Order*, FD 35305, Slip Op. at 3 (Service Date Aug. 31, 2011) (the availability of compensatory damages to address interim harms precludes the need for preliminary relief). If the F&W is not successful in those efforts, it will not suffer a cognizable harm because a Court will have determined that its rights to use the Line were legally terminated. Either way, the issue will be completely and finally resolved in the pending state court matters, proceedings which will protect the F&R from suffering any legally cognizable irreparable harm.

b. There Is No Emergency

Although the Board has no general definition of “emergency” for purposes of emergency relief, Board regulations in specific contexts make clear that an emergency is a situation in which the provision of rail service is demonstrably impaired by a failure of a railroad to meet its common carrier obligation. *See, e.g.* 49 C.F.R. § 1146.1 (explaining grounds for relief in service emergencies based on the “demonstrated inadequacy in rail carrier service.”); 49 C.F.R. § 1147.1 (same, to temporary relief). Based on that common sense understanding of an “emergency,” it is clear that no emergency exists here.

First, the F&W has no freight common carrier obligation on the Santa Paula Segment, so the basic premise for the kind of emergency the Board will address is missing. Further, because the lease terminations have not prevented the F&W from conducting any operations under the Board’s jurisdiction, the F&W has not been prevented from meeting its freight common carrier obligations on any part of the Line.

Second, the basis of the F&W’s Petition – the April 9, 2013, Letter and the May 14, 2013, Lease Termination Letters – occurred almost a full year ago. There is nothing new or urgent about those actions that suddenly warrants emergency action by the Board, and the F&W fails completely to explain what the immediate emergency is. Despite its claims of not being able to operate on the Santa Paula Segment, the F&W has not presented any evidence of a specific demand for service that it has been unable to meet because of the April 9 letter. Indeed, over the past year, despite the ongoing lease disputes and the state court litigation, VCTC has not prevented the F&W from conducting any operations under the Direct Lease, including freight operations and interchanging with the UPRR at the lease line (MP 414.95), or from conducting its tourist/excursion service under the FRDA Sublease. Nor has VCTC prevented the F&W from

securing an interchange agreement with the UPRR for the Santa Paula Segment. The status quo remains largely unchanged; there is simply no emergency.

Third, there is no impermissible “embargo” of the F&W’s freight operations. An “embargo” is commonly understood as

a method of controlling traffic movements when, in the judgement of the serving railroad, an actual or threatened Physical or Operational Impairment, *of a temporary nature*, warrant restrictions against such movements.³

An embargo is, of course, a permissible safety restriction on the use of a line.

The F&W alleges that VCTC’s April 9, 2013, letter is an “embargo” that must be struck down. On its face, the April 9 letter is not an embargo because it is not a means of controlling traffic because of an “impairment.” The F&W seems to be using the term “embargo” in a pejorative sense to argue that VCTC has improperly interfered with the F&W’s ability to use the Santa Paula Segment.

The obvious and fatal flaw in the F&W’s argument is that the F&W has no right or legal ability to use the Santa Paula Segment for freight operations. Pursuant to the Direct Lease and the FRDA Sublease, the F&W may operate freight *only* on the Fillmore Segment (MP 414.95 – MP 435.1). The UPRR has the exclusive freight rights on the Santa Paula Segment (MP 403.34 – MP 414.95). The April 9, 2013, letter simply directed the F&W to stop freight operations on the Santa Paula Segment, where it has no right to conduct freight operations, and to limit its freight operations to the Fillmore Segment, where it does have freight rights, until it executes an interchange agreement with UPRR that adequately protects VCTC from liability. VCTC further offered to assist the F&W in securing that agreement.

³ See <https://aarembargo.railinc.com/epdb/showTD1.do?step=viewTD1Circular> (accessed April 9, 2014).

There is nothing impermissible about limiting the F&W's freight operations to the portion of the Line on which it has the right to conduct freight operations, and nothing about that action creates an emergency. Moreover, the F&W has the ability to cure the so-called "emergency" by entering into an interchange agreement with the UPRR – a common commercial arrangement in the industry. The F&W can also avoid the issue entirely by interchanging with the UPRR at the lease line. The F&W's unwillingness or inability to do so further underscores that the F&W is seeking in vain to invoke the Board's jurisdiction as means to protect the F&W from its own agreements and actions.

Finally, the F&W asserts that the Unlawful Detainer Action threatens imminent harm by seeking to evict the F&W from the FRDA Sublease. Petition at 16-17. That action also does not warrant emergency action by the Board. The Unlawful Detainer Action relates to the F&W's lease with FRDA to use the Fillmore Segment for intrastate excursion/tourist services; it does not relate to the F&W's Direct Lease with VCTC, which addressed the F&W's freight rights on the Fillmore Segment. A court ruling in favor of VCTC in the Unlawful Detainer Action will have no effect on the F&W's freight and other operations under the Direct Lease.

Moreover, the F&W's intrastate excursion service is not subject to the Board's jurisdiction, and therefore the Board lacks the authority to issue any relief regarding that service. *See Fun Trains, Inc. – Operation Exemption – Lines of CSX Transp. Inc. and Fla. Dep't of Transp.*, FD No. 33472, Slip Op. at 2 (Service Date Mar. 5, 1998); *Napa Valley Wine Train, Inc. – Petition for Declaratory Order*, 7 I.C.C.2d 954, 968-69 (1991); *Magner-O'Hara Scenic Ry. v. I.C.C.*, 692 F.2d 441, 444-45 (6th Cir. 1982). Indeed, the F&W's use of the Unlawful Detainer Action regarding its intrastate excursion service as the pretext to claim emergency underscores that the F&W is seeking to use its freight operation as a sham to invoke the Board's jurisdiction

to protect the F&W's intrastate passenger excursion and other rail services beyond the Board's jurisdiction. It is well established that the Board will not exercise its jurisdiction to protect intrastate passenger and other non-freight rail operations. *See The City of Chicago, Ill. – Adverse Aban. – Chicago Terminal R.R. in Chicago, ILL.*, AB 1036, Slip Op. at 4, n.8 (Service Date June 16, 2010) (citing *Kansas City Pub. Serv. Freight Operation – Exemption – Aban. in Jackson Cnty., MO*, 7 I.C.C.2d 216 (1990) and *CSX Corp. and CSX Transp., Inc. – Adverse Aban. Application – Canadian Nat'l Ry. and Grand Trunk W. R.R.*, AB 31 (Sub-No. 38) (Service Date Feb. 1, 2002) (the Board will “not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding federal interest exists.”)).

B. Even If The Board Elects To Open The Proceeding, The Petition Must Be Denied On The Merits

The F&W seeks declaratory relief that (1) VCTC's alleged “interference” with the F&W's operation is preempted, and (2) VCTC's alleged “interference with, and purported embargo of,” the F&W's interchange with the UPRR is improper. To enforce those declarations, the F&W seeks to enjoin the pending state court actions and to “suspend” all “orders and instructions issued by” VCTC. Petition at 17-18. The F&W cites virtually no legal support for its claims, and it is clear that there is none.

1. The ICCTA Does Not Preempt Actions To Enforce Leases

The F&W attempts to end-run around the Board's lack of jurisdiction over lease disputes, by seeking a declaration that VCTC's alleged “interference with FWRR's operation is preempted.” Petition at 17. As detailed above, and made clear in the Petition, the only “interference” alleged by the F&W are VCTC's attempts to enforce the Direct Lease and the FRDA Lease and Sublease. Lease enforcement actions are not, however, preempted by the ICCTA.

The ICCTA preempts, in general, state and local government attempts to regulate rail transportation through state statutes, local ordinances, and state imposed standards of conduct, such as common law claims. *See Joint Petition for Declaratory Order - Boston and Me. Corp. and Town of Ayer, Mass.*, FD No. 33971, Slip Op. at 8-9 (Service Date May 1, 2001). *See also Pejepscot Indus. Park v. Me. Cent. R.R.*, 297 F. Supp. 2d 326, 332 (D. Me. 2003). The ICCTA does not, however, preempt the enforcement of contracts because a contract reflects a *voluntary* set of standards, and a railroad cannot invoke preemption to protect it from the consequences of its own agreements. As the Board has stated:

Furthermore, a town may seek court enforcement of voluntary agreements that the town had entered into with a railroad, notwithstanding section 10501(b), because the preemption provisions should not be used to shield the carrier from its own commitments, and “voluntary agreements must be seen as reflecting the carrier’s own determination and admission that the agreements would not unreasonably interfere with interstate commerce.”

Boston and Me. Corp., Slip Op. at 9 (quoting *Township of Woodbridge, NJ v. Consol. Rail Corp., Inc.*, FD No. 42053, Slip Op. at 5 (Service Date Dec. 1, 2000)). *See also PCS Phosphate Co. v. Norfolk S. Corp.*, 559 F.3d 212, 219 (4th Cir. 2009); *Pejepscot Indus. Park*, 297 F. Supp. 2d at 332.

This case illustrates perfectly why the Board reached that conclusion. All of VCTC’s actions at issue here relate to the enforcement of the leases and related voluntary agreements entered into by the F&W itself. The May 14 lease terminations are based on the leases. Similarly, the April 9 letter is an attempt to enforce the Direct Lease’s limitation of the F&W’s freight rights to the Fillmore Branch by preventing the F&W from operating on tracks where it

has no contractual right to operate.⁴ The F&W's attempt to declare the enforcement action preempted is a transparent attempt to escape the consequences of its own agreement. Indeed, the F&W's recent assertion of preemption is difficult to accept as genuine given that the F&W itself filed the lawsuit regarding the Direct Lease, and did not inform the state court that the case was preempted or that it intended to seek a stay from the STB. The case is not a mere protective suit, as the F&W may argue, because the F&W filed the case on the earliest date possible and sought initially to enjoin VCTC from enforcing the Direct Lease. Plainly, the F&W is trying to have it both ways by seeking similar relief from two forums, and attempting to use the Board as a forum to in effect overrule the state court's denial of the injunction.

The F&W suggests that preemption should be broadly construed because if VCTC is successful in terminating the leases, the F&W's rail operations on the Line will cease, thereby unreasonably interfering with interstate commerce. Although it is true that in some circumstances the Board will consider the degree to which a state or local law enforcement action will interfere with interstate commerce in assessing whether that action is preempted, that analysis is inapplicable in the case of enforcing a contract. As the Board has explained:

These voluntary agreements must be seen as reflection the carriers own determination and admission that the agreements would not unreasonably interfere with interstate commerce.

Township of Woodbridge, NJ v. Consol. Rail Corp., Inc., FD No. 42053, Slip Op. at 5 (Service Date Dec. 1, 2000).

Here, the F&W voluntarily entered into the Direct Lease and FRDA Sublease following negotiations. The F&W accepted all of the benefits of those agreements for many years, and has itself sought to enforce the leases against VCTC when it suited the F&W. But the F&W also

⁴ As discussed below, *infra*, 24-25, the F&W's regulatory authority from the Board to operate on the entire Line is permissive, not mandatory. The Board's regulatory authorization does not confer a right to operate on tracks where the property owner has not given permission to us the tracks, through a lease, contract, or property right.

accepted specific obligations under the leases, and agreed that its failure to meet those obligations could lead to the termination of the leases and the loss of the F&W's right to use the Line. By agreeing to enter into the leases and accepting the benefits and responsibilities of the leases, the F&W must be understood to have agreed that the terms and conditions of the leases, taken as a whole, did not unreasonably interfere with interstate commerce. The F&W cannot now complain that its bargain was unreasonable simply because the F&W is being held to the terms of those agreements.

2. VCTC Has Not Improperly Interfered With the F&W's Interchange With The UPRR

The F&W argues that the April 9, 2013, letter improperly interferes with the F&W's ability to interchange with the UPRR and is therefore without legal force or effect. Petition at 15-16. The F&W cites no legal authority to support that argument, however, and does not identify the legal theory upon which it relies. As a threshold matter, the F&W has failed to meet its burden of proof of any misconduct by VCTC.

Moreover, as explained above, there is nothing improper about the April 9 letter and it does not, in any event, interfere with the F&W's ability to interchange with the UPRR. Under the April 9 letter, the F&W is free to enter into an interchange agreement with the UPRR to allow the F&W to pick up cars on the UPRR-operated Santa Paula Segment. The F&W is also free to interchange with the UPRR at the lease line (MP 414.95) and otherwise conduct freight operations on the Fillmore Segment as provided in the Direct Lease. The only thing the April 9 letter prohibits is F&W freight operations on the Santa Paula Segment without an appropriate interchange agreement. Because neither the Direct Lease nor any other lease or contract gives the F&W the right to conduct freight operations on the Santa Paula Segment, however, the April

9 letter is not preventing anything; it simply enforces the express terms of the Direct Lease and preserves the legal status quo.

The F&W does not explain in its Petition why it has been unable to enter into an interchange agreement with the UPRR, or why it cannot simply interchange at the lease line. VCTC has provided the F&W with a letter supporting the F&W's efforts to acquire UPRR's operating rights on the Santa Paula Segment, but understands that the UPRR rejected the F&W's proposal. The F&W fails to show, however, that its inability to obtain an interchange agreement with the UPRR was the result of improper conduct by VCTC and not its own inability to meet UPRR's terms and conditions. Accordingly, the F&W's attempt to challenge the April 9, 2013, letter is without merit.

3. The F&W's 2002 Notice of Exemption Does Not Protect The F&W From Its Lease Obligations, Including Its Lack Of Property Or Contract Rights To Conduct Freight Operations On The Santa Paula Segment

The F&W seems to argue that its 2002 Notice of Exemption grants the F&W freight operating authority over the entire Line, which prevents VCTC from terminating the Direct Lease or from enforcing the April 9, 2013, letter. Petition at 11.⁵ Fundamentally, the F&W's authority under the Notice of Exemption does not trump the limited legal rights the F&W has under the Direct Lease. As the Board has explained in denying an emergency petition involving an apparent conflict between Board authority and contract rights:

⁵ The F&W also suggests that VCTC is somehow trying to take over the F&W's operations without the proper regulatory authority, and that the F&W cannot be evicted until there is another carrier on the Line. Petition at 12 & 15. The F&W provides no support for this assertion, however, and VCTC states that it has no intention of "taking over" the F&W's operations. To the contrary, as explained above, VCTC intends to seek the abandonment of the Line to remove all freight obligations from the Line due to the lack of traffic in recent years. Moreover, VCTC does have operating authority on the Line pursuant to the 1998 Notice of Exemption and is responsible for meeting the common carrier obligations on the Line. *Ventura Cnty Transp. Comm'n – Acquisition Exemption – Southern P. Transp. Co.*, FD No. 33553 (Service Date Mar. 24, 1998). Even though VCTC itself is not an operating carrier, it can exercise its authority, and meet its obligations, through another carrier by contract or other arrangement. The inability of the F&W to exercise its operating authority is no bar to VCTC or another entity obtaining its own authority or exercising VCTC's authority.

The question of whether a party (or parties) have regulatory authority to operate over a particular segment of track is different from the question of whether that party (or parties) have the necessary property interest or contractual right under applicable agreements to exercise that authority. In exercising our licensing authority, we look to whether the statutory standards are satisfied, not to whether the applicant or petitioner will be able to exercise the authority sought.

Delaware-Lackawanna Cnty., Slip Op. at 6. See also *In re Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 882 F.2d 1188, 1191 (7th Cir. 1989) (affirming Board's determination that its grant of authority to acquire and operate a line is "merely permissive," does not require the transfer of the line, and does not affect the rights and remedies of the parties to the transaction in the event of a dispute). Board "authorization is permissive, not mandatory, and did not give [an entity] a legal property interest in the line. [A carrier] would have to acquire some suitable legal interest that would give [it] the ability to exercise [its] authority. . . ." *James Riffin – Petition for Declaratory Order*, FD No. 35245, slip op. at 6 (Service Date Sept. 15, 2009), *aff'd*, No. 09-1277 (D.C. Cir. Nov. 30, 2010).

It follows, then, that if a railroad does not have a contract or property right to use a line, it cannot make any use of that line even it has regulatory authority. See *Saratoga and North Creek Ry., LLC – Operation Exemption – Tahawus Line*, FD No. 35631, Slip Op. at 4 (Service Date Oct. 11, 2012) (noting that a carrier must have property rights to use a line, in addition to Board authority, to begin operations on a line); *James Riffin*, slip op. at 6, (failure to obtain a cognizable possessory interest in a line of railroad rendered him incapable of exercising the authority granted to him to acquire and operate the line).

Here, even if the F&W has regulatory authority to conduct freight operations on the Santa Paula Segment, it does not have a property or contract right to do so. Accordingly, VCTC acted correctly in issuing the April 9, 2013, letter to bar the F&W from conducting freight operations

on the Santa Paula Segment until it secured the appropriate contract rights. Similarly, and for the reasons explained above, the F&W's operating authority does not shield it from the termination of the Direct Lease under the terms of the Direct Lease itself.

In addition, it is doubtful that the Notice of Exemption has any legal effect. The Notice is subject to the condition that "if it contains false or misleading information, the exemption is void *ab initio*." *Fillmore & W. Freight Serv., LLC – Lease and Operation Exemption – Ventura Cnty. Transp. Comm'n*, FD No. 34173 (Service Date May 3, 2002). At the time the F&W submitted its Notice of Exemption, and at every time since, the F&W has not had any rights to use the Montalvo-Santa Paula segment for freight services. Accordingly, to the extent the Notice of Exemption claimed that the F&W had any right to conduct freight operations on the Santa Paula Segment, the Notice was false or misleading and is therefore void *ab initio*.⁶ *See also James Riffin d/b/a The N. Cent. R.R. – Acquisition and Operation Exemption – In Baltimore City, MD*, FD No. 34982, Slip Op. at 3 (Service Date Oct. 9, 2007) (Board prevented use of, and revoked, a class exemption to operate on a dormant rail line when there were substantial doubts about an entity's ability to obtain property rights). Accordingly, the F&W cannot rely on the Notice of Exemption to obtain any relief.

4. The F&W Has No Right To A Declaration That "All Orders And Instructions Issued By Respondents Are Suspended"

The F&W seeks a declaration that "all orders and instructions issued by Respondents are suspended." Petition at 18. That is simply too broad and vague to be granted. As formulated, it would apply to every directive issued by VCTC without limitation, including orders on subjects over which the Board has no jurisdiction. The F&W fails to specify which orders and instructions violate what laws, and therefore fails to provide the Board with any basis upon

⁶ As indicated above, VCTC intends to file a formal petition to revoke the Notice of Exemption together with its Petition for Adverse Discontinuance and Notice of Abandonment.

which to grant this relief. Moreover, with respect to the “orders and instructions” that the F&W has identified – specifically the April 9, 2013, letter and the May 14, 2013, lease termination letters – the F&W has failed to show that they are in any way improper or barred by any law within the Board’s jurisdiction. Accordingly, the F&W’s third request for relief must be dismissed.

C. The Board Lacks The Authority To Enjoin The State Court Proceedings

Finally, the F&W asks the Board to order that “all litigation pending between [VCTC and the F&W] is stayed and suspended until the Board can consider the entire matter.” Petition at 18. In effect, the F&W asks the Board to enjoin the Ventura County Superior Court, which is not a party, from adjudicating cases currently and validly pending before the court. Again, the F&W fails to cite any support for this extraordinary request, and VCTC is not aware of any.

“An injunction is an extraordinary remedy and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction.” *Am. Chem. Council*, NOR No. 42129, Slip Op. at 4 (Service Date May 4, 2012). It does not appear that the Board has squarely addressed its authority to enjoin a state court proceeding. In *Boston and Me. Corp. and Springfield Terminal Ry. Co. – Petition for Declaratory Order*, FD 35749, Slip Op. at 3 (Service Date Oct. 31, 2013), the Board seemed to accept as true the principle that it could not “exercise control over the state court.” As detailed above, however, issues regarding the interpretation and enforcement of leases and contracts are in the purview of courts, not the Board. *Supra*, 14-15. Similarly, lease enforcement actions by public bodies are not preempted by the ICCTA. *Supra*, 20-21. These decisions further suggest that the Board lacks the authority to enjoin a state court lease enforcement proceeding. At a minimum, these decisions demonstrate that the Board has set a high bar for a petitioner to meet in order to persuade the Board to enjoin a state court lease enforcement proceeding.

More fundamentally, the Board's jurisdiction and authority is limited to the items specified in 49 U.S.C. § 10501. Section 10501 does not confer jurisdiction over state courts, and state courts are not, therefore, subject to the Board's enforcement authority under 49 U.S.C. § 721 or otherwise. Neither is it necessary to enjoin the state court proceedings to preserve the Board's jurisdiction because, as discussed above, lease and contract disputes do not fall within the Board's jurisdiction and are best left in the "purview" of state courts. Indeed, the Board has repeatedly confirmed that state courts enjoy concurrent jurisdiction with the Board to address questions of preemption, and the Board has stayed *its own* proceedings to allow the state court to adjudicate the response. *Supra* at 19-20.

The F&W's request for injunction turns all of these principles on their head. Rather than staying a Board proceeding pending resolution of state court proceedings, the F&W asks the Board to enjoin the ongoing state court proceedings so that the Board can resolve state law lease, contract, and tort claims. Those are the precise circumstances in which the Board has refused to take any action at all, other than declining to institute a declaratory proceeding or dismissing a petition. The F&W has not presented any legal basis or sound policy reason for the Board to depart from its precedent and practice and enjoin the pending state court proceedings. Moreover, the F&W takes the extraordinary step of asking the Board to enjoin a lawsuit *the F&W itself filed just 10 days before filing this action*. If the F&W is serious that that suit should not proceed, it should simply dismiss the suit itself. Instead, its claim here amounts to a "stop me before I sue again" argument that has no merit. Accordingly, the Board should refuse to issue the injunction either because it lacks the authority to enjoin a state court lease enforcement action or because it would not be a wise exercise of the Board's discretion.

CONCLUSION

For the foregoing reasons, VCTC respectfully requests that the Board decline to institute a declaratory proceed or deny the Petition outright. In the alternative, if the Board decides to institute a declaratory proceeding, VCTC respectfully requests that the Board hold the proceeding in abeyance pending the outcome of the state court proceedings, at which time the Board can assess the need for further proceedings.

Respectfully submitted,



Charles A. Spitulnik
W. Eric Pilsk
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036
(202) 955-5600

Counsel for the Ventura County Transportation
Commission

Dated: April 11, 2014

VERIFICATION AND CERTIFICATION

I, Darren M. Kettle, Executive Director, Ventura County Transportation Commission, verify under penalty of perjury that the facts recited in the foregoing "Verified Response of the Ventura County Transportation Commission to Fillmore & Western Freight Service, LLC's Emergency Petition for Declaratory Order" are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Petition for Exemption.


Darren M. Kettle

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the **VERIFIED RESPONSE OF THE VENTURA COUNTY TRANSPORTATION COMMISSION TO FILLMORE & WESTERN FREIGHT SERVICE'S EMERGENCY PETITION FOR DECLARATORY ORDER** upon the following parties of record by email and by overnight delivery, fees prepaid and properly addressed:

Ivan W. Halperin
Halperin Law Offices
1007 West 24th Street
Los Angeles, CA 90007- 1816
(310) 773-3494

Donna M. Standard
35625 E. Kings Canyon Rd.
Squaw Valley, CA. 93675
(559) 338-0111



W. Eric Pilsk
Kaplan Kirsch & Rockwell, LLC

Counsel for the Ventura County Transportation
Commission

Dated this 11th Day of April, 2014

EXHIBIT A

 **COPY**

VENTURA
SUPERIOR COURT
FILED

DEC 19 2013

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

Malin A. Acosta

1 Steven Mattas (SBN: 154247)
Ernest E. Price (SBN: 164534)
2 eprice@meyersnave.com
Jenny L. Riggs (SBN: 204417)
3 jriggs@meyersnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
4 633 West Fifth Street, Suite 1700
Los Angeles, California 90071
5 Telephone: (213) 626-2906
Facsimile: (213) 626-0215

6 Attorneys for Defendant
7 VENTURA COUNTY TRANSPORTATION
COMMISSION

8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF VENTURA

12 FILLMORE & WESTERN RAILWAY, INC.,
13 a California Corporation,

14 Plaintiff,

15 v.

16 VENTURA COUNTY TRANSPORTATION
17 COMMISSION, Darren Kettle, Executive
18 Director and DOES 1-50,

19 Defendants.

Case No. 56-2013-00444877-CU-BC-VTA

[Filed: November 19, 2013]

**DECLARATION OF DARREN KETTLE
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Judge Tari L. Cody

Date: January 7, 2014

Time: 8:30 a.m.

Dept. 21

Trial Date: TBD

1 all of the following records referred to below were prepared, compiled and maintained by
2 personnel with knowledge of these matters of the above named business, in the ordinary course of
3 business, at or near the time of the acts, conditions or events recorded:

4 3. Attached to this declaration as Ex. 1 is a true and correct copy of a memo and
5 accompanying attachment to VCTC authored by Ginger Gherardi, then-Executive Director for
6 VCTC, dated May 21, 2001, in part, explaining to VCTC that the prospective lease under
7 consideration for Fillmore & Western Railway Co. ("FWRY") at that time was written to have no
8 fiscal impact on VCTC (page 109, Item #11(b)) - that the lease would be structured so that
9 "existing revenues and expenses remain balanced." This 2001 representation by Ms. Gherardi is
10 consistent with my later understanding that the rail operations by FWRY would always be
11 considered "revenue neutral" for VCTC.

12 4. Attached to this declaration as Ex. 2 is a true and correct copy of the lease VCTC
13 entered into directly with FWRY on or about June 25, 2001 (the "Direct Lease").

14 5. Attached to this declaration as Ex. 3 is a true and correct copy of the lease VCTC
15 entered into with the Fillmore Redevelopment Agency on or about June 6, 2001 (the "Fillmore
16 Lease"). With the dissolution of the Fillmore Redevelopment Agency years later, I understand the
17 Fillmore Successor Agency assumed responsibility for the Fillmore Lease.

18 6. Attached to this declaration as Ex. 4 is a true and correct copy of the Sublease
19 Agreement FWRY entered into with the Fillmore Redevelopment Agency on or about July 1,
20 2001 (the "Fillmore Sublease"), kept on file with VCTC.

21 7. Attached to this declaration as Ex. 5 is a true and correct copy of a memo to VCTC
22 authored by me, dated July 9, 2010, in part, explaining to VCTC that the VCTC Direct Lease with
23 FWRY is and always has been viewed as a 'revenue neutral' relationship, to permit FWRY to
24 continue rail activity on the Santa Paula Branch Line and to consider adjustments to VCTC's
25 maintenance allowance to FWRY under the Direct Lease, in part, due to the revenues generated by
26 FWRY and due to the fiscal pressures also experienced by VCTC.

27 8. Attached to this declaration as Ex. 6 is a true and correct copy of a September 16,
28 2010 letter I received from FWRY on or about that time, indicating disagreement, as I interpret the

1 letter, regarding maintenance responsibilities between VCTC and FWRV for the Santa Paula
2 Branch Line under the Direct Lease, and resistance by FWRV to reimburse funds rendered by
3 VCTC to FWRV to conduct work needed to maintain the branch line.

4 9. Attached to this declaration as Ex. 7 is a true and correct copy of a revised memo to
5 VCTC authored by me, dated October 1, 2010, in part, alerting VCTC that VCTC will administer
6 its maintenance agreement with FWRV consistent with the Direct Lease with FWRV and the
7 Fillmore Lease and Sublease with the City of Fillmore and anticipates scheduling a recovery of
8 overpayments to FWRV from the prior five years.

9 10. Attached to this declaration as Ex. 8 is a true and correct copy of a letter I authored
10 and caused to be sent to Mr. David Wilkinson of FWRV on or about October 14, 2010 indicating,
11 in part, a request to the monthly adjustment in the maintenance allowance provided to FWRV
12 pursuant to our direct lease with them.

13 11. Attached to this declaration as Ex. 9 is a true and correct copy of a Santa Paula
14 Branch Line Advisory Committee agenda and minutes dated for November 16, 2011 indicating in
15 part a continuing goal to work with FWRV and insure that tracks between Montalvo and Santa
16 Paula would be maintained properly outside a 15 foot track area and that a draft budget by VCTC
17 of \$597,650 for track maintenance was to be considered by VCTC for approval (see, e.g., Items 3
18 thru 5).

19 12. Attached to this declaration as Ex. 10 is a true and correct copy of a Santa Paula
20 Branch Line Advisory Committee memo dated on or about November 16, 2011 memorializing a
21 discussion by Commission members regarding acknowledgment of a Federal Railroad
22 Administration ("FRA") "Final Rule" directive for track owners to follow specific procedures to
23 protect the safety of bridges and to strengthen oversight of railroad bridge maintenance programs.
24 I understand and am of the belief that VCTC, as owner of the Santa Paula Branch Line, is subject
25 to this Federal directive, as affirmed by the memo, and details responsibility for the condition of at
26 least 30 bridges along the rail line. The memo also articulates that J.L. Patterson & Associates
27 was awarded a contract to be a consultant on behalf of VCTC to inspect the rail line. Starting in
28 November 2011, "Phase One" of the "Bridge Certification Program" would include oversight by

1 J.L. Patterson to update all bridge inventories, prioritize bridge ratings, complete a management
2 plan and to submit this management plan to VCTC. Phase One was forecast to be complete by
3 July 2012. At that time, I also understood VCTC's compliance with the Federal Final Rule and
4 bridge certification request would be anticipated sometime in the year 2015.

5 13. Attached to this declaration as Ex. 11 is a true and correct copy of a Santa Paula
6 Branch Line Advisory Committee memo dated on or about November 16, 2011 authored by me
7 memorializing and detailing VCTC's understanding at that time of the responsibilities of VCTC
8 and FWRV regarding the transfer of Union Pacific freight across the rail line and reiterating, in
9 part, and in my view, Union Pacific's reliance on FWRV at that time as a common carrier for a fee
10 reinforcing FWRV's responsibilities for managing freight at that time on the rail line.

11 14. Attached to this declaration as Ex. 12 is a true and correct copy of a memo dated
12 July 27, 2012 received by me as indicated and authored by Mr. David Wilkinson, who I knew at
13 that time to be the principal to FWRV. I received this memo on or about the date indicated and
14 understood the writing to convey to VCTC that FWRV was proposing a 20 year franchise for the
15 operation and maintenance of the Line, to complement or replace the then-current June 25, 2001
16 Direct Lease with FWRV. The proposal was consistent with my understanding that the
17 arrangement and goals between VCTC and FWRV were to remain revenue-neutral for VCTC (i.e.,
18 "\$1 per year" lease payment). The proposal also requested that FWRV be allowed to assume
19 responsibility for the bridge certification program and that VCTC re-allocate \$90,000 for this
20 purpose. Further, the proposal indicates FWRV's desire to have exclusive rights to maintain the
21 entire rail line to 'at least class 1 standard.' Mr. Wilkinson's memo makes reference to FWRV's
22 desire to be aligned as a partner with VCTC and not be a "recipient of litigation, threats and
23 innuendo." Though I am not entirely clear what Mr. Wilkinson means by this reference, I recall
24 several discussions between VCTC and the Railroad by this date reiterating FWRV's
25 responsibility for maintaining the rail line in a safe operating condition and that VCTC was
26 seeking reimbursement of funds provided to FWRV, but not utilized by FWRV, for effecting
27 maintenance to the track and to the rail line.

28

1 15. Attached to this declaration as Ex. 13 is a true and correct copy of a Santa Paula
2 Branch Line Advisory Committee agenda dated on or about October 17, 2012 memorializing a
3 Santa Paula Branch Line Advisory Committee meeting that occurred on or near May 2012. From
4 this agenda and minutes, it correctly memorializes that I was directed to work with FWRV to
5 structure a long-term arrangement with FWRV for the maintenance of the rail line. These minutes
6 also memorialize attendance by Dave Wilkinson of FWRV, responding, in part, to J.L. Patterson's
7 observation that one bridge had to be "taken out of service." I was present for this meeting
8 indicated. Mr. Wilkinson indicated repairs were made to this bridge and that it was back in
9 service. Commissioner Long of VCTC noted the rail line was owned by VCTC and therefore
10 VCTC "must manage the asset and not walk away for it." Mr. Wilkinson also noted his "staff
11 might be able to handle these inspections." On these issues, in part, it was decided J.L. Patterson
12 and FWRV would make arrangements to handle bridge inspections concurrently and, in this case,
13 bridge repairs to the Ellsworth Barranca bridge would be postponed until Union Pacific freight
14 operations resumed.

15 16. Attached to this declaration as Ex. 14 is a true and correct copy of a memo dated
16 October 17, 2012 to the Santa Paula Branch Line Advisory Committee from Mary Travis, my
17 Manager of Transportation Development Act and Rail Programs at that time for VCTC. This
18 memo memorializes J.L. Patterson's assessments at the time, indicating four bridges are capable of
19 repairs and one, the Ellsworth Barranca Bridge, was not, and would be "red tagged" until further
20 freight requirement dictated a need for this bridge. I understand International Paper was
21 concluding its commercial freight operations in the area at this time and immediate freight
22 requirements were not pressing for use of this Ellsworth Barranca bridge. This memo also reflects
23 a dispute between FWRV and VCTC as to who is responsible for the repairs to the four bridges -
24 VCTC concluded FWRV to be responsible, despite expressed resistance by FWRV. VCTC
25 reiterated at this meeting the need to make the rail line self-supporting. To assist FWRV, VCTC
26 directed staff to explore allocation of potential loans via State Transit Assistance.

27 17. Attached to this declaration as Ex. 15 is a true and correct copy of another memo
28 dated October 17, 2012 to the Santa Paula Branch Line Advisory Committee from Mary Travis.

1 my Manager of Transportation Development Act and Rail Programs at that time for VCTC. This
2 memo memorializes VCTC's reiteration that FWRV was responsible for upkeep of the rail line
3 and of discussion between VCTC and FWRV regarding roles and responsibilities for maintaining
4 the Line. By this time, VCTC was becoming increasingly concerned that FWRV was overpaid on
5 its maintenance allowance and not effecting prompt maintenance repairs to the rail line. In
6 response, FWRV again submitted a 20 year franchise proposal as one potential solution. We
7 reiterated the rail line must be self-sustaining and that we were considering retention of another
8 consultant to resolve what, by now, was increasingly becoming a concern for VCTC -- that FWRV
9 was not maintaining the rail line properly, especially at rail crossings, to insure safety and
10 continuous operation of the Line.

11 18. Attached to this declaration as Ex. 16 is a true and correct copy of correspondence
12 dated January 4, 2013 from the State of California Public Utilities Commission ("PUC") to my
13 program manager Mary Travis concerning the Rail Crossings Engineering Section's ("RCES")
14 recent inspection of the Line on December 20, 2012 observing a number of poor surface
15 conditions at the railroad crossings in the City of Santa Paula. The correspondence contained
16 pictures of asphalt crossing surfaces with elevated ridges and concavities, causing rough crossing
17 conditions for vehicles. We were warned of the likelihood of rear-end accidents, creating a hazard
18 to both the railroad and general public. We were also informed by the PUC that maintenance of
19 these crossings was the responsibility of the railroad corporation operating on the rail line. We
20 were requested to respond by February 25, 2013 informing "RCES" of actions planned to resolve
21 these observations from the inspection.

22 19. Attached to this declaration as Ex. 17 is a true and correct copy of an email dated
23 January 9, 2013 from Mr. David Wilkinson to me, Mary Travis, Manager of Transportation
24 Development Act and Rail Programs, and Steve DeGeorge, Director of Planning and Technology.
25 Mr. Wilkinson indicates receipt of the prior PUC correspondence (see Ex. 16) and affirms "we
26 have been talking about these crossing for the past 2 years as a concern. Sounds like it is time to
27 meet and to come to a resolution." I understand the prior email exchange, dating back to
28 December 12, 2012, as concerning a visit by a Cal-Trans Maintenance supervisor, Sam Walsh, and

1 his concern about potential hazards with three crossings at Highway 126. It appears from this
2 exchange a Mr. Ray Morquecho of FWRV was to work up an estimate for repairs and 'would let
3 us know.' Subsequently, I believe and understand that no such work estimate for repairs was ever
4 provided to VCTC.

5 20. Attached to this declaration as Ex. 18 is a true and correct copy of a letter I
6 prepared and transmitted thereafter on or about January 30, 2013 to Mr. David Wilkinson
7 responding to his prior email of January 9, 2013. In this correspondence, I reiterate that VCTC
8 has carefully reviewed the Direct Lease dated June 25, 2001 and has concluded, under section 4(b)
9 of the Direct Lease, that maintenance of highway crossings is the responsibility of FWRV. I
10 informed Mr. Wilkinson that FWRV receives monthly maintenance fees from VCTC to perform
11 this work. I concluded that FWRV was required to effect repairs to any deficient highway
12 crossing on the rail line at no additional cost to VCTC. Questions were directed to either myself
13 or my colleague Steve DeGeorge, our planning director.

14 21. From 2011 to early 2013, VCTC consulted with various professionals and
15 specialists from time to time regarding the monitoring and condition of the Santa Paula Branch
16 Line to insure all rail operations were safe and in compliance with our lease and regulatory
17 requirements. One such consultant was J.L. Patterson & Associates, Inc., a company that
18 specializes, as I understand it, in civil track work engineering, to include the inspection,
19 maintenance and repair of structural railroad lines. From time to time during this period, I or my
20 staff also occasionally received communications from the former City Engineer for the city of
21 Santa Paula, a Mr. Jon Turner, of Phoenix Civil Engineering, Inc., who would contact us
22 occasionally with his observations of the rail line, to include observations regarding the grade
23 street crossings in the city of Santa Paula. Equally, from time to time during this period, I or my
24 staff received communications from a Mr. Rigo Landeros, city manager for the city of Fillmore,
25 concerning his observations regarding the rail street crossings in the city of Fillmore. Lastly,
26 from time to time, I or my staff would receive communications from a Mr. Brian Yanez, Director
27 of Public Works for the city of Santa Paula, concerning his own observations of the rail line.

28

1 22. By the first quarter of 2013, I was informed and believed, from the cumulative
2 communications and reports directed to me from J.L. Patterson & Associates, Inc., Jon Turner
3 and Brian Yanez, amongst others, that many portions of the Branch Line were suffering from
4 deferred maintenance deficiencies.

5 23. Beginning in January 2013, I am aware that my colleagues and I engaged in a
6 series of communications with Mr. David Wilkinson of FWRV expressing continuing concern
7 regarding the observations of lack of maintenance on the Branch Line. These communications
8 occurred through in-person meetings before VCTC and telephone calls to and from my office to
9 Mr. Wilkinson. Based on these cumulative communications, I understood and believed FWRV
10 was resisting its duties, as I understood them pursuant to the Direct Lease, to conduct routine
11 maintenance work on the branch line.

12 24. Attached to this declaration as Ex. 19 is a true and correct copy of a letter I
13 authored, dated April 9, 2013, to Mr. David Wilkinson indicating concern by VCTC of the risks
14 and exposure to VCTC from FWRV shipping freight along the rail line, and given no assurances
15 of indemnification or insurance by FWRV, VCTC was directing FWRV to no longer ship freight
16 along the rail line from Santa Paula to Fillmore (mile posts 414.95 to 435.07).

17 25. I am informed and believe that Steve DeGeorge engaged Mr. David Wilkinson in a
18 series of emails dated on or about late April 2013 concerning who was responsible for
19 maintenance repairs at railroad crossing in Santa Paula. Based on this exchange, I understand
20 FWRV would effectuate repairs but charge VCTC for the costs of such repairs. Based on this
21 exchange, I understand my colleague informed FWRV that VCTC believed the Direct Lease terms
22 required FWRV to render maintenance repairs at its own costs. From this exchange and my
23 knowledge of it, I was of the belief FWRV was no longer honoring the terms of the Direct Lease
24 agreement and was persistently disputing the scope of routine maintenance responsibilities it must
25 perform, such as the rail crossings in Santa Paula, that were historically managed by FWRV.

26 26. Attached to this declaration as Ex. 20 is a true and correct copy of a letter I
27 authored, dated May 14, 2013, in part, reiterating VCTC's goal that operation of the Line was to
28 be "cost neutral" and alerting Mr. Wilkinson that, despite his company's presentation to VCTC on

1 May 10, 2013, VCTC intended to terminate the Direct Lease effective December 1, 2013. This
2 letter was our six month notice to FWRY, providing FWRY with an option to cure, in my opinion,
3 if they so choose. In my experience, and in my opinion, cumulative disputes existed now for
4 several years from FWRY and were being experienced by VCTC as to how and when rail bridges
5 and rail crossings were to be maintained. VCTC was providing more in maintenance allowance to
6 FWRY than revenues taken in - resulting in a non-neutral cost burden to VCTC. Based on this
7 persistent pattern of resistance and inaction, with no solutions or timely repairs being offered by
8 FWRY, VCTC believed good cause existed for terminating the Lease with FWRY.

9 27. Attached to this declaration as Ex. 21 is a true and correct copy of a letter I
10 authored, dated May 14, 2013, to Mr. Rigo Landeros, City Manager of the City of Fillmore,
11 providing six month notice of termination of our ("without cause") Fillmore Lease to the City of
12 Fillmore.

13 28. Attached to this declaration as Ex. 22 is a true and correct copy of a letter dated
14 May 31, 2013 that I eventually received that was purportedly sent from Tiffany Israel, I
15 understand to be counsel for the city of Fillmore and the Successor Agency to the city of Fillmore
16 Redevelopment Agency, to Mr. David Wilkinson of FWRY. The letter conveys to Mr. Wilkinson
17 that the Fillmore Sublease has been cancelled without cause, effective December 1, 2013.

18 29. Attached to this declaration as Ex. 23 is a true and correct copy of a letter I
19 authored, dated June 4, 2013, to Mr. David Wilkinson reiterating what good cause VCTC believed
20 it possessed for termination of the Direct Lease with FWRY. In part, I indicated that the lease
21 with the City of Fillmore could be terminated without cause and therefore the bulk of FWRY's
22 excursion operations for the eastern Fillmore segment of the rail line were to conclude in six
23 months. Further, as to the Direct Lease with VCTC, good cause was detailed, in part, as failure to
24 reimburse VCTC for maintenance overpayments since 2010. Good cause was also detailed as
25 failure to maintain grade crossings, to repair faulty signal equipment and to request VCTC to pay
26 for such repairs - that FWRY characterized requests for repairs as "capital costs." I understood
27 this continued resistance by FWRY at that time as lacking any intent to effect repairs themselves,
28 or to even suggest a cure.

1 30. Attached to this declaration as Ex. 24 is a true and correct copy of a letter that was
2 eventually routed to me but not sent directly by Ms. Donna Standard, dated June 4, 2013, as
3 addressed to the Chairman and Commissioners of the Board for VCTC. In part, this letter affirms
4 VCTC's "authority to cancel their agreement with City of Fillmore Redevelopment Agency,
5 pursuant to the lease between City of Fillmore RDA and VCTC, and as such, would ultimately
6 terminate the sub-lease with FWRV and the City of Fillmore RDA..." Further, from this letter, I
7 understand Ms. Standard's communication protests the termination of the Direct Lease between
8 VCTC and FWRV, claiming no cause for termination exists. On this last point, I disagree with
9 her representations.

10 31. Attached to this declaration as Ex. 25 is a true and correct copy of a letter I received
11 from Ms. Donna Standard dated July 1, 2013 to VCTC. In part, this letter affirms "it is clear there
12 is no partnership remaining" between VCTC and FWRV and requests to proceed to mediation.

13 32. Attached to this declaration as Ex. 26 is a true and correct copy of a letter I received
14 from Mr. David Wilkinson dated July 2, 2013. Pertinent here, in my opinion, is Mr. Wilkinson's
15 representation that "Until we get these matters resolved this will serve as a 30 day notice of our
16 maintenance agreement that Fillmore & Western Railway will NOT be maintaining anything from
17 milepost 404.70 to 414.50 and from 426.10 to 431.90," and that FWRV would only be
18 maintaining "milepost 414.50 to 426.10." Milepost 414 to 426 coincides roughly with FWRV's
19 passenger excursion operations - all other mileposts do not - and typifies the very problems I
20 think we have historically had with FWRV where maintenance was typically lacking for years on
21 all other portions of the rail line but for where FWRV directly operated its dinner or excursion
22 tours. In my mind, Mr. Wilkinson's representation reinforced my earlier perception that good
23 cause existed and that FWRV had no intention of curing any repairs or maintenance obligations on
24 other portions of the Line, mileposts 404 to 414 and 426 to 431, which was, in my opinion, within
25 their Lease responsibilities.

26 33. Attached to this declaration as Ex. 27 is a true and correct copy of a letter I wrote to
27 Mr. David Wilkinson dated July 15, 2013 in response to his July 2, 2013 correspondence. In this
28 letter, I acknowledge receipt of FWRV's representations and demand FWRV to immediately cure

1 letter, I acknowledge receipt of FWRV's representations and demand FWRV to immediately cure
2 its prior representations and to continue maintenance on mileposts 404 to 414 and 426 to 431 so as
3 to safely operate on the rail line until December 1, 2013. From my understanding of the Direct
4 Lease, if no cure is effected -- for instance, representing that maintenance would continue -- then
5 the Direct Lease itself can be immediately defaulted and all operations could be suspended well
6 before our earlier noticed termination date of December 1, 2013.

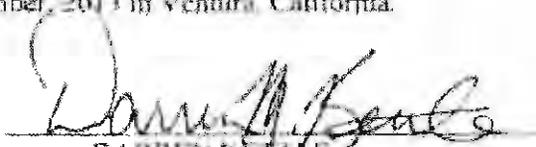
7 34. Attached to this declaration as Ex. 28 is a true and correct copy of a letter written
8 by our general counsel to counsel for FWRV dated July 16, 2013, received by me on our about
9 that date.

10 35. Attached to this declaration as Ex. 29 is a true and correct copy of a letter written
11 by counsel for FWRV to our general counsel dated July 25, 2013, received by me on our about
12 that date.

13 36. We eventually proceeded to mediation before retired Judge Zebrowski on or about
14 September 3, 2013. Despite our best efforts, with offers for continued FWRV rail operations on
15 the rail line, we were unable to resolve our differences.

16 37. To this date, I have never received any representation from FWRV or its counsel
17 that it intended to cure and/or assume the maintenance responsibilities for approximate mileposts
18 404 to 414 and 426 to 431. I believe under the Direct Lease, such maintenance responsibilities
19 were FWRV's obligation. By ignoring this obligation, I believe they have violated the Direct
20 Lease.

21 I declare under penalty of perjury under the laws of California that the foregoing is true
22 and correct. Executed this 19 day of December, 2013 in Ventura, California.

23
24 
25 DARREN KETTLE

26 2211791.2

1
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 633 West
6 Fifth Street, Suite 1700, Los Angeles, California 90071.

7 On December 19, 2013, I served true copies of the following document(s) described as
8 **DECLARATION OF DARREN KETTLE IN SUPPORT OF DEFENDANT'S**
9 **OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** on the interested parties
10 in this action as follows:

11 Donna M. Standard, Esq.
12 35625 East Kings Canyon Road
13 Squaw Valley, CA 93676

*Attorneys for Plaintiff Fillmore & Western
Railway, Inc.*

Tel: (805) 654-7091

Fax: (805) 654-7091

Email: ds2758@nol.com

14 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** At 12:18 pm, I caused a copy
15 of the document(s) to be sent from e-mail address schang@mcneersnave.com to the persons at the
16 e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the
17 transmission, any electronic message or other indication that the transmission was unsuccessful.

18 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
19 provided by the overnight service carrier and addressed to the persons at the addresses listed in the
20 Service List. I placed the envelope or package for collection and overnight delivery at an office or
21 a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a
22 courier or driver authorized by the overnight service carrier to receive documents.

23 Executed on December 19, 2013, at Los Angeles, California.

24
25
26
27
28

Steve Chang

EXHIBIT 1



Item #11(b)
Action

May 21, 2001

**TO: VENTURA COUNTY TRANSPORTATION COMMISSION
(JUNE 1, 2001 MEETING)**

**FROM: GINGER GHERARDI, EXECUTIVE DIRECTOR
CHRIS STEPHENS, VCTC STAFF**

SUBJECT: APPROVE FILLMORE & WESTERN CONTRACT

RECOMMENDATION

- The Transportation Commission approve, and authorize the Executive Director to execute, the attached contract with the Fillmore & Western Railway for operations on the Santa Paula Branch Line.

BACKGROUND

When the VCTC purchased the Santa Paula Branch Line from Southern Pacific in 1995, it was assigned all leases, licenses and easements attached to the property. One of the leases assumed by VCTC was with the City of Fillmore Redevelopment Agency for the "Fillmore Segment". (see Item #12(a) for additional discussion of this lease.) This lease gave the City of Fillmore the right to operate tourist/excursion trains and conduct filming activities on the line from Santa Paula to Piru. Both prior to and after VCTC assumed the lease from Southern Pacific, the City has subleased the property to the Fillmore & Western Railway. In addition, VCTC has entered into operating and maintenance leases directly with the Fillmore & Western Railway.

It was agreed in 1996, at the time the Fillmore Segment lease was renegotiated, that the terms of the lease would be revisited within two or three years after all parties had gained more experience with the day-to-day management and operation of an active rail line. Approximately six months ago, VCTC staff began working with the Santa Paula Branch Line Advisory Committee (SPBLAC), the City of Fillmore and the Fillmore & Western Railway on a contract update.

DISCUSSION

As noted previously in Item #12(a), it was determined that the simplest and most efficient approach to updating the leases was to address the branch line through a pair of Lease Agreements. One agreement would be with the City of Fillmore for Public/Tourist

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Item #11(b)
Page #2

Excursion services on the "Fillmore Segment" while the second would be with the Fillmore & Western Railway for the remainder of the line. The "Fillmore Segment" lease with the City of Fillmore was considered by VCTC under Item #12(a).

As with the "Fillmore Segment" Lease, the Fillmore & Western Lease had to reflect the existing operating environment on the branch line. That environment consists of the following elements: 1) the Union Pacific Railroad, through the Usage Agreement signed when VCTC acquired the line, has retained exclusive freight service operating rights from Montalvo to Santa Paula; 2) Metrolink has been given responsibility for the segment of the branch line over which they operate and/or control the signal system; and 3) Assuming the VCTC has approved Item #12(a) as recommended, the City of Fillmore has exclusive Public/Tourist Excursion operating rights from Santa Paula to Rancho Camulos (the "Fillmore Segment"). Also, in the interest of simplifying the operating arrangements, the Fillmore & Western Lease Agreement was prepared using the same basic contract format and language as the City of Fillmore Lease.

Attachment A is the recommended Fillmore & Western Railway Lease Agreement. As with the City of Fillmore Lease Agreement, there were two primary substantive revisions to the basic operating agreement language. The first revision was in the "Purpose and Scope of Lease" section. The Fillmore & Western Railway was interested in expanding its rights on the branch line beyond *Still & Motion Picture* and *Public/Tourist Excursions* to also include *Freight* and *Mail & Express* services. Therefore, Section 2 of the Lease Agreement was revised to reflect these additional services, within the limitations set by the operating responsibilities held by the City of Fillmore, Metrolink and the Union Pacific Railroad. In summary, the recommended lease provides Fillmore & Western the following operating rights:

Still and Motion Picture Productions – Ventura to Rancho Camulos

Public/Tourist Excursions – Ventura to Santa Paula

Freight Services – Santa Paula to Rancho Camulos

Mail & Express Service – Ventura to Rancho Camulos

The second revision was in the "Use of Premises" section of the Lease and was related to the issue of maintenance on the branch line. Since VCTC's acquisition of the line, the Fillmore & Western Railway, through the City of Fillmore, has been responsible for the maintenance of the line from Santa Paula to Piru. And has been entitled to any signal maintenance funds received by VCTC for that segment of the branch. VCTC has contracted with Fillmore & Western for maintenance services on the line from Santa Paula to Ventura. Over the past two years, VCTC's costs for these services have leveled off at roughly \$170,000. This amount is approximately equal to the combination of the annual signal maintenance funding and lease revenues (not including those derived from Fillmore & Western) generated on the branch line. Therefore, as "consideration" for the greater maintenance responsibilities, the Lease includes a "maintenance allowance" of \$170,000, or the annual signal and property lease revenues, whichever is lower, for the Fillmore & Western Railway. The revenues from Fillmore & Western which are retained by VCTC in this Lease Agreement will be used to cover branch line expenses outside of those covered (e.g. weed abatement, legal services).

June 1, 2001
Item #11(b)
Page #3

All revenues, both those due Fillmore & Western and those retained by VCTC will continue to pass through the Enterprise Account established for the branch line.

This arrangement will not only greatly simplify the operations and maintenance of the branch line, it will also clarify the roles and responsibilities of the Fillmore & Western Railway and the City of Fillmore, thereby improving the relationships and accountability of each.

The recommended Lease in Attachment A was reviewed and approved by the Santa Paula Branch Line Advisory Committee (SPBLAC) in April.

FISCAL IMPACT

No substantial impact. The recommended Lease is structured so that existing revenues and expenses remain balanced. Also, all revenues from the Santa Paula Branch Line are required to be deposited in an Enterprise Account so that they may only be spent on the branch line itself – this Lease does not in any way change the enterprise account status nor the VCTC Budget.

**LEASE AGREEMENT
FOR RAIL SERVICES ON THE SANTA PAULA BRANCH**

Agreement made this _____ day of _____, 2001, by and between the **FILLMORE & WESTERN RAILWAY COMPANY** ("Fillmore & Western"), a California corporation, and the **VENTURA COUNTY TRANSPORTATION COMMISSION** ("VCTC").

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore & Western desires to lease the segment of the line between milepost 405.31 at or near Montgomery Avenue in the City of San Buenaventura and 435.07 at Rancho Camulos, for still and motion picture production purposes, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media event, freight service, mail and express service, and for public/tourist excursions, charter and dinner train operations; and

WHEREAS, Fillmore & Western does not desire to be obligated to provide common carrier freight service on the Fillmore & Western Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein and other good and valuable consideration, receipt of which is acknowledged by the parties, the parties hereby agree:

4. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Freight Service" shall mean the movement of bulk commodities (such as coal and chemicals), automobiles or raw materials traditionally hauled by rail carriers.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, buildings and

the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Santa Paula Branch Line between milepost 405.31 and milepost 435.07, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore & Western or of Fillmore & Western 's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Mail and Express Service" shall mean premium rail transportation service at premium rates – expedited, regularly scheduled train service at prices which are generally higher than freight service – that is provided as an adjunct to Amtrak's passenger service.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment for Fillmore & Western's uses and in accordance with applicable regulations. "Track work" under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, spot replacement of worn rails and weed abatement. "Signal work" under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities relate thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore & Western or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore & Western or any or its sublessees except for contract fees paid by Fillmore & Western or any or its sublessees to a third party and reimbursement revenues received by Fillmore & Western or its sublessees.

5. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore & Western and/or its sublessees

to use the Lease Property for Still and Motion Picture Production purposes (including television and video productions), Public/Tourist Excursion purposes (including charter and dinner train operations), freight services, and mail and express service, subject to reservations described in Section 9c, as part of its efforts to further develop the local economy. The purposes outlined in this article shall be limited to specific segments of track as follows:

- Still and Motion Picture Productions – milepost 405.31 to milepost 435.07
- Public/Tourist Excursions – milepost 403.35 to milepost 414.45
- Freight Services – milepost 414.95 to milepost 435.07
- Mail and Express Service – milepost 403.35 to milepost 435.07

VCTC, for consideration of the rents, covenants, and conditions herein contained

to be kept, performed, and observed by Fillmore & Western, does lease and demise the Lease Property (as herein defined) to Fillmore & Western, subject to all matters of record and the rights of existing tenants in possession, and Fillmore & Western does rent and accept the Lease Property from VCTC.

6. Rental Payments:

d. Fillmore & Western shall pay to VCTC as initial rental hereunder the sum

of Six Hundred Dollars (\$600.00) monthly. Fillmore & Western shall also pay as Movie Rental to VCTC a five percent (5%) fee for each day of Still and Motion Picture Production use of the Property. Fillmore & Western shall pay Base Rental and Movie Rental to VCTC within fifteen (15) days of the end of each month including with payment a statement detailing the number of days of Still and Motion Picture Production during the period. Timely payment of Base Rental and Movie Rental is of the essence; VCTC may levee a one percent (1%) late fee on Fillmore & Western for each thirty (30) days that rental payments and production statements are past due.

This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California, published by the United States Department of Labor, Bureau

of Labor Statistics ("Index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date

("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore & Western agree that the rental rate shown in Section 3a be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore & Western are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore & Western acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense,

counter-claim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western against VCTC under this Agreement or otherwise.

10. Use of Premises:

a. **Fillmore & Western shall have the right to use the Lease Property for any lawful Still and Motion Picture Purposes (including television and video productions), any lawful Public/Tourist Train Excursion use defined herein, freight services, and mail and express services, but not to remove "Track or Track Support Structures."**

c. Fillmore & Western shall maintain the Track and Track Support Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations.

(2.) Fillmore & Western shall be entitled to receive, as part of its

maintenance allowance as defined below, any State or Federal Funds designated for highway grade crossing signal maintenance on the Lease Property.

(2.) Fillmore & Western shall receive a maintenance allowance in the lesser amount of One Hundred Seventy Thousand Dollars (\$170,000) or the total of its grade crossing signal maintenance funds and the annual income derived by VCTC from its property leases at the time of the Effective Date of this Agreement, excepting the revenues derived by VCTC from Fillmore & Western through this Agreement

c. In the event that specific Track and Track Support Structures are determined to need extensive replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said replacement. Any and all replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

11. Construction:

e. Permanent Improvements

Fillmore & Western shall not have the right to construct any additions or improvements of a permanent nature on the Lease Property without prior specific written approval in advance by VCTC. At such time VCTC has authorized construction of any additions or improvements, such construction shall be done in a good and workmanlike fashion. As such additions or improvements are constructed, Fillmore & Western shall be responsible for maintaining them at a level adequate to support their reasonable use for their expected useful life.

f. Temporary Improvements.

Fillmore & Western shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use. In the event that such improvements are not timely removed, VCTC shall have the right, in its discretion, after written notice to Fillmore & Western, to remove such improvements and Fillmore & Western shall be obligated to reimburse VCTC for all costs incurred by VCTC in such removal. In any event, temporary improvements shall not impede vehicular or pedestrian crossings at any public street or other legal public or private crossing without written authorization from VCTC and any applicable permitting authority.

g. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore & Western timely written notice of all such requests, provided, however, that VCTC shall have the sole discretion to consider such requests, to approve or reject proposals and execute and deliver such documents, from time to time, and

throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore & Western or its sub-lessees hereunder.

h. Title

Any parts installed, replacements made or additions improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore & Western's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western. If the removal of same causes material damage to property of VCTC, Fillmore & Western shall pay the reasonable cost of repair.

Fillmore & Western shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

12. Indemnification:

Fillmore & Western agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or to which VCTC may be subjected on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

13. Assignment, Subletting and Mortgaging:

d. Assignment by Fillmore & Western

This Agreement may not be assigned by Fillmore & Western without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument executed by the assignee expressly assuming all of Fillmore & Western's duties, obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms hereof, but not otherwise, the Fillmore & Western shall be released from the performance of obligations thereafter to be performed by it pursuant to this Agreement, except any obligation to hold and apply monies held by the Fillmore & Western at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, and VCTC shall have available to it all remedies set forth in this Agreement as well as any other remedy at law or in equity.

e. Mortgage of Leasehold Interest.

Fillmore & Western shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent on VCTC.

f. Subletting by Fillmore & Western

Fillmore & Western shall not have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement without the prior written consent of VCTC.

14. Limits on Use

c. During the Lease Term, the Lease Property shall be used by Fillmore &

Western for the use specified in Section 4 above and for no other use or purpose. Fillmore & Western shall not use nor permit any other person to use the Lease Property, or any part thereof, in contravention of the terms of this Agreement or for any unlawful purposes. Fillmore & Western shall at all times during the Lease Term conform to, and cause all persons using or occupying any part of the Lease Property by invitation of, under or by right of Fillmore & Western to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore & Western shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

d. Indemnity for Violation of Law

(1) Fillmore & Western covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines,

penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western or any person upon the Lease Property by license or invitation of Fillmore & Western or holding or occupying the same or any part thereof under or by right of Fillmore & Western, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(4) Likewise, VCTC shall release, defend, indemnify, and save Fillmore & Western harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed before, during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore & Western and persons upon the Lease Property by license or invitation of Fillmore & Western) upon the Lease Property by license or invitation of VCTC.

(5) Fillmore & Western shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be released, defended and held harmless from any penalty, damage, charge or claim resulting from such contest.

15. Conditions and Covenants:

All the provisions of this Agreement and any Riders or Amendments which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

e. Qualifications on Use

This Agreement is subject to the rights of existing tenants in possession. Fillmore & Western accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, except as may be set forth in Exhibit "A", and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

f. WARRANTIES AND REPRESENTATIONS.

FILLMORE & WESTERN UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE & WESTERN SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

g. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right,

the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement does not interfere with the reasonable use of the Lease Property by Fillmore & Western as permitted herein; 2) construct, maintain and operate any existing and new additional recreational trail facilities; and 3) operate freight and regular passenger rail services.

h. Right of Entry

VCTC or VCTC's agents, representatives or employees shall

have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore & Western agrees and covenants to defend, indemnify

and hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western or Fillmore & Western's subtenants. In the event of the filing of any such lien, Fillmore & Western shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore & Western shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore & Western shall furnish

evidence satisfactory to VCTC that VCTC is named as an additional insured, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish

VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

c. Liability:

Comprehensive general and automobile liability coverage shall:

(6) have a combined single limit of not less than \$5,000,000 per occurrence;

(7) name VCTC and Fillmore & Western as additional insureds with respect to the operations of Fillmore & Western's sublessees;

(8) cover the contractual liability assumed by Fillmore & Western's sublessees under this Lease;

(9) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and

(10) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest

thereon shall belong to VCTC. Under no circumstances shall Fillmore & Western be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore &

Western have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and

Fillmore & Western. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

d. Temporary Taking:

If all or part of the Lease Property or of Fillmore & Western's

Interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore & Western shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore & Western as of the date of expiration, after VCTC shall have received the entire portion of the award necessary to repair and restore physical damage to the Lease Property and return it to its condition before the Temporary Taking.

12. Late Payments:

Fillmore & Western shall pay VCTC an administrative charge of one and

One-half percent (1-1/2%) per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

14. Default:

Fillmore & Western shall be in default under this Agreement (1) if Fillmore & Western fails to pay the Base Rent and Movie Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore & Western fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore & Western is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore & Western is commenced by Fillmore & Western.

If Fillmore & Western fails to cure a default within thirty (30) days notice

from VCTC to do so and Fillmore & Western does not present a restoration plan within forty-five (45) days of such notice, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property and Fillmore & Western shall be obligated to reimburse VCTC for all expenses incurred by VCTC in retaking possession, including without limitation, repairs and restoration of the Lease Property to the condition it was at the execution of this Agreement and attorneys fees and costs.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition

or covenant of this Agreement shall not be construed as a waiver of the breach of any other or further rights or term, covenant or condition of the same or other nature. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

22. Termination or Expiration:

e. General:

Termination or expiration of this Agreement shall not release

either party from its obligations regarding an event which occurred prior to such termination or expiration. If Fillmore & Western fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and

remove Fillmore & Western and any person or entity claiming through Fillmore & Western from the Lease Property.

f. Notice of Termination

Either party may terminate this Agreement, with cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

g. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore & Western, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore & Western to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore & Western, (a) said personal property shall thereupon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore & Western, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western took possession, all at the expense of Fillmore & Western, which expense Fillmore & Western agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore & Western's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore & Western to surrender possession of the Lease Property, VCTC shall have the right to re-enter upon the Lease Property and remove Fillmore & Western, or any person, firm or corporation claiming by, through or under Fillmore & Western, therefrom.

23. Attorney's Fees:

If either party takes any steps or brings an action to compel performance

of or to recover for breach of any term of this Agreement, including without limitation mediation or arbitration, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of any judgment and all costs.

24. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

25. Warranties of Fillmore & Western:

Fillmore & Western warrants, at the Effective Date that:

d. It is a California Corporation validly existing and organized under the laws of the State of California;

e. This Agreement will not be rendered voidable nor unenforceable

by reason of any provision of, or lack of consent under, any indenture, agreement or instrument to which Fillmore & Western is bound as a party or bound by any ordinance.

c. The signatory hereof on behalf of Fillmore & Western has been duly and fully authorized to execute this Agreement on behalf of Fillmore & Western.

26. Warranties of VCTC:

VCTC warrants at the Effective Date it has full power to lease the Lease Property to Fillmore & Western

27. Applicable Law:

This Agreement shall be governed by and construed in accordance with

the laws of the State of California.

28. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura , CA 93003

Fillmore & Western:

David Wilkinson, President
Fillmore & Western
351 Santa Clara Avenue
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party. Notices given pursuant to this Agreement shall be deemed received at the time of delivery if delivered and on the fifth (5th) day after the date postmarked if sent by the United States mail.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

d. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to non-binding mediation. VCTC and Fillmore & Western agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

e. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

f. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

- (4) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.
- (5) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").
- (6) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.
- (4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the

California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action *de novo* in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

"Fillmore & Western:"

Ventura County

Transportation Commission

By: _____

By: _____

EXHIBIT 2

LEASE AGREEMENT

FOR RAIL SERVICES ON THE SANTA PAULA BRANCH

Agreement made this 25th day of June, 2001, by and between the FILLMORE & WESTERN RAILWAY COMPANY ("Fillmore & Western"), a California corporation, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC").

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore & Western desires to lease the segment of the line between milepost 405.31 at or near Montgomery Avenue in the City of San Buenaventura and 435.07 at Rancho Camulos, for still and motion picture production purposes, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media event, freight service, mail and express service, and for public/tourist excursions, charter and dinner train operations; and

WHEREAS, Fillmore & Western does not desire to be obligated to provide common carrier freight service on the Fillmore & Western Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein and other good and valuable consideration, receipt of which is acknowledged by the parties, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Freight Service" shall mean the movement of bulk commodities (such as coal and chemicals), automobiles or raw materials traditionally hauled by rail carriers.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, buildings and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Santa Paula Branch Line between milepost 405.31 and milepost 435.07, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore & Western or of Fillmore & Western's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Mail and Express Service" shall mean premium rail transportation service at premium rates – expedited, regularly scheduled train service at prices which are generally higher than freight service – that is provided as an adjunct to Amtrak's passenger service.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment for Fillmore & Western's uses and in accordance with applicable regulations. "Track work" under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, spot replacement of worn rails and weed abatement. "Signal work" under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture

production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities relate thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs, complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore & Western or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore & Western or any of its sublessees except for contract fees paid by Fillmore & Western or any of its sublessees to a third party and reimbursement revenues received by Fillmore & Western or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore & Western and/or its sublessees to use the Lease Property and Santa Paula Branch for Still and Motion Picture Production purposes (including television and video productions), Public/Tourist Excursion purposes (including charter and dinner train operations), freight services, and mail and express service, subject to reservations described in Section 9c, as part of its efforts to further develop the local economy. The purposes outlined in this article shall be limited to specific segments of track as follows:

- Still and Motion Picture Productions – milepost 405.31 to milepost 435.07
- Public/Tourist Excursions – milepost 403.35 to milepost 414.45

- Freight Services -- milepost 414.95 to milepost 435.07
- Mail and Express Service -- milepost 403.35 to milepost 435.07

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western, does lease and demise the Lease Property (as herein defined) to Fillmore & Western, subject to all matters of record and the rights of existing tenants in possession, and Fillmore & Western does rent and accept the Lease Property from VCTC.

3. Rental Payments:

a. Fillmore & Western shall pay to VCTC as initial rental hereunder the sum of Six Hundred Dollars (\$600.00) monthly. Fillmore & Western shall also pay as Movie Rental to VCTC a five percent (5%) fee for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western shall pay Base Rental and Movie Rental to VCTC within fifteen (15) days of the end of each month including with payment a statement detailing the number of days of Still and Motion Picture Production during the period. Timely payment of Base Rental and Movie Rental is of the essence; VCTC may levee a one and one-half percent (1 1/2%) late fee on Fillmore & Western for each thirty (30) days that rental payments and production statements are past due.

This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles -- Long Beach -- Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore & Western agree that the rental rate shown in Section 3a be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore & Western are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore & Western acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western against VCTC under this Agreement or otherwise.

4. Use of Premises:

a. Fillmore & Western shall have the right to use the Lease Property for any lawful Still and Motion Picture Purposes (including television and video productions), any lawful Public/Tourist Train Excursion use defined herein, freight services, and mail and express services, but not to remove "Track or Track Support Structures."

b. Fillmore & Western shall maintain the Track and Track Support

Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore & Western shall be entitled to receive, as part of its maintenance allowance as defined below, any State or Federal Funds designated for highway grade crossing signal maintenance on the Lease Property.

(2.) Fillmore & Western shall receive a maintenance allowance in the lesser amount of One Hundred Seventy Thousand Dollars (\$170,000) or the total of its grade crossing signal maintenance funds and the annual income derived by VCTC from its property leases at the time of the Effective Date of this Agreement, excepting the revenues derived by VCTC from Fillmore & Western through this Agreement

c. In the event that specific Track and Track Support Structures are determined to need extensive replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said replacement. Any and all replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore & Western shall not have the right to construct any additions or improvements of a permanent nature on the Lease Property without prior specific written approval in advance by VCTC. At such time VCTC has authorized construction of any additions or improvements, such construction shall be done in a good and workmanlike fashion. As such additions or improvements are constructed, Fillmore & Western shall be responsible for maintaining them at a level adequate to support their reasonable use for their expected useful life.

b. Temporary Improvements

Fillmore & Western shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use. In the event

that such improvements are not timely removed, VCTC shall have the right, in its discretion, after written notice to Fillmore & Western, to remove such improvements and Fillmore & Western shall be obligated to reimburse VCTC for all costs incurred by VCTC in such removal. In any event, temporary improvements shall not impede vehicular or pedestrian crossings at any public street or other legal public or private crossing without written authorization from VCTC and any applicable permitting authority.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore & Western timely written notice of all such requests, provided, however, that VCTC shall have the sole discretion to consider such requests, to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore & Western or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions, improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore & Western's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western. If the removal of same causes material damage to property of VCTC, Fillmore & Western shall pay the reasonable cost of repair

Fillmore & Western shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

6. Indemnification:

Fillmore & Western agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or to which VCTC may be subjected on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western

This Agreement may not be assigned by Fillmore & Western without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument executed by the assignee expressly assuming all of Fillmore & Western's duties, obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms hereof, but not otherwise, the Fillmore & Western shall be released from the performance of obligations thereafter to be performed by it pursuant to this Agreement, except any obligation to hold and apply monies held by the Fillmore & Western at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is

void, and VCTC shall have available to it all remedies set forth in this Agreement as well as any other remedy at law or in equity.

b. Mortgage of Leasehold Interest.

Fillmore & Western shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of VCTC.

c. Subletting by Fillmore & Western

Fillmore & Western shall not have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement without the prior written consent of VCTC.

8. Limits on Use

a. During the Lease Term, the Lease Property shall be used by Fillmore & Western for the use specified in Section 4 above and for no other use or purpose. Fillmore & Western shall not use nor permit any other person to use the Lease Property, or any part thereof, in contravention of the terms of this Agreement or for any unlawful purposes. Fillmore & Western shall at all times during the Lease Term conform to, and cause all persons using or occupying any part of the Lease Property by invitation of, under or by right of Fillmore & Western to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore & Western shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore & Western covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and

regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western or any person upon the Lease Property by license or invitation of Fillmore & Western or holding or occupying the same or any part thereof under or by right of Fillmore & Western, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore & Western harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed before, during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore & Western and persons upon the Lease Property by license or invitation of Fillmore & Western) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore & Western shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be released, defended and held harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders or Amendments which

are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in possession. Fillmore & Western accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE & WESTERN UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE & WESTERN SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement does not interfere with the reasonable use of the

Lease Property by Fillmore & Western as permitted herein; 2) construct, maintain and operate any existing and new additional recreational trail facilities; and 3) operate freight and regular passenger rail services.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore & Western agrees and covenants to defend, indemnify and hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western or Fillmore & Western's subtenants. In the event of the filing of any such lien, Fillmore & Western shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore & Western shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore & Western shall furnish evidence satisfactory to VCTC that VCTC is named as an additional insured, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore & Western as additional insureds with respect to the operations of Fillmore & Western's sublessees;
- (3) cover the contractual liability assumed by Fillmore & Western's sublessees under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and
- (5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore & Western be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore & Western have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore & Western. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore & Western's Interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore & Western shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore & Western as of the date of expiration, after VCTC shall have received the entire portion of the award necessary to repair and restore physical damage to the Lease Property and return it to its condition before the Temporary Taking.

12. Late Payments:

Fillmore & Western shall pay VCTC an administrative charge of one and One-half percent (1-1/2%) per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore & Western shall be in default under this Agreement (1) if Fillmore & Western fails to pay the Base Rent and Movie Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore & Western fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore & Western is adjudged bankrupt or becomes insolvent or seeks general debtor

relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore & Western is commenced by Fillmore & Western.

If Fillmore & Western fails to cure a default within thirty (30) days notice from VCTC to do so and Fillmore & Western does not present a restoration plan within forty-five (45) days of such notice, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property and Fillmore & Western shall be obligated to reimburse VCTC for all expenses incurred by VCTC in retaking possession, including without limitation, repairs and restoration of the Lease Property to the condition it was at the execution of this Agreement and attorneys fees and costs.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of the breach of any other or further rights or term, covenant or condition of the same or other nature. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from its obligations regarding an event which occurred prior to such termination or expiration. If Fillmore & Western fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western and any person or entity claiming through Fillmore & Western from the Lease Property

b. Notice of Termination

Either party may terminate this Agreement, with cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore & Western, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore & Western to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore & Western, (a) said personal property shall thereupon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore & Western, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western took possession, all at the expense of Fillmore & Western, which expense Fillmore & Western agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore & Western's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore & Western to surrender possession of the Lease Property, VCTC shall have the right to re-enter upon the Lease Property and remove Fillmore & Western, or any person, firm or corporation claiming by, through or under Fillmore & Western, therefrom.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, including without limitation mediation or arbitration, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of any judgment and all costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the

parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore & Western:

Fillmore & Western warrants, at the Effective Date that:

- a. It is a California Corporation validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument to which Fillmore & Western is bound as a party or bound by any ordinance.
- c. The signatory hereof on behalf of Fillmore & Western has been duly and fully authorized to execute this Agreement on behalf of Fillmore & Western.

19. Warranties of VCTC:

VCTC warrants at the Effective Date it has full power to lease the Lease Property to Fillmore & Western

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

Fillmore & Western:

David Wilkinson, President
Fillmore & Western
351 Santa Clara Avenue
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party. Notices given pursuant to this Agreement shall be deemed received at the time of delivery if delivered and on the fifth (5th) day after the date postmarked if sent by the United States mail.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to non-binding mediation. VCTC and Fillmore & Western agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take

testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

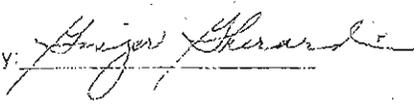
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

Ventura County
Transportation Commission

"Fillmore & Western:"

Fillmore & Western Railway Company

By: 

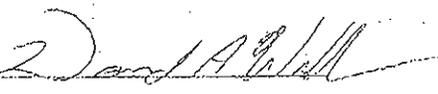
By: 

EXHIBIT 3

LEASE AGREEMENT
FOR THE "FILLMORE SEGMENT" OF THE SANTA PAULA BRANCH

Agreement made this 6 day of June, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"). This Agreement replaces a previous Agreement between the Fillmore and VCTC for service on the Fillmore Segment dated November 13, 1996.

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore desires to lease the segment of the line between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos, ("Fillmore Segment") for public/tourist excursions, charter and dinner train operations, and for placement of information/directional signs; and

WHEREAS, Fillmore does not desire to be obligated to provide common carrier freight service on the Fillmore Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereof.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, building and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore segment, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession. Where the Santa Paula Branch crosses State Route 126, the "Lease Property" shall include land lying within 25 feet of centerline of Track for a distance of 100 feet from edge of pavement. Where tracks do not exist on the Effective Date, the "Lease Property" shall include land lying within 25 feet of historic centerline of Track.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions,

recreational services, and charter and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore or any of its sublessees except for contract fees paid by Fillmore or any of its sublessees to a third party and reimbursement revenues received by Fillmore or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore and/or its sublessees to use the Lease Property for Public/Tourist Excursion purposes, and for informational/directional signage, subject to reservations described in Section 9(c), as part of its efforts to further develop the local economy.

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore, does lease and demise to Fillmore, subject to all matters of record and the rights of existing tenants in possession, and Fillmore does rent and accept from VCTC the Lease Property.

3. Rental Payments:

- a. Fillmore shall pay to VCTC as initial rental hereunder the sum of Six

Hundred and Seventy-Five Dollars (675.00) monthly, payable in advance on a quarterly basis within thirty (30) days of the beginning of each quarter. This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index) has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued.

b. VCTC and Fillmore agree that the rental rate shown in Section 4(a) be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment

("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore against VCTC under this Agreement or otherwise.

4. Use of Premises:

a. Fillmore shall have the right to use the Lease Property for lawful Public/Tourist Train Excursion use defined herein, and any lawful placement of informational/directional signage, but not to remove the Track or Track Support Structures as defined herein.

b. Fillmore shall maintain at its sole expense the Track and Track Support Structures to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore shall be entitled to receive any State or Federal Funds designated for highway grade crossing signal maintenance on the Fillmore Segment.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said refurbishment or replacement. Any and all refurbishment or replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by VCTC.

b. Temporary Improvements.

Fillmore shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore timely written notice of all such requests, but VCTC will continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore. If the removal of same causes material damage to property of VCTC, Fillmore shall pay the reasonable cost of repair.

Fillmore shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

6. Indemnification:

Fillmore agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore

This Agreement may not be assigned by Fillmore without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore's obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms here-of, but not otherwise, the assignor shall be released from the performance of obligations on the part of Fillmore thereafter to be performed under this Agreement, except any obligation to hold and apply monies held by the assignor at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of VCTC because of Fillmore's having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent on VCTC.

c. Subletting by Fillmore

Fillmore shall have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement but it may not sublease to any rail operator whose operation would be subject to regulatory control of any federal or state agency without the prior written consent of VCTC.

8. Limits on Use

a. During the term of this Agreement the Lease Property shall be used by Fillmore for the use specified in Section 4 above and for no other use or purpose. Fillmore shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore shall at all times during said term conform to, and cause all persons using or occupying any part of the lease Property by invitation of, under or by right of Fillmore to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitations, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore or

any person upon the Lease Property by license or invitation of Fillmore or holding or occupying the same or any part thereof under or by right of Fillmore, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore and persons upon the Lease Property by license or invitation of Fillmore) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in

possession. Fillmore accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, except as may be set forth in Exhibit "A", and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement; 2) construct, maintain and operate any existing and new additional recreational trail facilities; 3) operate freight and regular passenger rail services on the Fillmore Segment and 4) conduct still and motion picture filming, including television filming, commercials and other still and motion television promotional activities.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall

have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore agrees and covenants to hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore or Fillmore's subtenants. In the event of the filing of any such lien, Fillmore shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore shall furnish evidence satisfactory to VCTC that both VCTC and Fillmore are named as additional insureds for third party liability claims by Fillmore's sublessee, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore's sublessees;
- (3) cover the contractual liability assumed by Fillmore's sublessees under this Lease;

(4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore's interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly

as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore as of the date of expiration, after VCTC shall have received the entire portion of the award attributable to physical damage to the Lease Property and to their condition before Temporary Taking.

12. Late Payments:

Fillmore shall pay VCTC an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore shall be in default under this Agreement (1) if Fillmore fails to pay the Base Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC (or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore is commenced by Fillmore.

If Fillmore fails to cure a default within thirty (30) days notice from VCTC to do so Fillmore does not present a restoration plan within forty-five (45) days, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition

or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore and any person or entity claiming through Fillmore from the Lease Property.

b. Notice of Termination

Either party may terminate this Agreement, without cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore, (a) said personal property shall there-upon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore took possession, all at the expense of Fillmore, which expense Fillmore agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore to surrender possession of the Lease Property, VCTC shall have the right to re-enter

upon the Lease Property and remove Fillmore, or any person, firm or corporation claiming by, through or under Fillmore, therefrom.

d. Sale to Other Parties:

If during the term of lease, or any extension or continuation thereof, VCTC should elect to sell all or any part of the Lease Property to a private party, Fillmore shall have the right of first refusal to meet any bona fide offer of sale on the same or (to VCTC) more advantageous terms and conditions as contained in such offer and, on failure to meet such bona fide offer within sixty (60) days after notice thereof from VCTC, VCTC shall be free to sell the Lease Property or portion thereof to such private party third person in accordance with the terms and conditions of this offer provided, however, Fillmore's right of first refusal shall run with the property. Both VCTC and Fillmore are required to continue to fulfill any obligations generated under this Agreement prior to the closing of any sale to Fillmore. If sale of the property by VCTC is to a public agency, then Fillmore agrees that VCTC may assign this Agreement to such public agency.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore:

Fillmore warrants, at the Effective Date that:

- a. It is a local government agency validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument to which Fillmore is bound as a party or bound by any ordinance of Fillmore.
- c. The signatory hereof on behalf of Fillmore has been duly and fully authorized to execute this Agreement on behalf of Fillmore.

19. Warranties of VCTC:

VCTC warrants at the Effective Date that:

- a. It has full power to lease the Lease Property to Fillmore

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director

Ventura County Transportation Commission

950 County Square Drive, Suite 207
Ventura , CA 93003

Fillmore:

City Manager
City of Fillmore
250 Central Avenue
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute

between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator

shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

Ventura County

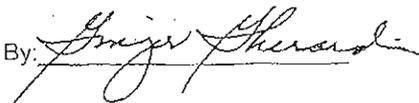
Transportation Commission

"Fillmore:"

City of Fillmore

Redevelopment Agency

By:



By:

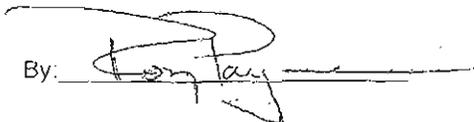


EXHIBIT 4

SUB-LEASE AGREEMENT FOR THE SANTA PAULA BRANCH

This Agreement is made this 1st day of July, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and FILLMORE & WESTERN RAILWAY COMPANY, a California corporation, in contemplation of the following facts:

A. The Ventura County Transportation Commission ("VCTC") owns a line of railroad subject to the Interstate Commerce Act, from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

B. Fillmore has, executed a certain "Lease Agreement for the Fillmore Segment of the Santa Paula Branch" with the Ventura County Transportation Commission ("VCTC") for the use of a portion of a line of railroad owned by VCTC and subject to the Interstate Commerce Act, from milepost 414.45 at or near 8th Street in Santa Paula, California, to milepost 435.07 at or near Rancho Camulos, ("Fillmore Segment");

C. Fillmore has leased the Fillmore Segment from VCTC for any lawful Public/Tourist Train Excursions;

D. Fillmore desires to afford the use of the Fillmore Segment to Fillmore & Western Railway Co. for the same purposes and upon substantially the same terms and conditions as oblige Fillmore under the said Lease Agreement;

E. This Agreement replaces a previous Agreement between Fillmore and the Fillmore & Western Railway Company dated November 13, 1996.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. General Provisions:

Excepting as otherwise specifically provided in this Agreement, Fillmore & Western Railway Co. shall during the term of this Agreement warrant, agree to, perform, observe and refrain from doing all those promises and acts to be performed by and matters prohibited to Fillmore under the terms of the said Lease Agreement dated between VCTC and Fillmore, the intent of the parties hereto being that Fillmore shall be fully and completely relieved by Fillmore & Western Railway Co. of all of the obligations of Fillmore according to that Lease Agreement. To that end, Fillmore & Western Railway Co. shall, with or without demand from Fillmore, defend and hold Fillmore harmless from and against any and all claims, liabilities, actions, and causes of action, whether or not well founded, which shall be brought or threatened against Fillmore or any of its officers, agents or employees by VCTC or any other person or entity to enforce or interpret or construe the terms of the said Lease Agreement or in any way pursuant to its provisions. A copy of said Lease Agreement is attached to this Agreement and by this reference incorporated herein in all its particulars.

2. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near 8th Street in Santa Paula and milepost 435.07 at or near Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California.

"Lease Property" shall mean the Track, Track Support Structures, buildings and real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore Segment on the Execution Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media events.

"Public/Tourist Train Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, or other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities.

3. Purpose and Scope of Lease:

The purpose of this lease is to permit Fillmore & Western Railway Co. to use the Lease Property for Public/Tourist Train Excursion purposes, subject to reservations described in Section 11c, as part of the efforts of Fillmore to further develop the local economy. For purposes of promoting the local economy, for the term of this Lease Agreement, Fillmore & Western Railway Co. agrees to headquarter its operations and equipment in the City of Fillmore and to promote and support the City of Fillmore and its business establishments in its business activities.

4. Demise and License:

Fillmore, for and in consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western Railway Co., does lease and demise to Fillmore & Western Railway Co. for the Lease Term, subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore, and Fillmore & Western Railway Co. does rent and accept from Fillmore the Lease Property.

5. Rental Payments:

a. Effective July 1, 2001, Fillmore & Western Railway Co. shall pay as rental hereunder Six Hundred and Seventy-Five Dollars (\$675.00) monthly, plus Twenty-Five Cents (\$0.25) per each paid adult passenger and Fifteen Cents (\$0.15) per each paid juvenile passenger (under age sixteen [16]) ("Base Rental"). Fillmore & Western Railway Co. shall pay Base Rental to Fillmore within fifteen (15) days of the end of each month including with payment a statement detailing the number of passengers (paid and unpaid) during the period.

This rental rate shall be adjusted annually on July 1, thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles-Long Beach-Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month of June, 2001 ("Beginning Index").

If the Index published for the month of June prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government Index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. Fillmore and Fillmore & Western Railway Co. agree that the rental rate shown in Section 5a shall be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipts, fee per rider, or other appropriate measures. In the event Fillmore and Fillmore & Western Railway Co. are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provision of Section 26. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 19(b).

c. Fillmore & Western Railway Co. acknowledges and agrees that its obligation to pay Base Rental hereunder and the rights of Fillmore in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western Railway Co. against Fillmore under this Agreement or otherwise.

d. Fillmore & Western Railway Co. recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Fillmore & Western Railway Co. may be subject to the payment of property taxes levied on such interest. Fillmore & Western Railway Co. shall pay all real and personal property taxes and assessments applicable to the Lease Property and to the personal property thereon.

e. It is the intention of the parties that Fillmore shall receive the Base Rental free from all taxes, charges, expenses, costs, and deductions of every description, which are specified in this Agreement as being the obligation of Fillmore & Western Railway Co..

f. Fillmore shall have the right to inspect and audit the records of Fillmore & Western Railway Co. relating to the calculation of Base Rental Payments.

g. Fillmore & Western Railway Co. agrees to use forms reviewed and approved by Fillmore for purposes of Calculation of Base Rental.

h. With respect to the PURCHASE AND SALE AGREEMENT, SANTA PAULA AND VENTURA BRANCHES, between Southern Pacific Transportation Company as Seller and Ventura County Transportation Commission as Purchaser, Article 6: Reservations Paragraph 6.2 Income from Certain Leases and Other Agreements, the parties agree that the conditions set forth in the above referenced paragraph do not apply to this Agreement.

6. Use of Premises:

a. Fillmore & Western Railway Co. shall have the right to use the Lease Property for any lawful Public/Tourist Train Excursion use defined herein, but not to remove the Track or Track Support Structures, as itemized on Exhibit "A" attached hereto, entitled "Inventory of Track and Track Support Structures" unless specifically authorized to do so in writing by Fillmore.

b. Fillmore & Western Railway Co. shall maintain at its sole expense the Track and Track Structures to such standards as required for its uses and in accordance with applicable regulations including, but not limited to, applicable regulations of the California Public Utilities Commission and Federal Regulations. Any materials used to replace defective components of the Track or the Track Support Structures shall be of the same or superior type and quality as that being replaced.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond Maintenance as defined in Section 2, VCTC shall be responsible for said refurbishment or replacement. Fillmore & Western Railway Co. acknowledges that any and all refurbishment or replacement activities beyond Maintenance shall be undertaken at the sole discretion of VCTC as funds may become available and Fillmore shall not be responsible whatsoever to undertake any refurbishment, replacement or Maintenance activities.

7. Construction:

a. Permanent Improvements.

Fillmore & Western Railway Co. shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written

approval in advance by Fillmore.

b. Temporary Improvements.

Fillmore & Western Railway Co. shall have the right to construct any temporary improvements necessary for the use of the Leased Property as permitted herein, provided, however, said temporary improvements shall be promptly removed upon cessation of their use.

c. Easements and Dedications.

The parties each recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. Fillmore will give Fillmore & Western Railway Co. timely written notice of all such requests, but VCTC under the terms of its Lease Agreement with Fillmore, may continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting easements and dedications. No such easement or dedication, nor any construction in connection therewith shall unreasonably interfere with the operations of Fillmore & Western Railway Co..

d. Title.

Any parts installed, replacements made or additions, improvements or alterations to the existing Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without further cost or expense to VCTC or Fillmore. Any supplemental trackage (i.e. new sidings, yard or shop trackage) added to the original Track and Track Support Structures by Fillmore & Western Railway Co. shall remain the property of Fillmore & Western Railway Co. and shall not be considered accessions to the Track and Track Support Structures and title shall not be vested in VCTC unless Fillmore & Western Railway Co. receive due compensation.

However, Fillmore & Western Railway Co.'s fixtures, machinery and equipment placed on or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western Railway Co. unless the removal of same causes material damage to property of VCTC or of Fillmore, in which event Fillmore & Western Railway Co. shall pay the reasonable cost of repair.

At the termination of the Lease Term, Fillmore & Western Railway Co. shall, within One Hundred Eighty (180) days following, remove at Fillmore & Western Railway Co.'s sole expense, all of its property from the Lease Property.

8. Indemnification:

a. Fillmore & Western Railway Co. shall investigate, release, defend, indemnify and hold VCTC and Fillmore harmless from and against any and all loss, damage, liability claims; demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC or Fillmore, or both, may incur; sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees,

subcontractors, agents and invitees of VCTC and of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC or Fillmore.

9. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. may not assign this Agreement without the prior written consent of Fillmore. The assignment shall not be valid unless there shall be delivered to Fillmore in due form for recording within ten (10) business days after the date of assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore & Western Railway Co.'s obligations and defaults under this Agreement. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of Fillmore because of Fillmore & Western Railway Co.'s having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore & Western Railway Co. shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of Fillmore, and any attempt by Fillmore & Western Railway Co. to do so without such consent shall be absolutely void and without effect.

c. Subletting by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. shall not have the right, without prior written consent of Fillmore, to sublet a part of the Lease Property.

10. Limits on Use:

a. During the term of this Agreement the Lease Property shall be used by Fillmore & Western Railway Co. for the use specified in Section 6 above and for no other use or purpose. Fillmore & Western Railway Co. shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore & Western Railway Co. shall at all times during said term conform to, and cause all persons using or occupying any part of the Lease Property and Improvements by invitation of, under or by right of Fillmore & Western Railway Co. to comply with, all public laws, ordinances, rules, orders and regulations from time to time applicable thereto regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality, and shall furnish satisfactory evidence of such compliance upon request of Fillmore. Fillmore & Western Railway Co. shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law.

(1) Fillmore & Western Railway Co. covenants and agrees to release, defend, indemnify and save Fillmore and VCTC harmless from any liability, cost,

expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western Railway Co. or any person upon the Lease Property by license or invitation of Fillmore & Western Railway Co. or holding or occupying the same or any part thereof or by right of Fillmore & Western Railway Co., regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, Fillmore covenants and agrees to release, defend, indemnify and save Fillmore & Western Railway Co. harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of any predecessor entity or any person upon the Lease Property by license or invitation of predecessor entity or holding or occupying the same or any part thereof or by right of predecessor entity, regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurred prior to October 31, 1996.

(3) Fillmore & Western Railway Co. shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western Railway Co., upon commencing such contest shall furnish to Fillmore a document guaranteeing that Fillmore and Fillmore's interest and VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

(4) Fillmore and VCTC shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore & Western Railway Co., the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore & Western Railway Co. to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore and VCTC, upon commencing such contest shall furnish to Fillmore & Western Railway Co. a document guaranteeing that Fillmore & Western Railway Co. and Fillmore & Western Railway Co.'s interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

11. Conditions and Covenants:

All of the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provisions.

a. Qualifications on Use.

This Agreement is subject to the right of existing tenants in possession.

Fillmore & Western Railway Co. accepts the Lease Property (including VCTC owned and other existing improvements) in its present condition without any representation or warranty by Fillmore as to the condition of such Lease Property or Improvements, and Fillmore shall not be responsible for any defect or change of condition in the Lease Property or such Improvements, any damage occurring thereto, or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. Fillmore & Western Railway Co. UNDERSTANDS AND AGREES THAT FILLMORE MAKES NO WARRANTY OR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE UNDER THE REQUIREMENTS OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES, INCLUDING THE CITY OF FILLMORE AND ITS ASSOCIATED AGENCIES AND DEPARTMENTS. Fillmore & Western Railway Co. SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF FILLMORE HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST FILLMORE OR THE CITY OF FILLMORE.

c. VCTC Reservations.

Fillmore & Western Railway Co. acknowledges that VCTC has reserved for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such right does not unreasonably interfere with Fillmore's rights under its Lease Agreement with VCTC; 2) construct, maintain and operate any existing and new and additional recreational trail facilities; and 3) operate freight and regular passenger rail services on the Fillmore segment.

d. Right of Entry.

Agents, representatives or employees of Fillmore and VCTC shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions of this Agreement and other Agreements applicable to the Lease Property are being complied with, and for maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens.

Fillmore & Western Railway Co. agrees and covenants to hold Fillmore and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western Railway Co.. In the event of the filing of any such lien, Fillmore & Western Railway Co. shall cause such lien to be released within five (5) business days after Fillmore's written notice to do so. Fillmore & Western Railway Co. shall indemnify and defend Fillmore and VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC or Fillmore as a result of any such lien.

12. Insurance:

While this Agreement is in effect, Fillmore & Western Railway Co. shall furnish evidence satisfactory to Fillmore that both VCTC and Fillmore are named as additional insureds for third party liability claims, meeting the requirements stated below, in a form satisfactory to Fillmore. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western Railway Co. shall furnish Fillmore with evidence satisfactory to Fillmore that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automotive liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore & Western Railway Co.;
- (3) cover the contractual liability assumed by Fillmore & Western Railway Co. under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC or Fillmore; and
- (5) provide for at least ten (10) days' notice to VCTC and Fillmore prior to any other cancellation or modification of coverage.

The insurance coverage shall also comply with the following requirements:

(a) A "Deductible" clause is permitted subject to Fillmore & Western Railway Co. being solely responsible to be Self Insured for the amount of the deductible and to assume full responsibility for payment of any claims, which fall below the deductible amount of the insurance coverage.

(b) Provides coverage for "all operations of the Insured conducted on the Lease Property" and contains a description of the work performed by the insured.

(c) All signatures must be handwritten in ink on any policy, certificate or endorsement; rubber stamp signatures are not acceptable.

(d) Said policy shall contain a cancellation clause reading in substance as the following approved notice:

"It is agreed that this policy shall not be canceled nor the amounts of coverage provided herein reduced until thirty (30) days after Fillmore's City Attorney shall have received written notice of such cancellation or reduction, as evidence by return receipt of registered mail."

(e) No policy shall be acceptable unless first approved as to form by the City Attorney of Fillmore.

(f) If Fillmore & Western Railway Co. is involved with the preparation and/or

sale of food and/or drink on the concession premises, then products liability coverage shall also be required.

(g) Insurance Binders shall not be accepted by Fillmore as proof of insurance coverage.

b. Worker's Compensation:

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western Railway Co. or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against Fillmore and/or VCTC to the extent permitted by law.

13. Condemnation:

a. Total Taking.

The term "Taking" means the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Lease is in effect. In the event of a Taking, this Agreement shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC and/or Fillmore. Under no circumstances shall Fillmore & Western Railway Co. be entitled to any "bonus value" for any remaining unexpired Term of this Lease.

If the values of the respective interests of VCTC, Fillmore and Fillmore & Western Railway Co. have been separately determined in the proceeding for the Taking in accordance with this Section 13a., then the values so determined shall be conclusive upon VCTC, Fillmore and Fillmore & Western Railway Co.. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Lease.

b. Temporary Taking:

(1) If all or part of the Lease Property or of Fillmore & Western Railway Co.'s interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western Railway Co. shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western Railway Co. is not prevented from doing so by the taking authority. In the event of a Temporary Taking, Fillmore & Western Railway Co. shall be entitled to receive from the award, up to one hundred (100%) percent reimbursement of its total forecast revenue for the period of the Taking as compensatory damages for any lost revenue resulting from the Temporary Taking.

(2) In the event all or part of Fillmore & Western Railway Co.'s interest under this lease is taken by any competent authority for its temporary use or occupancy for the full term of this lease, Short line shall receive the entire award for such interest.

14. Late Payments:

Fillmore & Western Railway Co. shall pay Fillmore an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due

hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

15. Default:

Fillmore & Western Railway Co. shall be in default under this Agreement (1) if Fillmore & Western Railway Co. fails to pay the Base Rental and Movie Rental when due and such failure continues for a period of more than ten (10) business days, (2) if Fillmore & Western Railway Co. fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from Fillmore or to commence and diligently pursue the cure of such a breach if the breach can be cured within thirty (30) days; (3) if Short line is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extra judicial means or if any action or proceeding for debt relief of Fillmore & Western Railway Co. is commenced by Fillmore & Western Railway Co..

If Fillmore & Western Railway Co. fails to cure a default within thirty (30) days of notice from Fillmore to do so, or Fillmore & Western Railway Co. does not present a restoration plan within thirty (30) days, Fillmore shall have the right, without further notice and in addition to any other remedies Fillmore may have by law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

16. ANTI-DISCRIMINATION CLAUSE:

Fillmore & Western Railway Co. herein covenants by and for itself and its assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall Fillmore & Western Railway Co. itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

17. Relocation:

Fillmore & Western Railway Co. acknowledges that it is a post acquisition tenant having entered into this Agreement and taken occupancy of the premises from Fillmore after Fillmore's acquisition of the premises. By entering into this Agreement, Fillmore & Western Railway Co. and any subtenant or successor in interest to Fillmore & Western Railway Co. under this Agreement hereby expressly waives any claim for compensation for fixtures and equipment installed on the premises at such time as the Agreement is terminated or the term expires. Fillmore & Western Railway Co., any subtenant, and any successor in interest to Fillmore & Western Railway Co. also waive any claim against Fillmore for moving expenses, relocation assistance, and any claim for loss or damage to goodwill, as a result of being required to vacate the premises if this Agreement is terminated for any reason or due to expiration of the term of this Agreement. Fillmore & Western Railway Co. shall not be considered a "displaced person" as such term is defined in Section 7260 (b) (c) or (d) of the California Government Code as it relates to Fillmore. Fillmore & Western Railway Co. disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in California Government Code Sections 7260 through 7277, as it now exists or may be amended.

18. Nonwaiver:

Fillmore's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall not be deemed a waiver of Fillmore's rights to terminate this agreement as provided herein, regardless of when rent is accepted.

19. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event that occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

Either party may terminate this Agreement, without cause, upon six (6) month written notice of termination given to the other party per Section 25 23 below.

c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and Improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property, as provided in Section 7d., all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

d. Highway Grade Separation Projects.

The parties acknowledge that in the event that any highway/railroad grade separation projects involving the Lease Property are approved by government agencies having jurisdiction, Fillmore may terminate this Agreement in order to eliminate any obligation

upon Fillmore to participate in such project.

20. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the non-prevailing party agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the prevailing party in the enforcement of this Agreement.

21. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 8 and 9, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

22. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

23. Notices:

All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first class mail, postage prepaid, to the parties at their last known address.

24. Severability:

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

25. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

26. Dispute Resolution

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in Subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the Mediator (as hereinafter defined), whichever is earlier.

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the Mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of any or all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of the conclusion of taking testimony and/or evidence regarding the dispute.

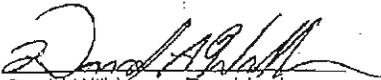
(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation that may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"FILLMORE & WESTERN RAILWAY CO.:"
Fillmore & Western Railway Co.,
a California corporation

by: 
David Wilkinson, President

by: 
Tresa Wilkinson, Secretary

"FILLMORE:"
City of Fillmore
Redevelopment Agency

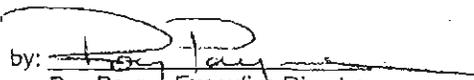
by: 
Roy Payne, Executive Director

EXHIBIT 5



Item #13

July 9, 2010

MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION
FROM: DARREN KETTLE, EXECUTIVE DIRECTOR
MARY TRAVIS, MANAGER - TRANSPORTATION DEVELOPMENT ACT AND RAIL PROGRAMS
SUBJECT: SANTA PAULA BRANCH LINE (SPBL) FUTURE MAINTENANCE OPERATIONS

RECOMMENDATION:

- Direct staff to administer the maintenance payment clause of the Fillmore & Western (F&W) lease agreement as approved by the Commission effective July 1, 2010. Effective action reduces VCTC maintenance payment to F&W by approximately \$2,600 per month to \$23,400, or,
- Direct staff to postpone administering the maintenance payment clause of the F&W lease agreement until October 1, 2010. Effective action leaves the maintenance payment unchanged at \$26,000 per month until October 1, 2010. (Note: this is the recommendation of the elected officials of the Santa Paula Branch Line Advisory Committee (SPBLAC).

BACKGROUND:

In 2001 the Ventura County Transportation Commission approved a contract with the Fillmore and Western Railway Company (F&W) to maintain the Santa Paula Branchline Corridor to a standard that would allow continued rail operations. The rail activity on the line included freight hauling, tourism and filming. The agreement was amended in 2004 and again in September 2007. Attached to this report is a memorandum from VCTC General Counsel that more thoroughly discusses the original agreement and subsequent amendments.

The fiscal challenges facing the Commission have required that VCTC pursue alternatives to the "business as usual" of using declining public transit funds to support the private activities of Union Pacific (UP) and the Fillmore and Western (F&W) railroads, with a desired outcome of the SPBL being self-sustaining. This was specific direction as part of the adoption of the 2009/2010 budget. As staff was developing the 2010/11 budget and the fiscal condition worsened, the need to develop a solution became even more pressing. The Commission directed staff to meet with the local agencies along the SPBL, and with F&W and UP railroads to explore alternatives. While some progress has been made over the last several months there are no firm developments to report at this time, however, an issue has surfaced about the ongoing SPBL maintenance contract payments that needs to be resolved.

There follows a brief summary of the different discussions that have taken place to date. The information was reviewed with the Santa Paula Branch Line Advisory Committee (SPBLAC) at their meeting June 28, 2010 and the SPBL comments are included in the agenda item.

Meetings with County, Fillmore, San Buenaventura and Santa Paula:

VCTC Staff met senior staff from each of the local jurisdictions along the SPBL Corridor. It has been suggested that as the primary benefit of maintained operations on the SPBL is one of economic benefits to the communities along the corridor that possibly the local jurisdictions might contribute local fund to maintain continuing operations. However, while all were supportive of VCTC continuing to keep the SPBL in operating condition, they did not have the local funding available to subsidize the maintenance expenditures at this time.

Subsequently, the City of Santa Paula provided written comments with some possible funding alternatives. VCTC Staff has researched the suggestions included in the Santa Paula letter and has already implemented most of the suggestions. One of the revenue raiser ideas was that VCTC request that the County consider foregoing lease revenues it receives from properties along the SPBL, and instead contribute those revenues to SPBL maintenance and operations. The County has indicated reservations to this proposal as they believe it is inconsistent with the original arrangement when the SPBL was purchased. Additionally the County is using those lease revenues to support activities that would otherwise need to be funded from the County general fund; they are reluctant to divert the money.

Fillmore & Western (F&W) Railroad:

F&W pays to lease the SPBL for its tourist and movie trains, and also, receives a monthly payment from VCTC per contract to maintain the Line between Montalvo and Piru. The agreement between VCTC and F&W is for a twenty-year period or until July 1, 2021 and can only be terminated for "cause" although "cause" is not defined in the agreement. A variety of ideas to reduce the maintenance contract cost have been discussed with F&W, and these discussions are still continuing.

There were two issues that arose when reviewing the VCTC/F&W agreement. First, it became apparent that VCTC has been overpaying the cost of the existing maintenance contract. The contract states the annual maintenance allowance paid to F&W shall be the lesser amount of \$312,000 or the total of the grade crossing funds and annual income derived by VCTC from its property leases. In the past, VCTC has simply been paying the monthly fee which is not consistent with the agreement language.

Please see the attached memorandum from VCTC General Counsel for further explanation on the nature of the agreement language. Depending on an interpretation of the term "income derived" the Commission has overpaid F&W either \$130,000 or \$670,000 over the last 5-6 years depending upon whether gross or net lease revenue is used in the calculation. However, either way, VCTC General Counsel has concluded that the overpayment does need to be recovered in some fashion.

SPBLAC discussed this issue at great length, with representatives of F&W disagreeing that any overpayment has been made. F&W firmly believes that the language in the VCTC agenda items approving the two agreement amendments states that a set monthly amount will be paid, even though the agreement amendment language clearly provides two alternative monthly amounts. Based on the VCTC Legal Counsel opinion, staff believes the actual agreement language is the approved amount to be paid, and therefore, staff recommends that effective July 1, 2010, we administer the monthly payment to with F&W consistent with agreement language. Note that, based on 2009/10 revenues and an interpretation of "income derived" being gross income, VCTC would reduce the monthly payment of \$26,000 to F&W by \$2,000-\$2,500 per month.

There was also a second issue concerning payments to F&W that was briefly discussed by SPBLAC. F&W stated that they have been providing on-call services to VCTC beyond the scope of the maintenance agreement and implied they were doing so at little or no additional cost to VCTC. However, a review of the VCTC accounting records for the past three fiscal years shows that F&W has been paid substantial amounts for: weed abatement and debris cleanup (outside the 15' center line); crossing repair and replacement; ballast and track replacement; emergency response to gate/signal knockdowns; and, for other special projects. Therefore, staff does not believe F&W has provided any services for which they have not been paid.

Item #13

Page #3

Because of the difference of opinion, SPBLAC recommended that a more careful and thorough review of the agreement language take place to preclude any possible legal challenges on the issue, and further, that the implementation of the agreement as interpreted by VCTC staff and Legal Counsel not take place for three months or until October 1, 2010 to allow for all concerns and questions to be answered to everyone's satisfaction.

Union Pacific (UP) Railroad:

In summary, VCTC's agreement with UP requires the Commission maintain the tracks between Montalvo and Santa Paula without charge as long as UP runs freight on the Line. They currently have one customer, International Paper, with deliveries/pickups by rail three times a week. UP and F&W have initiated discussions to possibly establish a transloading arrangement, where the freight would be shifted from UP to F&W near Montalvo. In this type of arrangement, UP would pay F&W to transport freight to the UP customer i.e. International Paper. F&W could then market to provide other freight hauling opportunities down the SPBL corridor. It is possible additional freight customers could be added; this hasn't been a priority in the past because UP got all the revenue while VCTC shouldered all the costs. Staff will continue working with both UP and F&W on this potential new source of revenue that would support F&W operations.

Next Steps:

1. Continue discussions with the County about possible use of some or all of the lease revenues on County area property being diverted to SPBL maintenance.
2. Effective, either July 1, 2010 or October 1, 2010, administer agreement with F&W consistent with agreement language. Based on 2009/10 revenues and an interpretation of "income derived" being gross income, VCTC would reduce it's monthly payment to F&W by \$2000-\$2500 per month.
3. Develop schedule to recover overpayment of approximately \$130,000 made to F&W over the past five years.
4. Continue to actively engages discussions between UP, F&W, and Metrolink to facilitate shifting freight hauling activity on the SPBL from UP to F&W.
5. Continue discussions with UP to address lease revenue sharing for SPBL maintenance.

Impact on FY 2010-2011 Budget

The impacts to the VCTC 2010-2011 budget of the "next steps" action are not substantial but are meaningful two ways. First, by administering the agreement consistent with Commission approval there is now adequate budgeted resources to fund the F&W maintenance agreement for a period of eight months rather than seven as was described in the Santa Paula Branchline Task Description. Second, so long as VCTC must remit half of the "gas line" revenues to UP as is the case with current purchase agreement, the SPBL will have a continuing structural deficit in excess of \$100,000 annually until 2015 when VCTC's obligation to share the "gas line" lease revenues with UP terminates and VCTC will retain all lease revenues.

The continuing challenge will be this structural deficit translates to an approximate \$100,000-\$120,000 annual impact to future VCTC budgets with the only revenues available to fund VCTC contractual obligations with F&W being limited public transit funds.

EXHIBIT 6



251 Santa Clara St
Fillmore, CA
93016

805-524-2546
805-524-1838 fax
www.fwry.com

P.O. Box 850
Fillmore, CA
93016

September 16, 2010

Mr. Darren Kettle
Ventura County Transportation Commission
950 County Square Drive
Suite 207
Ventura, CA 93003

Re: Santa Paula Branch Line

Dear Mr. Kettle:

Thank you for prompt reply to our information request of September 14, 2010. (See Attached). We are in process of reviewing the documents. It appears from our preliminary review of the documents produced that your agency's review of the terms and conditions of the agreements between the Fillmore & Western Railway Company (F&W) and the Ventura County Transportation Commission (VCTC) and review of the Santa Paula Branch Line began in 2009.

Prior to 2009, budgets for the branch line and payment of services were negotiated at the branch line committee level and then adopted as part of the May Metro-Link budget process by the entire commission. This was the case since at least the 2004 addendum as well as the 2007 addendum, which was drafted by VCTC's counsel, Mitchell Kahn, Esq. All expenditures, level of reimbursement for services rendered, funding levels and budget process were approved through a public process, and is part of the public record.

While it is the position of Mr. Kahn that the contract reflects one set of numbers, it is F & W position that the commission detailed the work needed to maintain the branch line, budgeted the money for that work and that the F & W performed the work with VCTC's full approval and was paid for work completed. To this end, there was fee for service, service provided and payment made for that service.

Fillmore and Western has communicated on numerous occasions that the current contract does not accurately reflect the work required, negotiated, done, and paid by VCTC. The actual VCTC process of budgeting, appropriation, billing and actual work completed has been a completely different process than that reflected by the agreement. Nonetheless, this is the course of dealing engaged in by the parties in an effort to maintain and improve the Santa Paula Branch Line and related properties owned by VCTC. Accordingly, the F & W is not able to reimburse funds expended to maintain and improve VCTC property.

The documents that your staff provided are illuminating in that the potential act of "moth-balling" is actively used in the 2009 material. Fillmore and Western is more than willing to continue to explore, work with, partner with, expand services to and seek resolution for the challenges that VCTC and you as Director have framed. However, reaching back into history through allegations of gifts, language of past leadership or even yourself as "screwing up" is not appropriate nor conducive to resolution of the issues.



351 Santa Clara St
Fillmore, CA
93015

805-524-2546
805-524-1838 Tax
www.fwry.com

P.O. Box 980
Fillmore, CA
93016

The F & W appreciates your recent attention to the challenges it faces in maintaining the Santa Paula Branch Line. We also are aware that you have defined your position as "not" being in the railroad business, "not" being in the economic development business and "not" have adequate resources to maintain the amenity of the Santa Paula Branch Line. With all respect, VCTC is in the railroad business and also is an engine of economic development. Based upon your comments and those of staff as reflected in meetings and the documents produced we are also of the opinion that your vision for the line is to "mothball" it; public pronouncements by VCTC to the contrary.

We look forward to discussions of solutions. We understand the lack of financial resources and that this year is likely to see a major reduction in funding from VCTC. We are willing to work towards solutions to the issues. We look forward to a conversation between all the railroad stakeholders including VCTC, F&W and the Union Pacific Railroad in an effort to solve several issues currently holding back progress of the Santa Paula Branch Line towards a solution both of financial issues and economic development concerns to render this asset stable and viable for the future of Ventura County.

F&W is unable to reimburse VCTC for the funds spent with the express approval of VCTC on the Santa Paula Branch Line which is owned by VCTC. To reach back and attempt to undo that which has been publicly supported with approval of budget, use of controls and approved appropriation processes and full review of counsel only casts VCTC in an unfortunate light.

Thank you for your kind attention to this communication. We hope that we can continue discussions concerning the resolution of the issues critical to the long term operation of the Santa Paula Branch Line without further rehashing of the past which can only result in further confusion and obstruct forward progress. Should you have further questions, please feel free to call.

Sincerely,

Dave Wilkinson
Fillmore and Western Railway

Information Request 9-15-10
Fax 9-15-10

EXHIBIT 7



REVISED

Please note the additional recommendation and information are included in bold-face italic.

Item # 15

October 1, 2010

MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION
FROM: DARREN KETTLE, EXECUTIVE DIRECTOR
MARY TRAVIS, MANAGER - TRANSPORTATION DEVELOPMENT ACT AND RAIL PROGRAMS
SUBJECT: SANTA PAULA BRANCH LINE (SPBL) OPERATIONS AND MAINTENANCE CONTRACT

RECOMMENDATION:

- Effective October 1, 2010 administer maintenance agreements as originally approved by the Commission.
- Authorize the Executive Director to renegotiate multiple leases along the SPBL for maintenance and operations on the SPBL corridor.
- ***Approve amendment to the FY 10/11 Santa Paula Branch Line (SPBL) project budget to include additional lease revenues of \$31,000 and signal revenues of \$18,100 to fund the SPBL maintenance contract for the entire fiscal year.***

BACKGROUND:

Fillmore and Western Railroad (F&W) pays VCTC to lease the SPBL for its tourist and movie trains, and also receives a monthly payment from VCTC per the approved maintenance contract to maintain the track and 15 feet on either side along the SPBL between Montalvo and Santa Paula. The agreement between VCTC and F&W is for a twenty-year period or until July 1, 2021. Note that in addition to the monthly maintenance contract payment, the Commission also pays F&W for maintenance work such as weed abatement, debris removal, emergency callouts, etc. on the non-operating property outside the 15-foot track area on a project-by-project basis. This additional work on the non-operating property takes place the entire length of the SPBL, from Montalvo to Rancho Camulos.

By a separate 20-year agreement approved in 2001, the City of Fillmore leases the track from VCTC between Santa Paula to Rancho Camulos (called the "Fillmore Segment") and then subleases this section of track to F&W for their tourist and excursion train operations. Fillmore receives a monthly payment from F&W based on the passengers carried on the special tourist trains operated on this segment. The maintenance of the track and area within the fifteen-foot operating boundary on either side is covered by the Fillmore Segment sublease between Fillmore and F&W.

Two issues recently came to light when reviewing the VCTC SPBL agreements:

First, the VCTC/F&W agreement states that under the current maintenance contract F&W shall receive a maintenance allowance in the lesser amount of \$312,000, or, the total of the State/Federal grade crossing signal maintenance funds and the annual income derived by VCTC from its SPBL leases. This amount changes each year but the FY 10/11 Budget estimated combined signal/lease revenues of \$238,000. However, for the past several years, VCTC has been paying F&W the maximum monthly amount rather than the "lesser amount" identified in the agreement. The Commission discussed this issue in detail at the July meeting, and postponed the monthly maintenance payment adjustment until October 1, 2010.

A final review of the SPBL lease and signal revenues estimated available in FY 10/11 indicates lease revenues of \$258,000 and signal revenues of \$29,100 for a total of \$287,100. This total is available as the "lesser" amount under the VCTC/F&W maintenance contract agreement to support monthly payments to F&W for maintenance of the track between Montalvo and Santa Paula. After subtracting the payments already made to F&W from July through September, 2010 (\$78,000) there remains a total \$209,100 for payout to F&W for the balance of the year, in monthly payments from October 2010 through June 2011.

A second issue involves the City of Fillmore's separate sublease agreement with F&W for the portion of the SPBL from Santa Paula to Rancho Camulos for tourist and excursion train purposes. The sublease states that Fillmore and/or F&W will maintain this section of the SPBL, however, for the past several years, VCTC has been paying for this maintenance. Until the various lease agreements are renegotiated, the maintenance cost for the track and fifteen-foot strip of land on either side of the track for the Fillmore Segment is the responsibility of the City and their subleasees.

FY 10/11 VCTC Budget Adjustment

This issue was still being explored when the Commission's FY 10/11 budget was approved last June and a placeholder amount of \$182,000 for the maintenance contract was included in the SPBL project budget. Based on the issues just discussed, the maintenance contract line item will need to be increased to fully fund the year's maintenance work. Maintenance work outside the track will still be handled on a case-by-case basis and paid from funds already budgeted for non-operating property maintenance work.

Staff is still analyzing anticipated VCTC lease revenues to ensure the maintenance contract is funded at the correct level, and we will therefore be preparing a revised agenda item including the final revenue amounts and distribute the information ahead of the Commission meeting October 1st.

As noted, the final calculation just completed indicates lease revenue of \$258,000 and signal revenue of \$29,100 is expected this fiscal year for a total of \$287,100. This amount then becomes the "lesser" amount paid to F&W for the FY 10/11 SPBL maintenance contract. Because placeholder amounts for the lease/signal revenues and contract expenses were used when the budget was adopted, the revenues and expenses for the SPBL project need to be increased to account for the additional lease and signal revenue to fully fund the maintenance contract work. Staff recommends the VCTC budget be amended accordingly.

Update on Potential Additional SPBL Revenues:

Staff is continuing to work with F&W and UP on generating additional revenues for the SBPL with the goal of making this vital asset self-sustaining in the near future. We will continue to meet regularly with the Commission's Santa Paula Branch Line Advisory Committee (SPBLAC) and will update the Commission as progress is made.

Property Leases

Staff has been working with F&W to review the existing SPBL leases to determine if additional revenues can be generated to offset the ongoing maintenance work. While it does not appear that significant additional revenues can be found at this time, there is some opportunity to approach leaseholders about adding property to their existing leases and bringing in more money; we will continue this effort.

Union Pacific (UP) Railroad

VCTC's agreement with UP requires the Commission maintain the tracks between Montalvo and Santa Paula without charge as long as UP runs freight on the Line. They currently have one customer, International Paper, with deliveries/pickups by rail three times a week. Staff is continuing discussion with UP and F&W to possibly establish a transloading arrangement, where the freight would be shifted from UP to F&W near Montalvo. In this type of arrangement, UP would pay F&W to transport freight to the existing UP customer i.e. International Paper, however, F&W could also provide other freight hauling opportunities to customers all along the SPBL corridor. It is possible additional freight customers could be added. This hasn't been a priority in the past because UP got all the revenue while VCTC shouldered all the costs. Staff will continue working with both UP and F&W on this potential new source of revenue to support F&W operations.

Next Steps:

1. Effective October 1, 2010, VCTC will administer maintenance agreement with F&W consistent with VCTC/F&W agreement language, and also, the City of Fillmore will administer their agreement with F&W consistent with the sublease agreement's language.
2. Effective July 1, 2011, a schedule to recover overpayment of approximately \$137,452 made to F&W over the past five years will be developed. This overpayment issue is still being reviewed with F&W.
3. Continue to investigate potential lease revenue increases along the SPBL to generate additional revenue.
4. Continue to actively engage discussions between UP, F&W, and Metrolink to facilitate shifting freight hauling activity on the SPBL from UP to F&W.
5. ***Amend the FY 10/11 VCTC SPBL project budget for contract maintenance to include additional lease and signal funds to fully fund the annual SPBL maintenance contract between VCTC and F&W.***

EXHIBIT 8



Ventura County Transportation Commission

October 14, 2010

Mr. David Wilkinson, President
Fillmore & Western Railroad
351 Santa Clara Street
Fillmore, CA 93015

Subject: Adjustment to FY 10/11 Santa Paula Branch Line Maintenance Contract Payments

Dear Mr. Wilkinson:

As we discussed and as approved by the Commission at its October 1, 2010 meeting, we will be making an adjustment to the monthly payments made to Fillmore & Western Railroad (F&W) beginning with the October payment. The change is being made in accordance with the terms in Section 4.B.2 of the adopted agreement between VCTC and F&W for operation of the Santa Paula Branch Line (SPBL).

Specifically, a final review of the SPBL lease and signal revenues estimated available in FY 10/11 indicates lease revenues of \$258,000 and signal revenues of \$29,062 for a total of \$284,062. This total is available as the "lesser" amount under the VCTC/F&W maintenance contract agreement to support monthly payments to F&W for maintenance of the track between Montalvo and Santa Paula. After subtracting the payments already made to F&W from July through September, 2010 (\$78,000) there remains a total \$206,062 for payout to F&W for the balance of the year, in monthly payments from October 2010 through June 2011.

Thank you for working with us to sort out the payment schedule. We appreciate your cooperation and assistance in maintaining the SPBL and look forward to continuing to work with you in the future.

Please give Mary Travis a call at 805-642-1591 ext. 102 or email: mtravis@coventura.org if you have any questions.

Sincerely,

Darren Kettle
Executive Director

cc: Sally DeGeorge, Director of Finance

EXHIBIT 9



**VENTURA COUNTY TRANSPORTATION COMMISSION
SANTA PAULA BRANCH LINE ADVISORY COMMITTEE
(SPBLAC)**

**WEDNESDAY, NOVEMBER 16, 2011
3:30 – 5 PM**

www.goventura.org

AGENDA*

**Actions may be taken on any item listed on the agenda*

**VENTURA COUNTY TRANSPORTATION COMMISSION CONFERENCE ROOM
950 COUNTY SQUARE DRIVE - SUITE 108
VENTURA, CA 93003**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in a Commission meeting, please contact the Clerk of the Board at (805) 642-1591 ext 101. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENTS** (For items not on the agenda)~ *Each individual speaker is limited to speak three (3) continuous minutes or less. Any written documents to be distributed or presented to the Commission shall be submitted to VCTC SPBLAC staff. This policy applies to Public Comments and comments on Agenda Items.*

Under the Brown Act, SPBLAC should not take action on or discuss matters raised during Public Comment portion of the agenda which are not listed on the agenda. SPBLAC members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.

- 4. APPROVE SUMMARY FROM MARCH 3, 2011 SPBLAC MEETING – PG. 3**

5. **COMMITTEE MEMBER/STAFF REPORT**

This item provides the opportunity for the SPBLAC members VCTC staff to report on attended meetings and any other items related to SPBLAC activities.

6. **ADDITIONS/REVISIONS** – *The SPBLAC may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the SPBLAC subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the SPBLAC. If there are less than 2/3 of the SPBLAC members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.*

7. **SANTA PAULA REQUEST TO ANNEX A PORTION OF THE SBPL – PG. 5**

Recommended Action:

Approve the request from the City of Santa Paula to annex a portion of the Santa Paula Branch Line (SPBL) into the City's East Area Project Phase II.

Responsible Staff: Mary Travis

8. **FRA REQUIRED SPBL RAIL BRIDGE INVENTORY PROJECT UPDATE – PG. 8**

Recommended Action:

Receive and file update report.

Responsible Staff: Mary Travis

9. **FREIGHT OPERATIONS ON THE SPBL UPDATE – PG. 9**

Recommended Action:

Approve staff initiatives to improve freight operations on the SPBL.

Responsible Staff: Darren Kettle

10. **FUTURE MEETINGS**

Recommended Action:

Approve tentative date for next SPBLAC meeting.

Responsible Staff: Mary Travis

11. **ADJOURNMENT**



Item # 4

Summary of 3/3/11 SPBLAC Meeting

- Item # 1. **Call to Order/Self Introductions:**
The meeting was called to order at the VCTC Conference Room at 2:30 PM. Attending the meeting were Commissioners Patti Walker, Kathy Long and Ralph Fernandez. Also attending were Dave Wilkinson, Bill Bartels, Martin Hernandez, Kathy Connell, and, Dave Fleisch, and VCTC staff members Darren Kettle and Mary Travis.
- Item # 2. **Approval of 9/8/10 SPBLAC Meeting Summary:**
The meeting summary was approved.
- Item # 3. **Update on SPBL Maintenance Operations:**
Staff updated the Committee on the ongoing discussions with all parties involved in SPBL operations. In accordance with the existing agreements, from now on, the City of Fillmore will be working with the Fillmore & Western (F&W) Railroad to maintain the tracks on the "Fillmore Segment" between Santa Paula and Rancho Camulos. VCTC, working with F&W, will maintain the tracks between Montalvo and Santa Paula, and also, will continue to maintain the property outside the 15-foot track area. Also, in the area of increased freight service, discussions with Union Pacific Railroad are still continuing.
- Item # 4. **Draft FY 2011/12 Santa Paula Branch Line (SPBL) Project Budget:**
Staff reviewed the proposed FY 2011/12 budget for continued operation and administration of the Santa Paula Branch Line. The draft budget totals \$597,650 and includes funds for administration and maintenance of the SPBL. After review, the Committee recommended the SPBL budget be forwarded to the Commission for approval.
- Item # 5. **Circulation of Request for Proposals for Federal Railroad Administration Bridge inventory Program:**
Staff reviewed the Federal Railroad Bridge Inventory requirement and staff recommendation to issue a Request for Proposals (RFP) for consultant assistance to complete the necessary work. The federal deadline for completion of the first phase of the project is September 13, 2012. After the initial inventory is completed, the capacity of each of the rail bridges will have to be calculated under Phase II of the requirement. After discussion, the Committee recommended the RFP be forwarded to the Commission for approval.
- Item # 6. **Solicitation of Firms for SPBL and Coast Main Line Right-of-Way Services:**
Staff reviewed the current arrangements for right-of-way maintenance on the SPBL and Coast Main Line properties owned by VCTC. The maintenance has been handled on an as-needed basis for several years by the Fillmore & Western Railway (F&W) and Van Nortwick & Associates on the Coast Main. Both F&W &

Van Nortwick crews are certified and insured to work next to operating rail lines, and both companies have performed in an excellent and efficient manner. However, to make sure the work is handled in the most competitive way, staff will seek proposals from other firms to ensure the price paid is the best for the needed work. After discussion, the Committee authorized staff to seek comparative prices for right-of-way maintenance to establish a "bench" of firms that can be retained as needed.

Item # 7.

Federal Railroad Administration (FRA) Inventory of Signals/Grade Crossings by Fillmore & Western Railway (F&W):

Staff reviewed the FRA requirement that all owners of railroad property have a current and updated inventory of signal equipment and grade crossings. Rail owners are subject to fines if this information is not available upon request by the FRA inspectors. Because this is a matter of urgency, and because F&W already have much of the needed inventory information on file, it is recommended F&W be approved to complete the necessary inventory work. Funding for the project has been included in the FY 2011/12 SPBL budget. The Committee approved this recommendation be forwarded to the Commission for approval.

Item # 8

Request for Property Lease of Parking Lot in Santa Paula at 10th Street:

Staff presented a request forwarded to VCTC by the City of Santa Paula from Santa Paula Promenade Inc. to lease a parking lot near the railroad tracks at 10th Street. Staff recommends the lease be approved, pending review of the property ownership and comparable lease rates; the Committee approved the staff recommendation.

Item # 9

Schedule Future Meetings:

No immediate actions are anticipated in the near future. Therefore, the next meeting date was not set but will be called in the Fall when needed.

Item # 10.

Adjournment:

The meeting was adjourned at 5 PM.

EXHIBIT 10



Item # 8

November 16, 2011

MEMO TO: SANTA PAULA BRANCH LINE ADVISORY COMMITTEE (SPBLAC)
FROM: MARY TRAVIS, MANAGER OF TRANSPORTATION DEVELOPMENT ACT
AND RAIL PROGRAMS
SUBJECT: UPDATE ON FEDERAL RAILROAD ADMINISTRATION REQUIRED RAILROAD
BRIDGES INVENTORY PHASE ONE PROJECT

RECOMMENDATION:

- Receive and file update report on completion of Phase One of the requirements of the Federal Railroad Administration (FRA) Final Rule on Railroad Bridge Inventory and Safety Inspections.

DISCUSSION:

The Federal Railroad Administration (FRA) has published its Final Rule requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges and to strengthen federal oversight of railroad bridge maintenance programs. The rule is a requirement under the Rail Safety Improvement Act of 2008.

VCTC, as owner of the Santa Paula Branch Line (SPBL) railroad, is subject to this requirement. There are 39 bridges along the SPBL of varying sizes between East Ventura and Piru.

The Final Rule requires track owners (or "Agency") to implement a rail bridge management program that has two phases. The first phase must be completed by September 13, 2012 and includes the following:

- Agency must inventory all railroad bridges owned by the Agency.
- Agency must maintain design documents for each railroad bridge.
- Agency must document all repairs, modifications, and inspection of railroad bridges subject to FRA review.
- Agency must establish a program to undertake at least annual inspections of all owned railroad bridges
- Agency must conduct special inspections if weather or other conditions warrant such inspections.
- Agency must develop and maintain a secure records management system.
- Agency must designate qualified, responsible persons to carry required tasks under the Final Rule.

At its March meeting, SPBLAC discussed the requirement and recommended to the Commission that consultant assistance be retained for the project. In June, the Commission approved issuing a Request for Proposals (RFP) to complete this required work.

SPBLAC
November 16, 2011
Item #8
Page #2

The RFP was posted on VCTC's website and the RFP was also mailed directly to six firms who had expressed interest in the project. Based on the prices submitted, and also, the past positive working experience with the firm, JL Patterson & Associates was awarded the contract. It should be noted that the firm is very familiar with the SBPL from its work on the 2007 SPBL Action Plan, and they have already started to collect the necessary information.

The schedule for the project is as follows:

October -November, 2011:	Update bridge inventory/obtain available as-built plans
December-January, 2012:	Write draft bridge management plan
February-March, 2012:	Prioritize bridge ratings
April-May, 2012:	Complete final bridge management plan
June-July, 2012:	Develop/secure records management plan
July, 2012:	Complete project/submit plan & inventory to FRA

Note that, after Phase One is completed for the SPBL and submitted to the FRA, VCTC will then begin Phase Two of the FRA inventory requirement. Phase II has to be completed within five years after Phase One is finished (or no later than September 13, 2018). In Phase Two, the Agency must schedule an evaluation for any bridges for which the load capacity has not already been determined as discovered in Phase One. This load capacity evaluation must be completed by a railroad bridge engineer in conformance with FRA regulations. After we have completed Phase I and have more information, staff will likely recommend placing this Phase Two work in the FY 2013/14 or FY 2014/15 VCTC budget.

EXHIBIT 11



Item # 9

November 16, 2011

MEMO TO: SANTA PAULA BRANCH LINE ADVISORY COMMITTEE (SPBLAC)

FROM: DARREN KETTLE, EXECUTIVE DIRECTOR

SUBJECT: UPDATE ON SPBL FREIGHT OPERATIONS

RECOMMENDATION:

- Initiate actions to transfer common carrier service from Union Pacific (UP) to Fillmore & Western (F&W) Railway as permitted by the SPBL Shared Use Agreement between UP and VCTC.

DISCUSSION:

When VCTC purchased the SPBL from Southern Pacific (SP) Railroad in 1996, the Commission entered into a Shared Use Agreement with SP to allow continuation of existing freight service on the Line. The Agreement was transferred to Union Pacific (UP) Railroad when UP purchased SP. The agreement requires the Commission maintain the tracks between Montalvo and Santa Paula without charge as long as UP runs freight on the Line. Because VCTC contracts with F&W to manage the SPBL, when UP has freight to deliver, UP contacts F&W, and F&W then dispatches the train and controls the actual freight delivery.

For the past two years, staff has been working with UP to improve management of the freight operations on the SPBL. UP currently has one customer, International Paper, with deliveries/pickups by rail three times a week. VCTC, UP and F&W have been discussing establishment of a transloading arrangement, where the freight would be shifted from UP to F&W near Montalvo. In this type of arrangement, UP would pay F&W to transport freight to the UP customer i.e. International Paper. F&W could also market to provide other freight hauling opportunities to potential customers along the Line; this hasn't been a priority in the past because UP got all the revenue while VCTC shouldered all the costs.

While freight management on the SPBL is important to VCTC and F&W, it is not a high priority for UP and we have not been able to get them to focus attention on this issue. The operating agreement in place between VCTC and UP does allow VCTC to give a six-month notice to UP and the federal Surface Transportation Board (STB) to transfer common carrier freight service. This should not be a problem because F&W is already fully qualified as a "common carrier" for rail operations and the movement of UP's freight will not be adversely impacted.

The change will require an amendment to the VCTC/UP Shared Use Agreement and approval by the STB. The current Shared Use Agreement does place the responsibility for damages to VCTC should UP incur damages brought about by the request to transfer common carrier service. As it is the intent of F&W to continue freight service to International Paper, general counsel believes the risk of damage is minimal.

EXHIBIT 12

Memo to Darren Kettle from Dave Wilkinson - Fillmore & Western

July 27, 2012

Dear Darren;

The Fillmore & Western would like to propose a 20 year franchise for the operation and maintenance of the Santa Paula Branch Line. The first 5 years would be at a fee of \$1 per year. The subsequent periods would be at 5% of net based on rail line income from tourism and freight service. It would be the purpose of the franchise to give the F & W full responsibility and control of the full line and entire right of way. In the short term, VCTC would re-allocate the \$90,000 for bridge study to bridge repair and the Fillmore & Western would assume the responsibility for the bridge certification that is due by 2015. The Fillmore & Western is currently accepting freight service through the Union Pacific. This freight is wind trains that are in need of reconfiguration. This has resulted in a set of informal operational agreements between the F & W and UP. In researching current funding schemes that appear to have some traction, freight as a funding source for line improvement, economic development and infrastructure goods movement are all present. It would be F & W's desire to leverage the VCTC project list to include specific line improvements for federal funding as a partner. Since 2004 when the last lease amendment was processed, much has changed. It is F & W's desire to be an aligned partner in that change instead of the recipient of litigation, threats, and innuendo. To this end, it would be the goal and desire of F & W to work to enhance the current asset through a thoughtful public private partnership. This means that a healthy operator creates a healthy asset.

In no specific order, the following items are areas of clarification and negotiation.

General areas of Interest include:

The Fillmore & Western would have:

Exclusive Right to Operate and the exclusive right and responsibility to maintain the entire line to at least class 1 standard. The deal would be for a term of 20 years with check back at 5 year intervals. For the first 5 year interval the fee to VCTC would be \$1 per year. This right and responsibility is based on the clear shared responsibilities of the line owner and the legislative support or affirmation of desire and outcome from the owner VCTC.

Responsibility of Property Owner:

Affirm through legislative action the branch line as an asset

Affirm through legislative action the branch line as an economic driver

Affirm through legislative action the specific areas of Business development to include:

Freight

Movies

Commuter partnership Train, VCTC, FATCO

Train Maintenance, Wind train

Memo to Darren Kettle from Dave Wilkinson - Fillmore & Western

Tourism Partnerships with ... Santa Paula, Fillmore, Bennet's Honey Farm, Railfest, Pumpkins, Christmas trains, Limoneira, Thomas, 4th of July, May Festival, Balloon Festival

Affirm the Legislative requirements for property management by declaration of the operator as the property management authority

Affirm the Legislative requirements for declaration of operator's authority for management of the railroad right of way.

This would include From a perspective of railroad right of way.

A legislative setting of change in condition for lease fee

A legislative setting of the Lease fee

A legislative setting of the right of entry fee

A legislative setting of the pipeline or utility fee

Adoption of standard lease agreement

Adoption of standard access agreement

Adoption of standard also insured requirements for private rail crossings

Affirmation that All lease income will accrue to the line for The whole branch

Lease income to branch

Lease management authority made clear for:

Lease management

Property adjacent leases

Access leases

Authority to fence

Authority to collect leases in partnership with VCTC

Backing of VCTC legislative authority to authorize collection of lease and legal authority to provide collection

Right of Way definitions

Current is 15' from centerline

New, the whole right of way

Abatement of hazards with authority from VCTC and monetary support for the same

Limits to liability as a railroad

Partner in Federal funds for freight movement improvement

Validation of exclusive right to operate as the branch freight railroad

FRA requirements support either legislatively and/or legislatively and monetarily

Partner in Federal funds for people movement

Indemnification from lawsuit for actions of owner

Indemnification and all fees covered for any insult to lease through actions of owner

The Fillmore & Western would be responsible for annual budgeting for the line with concurrence of the owner. This budgeting process would depend on annual lease

Memo to Darren Kettle from Dave Wilkinson - Fillmore & Western

income, signal income, weeds and hazards support, and a working budget developed by Fillmore & Western using standards of the rail industry.

Budget Construction:

That the owner and the operator will produce a working list for funds that is recognized in the county, state and federal arena for line protection, improvement and repair.

Creation of a capital repairs budget and reserve is fundamental to this budget construction. Currently, there is no capital reserve.

Capital repairs

Bridges

Creeks

Washouts

Capital Projects

Signal Replacement entire branch

Crossings replacement entire branch

Roadbed upgrades

Inspection areas

Track

Right of way

Adjacent property

Signals

Maintenance areas

Bolts

Individual ties (up to three)

Leveling

Spikes

Signs

Certain Capital Improvements/Repairs

EXHIBIT 13



**VENTURA COUNTY TRANSPORTATION COMMISSION
SANTA PAULA BRANCH LINE ADVISORY COMMITTEE
(SPBLAC)**

**WEDNESDAY, October 17, 2012
3:30 – 5 PM**

www.goventura.org

AGENDA*

**Actions may be taken on any item listed on the agenda*

**VENTURA COUNTY TRANSPORTATION COMMISSION CONFERENCE ROOM
950 COUNTY SQUARE DRIVE - SUITE 106 (Downstairs)
VENTURA, CA 93003**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in a Commission meeting, please contact the Clerk of the Board at (805) 642-1591 ext 101. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENTS** (For items not on the agenda) – *Each individual speaker is limited to speak three (3) continuous minutes or less. Any written documents to be distributed or presented to the Commission shall be submitted to VCTC SPBLAC staff. This policy applies to Public Comments and comments on Agenda Items.*

Under the Brown Act, SPBLAC should not take action on or discuss matters raised during Public Comment portion of the agenda which are not listed on the agenda. SPBLAC members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.

- 4. APPROVE SUMMARY FROM MAY 16, 2012 SPBLAC MEETING**

5. COMMITTEE MEMBER/STAFF REPORT

This item provides the opportunity for the SPBLAC members VCTC staff to report on attended meetings and any other items related to SPBLAC activities.

- 6. ADDITIONS/REVISIONS** – *The SPBLAC may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the SPBLAC subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the SPBLAC. If there are less than 2/3 of the SPBLAC members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.*

7. FRA REQUIRED SPBL RAIL BRIDGE INVENTORY PROJECT UPDATE

Recommended Action:

Receive update on FRA-required rail bridge inventory and repairs.

Responsible Staff: Mary Travis

8. FILLMORE & WESTERN RAILWAY PROPOSAL FOR LONG-TERM OPERATIONS AND MAINTENANCE OF THE SPBL

Recommended Actions:

Direct staff to continue working with Fillmore & Western Railway to structure a long-term arrangement for operation and maintenance of the SPBL.

Concur with staff recommendation to Commission authorizing the Executive Director to execute a contract with Egan Consulting Group not to exceed \$50,000 for assistance to review current operational agreements on the SPBL.

Responsible Staff: Darren Kettle

9. FUTURE MEETINGS

Recommended Action:

At this time, no meeting is scheduled.

Responsible Staff: Mary Travis

10. ADJOURNMENT



Item # 4

Summary of 5/16/12 SPBLAC Meeting

- Item # 1 **Call to Order:**
The meeting was called to order at the VCTC Conference Room at 3:30 PM by County Supervisor Kathy Long.
- Item # 2 **Roll Call:**
Attending the meeting in addition to Commissioner Long, were Commissioners Jamey Brooks (Fillmore), and Carl Morehouse (San Buenaventura). Also attending were Dave Wilkinson, Bill Bartels and AJ Farrar from Fillmore & Western Railway (F&W), Dave Fleisch and Kathy Connell from Ventura County Public Works Transportation, Fillmore City Manager Yvonne Quiring, JL Patterson project managers Dan Davis and Richard Gonzalez, VCTC Legal Counsel Mitch Kahn, and, VCTC staff Darren Kettle and Mary Travis.
- Item # 3 **Public Comments for items not on the agenda:**
There were no public comments.
- Item # 4 **Approval of 11/16/11 SPBLAC Meeting Summary:**
The meeting summary was approved.
- Item # 5 **Committee/Staff Report:**
There were no Committee or staff reports.
- Item # 6 **Additions/Changes to Agenda:**
There were no changes or additions to the agenda.
- Item # 7 **Update on Federal Railroad Administration (FRA) Bridge Inventory Project:**
Darren Kettle introduced Dan Davis, JL Patterson & Associates, who has been managing the FRA required railroad bridge inventory for the SPBL. Dan briefly reviewed the requirement and said the SPBL is actually in remarkable shape but there are four bridges needing repairs and one of them had to be taken out of service. Dave Wilkinson with F&W mentioned they had already repaired this bridge because it was needed immediately back in service for their operations. Darren mentioned there is a federal program with loans available for railroad rehabilitation projects, and that VCTC could work with F&W on obtaining this money. Dave responded he would be glad to work with VCTC on this but operation of the line has to be a partnership.
- Supervisor Long noted that, as SPBLAC has already discussed, the Commission owns the SPBL and must therefore manage the asset and not walk away from it, so some type of joint VCTC/F&W application would be appropriate. She also asked about VCTC's agreement with UP for freight; it was confirmed that as long as UP wants to run freight on the SPBL, VCTC has to keep the line open. However, because the only customer currently is International Paper in

Santa Paula, and they have just announced the Santa Paula plant is closing, the current status of freight service on the line is uncertain.

Dan Davis noted that the bridges could remain open at least temporarily if they were inspected bi-weekly, and that JL Patterson could do this inspection as long as needed with a minor change-order to their current contract with the Commission. Dave Wilkinson suggested that F&W staff might be able to handle these inspections; Dan said he would work with F&W on this to ensure the inspections were properly completed. Darren said an adjustment to the JL Patterson contract for this purpose would be possible.

It was agreed the next steps would be for VCTC staff to:

1. Make arrangements for with JL Patterson and F&W to handle the bridge inspections until it is decided by SPBLAC what to do about the bridge repairs.
2. Continue to work with Union Pacific to transfer any future freight operations to the F&W.
3. Postpone the repairs to the Ellsworth Barranca bridge until freight operations of some type resume.
4. VCTC work with F&W on obtaining federal railroad rehabilitation funds.

The full bridge inventory repair will be available in early June and will be distributed to the SPBLAC for review at the anticipated June SPBLAC meeting. After SPBLAC consideration, the bridge inventory will be presented to the Commission in July and then sent to the FRA no later than September 13, 2012.

Item # 8

Update on Freight Operations on the SPBL:

Darren Kettle summarized the staff initiatives to work with Union Pacific (UP) and F&W to transfer freight operations on the SPBL to F&W. The operating agreement in place between UP and VCTC allows VCTC to give UP a six-month notice to UP and the Surface Transportation Board (STB) to transfer common carrier freight service, and staff recommends initiating action in that direction.

Item # 9

Santa Paula Branch Line FY 2012/2013 Proposed Budget

After brief discussion, it was recommended the proposed budget be forwarded to the Finance Committee and then the full Commission for approval.

Item # 10

Schedule Future Meetings:

The next meeting will be June 20, 2012 at 3:30 PM at the VCTC Conference Room.

Item # 11

Adjournment:

The meeting was adjourned at 5 PM.

EXHIBIT 14



Item # 7

October 17, 2012

MEMO TO: SANTA PAULA BRANCH LINE ADVISORY COMMITTEE
FROM: MARY TRAVIS, MANAGER OF TRANSPORTATION DEVELOPMENT ACT AND RAIL PROGRAMS
SUBJECT: SANTA PAULA BRANCH LINE RAIL BRIDGE INVENTORY UPDATE

RECOMMENDATION:

- Receive and file.

DISCUSSION:

In 2011, the Federal Railroad Administration (FRA) published its Final Rule requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges and to strengthen federal oversight of railroad bridge maintenance programs. VCTC, as owner of the Santa Paula Branch Line (SPBL) railroad, was subject to this requirement. Phase One of the requirement was completion of an inventory of the 37 bridges on the SPBL, which was finished last month via a Commission contract with JL Patterson & Associates. The report has now been submitted for review to the FRA.

In summary, JL Patterson found there are four bridges on the SPBL with structural flaws. Three of the four bridges have comparatively smaller problems but one of the bridges is bad enough that it had to be put out of service. This last noted bridge is over a barranca just east of Saticoy. When it was "red-tagged", it effectively halted rail operations at this location on the SPBL until the bridge is repaired. Because this happened at the same time International Paper announced it was closing its Santa Paula facility, there is no requirement for VCTC to repair the bridge. However, if future freight opportunities occur, the bridge will need to be repaired before those operations can take place on a regular schedule.

JL Patterson made the following assessments of all the problematic bridges and estimated repair costs as follows:

1. Mile Post #408.60 (near Ellsworth Barranca just east of Saticoy)
6,022 foot ballast deck trestle needs both end abutment wood stringers replaced; bridge is currently closed.
Estimated repair cost: \$75,000
2. Mile Post # 416.09 (near the Christmas tree farm at Hallock Drive just east of Santa Paula)
A small (15 foot) bridge over culvert needed repair to both abutment supports – repair cost \$20,192 (note: repairs on this bridge have already been completed by F&W to allow their tourist trains to operate)

3. Mile Post # 416.40 (over Haun Creek east of Santa Paula)
45-foot ballast deck trestle bridge has been problematic during storms for several years and needs reinforcement. In addition, stringers on spans one and two on the left side and span three on the right side need to be replaced and bent two needs replacement with a posted pile bent on a concrete sill. Bridge is open with monthly inspections and slow orders.
Estimated repair cost: \$45,000 - \$50,000

4. Mile Post # 420.22 (over unnamed barranca just west of Hall Road west of Fillmore)
Ballast deck trestle bridge needs abutment one cap replaced, span one on the right side stringers replaced and the cross beams reinforced. Bridge is open with monthly inspections and slow orders.
Estimated repair cost: \$25,000 - \$30,000

At the September VCTC meeting, Fillmore and Western Railway (F&W) provided their perspective that the Commission is responsible for repairing the Ellsworth Barranca bridge just east of Saticoy. However, after review of the existing agreements, General Counsel concluded that VCTC is not responsible for making any bridge repairs necessary for F&W's operations; an opinion from the General Counsel is attached. Also included in the General Counsel report is his opinion about an additional issue, that is, whether or not prevailing wages will have to be paid on the work. After reviewing the Labor Code, General Counsel has concluded that prevailing wages will have to be paid and should be paid in general by the F&W for work related to the existing agreement as they are a recipient of public funds.

Because F&W is valued partner to the Commission on the track to make the SPBL self-supporting, staff will continue working with them to identify funds F&W could use for the bridge repair work. The concern with federal and/or State loan or grant programs is the time required to access these funds and also the eligibility of the bridge repairs. As an alternative to a State or Federal grant, VCTC could facilitate short term, low interest financing using the current balance of State Transit Assistance (STA) funds.

After discussing the repairs in greater detail at the October 5th Commission meeting, staff was directed to further explore some type of allocation or loan of the STA funds to make sure repairs are in place as soon as possible. Staff will continue to work with F&W on this project.

EXHIBIT 15



Item # 8

October 17, 2012

MEMO TO: SANTA PAULA BRANCH LINE ADVISORY COMMITTEE (SPBLAC)
FROM: MARY TRAVIS, MANAGER OF TRANSPORTATION DEVELOPMENT ACT AND RAIL PROGRAMS
SUBJECT: FILLMORE & WESTERN RAILWAY PROPOSAL FOR LONG-TERM SANTA PAULA BRANCH LINE OPERATIONS AND MAINTENANCE

RECOMMENDATION:

- Direct staff to continue working with Fillmore & Western Railway (F&W) to structure a long-term arrangement to operate and maintain the Santa Paula Branch Line (SPBL).
- Concur with staff recommendation to Commission authorizing the Executive Director to execute a contract with the Egan Consulting Group not to exceed \$50,000 for assistance to review current agreements for maintenance and operation of the SPBL.

DISCUSSION:

VCTC has partnered with the F&W to operate and maintain the SPBL since the Line was purchased from Southern Pacific Railroad in 1996. This partnership is documented in a lease between the Commission and F&W for operation of their tourist and movie train services, and also, for maintenance and upkeep of the Line and for 15-feet on either side of center line. On a case-by-case basis, F&W also does special maintenance activities when authorized by staff such as emergency call-out repairs, weed abatement and trash pickup on the SPBL on VCTC property outside the 15-foot operating agreement.

Staff has continued to work with F&W over the past several months to update the existing agreements and to arrange a settlement for past overpayments made under the VCTC/F&W maintenance contract. At the same time, F&W has been considering their future operations and the best way to manage them. As a starting point to discussions, F&W submitted the attached initial proposal for a 20-year franchise on the SPBL for both operation and maintenance of the Line, and it is presented for your information.

In addition to staff continuing to work with F&W, and after discussions with the other Transportation Commissions who own and/or operate railroad property, it is recommended that VCTC procure consultant services to provide a professional and objective review of the SPBL operations with the ultimate goal of the SPBL becoming self-sustaining. Because of the specialized nature of the railroad and property management business greater expertise is needed to evaluate all aspects of the SPBL in order to achieve the Commission's goals. This analysis has never been done before and it is critically important that it be completed now.

Staff recommends the VCTC contract with the Egan Consulting Group to guide us forward; details about Thomas Egan, Principal of the firm, are attached. If SPBLAC decides to proceed in this way, a detailed contract with goals, objectives and timelines will be developed along with associated costs.

In anticipation that consultant services might be needed this fiscal year, funding for this purpose was included in the FY 12/13 SPBL budget. Originally, these funds were to be used for Phase II of the FRA - required Rail Bridge inventory. However, completion of the inventory is not required until 2018 allowing these budgeted funds to be used instead for this purpose.

EXHIBIT 16

PUBLIC UTILITIES COMMISSION

320 West 4th Street, Suite 500
Los Angeles, CA 90013

RECEIVED
JAN 08 2013



January 4, 2013

File Number: N.1212001

Mary Travis
Program Manager – Rail and TDA Programs
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

Subject: Safety concerns with rough crossings in the City of Santa Paula, County of Santa Barbara

Dear Ms. Travis:

The Rail Crossings Engineering Section (RCES) has regulatory and safety oversight over railroad crossings in California. During a recent inspection on December 20, 2012, a number of poor surface conditions at the railroad crossings in the City of Santa Paula were observed and documented:

Table 1 : Rough Crossings in the City of Santa Paula

CROSSINGS	DOT NUMBER	CPUC NUMBER
Blanchard School Ped	745-711D	001BE-413.04D
Steckel Drive	903-179B	001BE-413.47
Dean Drive	745-716M	001BE-413.60
Palm Avenue	745-718B	001BE-413.90
Olive Street	745-719H	001BE-414.00
Fourth Street	745-720C	001BE-414.10-D
Seventh Street	745-721J	001BE-414.30
Santa Barbara Street	745-722R	001BE-414.36
Eighth Street	745-723X	001BE-414.40
Ninth Street	745-724E	001BE-414.50

The asphalt crossing surfaces reveal elevated ridges and concavities, causing rough crossing conditions at which vehicles were observed to suddenly slow down as they approached the crossings. Such vehicular activities increase the likelihood of rear-end accidents or tire blow outs over the tracks, creating safety hazards to both the railroad and the general public.

According to the Commission General Order (GO) 72-B, Section VII: *Maintenance of Crossing in Track Area*, "It shall normally be the responsibility of each railroad corporation to maintain the crossing area between lines two (2) feet outside of the rails of each track..."

Enclosed are the photographs taken at the crossings as referenced in Table 1. As shown in the photographs, the ridges and the concavities along the tracks are within the two feet limit specified in the GO 72-B.

Mary Travis
N.1212001
January 4, 2013
Page 2 of 2

Please respond by February 25, 2013, informing RCES the actions Ventura County Transportation Commission plans to take to resolve this matter or if you would like to discuss our recommendations. Thanks in advance for your cooperation. If you have any questions, you may contact me at (213) 576-7085, or sal@cpue.ca.gov.

Sincerely,



Sergio Licon
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

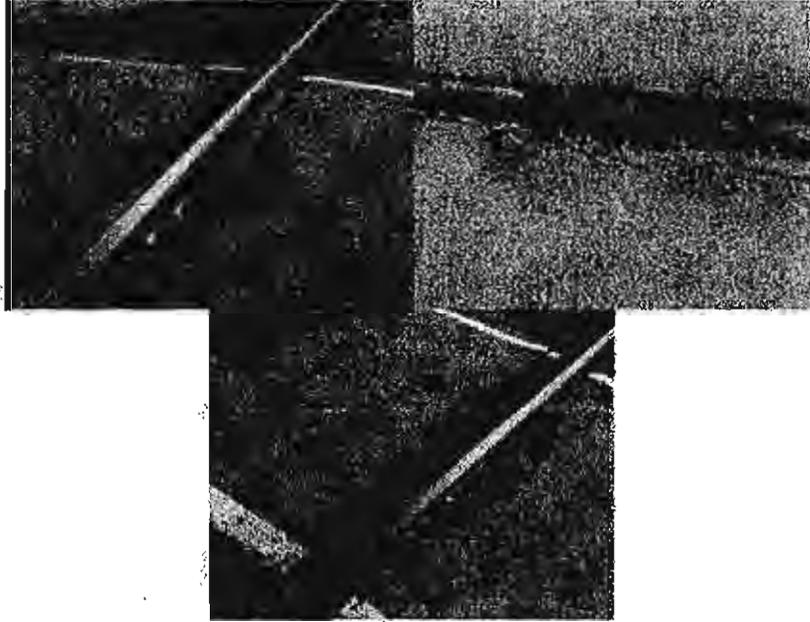
Enclosures: Photographs taken at crossings in the City of Santa Paula

C: Dave Wilkinson
President
Fillmore & Western Railway Department
351 Santa Clara St
Fillmore, CA 93015

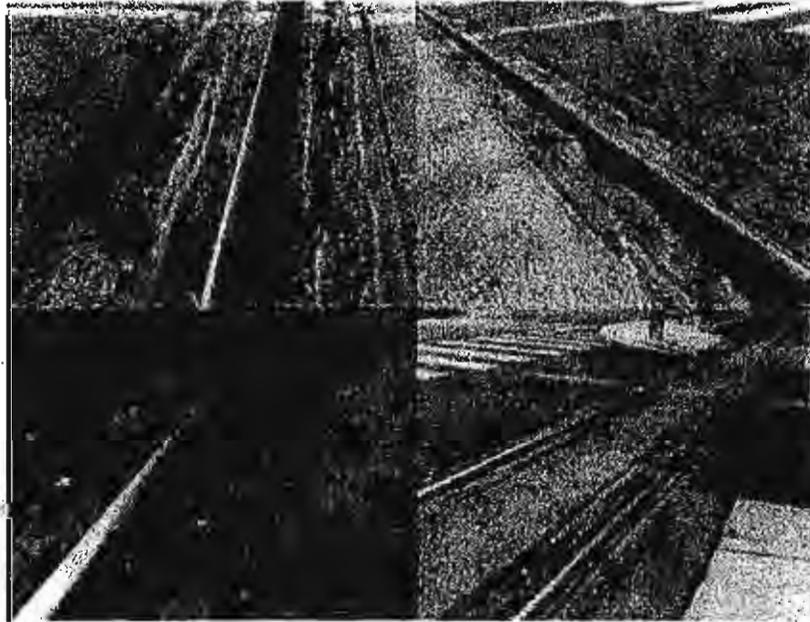
Brian J. Yanez
Interim Public Works Director
City of Santa Paula - Attn: Public Works Department
P.O. Box 569
Santa Paula, CA 93061

ENCLOSURES

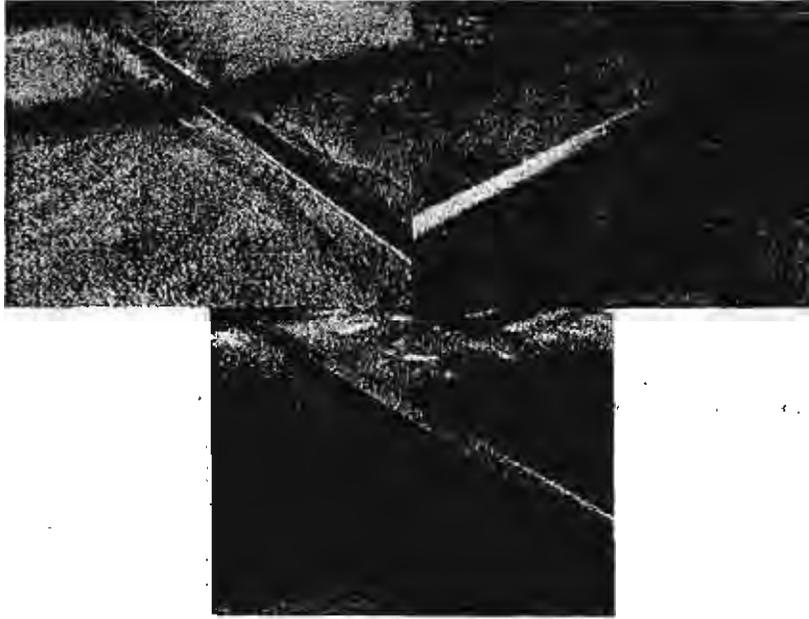
Blanchard Pedestrian Crossing Surface (PUC No. 001BE-413.04D)



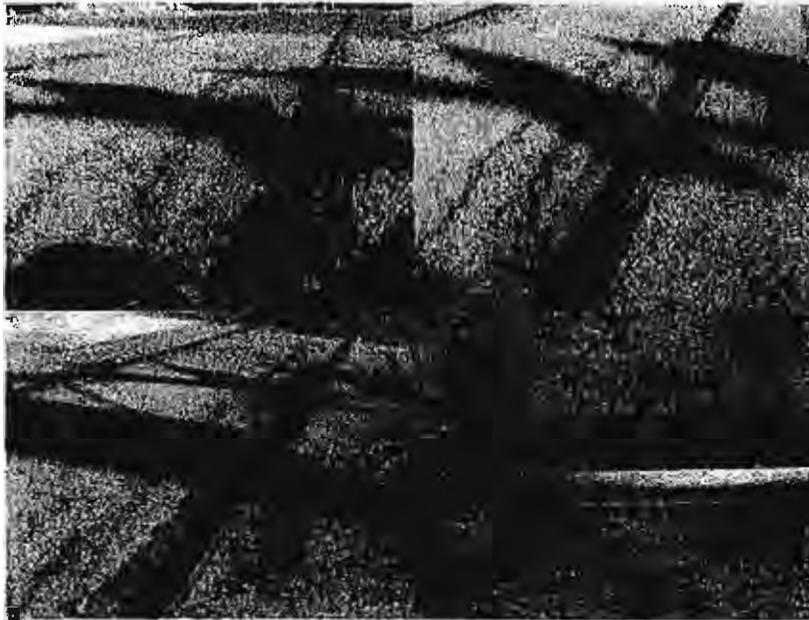
Steckel Drive Crossing Surface (CPUC No. 001BE-413.47)



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Page 2 of 8
Dean Drive Crossing Surface (CPUC No. 001BE-413.60)

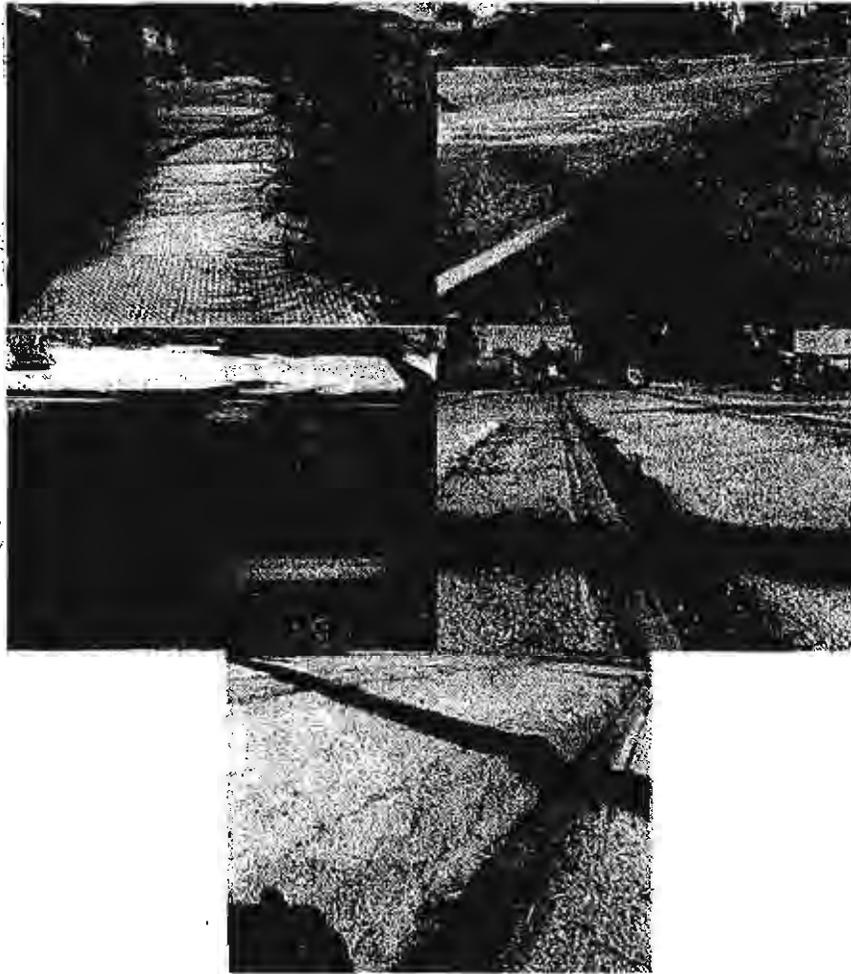


Palm Avenue Crossing Surface (CPUC No. 001BE-413.90)



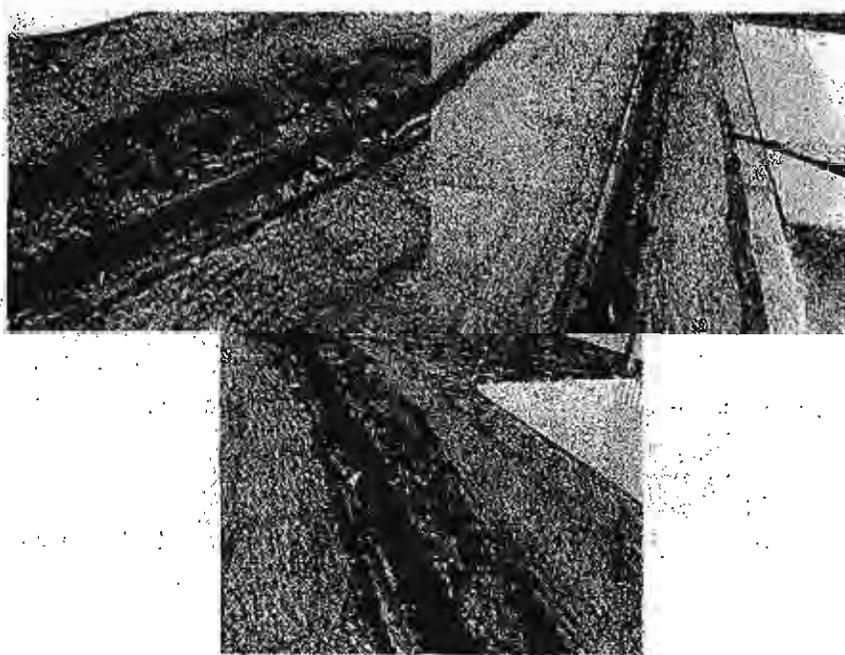
Mary Travis
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Page 3 of 8

Olive Street Crossing Surface (CPUC No. 001BE-414.00)



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January 4, 2013
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Fourth Street Crossing Surface (CPUC No. 001BE-414.10-D)



Mary Travis

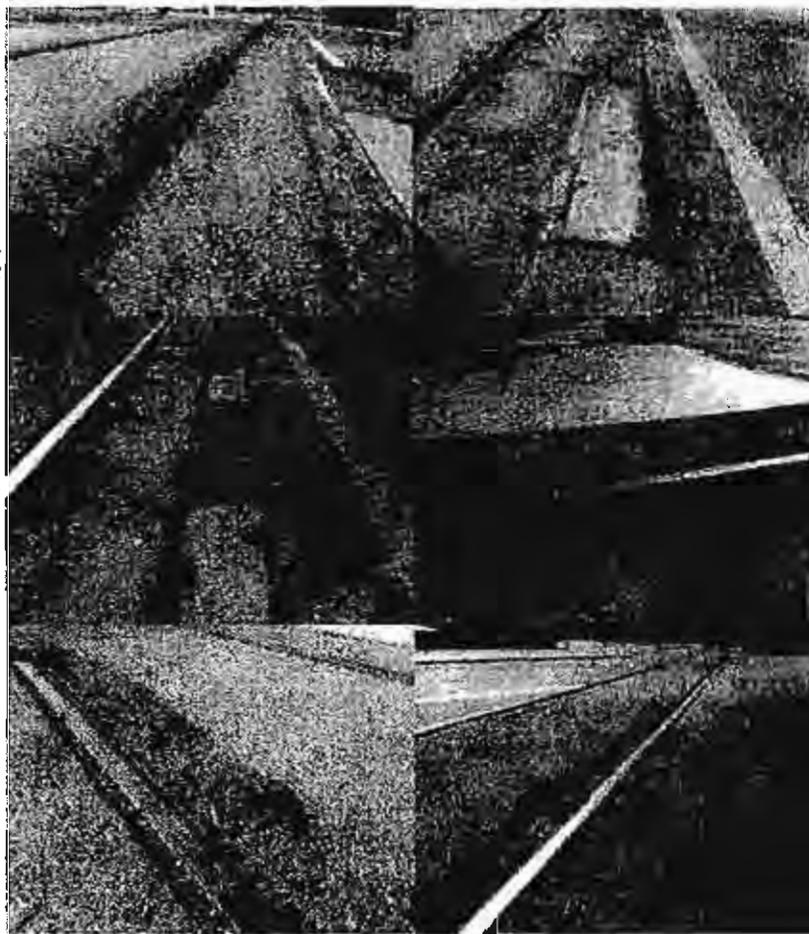
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January 4, 2013

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Seventh Street (CPUC No. 001BE-414.30) & Santa Barbara Street (CPUC No. 001BE-414.36)

Crossing Surface

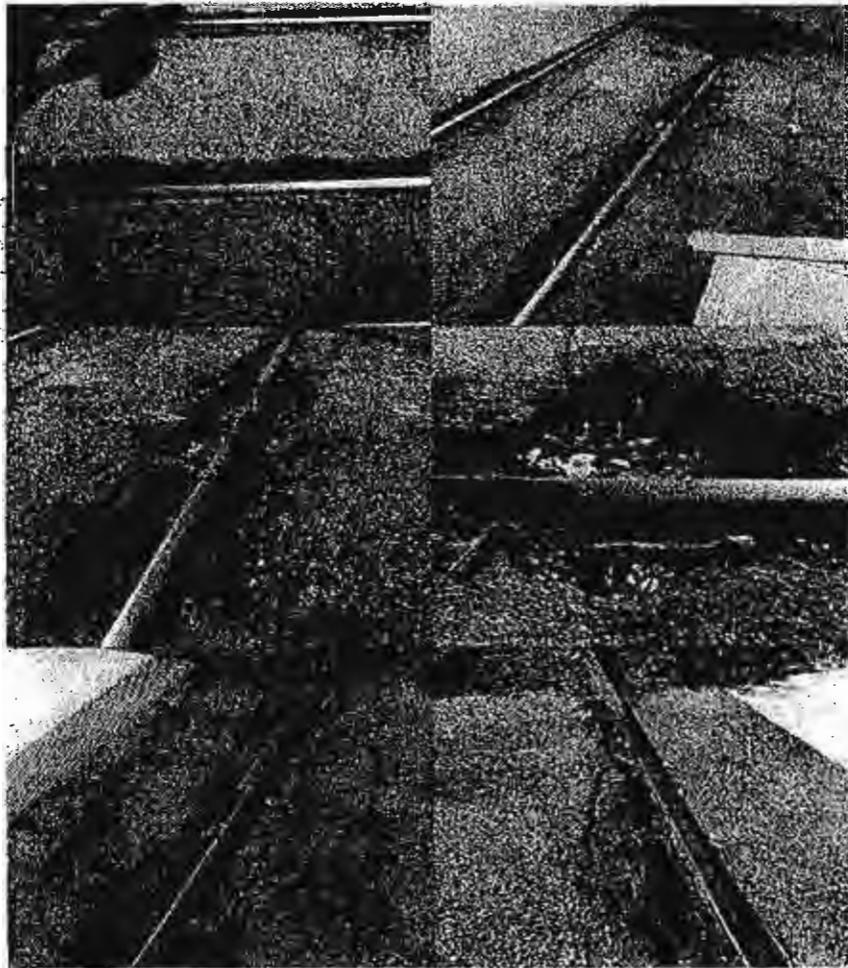


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January 4, 2013
Page 6 of 8



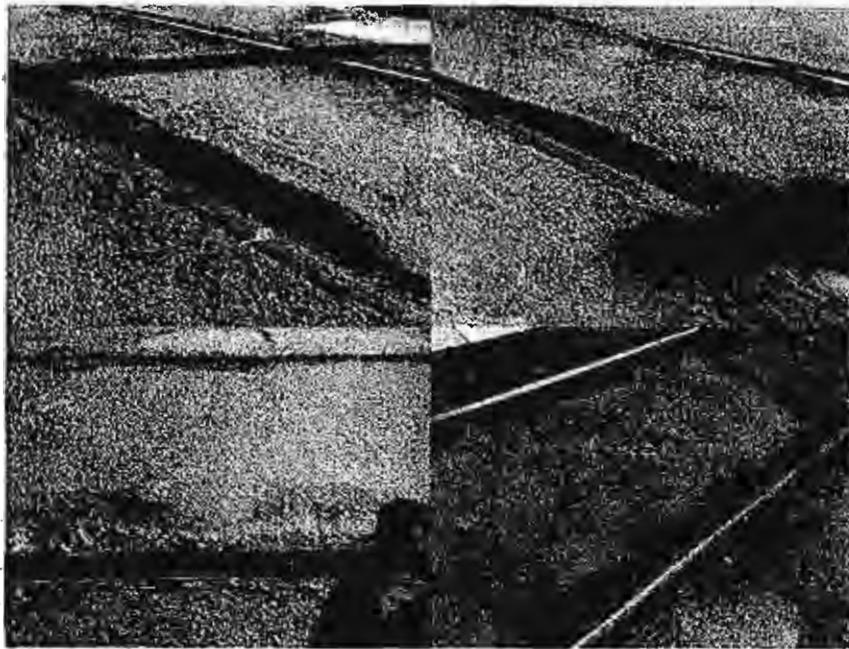
Mary Travis
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January 4, 2013
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Ninth Street Crossing Surface (CPUC No. 001BE-414.50)



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Eighth Street Crossing Surface (CPUC No. 001BE-414.40)



GENERAL ORDER NO. 72-B
(Supersedes General Order No. 72-A)

**Public Utilities Commission of the
State of California**

**RULES GOVERNING THE CONSTRUCTION AND MAINTENANCE OF CROSS-
INGS AT GRADE OF RAILROADS WITH PUBLIC STREETS, ROADS AND
HIGHWAYS IN THE STATE OF CALIFORNIA**

Adopted May 22, 1973; Effective June 21, 1973
(Decision No. 81670, Case No. 9454)

Amended September 25, 1990; Effective October 25, 1990
Resolution No. SR 21 *

Amended April 10, 1991; Effective April 10, 1991
Resolution No. SR 25 +

IT IS ORDERED by the Public Utilities Commission of the State of California, that the following rules governing construction standards and maintenance responsibilities at railroad grade crossings with public streets, roads and highways are approved for use in this State, unless otherwise ordered or directed by the Commission:

I Purpose of Rules:

The purpose of these rules is to formulate in the State of California, uniform standards for grade crossing construction in the interests of greater safety to the public.

II Scope of Rules:

These rules are not intended as complete construction or maintenance specifications but embody requirements which are most important from the standpoint of public safety. Construction should be according to accepted good practice for the given local conditions in all particulars not specified herein.

III Width of Public Crossings:

Grade crossings shall be a width not less than the traveled approach portions of the adjacent sections of the road, highway or street, including usable shoulders and sidewalks, if any. If both approaches are widened the crossing shall also be widened. If only one approach is widened, an appropriate taper shall be constructed to channelize traffic over the crossing. Political bodies shall not widen any approach to a grade crossing beyond the width of existing pavement at the rails without permission of the Commission.

IV Minimum Width:

Unless the Commission otherwise authorizes, public crossings hereafter constructed shall be not less than twenty-four (24) feet in effective roadway width measured at right angles with the center line of the roadway.

* (Corrected SR 21)

V Deceleration and Acceleration Lanes:

Deceleration and Acceleration Lanes for vehicles required to stop at railroad grade crossings should be provided where public agencies determine such lanes are necessary.

VI Rail Joints in Crossing Area:

Whenever practicable, rails, switches and frogs should be so placed or relocated as to avoid switch points, frogs and switches or bolted rail joints in the paved area of a crossing.

VII Maintenance of Crossing in Track Area:

It shall normally be the responsibility of each railroad corporation to maintain the crossing area between lines two (2) feet outside of the rails of each track. When two or more tracks are involved, the railroad shall maintain the area between the tracks where the distance between the center lines of tracks is fifteen (15) feet or less measured at the center line of the road or highway normal to the tracks.

VIII Maintenance of Approaches:

It shall ordinarily be the responsibility of the political subdivision having jurisdiction over the roadway to maintain the approaches and those portions of the crossing not included under railroad responsibility above.

IX Work in Track Area:

All work in connection with the construction or alteration of a crossing at grade between lines two (2) feet outside of the outside rails shall be performed under the supervision of the railroad.

X Surface of Crossings:

At the time of construction the surface of the highway shall be installed to conform substantially to the plane of the rails for the entire area between rails and between tracks and to lines two (2) feet outside the rails. The alignment and profile of each grade crossing shall be substantially maintained as constructed.

Where crossings involve two or more tracks, the top of rails for all tracks shall be brought to the same plane where practicable. The surface of the highway shall be at the same plane as the top of rails for a distance of at least two feet outside of rails for either multiple or single-track crossings. The top of rail plane shall be connected with the grade line of the highway each way by vertical curves of such length as is required to provide riding conditions and sight distances normally applied to the highway under consideration.

Unless special conditions so require, such as curvature and/or train speeds, the rails of spur or secondary tracks shall not be substantially superelevated within the limits of the crossing.

XI *Approach Grades:*

In general, approach grades not in excess of six percent are desirable, but where not reasonably obtainable due to local topographical conditions the gradients in the vicinity of the rails shall be kept as low as feasible.

XII *This Order shall not be Retroactive:*

This Order shall not be retroactive with respect to grade crossings lawfully existing on its effective date, except that the Commission reserves the right to require, by appropriate proceedings, alterations or improvements at any such grade crossing.

XIII *Illustrations:*

The illustrations attached hereto are hereby declared to be a part of this General Order and shall be known as Commission Standards.

XIV *Exemptions:*

In a particular case, a written request may be made for an exemption from any of the requirements or standards herein. Such a request should be accompanied by a full statement of the conditions existing and the reasons relied on to justify the exemption. It is to be understood that any exemption so granted shall be limited to the particular case covered by the request.

Nothing herein shall be construed as limiting the trial installation of experimental types of grade crossing construction, provided the Commission has approved such plan in advance of the time the crossing is constructed.

The Commission reserves the right to modify any of the provisions of these rules in specific cases, when, in the Commission's opinion, public interest or safety would be served by so doing.

Compliance with these rules shall not relieve a railroad from any statutory requirement.

This order shall be effective on and after the 21st day of June, 1973.

Approved and dated at San Francisco, California, this 22nd day of May, 1973.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

By WILLIAM R. JOHNSON, *Secretary*

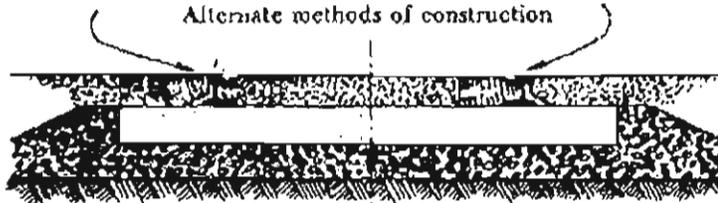
STANDARD NO. 1



Filling Material: Asphaltic concrete or other equally suitable paving material, laid flush with top of rails and of thickness corresponding to height of top of rail above the cross-ties.

STANDARD NO. 2

Alternate methods of construction

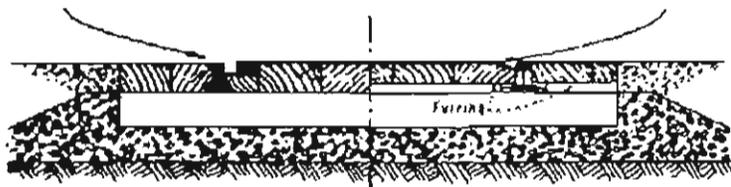


Filling Material: Asphaltic concrete or equally suitable paving material.

Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical.
Planks at ends of crossing to be beveled.
Planks to be substantially secured to ties.

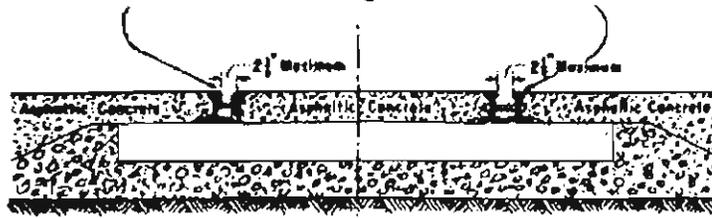
STANDARD NO. 3

Alternate methods of applying planking providing flangeway



Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical.
Planks at ends of crossing to be beveled.
Planks to be substantially secured to ties.

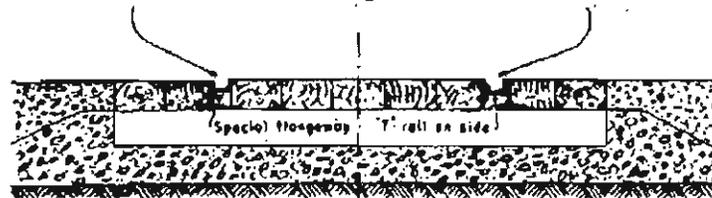
STANDARD NO. 4-A
Alternate methods of guard rail installation



Filling Material: Asphaltic concrete or other equally suitable paving material).

Guard Rail: Tee rail secured to rail or ties by proper fastening forming a flangeway not exceeding 2 1/2 inches in width. Above diagram illustrates suggested methods of installation only.

STANDARD NO. 4-B
Alternate methods of guard rail installation



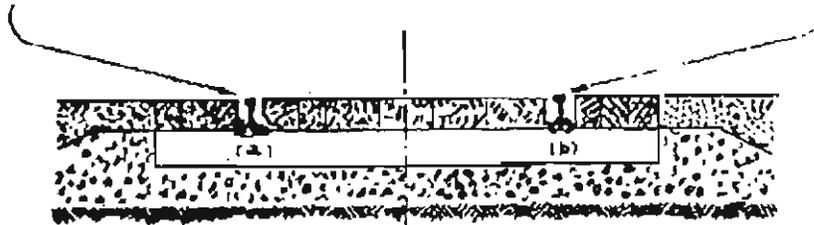
Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical.

- Planks at ends of crossing to be beveled.
- Planks to be substantially secured to ties.

Guard Rail: Special rolled guard section or lightweight Tee rail laid on side to provide flangeway not more than 2 1/2 inches wide. Top of flangeway to be substantially same height as top of running rail. Guard rail to be secured to rail or ties by proper fastening.

STANDARD NO. 4-C

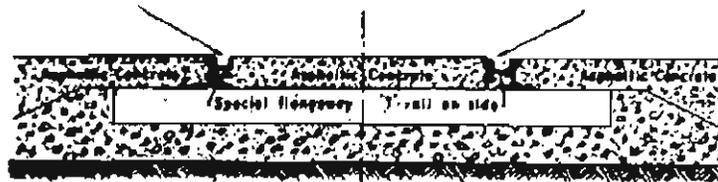
Alternate methods: use of steel (a) or rubber (b) tie plates



Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical.
Planks at ends of crossing to be beveled.
Planks to be substantially secured to ties.

STANDARD NO. 4-D

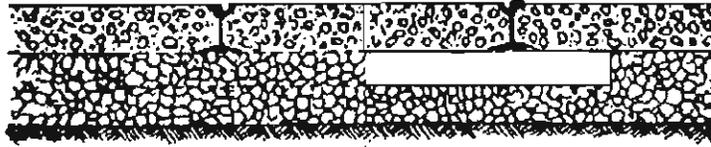
Alternate methods of guard rail installation



Filling Material: Asphaltic concrete or equally suitable paving material.

Guard Rail: Special rolled guard section or lightweight Tee rail laid on side to provide flangeway not more than $2\frac{1}{2}$ inches wide. Top of flangeway to be substantially same height as top of running rail. Guard rail to be secured to rail or ties by proper fastening.

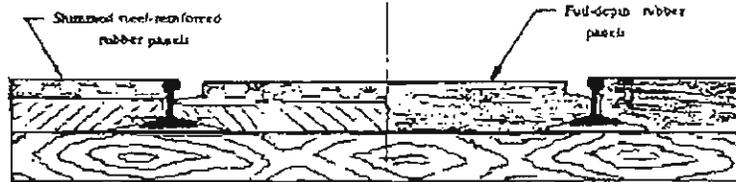
STANDARD NO. 5



Girder Rail Construction

For use in municipalities requiring girder rail construction. Pavement between rails and two feet outside to be consistent in type with adjacent pavement or as specified by local authorities.

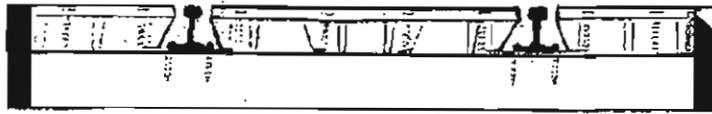
STANDARD NO. 6 *



TYPICAL CROSS SECTION

Rubber Panels: This type of crossing surface consists of molded rubber panels usually shimmed, steel-reinforced and with a patterned surface, but some are full depth rubber. The panels can be removed and/or replaced for track maintenance. Flangeway shall not be more than two and one-half (2½) inches wide.

STANDARD NO. 7 *



TYPICAL CROSS SECTION

High Density Polyethylene Modules: This type of crossing surface consists of molded panels, usually with recesses to serve as openings for lag screws or drive spikes. Panels are usually full depth, but some require wood shims. Flangeway shall not be more than two and one-half ($2\frac{1}{2}$) inches wide.

STANDARD NO. 8 *



TYPICAL CROSS SECTION

Concrete Slabs: This type of crossing surface consists of precast or cast in place reinforced concrete panels that may be removed and reinstalled for maintenance and replacement purposes. These panels are usually placed and removed by powered mechanical equipment because of their weight. Flangeway shall be not more than two and one-half ($2\frac{1}{2}$) inches wide.

STANDARD NO. 9*



TYPICAL CROSS SECTION

Steel Sections: This type of crossing surface consists of prefabricated steel sections of an open grating type that may be installed and removed individually for maintenance and replacement purposes. Flangeway shall not be more than two and one-half (2½) inches wide.

EXHIBIT 17

Steve DeGeorge

From: dave@fwry.com
Sent: Wednesday, January 09, 2013 11:48 AM
To: Darren Kettle; Steve DeGeorge; Mary Travis
Cc: kathy.long@ventura.org; byanez@spcity.org
Subject: PUC letter of Jan 4, 2013
Attachments: PUC Letter Jan 4, 2013 Santa Paula Crossings.pdf

All,

I received this letter from the PUC in the mail today. We have been talking about these crossings for the past 2 years as a concern. Sounds like it is time to meet and come to a resolution.

Thank you for your kind attention to this matter,

Dave Wilkinson
Fillmore and Western Railway

"Remember, anytime is train time"



FREE Animations for your email



EXHIBIT 18



January 30, 2013

Mr. David Wilkinson, President
Fillmore & Western
351 Santa Clara Avenue
Fillmore, CA 93015

Subject: Highway Crossings

Dear Mr. Wilkinson:

In response to your request for direction concerning highway crossings, the Ventura County Transportation Commission (VCTC) has carefully reviewed the Lease Agreement for Rail Services on the Santa Paula Branch dated June 25, 2001 and the subsequent amendments, dated May 10, 2004 and September 14, 2007 and has determined in accordance with the Lease Agreement Section 4(b) and the Public Utilities Commission (PUC) General Order (GO) 72-8, Section VII, maintenance of highway crossings within the limits set by the PUC are the responsibility of Fillmore & Western. Fillmore & Western receives monthly maintenance fees for this work and contained within those fees are State Signal and Crossing funds specifically for this purpose.

The Lease Agreement for Rail Services on the Santa Paula Branch Section 4(b) states, "Fillmore & Western shall maintain the Track and Track Support Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations." Public Utilities Commission General Order (GO) 72-B, Section VII, states that it is normally the responsibility of each railroad corporation to maintain the crossing area between lines two (2) feet outside of the rails of each track.

Given the requirements and definitions set forth in the Lease Agreement and responsibilities of the railroad corporation defined by the PUC, VCTC must conclude that Fillmore & Western is required to affect repairs to any deficient highway crossing on the Santa Paula Branch Line at no additional cost to the VCTC.

If you have questions concerning this communication please do not hesitate contact me or Steve DeGeorge, Planning Director at (805) 642-1591 (ext 103).

Sincerely,

A handwritten signature in black ink that reads "Darren M. Kettle".

Darren Kettle,
Executive Director

EXHIBIT 19



Ventura County Transportation Commission

April 9, 2013

Mr. Dave Wilkinson
Fillmore & Western Railway Company
P.O. Box 960
Fillmore, CA 93016

Dear Mr. Wilkinson:

At the meeting of the Ventura County Transportation Commission Santa Paula Branch Line Advisory Committee ("SPBLAC") on April 8, 2013, several facts came to light that require immediate action to address previously unidentified liability issues for VCTC.

It was reported that for more than one year, the Fillmore & Western Railway (FMRW) has been, and currently does, work with the operations staff at Union Pacific Railroad (UPRR) Company to transfer freight cars in or near Montalvo from UP to FMRW for delivery to sites in Santa Paula, and from FMRW to UPRR for freight car deliveries from Santa Paula over VCTC-owned railroad tracks. There is no formal agreement between the two companies and there is no California Public Utilities Code or federal Certificate of Common Utility and Public Necessity approvals for such a transfer. Although both companies are common carriers, those regulatory authorizations are still required for FMRW to conduct freight business over the Santa Paula Branch Line.

In addition, VCTC, as owner of the Santa Paula Branch Line, has lease with the FMWR that permits FMWR to perform freight service from milepost 414.95 to 435.07. UPRR is approved and certified to operate freight service from milepost 403.35 to milepost 414.95, pursuant to its usage agreement with VCTC dated October 31, 1995 until VCTC provides notice of its intent to assume those operations and complies with applicable regulations, both state and federal.

By FMWR assuming UPRR responsibilities without meeting any state or federal requirements for the transfer of the freight delivery operations and without any agreement with UPRR naming FMRW as a UPRR contractor, VCTC, as owner of the railroad right of way and track system, runs a tremendous risk of liability should any incident occur while FMWR is operating the freight service on that portion of the line. If an accident, hazardous spill or any damage occurs to anyone or anything, UPRR may disavow any responsibility and FMWR has provided VCTC with no insurance or indemnification for that portion of its operation. Additionally, while UPRR local operations may permit the transfer, it is a breach of the usage agreement. Furthermore, I understand from communications with UPRR representatives based in UPRR headquarters in Omaha that UPRR local operations should not be making such transfers without an interchange agreement in place between the FMWR and UPRR.

Given these facts and circumstances please discontinue immediately all freight related activities outside the limits of milepost 414.95 to 435.07 on the Santa Paula Branch Line. VCTC will continue to work with FMWR and UPRR to formalize arrangements for the transfer of freight operations from the UPRR to the FMRW on the Santa Paula Branch Line but must make this request now and until such time as the appropriate state and federal approvals are obtained, an interchange agreement with UPRR is in place, and an appropriate lease amendment or operating agreement is entered into by FMWR with VCTC that provides suitable protections for VCTC as owner of the Santa Paula Branch Line.

Please feel free to contact me at (805) 642-1591 ext. 123 if you have any questions.

Sincerely,

Darren M. Kettle
Executive Director

cc: VCTC Commissioners
Melissa Grosz, Union Pacific Railroad

EXHIBIT 20



Ventura County Transportation Commission

May 14, 2013

Mr. David Wilkinson, President
Fillmore and Western Railroad
351 Santa Clara Street
Fillmore CA 93015

Dear Dave:

Thank you for your team's presentation at the Commission meeting on May 10, 2013. I was encouraged to see and hear that we were offering similar visions for the future of the Santa Paula Branch Line. As you heard in the open session, the Commission members expressed a series of concerns that they would like to see addressed. High among those concerns is, at a minimum, the need to make every effort to bring the line to a cost neutral status, and preferably "profitable", as soon as reasonably possible.

In the closed session, I was provided further direction. A key take-away from the May 10, 2012 Commission meeting is the need to update and simplify the agreements between VCTC and multiple other entities, including Fillmore and Western Railroad Company (FWRR).

As result of the concerns expressed and directions provided by the Commission, below is an outline for the course of action on which we are prepared to embark with FWRR in order to move to put the Santa Paula Branch Line on solid financial footing as prescribed by the Commission.

1. The Commission remains in need of an appropriate response to the request for financial information. Please advise me by return mail of specifically what information FWRR will be in a position to provide the VCTC and the timeline in which this material will be delivered.
2. Upon receipt of that financial information, the Commission is prepared to enter into negotiations with FWRR on the new agreement(s) needed to establish the ongoing relationship that we all hope to enjoy. VCTC is prepared to provide the initial deal points that will outline the proposed commercial and operating relationship between VCTC and FWRR.
3. VCTC will make itself available to meet with Union Pacific and FWRR to ensure that current or potential rail customers are not disadvantaged during this interim period. As a number of the public who spoke during the Commission meeting stressed, there is a public benefit derived from having rail service available on the line. We want to make sure that we give every opportunity to companies within the County to have a viable, cost efficient rail provider, within the parameters set by the Commission.

To that end, please consider this letter as notice, under section 19 b. of the agreement dated 6/27/01 that VCTC intends to terminate that agreement effective December 1, 2013. Please note that the VCTC team will be opening up current agreements with multiple entities in addition to FWRR in order to update the entire suite of agreements relating to this line. This is and will remain a high priority.

Again thank you for your input into Friday's VCTC meeting. The Commission looks forward to working toward a new contractual relationship between VCTC and FWRR.

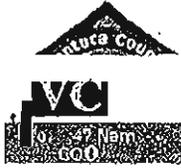
Sincerely,

A handwritten signature in black ink that reads "Darren Kettle". The signature is written in a cursive, flowing style.

Darren Kettle
Executive Director

cc Commissioners

EXHIBIT 21



Ventura County Transportation Commission

May 14, 2013

Mr. Rigo Landeros,
Acting City Manager
City of Fillmore
250 Central Avenue
Fillmore, CA, 93015

Subject: Santa Paula Branch Line Lease with Fillmore Redevelopment Agency

Dear Mr. Landeros:

The Ventura County Transportation Commission (VCTC) took an action at the May 10, 2013 Commission meeting to address the future of the Santa Paula Branch Line (SPBL). In the action taken, the Commission expressed their strong desire to bring the SPBL to a cost neutral and preferably "profitable" status as soon as reasonably possible. The Commission further recognized the need to simplify all agreements between VCTC and other entities concerning the SPBL and directed staff to take action to update and/or simplify all leases or other agreements.

As you are aware, on June 6, 2001, the City of Fillmore Redevelopment Agency entered into a lease agreement with VCTC for a portion of the SPBL from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos. The VCTC is providing notice to the City of Fillmore, as the successor agency to the City of Fillmore Redevelopment Agency, that in accordance with Section 15 of the Lease Agreement date 6/6/2001, VCTC intends to terminate that agreement effective December 1, 2013.

In the interim, VCTC would like to begin discussions with the City of Fillmore outlining points of interest in any new agreements that may be desired. Please contact me at your earliest convenience so that this important process can begin.

Sincerely,

Darren Kettle
Executive Director

EXHIBIT 22



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

Respond to Orange County
Israel@awattorneys.com
Direct

Orange County
16881 Von Karman Ave., Suite 1700
Irvine, CA 92612
P 949.223.1170 • F 949.223.1180

Los Angeles
Continental Park Terrace
2361 Rossmore Ave., Suite 475
El Segundo, California 90245-4916
P 310.527.6660 • F 310.532.7395

awattorneys.com

May 31, 2013

Via Email and US Mail

David Wilkinson, President
Fillmore and Western Railroad
351 Santa Clara Street
Fillmore, CA

Re: Santa Paula Line Lease with Fillmore Redevelopment Agency

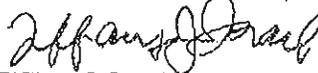
Dear Mr. Wilkinson:

Please be advised that this office represents the City of Fillmore and the Successor Agency to the City of Fillmore Redevelopment Agency as its City Attorney's Office. This letter is being sent to follow up on the letter you recently received from Darren Kettle, the Executive Director of Ventura County Transportation Commission ("VCTC"), stating VCTC's intent to terminate its Lease Agreement with the City of Fillmore Redevelopment Agency for a portion of the Santa Paula Branch Line effective December 1, 2013. As the Sub-Lease Agreement for the Santa Paula Branch between the City of Fillmore Redevelopment Agency and Fillmore & Western Railway Company is "subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore", as set forth in Section 4 of the Sub-Lease, this letter is being sent to confirm the termination of the Sub-Lease; the Lease Agreement for the engine dated March 14, 2006; the Lease Agreement for the building located at 364 Main Street in Fillmore dated December 13, 2011 and all other agreements between the City of Fillmore Redevelopment Agency and Fillmore & Western Railway Company relating to the Santa Paula Branch Line effective December 1, 2013.

If it appears that the City may be able to negotiate new contract with VCTC we will contact you to discuss possible deal points of new agreements between the City and Fillmore & Western Railroad.

Very truly yours,

ALESHIRE & WYNDER, LLP


Tiffany J. Israel

cc: Rigo Landeros, Acting City Manager (via email)

EXHIBIT 23



Ventura County Transportation Commission

June 4, 2013

Mr. Dave Wilkinson, President
Fillmore & Western Railway, Inc.
351 Santa Clara St.
Fillmore, California 93015

SENT VIA EMAIL AND CERTIFIED MAIL

Re: Termination of Lease

Dear Dave:

By a letter dated May 14, 2013, I provided your company with notice that VCTC intends to terminate the existing lease with Fillmore & Western Railway, Inc., effective December 1, 2013 under Section 19b of the lease dated June 27, 2001, as amended from time to time. It was brought to my attention that the cause required for the termination was not stated clearly, although it is abundantly clear to you as a result of numerous communications over the past three years.

To specifically identify those matters constituting cause, I provide the following information.

The twenty-year lease between Fillmore & Western Railway Company ("F&W") and the Ventura County Transportation Commission, as the owner of the Santa Paula Branch Line ("SPBL"), has several flaws concerning both VCTC and F&W that have been noted by both parties over the past several years. The lease was entered into mid-2001 and has been amended from time to time which has only contributed to the current differences of opinion between the parties. Both parties have sought a renegotiated lease, but my sense is for somewhat opposing reasons. Certainly the lack of clarity and the disparate interpretations of several provisions are at the heart of the desire of both parties to see the lease renegotiated.

Disputes or disagreements have arisen as to responsibility for the expense of maintenance, repairs and replacement of the lease property, including tracks, bridge structures, street crossings and signals. A disagreement that has gone unresolved for a few years includes overpayments by VCTC to F&W pursuant to the lease terms. Added to that mix, a portion of the SPBL is concurrently leased to the City of Fillmore Redevelopment Agency, which no longer exists as a matter of state law, and subleased to F&W. The City, itself, has elected to assume the responsibility for winding up RDA activities and, for that reason, has stepped into the shoes as the lessee of that portion of the Line.

The VCTC lease with F&W is different than the City lease in one material way that only compounds the problems between the parties to those leases. That is, section 15.b. of the F&W lease allows for either party to terminate the lease for cause upon six months' notice without any definition of that term, while the City lease at section 15.b. allow for either party to terminate the lease without cause upon six months' notice. In order for VCTC to address the entirety of the SPBL operation, VCTC also served notice on the City of its intent to concurrently terminate that lease. When the City's lease is terminated, the ability for F&W to maintain its tourist excursion business is also terminated. We are in receipt of a letter from Fillmore City Attorney, Tiffany Israel, dated May 31, 2013 notifying F&W of the City's intent to terminate the sublease with F&W for tourism and excursion train activities on the SPBL segment referred to as the Fillmore Segment. Under the F&W lease, the filming and still photography portion of its business may continue along with its right to offer mail and express service over the entire SPBL, and freight service between generally the City of Santa Paula and the eastern end of the SPBL. At the present time, there is no freight or mail service being conducted by F&W along the SPBL. Therefore, only the filming and still photography portion of the F&W business will remain.

Mr. Dave Wilkinson
June 4, 2013
Page Two

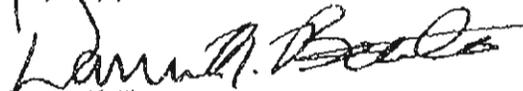
Under the F&W lease at Section 13, F&W is in default of its lease if one or more of three reasons occur: (1) its failure to pay rent when due and such failure continues for more than 15 days; (2) if it fails to cure any breach of the lease within 30 days following a notice from VCTC, or commence and diligently pursue a cure within 30 days if it would take longer than 30 days to cure the breach; or (3) F&W is adjudged bankrupt or becomes insolvent. If no cure is undertaken as provided above and no restoration plan is provided to VCTC within 45 days of the notice to cure, VCTC can, among other available remedies, immediately terminate the lease; no need to provide six months' prior notice. Section 13 of the Fillmore lease is identical.

Therefore, "cause" as the term is used in section 15.b. of the F&W lease, must mean something different than simply a failure to cure in Section 13. That was one issue noted for discussing a new or amended F&W lease and included in a draft amended and restated lease in 2011 when our General Counsel drafted a companion general release and settlement agreement relating to the overpayment by VCTC of \$137,452.00 which F&W continues to dispute. Those documents were never signed by F&W nor has the overpayment ever been returned.

The fact is, F&W has failed to repay VCTC a large overpayment since mid-2010 when the overpayment was identified and has failed to honor VCTC staff requests to review financial records. In addition, F&W has not properly maintained grade crossings or repaired faulty signal equipment in accordance with state and federal requirements in an attempt to have VCTC compensate it for that work. These ongoing differences lead to the substantial dispute based upon differing interpretations of the lease concerning the definition of "maintenance" required by F&W and the "... need for extensive refurbishment or replacement, beyond maintenance as defined in Section 1. . ." required of VCTC. In all discussions before the Commission and the SPBL committee, F&W consistently has drawn a distinction between the terms "maintenance" for which it is responsible and "capital expense" or "capital costs" for which it claims VCTC is responsible. Nowhere in the lease does that distinction exist. Allowing maintenance to be delayed or ignored until the repair becomes a need for extensive refurbishment or replacement, beyond maintenance as defined in the lease is not an acceptable practice under the lease.

For all of the foregoing reasons and for those causes, the termination notice provided to F&W pursuant to lease Section 15.b. is appropriate.

Very truly yours,



Darren Kettle
Executive Director

cc: Mitch Kahn, VCTC Legal Counsel

EXHIBIT 24



DONNA M. STANDARD
Attorney at Law

35625 E. Kings Canyon Rd.
Squaw Valley, CA. 93675
Cell Phone (805) 276-1213
Telephone (559) 338-0111

Mailing Address: P.O. Box 254
Dunlap, CA. 93621
Facsimile (559) 338-1130
E-mail: ds2758@aol.com

June 4, 2013

Hon. Steven T. Sojka, Chairman, and Commissioners
Ventura County Transportation Commission (VCTC)
950 County Square Drive, Suite 207
Ventura, CA. 93003

RE: Letter of May 14, 2013

Honorable Chairman and Commissioners of the Board:

Fillmore & Western Railway, Inc. is in receipt of a letter dated May 14, 2013 from Darren Kettle, Executive Director, regarding termination of the contract with the City of Fillmore Redevelopment and Ventura County Transportation.

While I believe VCTC has the authority to cancel their agreement with City of Fillmore Redevelopment Agency, pursuant to the lease between City of Fillmore RDA and VCTC, and as such, would ultimately terminate the sub-lease with FRWY and the City of Fillmore RDA, however, such a termination would have no effect on the direct contract between VCTC and FRWY. The contract between FRWY and VCTC requires cause for termination by VCTC.

Mr. Kettle's letter defines no cause for termination. The letter only complains that the Board is now unhappy with the terms of the contract, even though the terms were negotiated in good faith by a prior VCTC board and FRWY for the term stated.

Furthermore, while the letter is directed to Fillmore & Western Railway, specifically citing Paragraph 19 of an agreement dated 6-27-01, FRWY cannot locate an agreement dated June 27, 2001. We do find an agreement between Fillmore & Western Railway, Inc. and VCTC dated June 25, 2001, which became effective July 1, 2001, however, the termination provision of that contract is contained in Paragraph 15.

We also have in our possession the lease agreement dated June 6, 2001, between City of Fillmore Redevelopment Agency and VCTC, which also became effective on July 1, 2001 and a sub-lease agreement between City of Fillmore Redevelopment Agency and Fillmore & Western Railway, dated July 1, 2001, which also has an effective date of July 1, 2001. Only one of those contracts has a Paragraph 19 regarding termination; the other has a termination clause in Paragraph 15.

FRWY has no other contracts in their possession between VCTC and FRWY for the lease of the line, other than the maintenance agreement dated November 14, 1997 and the amendments to the thereto. There is no contract in our possession dated June 27, 2001.

Therefore, FRWY is hereby requesting that VCTC produce the agreement referred to in the May 14, 2001 letter, to verify that such an agreement exists and that it contains the termination provision referred to, that would supersede the June 25, 2001 agreement.

It is my position that VCTC has no authority to terminate the contract currently in place with FRWY, as there is no basis for termination based on cause.

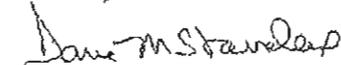
FRWY had a long term vision for the operation of the railway and continues to do so. FRWY believes that the parties can continue to jointly maintain the line and its usefulness to VCTC, FRWY, the surrounding cities and their citizenry in the future.

If VCTC has decided to terminate the contract, without cause, it would be the position of FRWY that such action can only serve to destroy the relationship between FRWY and VCTC that has only recently become tenuous. This is only due to inaction and mismanagement on the part of certain delegated personnel.

FRWY has a great desire to continue the line and to work with personnel to assure the line becomes more profitable for all involved. With that being said, FRWY has offered many suggestions to make that a realization, however, those suggestions seem to be falling on deaf ears.

FRWY is hopeful the Board will make further inquiry regarding the potential harm that will result for all involved before the issue of the Santa Paula Branch Line is thoughtfully considered.

Sincerely,



Donna M. Standard
General Counsel for Fillmore & Western Railway, Inc

cc: Email (info@ci.santa-paula.ca.us)
Email (steve.bennett@ventura.org)
Email (supervisor.zaragoza@ventura.org)
Email (munizares@ci.fillmore.ca.us)
Email (clapp%40ci.ojai.ca.us)
Email (supervisor.foy@ventura.org)
Email (Claudia4slowgrowth@roadrunner.com)
Email (brian.vctc@prodigy.net)
Email (kathy.long%40ventura.org)
Email (council@ci.camarillo.ca.us)
Email (lmillhouse@ci.moorpark.ca.us)
Email (cmorehouse%40ci.ventura.ca.us)
Email (linda.parks@ventura.org)
Email (bryan.macdonald@ci.oxnard.ca.us)
Email (jon@sharkey.com)
Email (jwhite@arcvc.org)
Email (michael.miles@dot.ca.gov)
Email (mkahn@calattys.com)

EXHIBIT 25



DONNA M. STANDARD
Attorney at Law

35625 E. Kings Canyon Rd.
Squaw Valley, CA. 93675
Cell Phone (805) 276-1213
Telephone (559) 338-0111

Mailing Address: P.O. Box 254
Dunlap, CA. 93621
Facsimile (559) 338-1130
E-mail: ds2758@aol.com

July 1, 2013

Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA. 93003
ATTN: Darren Kettle

Dear Mr. Kettle:

Fillmore & Western Railway, Inc. has had an opportunity to review your letter of June 4, 2013 stating a basis for termination of the June 25, 2001 lease and your most recent letter regarding your claim of overpayment. I also understand a meeting was held with you and Mr. Wilkinson regarding the maintenance provisions of the contract.

Based on your recent letters and the recent meeting with Mr. Wilkinson, it is clear there is no partnership remaining. To that end, Fillmore & Western Railway, Inc. declares the commission in breach of the contract under which it has operated since 2007. Fillmore & Western Railway, Inc. also declares material breach of the maintenance provisions of the contract due to VCTC failing to meet their obligations under the contract, which includes the maintenance payments due Fillmore & Western and VCTC failing to make necessary capital improvements.

Since there are disputes over the terms and the interpretation of the contract, Fillmore & Western Railway is hereby invoking the mediation requirements under the contract.

Fillmore & Western Railway, Inc., disputes the facts set forth in your letters as they are inaccurate. Your letter further indicates you have already negotiated the disputes in this matter and based on your representations, Fillmore & Western would therefore request we proceed to mediation within the next ten (10) days. Fillmore & Western had previously requested this matter proceed to mediation, to which no response has been received. The relevant provision of the agreement is contained on page 19, Paragraph 24 (a), which states:

“In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for (30) days before either party may submit the matter to non-binding mediation. VCTC and Fillmore & Western agree that, in the event They are unable to resolve such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall

submit the matter at issue to mediation and that the method and procedure for such mediation be as hereinafter set forth in subsection (c).”

The terms of the contract provide mediation shall be conducted by a retired Ventura County Superior Court Judge. I understand Judge Hadden and Judge Long are both doing mediation and we would be agreeable to utilizing either of their services for the purpose of mediation.

The issues that need to be addressed in mediation are the following:

1. Determination by the mediator as to whether or not there was an actual “overpayment” of funds based upon the maintenance contract. FWRV contends there is no overpayment, as it must be based upon the grade crossing funds and the annual income derived by VCTC from its property leases on the effective date of the agreement, which is dated September 7, 2007.

2. There also appears to be a dispute over the issue of the responsible party for capital improvements, as opposed to repairs and maintenance of the line.

3. Interference with freight operations that were granted to FWRV based on an alleged lack of an interchange agreement.

4. Whether this contract is terminable by VCTC;

5. The Beserra lawsuit (attorney fees and costs associated with the litigation);

If FWRV does not receive a written response within the next ten (10) days, FWRV will presume you are refusing to mediate and will take appropriate action thereafter.

Thank you for your courtesy and cooperation in this matter.

Sincerely,

Donna M. Standard
General Counsel for Fillmore & Western Railway, Inc

cc: Mitch Kahn

All Members of the Ventura County Transportation Commission:

EXHIBIT 26



Phone: (805) 524-2546

351 Santa Clara St. Fillmore, CA 93015

Fax: (805)524-1838

July 2, 2013

RECEIVED
JUL 11 2013

Darrin Kettle
Ventura County Transportation Commission
950 County Square Dr., Suite #207
Ventura, CA. 93003

Mr. Kettle

After reviewing your letter dated June 13, 2013 regarding maintenance payments and the reduction of \$17,382.50 per month, I have instructed my attorney to write a letter once again requesting arbitration on this and several other matters that have been in dispute, some of them for several years now. I have also looked at the remaining 6 months budget and with your decision to make this adjustment on maintenance payments, I have come to the conclusion that Fillmore & Western Railway has to lay off an additional 4 staff members. This action will not allow us to safely maintain to FRA and CPUC standards. So at this point we will only be able to provide for maintenance, pursuant to the contract, from milepost 414.50 to 426.10.

Until we get these matters resolved this will serve as a 30 day notice of our maintenance agreement that Fillmore & Western Railway will NOT be maintaining anything from milepost 404.70 to 414.50 and from 426.10 to 431.90.

We are also surrendering to Ventura County Transportation Commission the dispatch authority, the weekly inspection authority, the emergency response number authority, and any associated electric bills within these milepost that Fillmore & Western Railway has been paying in the past, although we are clearly not responsible to provide under the contract.

Sincerely,

Dave Wilkinson
Fillmore and Western Railway

"Remember, anytime is train time"

EXHIBIT 27



July 15, 2013

Dave Wilkinson
Fillmore and Western Railway
351 Santa Clara Street
Fillmore, California 93015

Re: Notice of Default of Lease Agreement

Dear Dave:

This letter is sent in response to your letter to me dated July 2, 2013, received at the Ventura County Transportation Commission (VCTC) office on July 11, 2013, in which you inform the VCTC that "at this point we [Fillmore & Western] will only be able to provide for maintenance, pursuant to the contract, from milepost 414.50 to 426.10. Until we get these matters resolved this will serve as a 30 day notice of our maintenance agreement that Fillmore & Western Railway will NOT be maintaining anything from milepost 404.70 to 414.50 and from 426.10 to 431.90."

As you are aware, the June 25, 2001 "Lease Agreement for Rail Services on the Santa Paula Branch" between the Fillmore & Western Railway Company and the VCTC provides at section 4(b) as follows: "Fillmore & Western shall maintain the Track and Track Support Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations." The Lease Agreement also provides that "Maintenance" shall mean those activities required for continued basic operation of track and signal equipment for Fillmore & Western's uses and in accordance with applicable regulations."

Your July 2 letter states that "at this point," which I understand to mean "effective immediately" Fillmore & Western Railway will only be able to provide maintenance from milepost 414.50 to 426.10.

Fillmore & Western Railway's failure to maintain Track and Track Support Structures from milepost 404.70 to 414.50 and from 426.10 to 431.90 constitutes a default of the Lease Agreement; the VCTC demands that Fillmore & Western Railway immediately cure this breach and inform the VCTC of such cure.

Your July 2 letter also provides the VCTC with a 30 day notice that Fillmore & Western Railway will not be maintaining anything from milepost 404.70 to 414.50 and from 426.10 to 431.90. As explained in the paragraph immediately above, Fillmore & Western Railway's failure to maintain Track and Track Support Structures from milepost 404.70 to 414.50 and from 426.10 to 431.90 does and will continue to constitute a default of the Lease Agreement; the VCTC demands that Fillmore & Western Railway immediately cure this breach and inform the VCTC of such cure and diligently continue to properly maintain the leased premises as required by the Lease Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darren M. Kettle', is written over the word 'Sincerely,'.

Darren M. Kettle
Executive Director

EXHIBIT 28

July 16, 2013

Dave Wilkinson
Fillmore and Western Railway
351 Santa Clara Street
Fillmore, California 93015

Donna M. Stouard
Attorney at Law
PO Box 254
Dunlap, CA 93621
dms275@aol.com

Re: Request for Mediation

Dear Mr. Wilkinson and Ms. Stouard:

By letter dated July 8, 2013, Ventura County Transportation Commission (VCTC) Executive Director Darren Kettle provided you with an initial response to Ms. Stouard's July 1, 2013 letter to the VCTC in which she, on behalf of Fillmore & Western Railway, notified the VCTC that she was invoking the mediation provision set forth in the 2001 Lease Agreement ("Agreement") between the parties. As Mr. Kettle explained in his letter, the VCTC discussed this issue at its July 12, 2013 meeting and provided direction to me, as General Counsel to the VCTC, and to Executive Director Kettle.

Consistent with the direction given by the Commission and as provided in section 24 of the Agreement, the Commission concurs with your request to mediate certain disputes "arising out of the terms of, or pertaining to, the Agreement." Specifically, the Commission has elected to mediate the following issues:

1. Fillmore & Western's continued refusal to return to VCTC those portions of maintenance allowance payments paid in excess of the amount obligated to be paid to Fillmore & Western in accordance with the provisions of section 4.b of the Lease Agreement, as amended.
2. Fillmore & Western's continued failure to undertake maintenance of the Santa Paula Branch Line consistent with the standards and obligation described in section 4.b of the Lease Agreement and related defined terms set forth in the Lease Agreement.

3. The extent of VCTC's obligation to undertake "extensive replacement" of any specific Track and Track Support Structures pursuant to section 4.e of the Lease Agreement.
4. The termination provisions of the Agreement.

Thank you for your list of preferred mediators. VCTC respectfully requests that the parties retain the services of retired Ventura County and Court of Appeal Judge Steven J. Stone. Judge Stone is well respected for being thorough, diligent, thoughtful and fair. He currently works as a mediator for JAMS. The JAMS website notes that Judge Stone "is known for creative settlements on resolving complex matters. He has extensive experience in the resolution of complex multi-party disputes in all areas of civil litigation. Justice Stone has handled all types of civil disputes and litigation by way of trial, review and alternative resolution." Consistent with Section 24, the VCTC is prepared to equally share the fee and costs that the parties would incur hiring Judge Stone to conduct this mediation. We have checked with his calendar and with ours, and we propose that the mediation occur on one or both of the following dates: August 19, 2013 and August 20, 2013. Justice Stone's assistant has confirmed that he will hold those dates for us through next Thursday.

Mediation would occur consistent with the provisions of section 24 of the Lease Agreement and all communications by and between the parties or between any party and the mediator would be confidential and protected from disclosure to the extent provided by California Evidence Code sections 1115 - 1128.

Nothing in this letter, and nothing in VCTC's concurrence in your request to mediate certain disputes arising out of the Lease Agreement is intended to nor shall it be interpreted to have any effect on the notice of termination for cause provided to Mr. Wilkinson by Mr. Kettle by letters dated May 14, 2013 and June 4, 2013.

Very truly yours,



Steven T. Martin
General Counsel
Ventura County Transportation Commission

c: Darrin Kettle, Executive Director

STM:pp

21100943

EXHIBIT 29



DONNA M. STANDARD
Attorney at Law

35626 E. Kings Canyon Rd.
Squaw Valley, CA 93675
Cell Phone (805) 276-1213
Telephone (559) 338-0111

Mailing Address: P.O. Box 254
Dunlap, CA 93621
Facsimile (559) 338-1130
E-mail: ds2758@aol.com

(F)
1772-0219
Fillmore +
Western

July 25, 2013

Steve M. Mattes
MEYERS NAVE
575 Market Street, Suite 2080
San Francisco, California 94105

RE: Mediation between VCTC and FWRV

Dear Mr Mattes:

I am in receipt of your letter dated July 16, 2013 regarding mediation of the dispute that has arisen between VCTC and Fillmore & Western Railway.

While we do agree this matter should proceed to mediation, we are not in agreement with the manner in which you have framed the issues. While we made our best effort to frame the issues, without assigning blame, but you have framed the issues by pointing a finger at blame FWRV. With that said, we reframe our issues as follows:

- 1) VCTC's willful failure and refusal to pay maintenance fees pursuant to the contract
- 2) The anticipatory breach of the agreement that is still in effect and is not terminable without cause;
- 3) Whether VCTC, as owner, is responsible for capital improvements/repairs on the railway property owned by VCTC, which has been the custom and practice of the parties under the contract since its inception, until VCTC's recent refusal to provide funds for capital improvements/repairs.
- 4) There is now a dispute, which did not previously exist, regarding the definition of capital improvements/repairs.
- 5) VCTC and its agents interference with the use and enjoyment of the line including freight operations pursuant to the contract and the damages related thereto;
- 6) Mr. Kettle's actions have defamed FWRV and my individual clients and further interfered with their prospective economic advantage regarding freight, passenger and mail operations and the damages related thereto; and

7) The liability of VCTC for wrongfully filing a claim of indemnification against FRWY for fictitious damages in the Beserra lawsuit.

8) Mr. Kettle's most recent demand to renegotiate the lease rate when he has already attempted to cancel the contract;

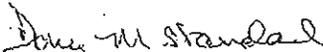
9) The continued false assertion by both VCTC and Union Pacific that there is no freight rail customer on the line; and

10) The Commission's interference with interstate commerce by refusing to provide interchange and falsely portraying itself as a railroad carrier.

While we agree Justice Stone is well respected, he is not acceptable to FRWY due to his prior involvement with the Beserra issue. To that end, we believe there is an inherent conflict because of that involvement in the Beserra issue. We would request again, one of the two mediators previously requested. Judge McGrath would be my other suggestion. I am not aware of any other retired judges that are available that would be acceptable to FRWY.

Please let me know your thoughts regarding the selection of a mediator from the acceptable candidates. Thank you.

Sincerely,



Donna M. Standard
General Counsel for Fillmore & Western Railway, Inc

cc: Dave Wilkinson
Ventura County Transportation Commission (via e-mail)
D. Kettle (via e-mail)

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 01/07/2014
JUDICIAL OFFICER: Tari Cody

EVENT TIME: 08:20:00 AM

DEPT.: 21

CASE NUM: 56-2013-00444877-CU-BC-VTA

CASE TITLE: FILLMORE & WESTERN RAILWAY INC VS. VENTURA COUNTY TRANSPORTATION COMMISSION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Order To Show Cause Re Preliminary Injunction

CAUSAL DOCUMENT/DATE FILED:

Ruling

Defendant Ventura County Transportation Commission's evidentiary objections to the declarations of David Wilkinson and Ginger Gherardi as to Objections Nos. 1 through 5, 9, 10, 12, 13, 16 through 21, 25, 26, 28, 29, and 35 through 37 are sustained.

Defendant's remaining Objections are overruled. The court will not consider, however, Plaintiffs' evidence submitted in its reply.

Plaintiff Fillmore & Western Railroad, Inc.'s request for a preliminary injunction is denied, on the grounds that (a) the only potential basis for injunctive relief in this action is Plaintiff's claim for specific performance of the subject Agreement between Plaintiff and Defendant; and (b) Plaintiff fails to demonstrate a reasonable likelihood of prevailing on that claim due – in large part – to the rulings above on Defendant's Objections to Plaintiff's evidence.

Analysis

Plaintiff seeks a preliminary injunction (i) prohibiting VCTC from taking any actions "facilitating termination" of the June 25, 2001 Agreement between Plaintiff and VCTC; and (ii) requiring Plaintiff to specifically perform under the Agreement.

In ruling on a request for a preliminary injunction, the Court must weigh the requesting party's likelihood of prevailing on the merits with the respective interim harms to the parties if the injunction is, or is not, granted:

"In deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. [Citation.]...

"The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.] Of course, '[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits.' A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. [Citation.]"

(*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.)

In considering whether to grant the requested injunctions, the Court should balance the respective interim harms to Plaintiffs and Defendants and the probability of Plaintiff's prevailing on the merits:

"In determining whether to issue a preliminary injunction, the trial court considers two related factors: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction [Citation.] 'The latter factor involves consideration of such _____ things as the inadequacy of other remedies,

the degree of irreparable harm, and the necessity of preserving the status quo.' [Citation.]"

(14859 Moorpark Homeowner's Ass'n v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402.)

Plaintiff fails to demonstrate a reasonable likelihood of prevailing on a claim for injunctive relief. (See *SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal. App. 4th 272, 280.) Plaintiff's only claim that even potentially supports a request for injunctive relief is Plaintiff's claim for specific performance; and Plaintiff fails to demonstrate a reasonable likelihood that it will prevail on its claim for specific performance.

The basic premise of Plaintiff's request for injunctive relief is that VCTC has breached the Agreement between the parties by (a) attempting to improperly terminate the Agreement prior to the expiration of the term of the Agreement; and (b) failing to perform its payment and other obligations under the Agreement. Essentially, Plaintiff is seeking injunctive relief preventing VCTC from breaching the Agreement and requiring VCTC to perform under the Agreement.

As a result, Plaintiff's 1st Amended Complaint is essentially premised on various alleged breaches of contract by VCTC. However, breach of contract claims can only provide a basis for injunctive relief where the plaintiff has a right to specific performance of the contract. In particular, Code of Civil Procedure §526(b) provides, in pertinent part, that:

"An injunction cannot be granted in the following cases: [¶](5) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and where the compensation for the personal services is as follows...."

As a result, the viability of Plaintiff's claim for injunctive relief rests entirely on its claim for specific performance of the Agreement.

The requirements for establishing a right to specific performance are substantial and – due in part to the merits of a number of VCTC's evidentiary objections to Plaintiff's evidence [and, in particular, the original declaration of Plaintiff's President David Wilkinson] – Plaintiff fails to demonstrate a reasonable possibility that it will be able to satisfy those requirements. More specifically:

In order to be entitled to specific performance, Plaintiff must first make a threshold showing that VCTC breached the Agreement. In particular, specific performance is merely an alternative remedy for a breach of contract. (5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, §732, at pp. 180-181.)

Plaintiff must also demonstrate its own performance under the Agreement (or excuse for non-performance), and that it remains ready, willing, and able to perform under the Agreement. (*Ninety Nine Investments v. Overseas Courier Service (Singapore) Private* (2003) 113 Cal. App. 4th 1118, 1126.)

Finally, Plaintiff must show that certain additional requirements for entitlement to specific performance are met:

"To obtain specific performance after a breach of contract, a plaintiff must generally show: '(1) the inadequacy of his legal remedy; (2) an underlying contract that is both reasonable and supported by adequate consideration; (3) the existence of a mutuality of remedies; (4) contractual terms which are sufficiently definite to enable the court to know what it is to enforce; and (5) a substantial similarity of the requested performance to that promised in the contract. [Citations.]' A grant or denial of specific performance is reviewed under an abuse of discretion standard." (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal. App. 4th 463, 472.)

Here, Plaintiff fails to submit sufficient admissible evidence sufficient to establish even a reasonable possibility that VCTC has breached the Agreement, or Plaintiff has fully performed under the Agreement, or that Plaintiff is ready, willing, and able to continue performing under the Agreement.

First, Plaintiff fails to submit any admissible evidence that VCTC has breached the Agreement. Plaintiff appears to contend that VCTC has breached the Agreement by (i) failing to make numerous necessary capital improvements and repairs to the railroad line; (ii) failing to make sufficient maintenance payments to Plaintiff and deducting claimed

overpayments from those payments; and (iii) taking steps to terminate the Agreement without "cause" for doing so. (See Original Wilkinson Decl., ¶31.) However, Plaintiff fails to submit admissible evidence sufficient to establish the claimed breaches.

For example, Wilkinson's statements regarding VCTC's failure to pay maintenance fees (*id.* at ¶¶18 through 21) all appear to lack foundation and appear to be based largely on hearsay documents, thus, the Court sustained VCTC's Objections Nos. 16 through 19 to these statements.

Similarly, Wilkinson's statement regarding VCTC's failure to make capital improvements in ¶28 of his original Declaration also lack foundation and contain improper legal/factual conclusions and the Court has sustained VCTC's Objections Nos. 26 to that statement. More generally, Wilkinson's statements in ¶¶28 and 29 merely indicate the existence of a dispute as to the parties' respective obligations, and do not show that Plaintiff has any likelihood of prevailing on the merits of that dispute.

As to whether VCTC has cause for terminating the Agreement, Wilkinson states in conclusory fashion in ¶26 of his declaration that Plaintiff received no notice of any claim of lack of maintenance prior to VCTC's notice of termination of the Agreement on June 4, 2013, but fails to rebut VCTC's claim that Plaintiff breached the Agreement by failing to return overpayments.

Moreover, Wilkinson's general statement in ¶30 of his original Declaration indicating that Plaintiff "has performed all things to be performed all things to be performed by them under the Agreement or were excused from such performance by the prior breaches of Defendants" lacks foundation, and the Court sustained VCTC's Objection No. 28 to this statement. As a result, Plaintiff fails to establish that it has itself fully performed under the Agreement.

Finally, there is no evidence that Plaintiff continues to be able to perform under the Agreement.

EXHIBIT C

1 Steven T. Mattas (SBN: 154247)
smattas@meyersnave.com
2 Jenny L. Riggs (SBN: 204417)
jriggs@meyersnave.com
3 MEYERS, NAVE, RIBACK, SILVER & WILSON
4 633 West Fifth Street, Suite 1700
Los Angeles, California 90071
5 Telephone: (213) 626-2906
Facsimile: (213) 626-0215

VENTURA
SUPERIOR COURT
FILED

MAR 06 2014

MICHAEL D. PLANET
EXEMPT FROM FILING FEES
GOV'T CODE § 6103 Deputy

Malia A. Acosta

6 Attorneys for Plaintiff
7 VENTURA COUNTY TRANSPORTATION COMMISSION

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF VENTURA**

10 VENTURA COUNTY TRANSPORTATION
11 COMMISSION,

12 Plaintiff,

13 v.

14 FILLMORE & WESTERN RAILWAY, INC.,
15 a California Corporation; and DOES 1-10,
Inclusive,

16 Defendants.

Case No. 56-2014-00449769-CL-UD-VTA

**COMPLAINT FOR UNLAWFUL
DETAINER**
[Code of Civil Procedure § 1161(1)]

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28

1 COMES NOW Plaintiff Ventura County Transportation Commission (hereinafter,
2 “VCTC”), and hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff VCTC owns a rail line, the Santa Paula Branch Line, that begins in the
5 west in the Montalvo section of Ventura, running east through the City of Santa Paula, continuing
6 on to the City of Fillmore, and terminating in Rancho Camulos. Defendant Fillmore & Western
7 Railway runs tourist and excursion trains on the eastern part of the rail line, between Fillmore and
8 Santa Paula. Defendant Fillmore & Western Railway’s tourist and excursion trains do not run on
9 the western section of the rail line between Ventura and Santa Paula.

10 2. With regard to that rail line, VCTC has entered into various leases, each permitting
11 specific uses on specific portions of the line. At issue here, VCTC entered into a lease that
12 permitted tourist and excursion trains to run on the eastern portion of the rail line. Now that lease
13 has terminated, but Defendant Fillmore & Western Railway – the sublessee – has refused to
14 vacate, and instead continues to run tourist and excursion trains in violation of VCTC’s rights.
15 VCTC therefore seeks to regain its possessory rights with regard to the right to operate tourist and
16 excursion trains on the eastern segment of the Santa Paula Branch Line.

17 **THE PARTIES**

18 3. Plaintiff Ventura County Transportation Commission (hereinafter, “VCTC”) is a
19 County Transportation Commission established pursuant to the California Public Utilities Code
20 § 130050.1, with its principal place of business in Ventura, California.

21 4. Plaintiff is informed and believes and thereupon alleges that Defendant Fillmore &
22 Western Railway, Inc., is a California corporation with its principal place of business in Fillmore,
23 California.

24 **GENERAL ALLEGATIONS**

25 5. On June 6, 2001, VCTC and the City of Fillmore Redevelopment Agency entered
26 into a lease for the eastern “Fillmore Segment” of the rail line, running “between milepost 414.45
27 at or near Santa Paula to milepost 435.07 at Rancho Camulos.” [Kettle Decl., Ex. 1 (Fillmore
28 Lease), § 1, p. 2.] Among other things, the lease “permit[ted] Fillmore and/or its sublessees to use

1 the Lease Property for Public/Tourist Excursion purposes.” [Id., Ex. 1, § 2, p. 3.] This Fillmore
2 Lease could be terminated by either party, *without cause*, effective upon six months’ notice to the
3 other party. [Id., Ex. 1, § 15(b), p. 14.]

4 6. On June 25, 2001, VCTC and Defendant Fillmore & Western Railway entered into
5 a direct lease for the entire rail line, but with limitations on the uses of the eastern Fillmore
6 Segment. [Id., Ex. 2 (Direct Lease) at p. 1.] For example, while the Direct Lease permitted
7 Defendant Fillmore & Western Railway to use nearly the entire line for still and motion picture
8 productions or for mail and express service, it permitted freight services only on the Fillmore
9 Segment of the line (from milepost 414.95 to 435.07), and, critical here, permitted public and
10 tourist excursions only on that western part of the line running from Ventura to Santa Paula, from
11 milepost 403.35 to milepost 414.45. [Id., Ex. 2, § 2, p. 3-4.] Thus, this Direct Lease did not
12 permit Defendant Fillmore & Western Railway to operate tourist and excursion trains between
13 Fillmore and Santa Paula. That right was instead given to the City of Fillmore Redevelopment
14 Agency alone pursuant to the June 6, 2001 Fillmore Lease.

15 7. On July 1, 2001, Defendant Fillmore & Western Railway entered into a sublease
16 agreement with the City of Fillmore Redevelopment Agency. That Sublease addressed “the use of
17 a portion of a line of railroad owned by VCTC ... from milepost 414.45 at or near 8th Street in
18 Santa Paula, California, to milepost 435.07 at or near Rancho Camulos (“Fillmore Segment).”
19 [Id., Ex. 3 (Fillmore Sublease) at B, p. 1.] The use of the Fillmore Segment was limited to
20 “Public/Tourist Train Excursion purposes.” [Id., Ex. 3, § 3, 6(a), 10(a).] Important here, the
21 Sublease provided that it could be terminated “without cause, upon six (6) month written notice of
22 termination.” [Id., Ex. 3, § 19(b).]

23 8. Pursuant to the sublease, Defendant Fillmore & Western Railway ran tourist and
24 excursion trains between Santa Paula and Fillmore. The direct lease between VCTC and
25 Defendant Fillmore & Western Railway (not at issue here) did not grant Defendant Fillmore &
26 Western Railway any right to operate tourist and excursion trains on that segment of the rail line.

1 could be terminated without cause upon six months' notice. The Sublease is attached hereto as
2 Exhibit 3 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference
3 herein.

4 16. The City of Fillmore, as successor agency to the City of Fillmore Redevelopment
5 Agency, gave notice of termination without cause of the Sublease on May 31, 2013, providing for
6 termination of the Sublease as of December 1, 2013. Notice of termination is attached hereto as
7 Exhibit 5 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference
8 herein.

9 17. As a result, the Fillmore Lease and the Sublease were terminated as of December 1,
10 2013.

11 18. The June 25, 2001 Direct Lease between VCTC and Defendant Fillmore &
12 Western Railway does not permit Defendant Fillmore & Western Railway to operate tourist and
13 excursion trains between Fillmore and Santa Paula. The Direct Lease is attached hereto as Exhibit
14 2 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference herein.

15 19. Despite the December 1, 2013 termination, on information and belief, Defendant
16 Fillmore & Western Railway continues to operate tourist and excursion trains on the eastern
17 segment of the Santa Paula Branch Line, between Fillmore and Santa Paula. As of March 5, 2014,
18 Defendant Fillmore & Western Railway advertised ticket sales for a variety of tourist and
19 excursion train trips to take place on VCTC's rail line throughout 2014. Defendant Fillmore &
20 Western Railway's website, www.frwy-blog.com, advertises that tickets may be purchased for
21 tourist and excursion trains through December 31, 2014.

22 20. As the owner of the line, VCTC has the right to lease out portions of the line for
23 specific purposes. Following the termination of the Fillmore Lease and Sublease, the right to
24 permit or deny permission to operate tourist and excursion trains on the eastern segment of the line
25 reverted to VCTC. Defendant Fillmore & Western Railway's unauthorized operation of tourist
26 and excursion trains on that segment of the line interferes with VCTC's rights as owner, and
27 VCTC therefore requests that its possessory rights be returned to it.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants individually and collectively as follows:

1. For possession of the Santa Paula Branch Line eastern segment, from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos, for Ventura County Transportation Commission's exclusive use to permit or refuse to permit the operation of tourist and excursion trains;
2. For an order precluding Defendant Fillmore & Western Railway, Inc. from operating tourist and excursion trains on the Santa Paula Branch Line eastern segment, from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos;
3. For costs of suit, including reasonable attorney's fees pursuant to contract; and
4. For such further relief this Court may deem just and proper.

DATED: March 6, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 

Steven T. Mattas
Jenny L. Riggs
Attorneys for Plaintiff
VENTURA COUNTY TRANSPORTATION
COMMISSION

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF VENTURA

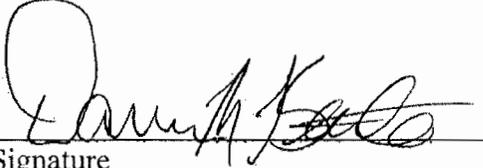
I have read the foregoing Complaint for Unlawful Detainer and know its contents.

I am the Executive Director of the Ventura County Transportation Commission, the plaintiff in this action, and am authorized to make this verification on its behalf. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on March 6, 2014, at Ventura, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Darren Kettle
Print Name of Signatory


Signature

2246213.1

EXHIBIT D

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

VENTURA
SUPERIOR COURT
FILED

MAR 17 2014

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____ Deputy
M. MIJARES

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Commissioners of the Ventura County Transportation Commission,
(continued on attachment)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Fillmore & Western Railway, Inc., A California Corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

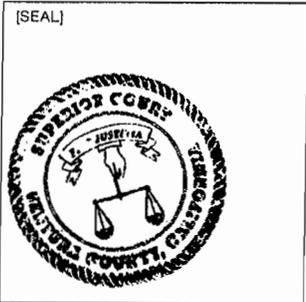
The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, County of Ventura
800 S. Victoria Ave.
Ventura, CA. 93009

CASE NUMBER
(Número del Caso)
56-2014-C0450239-CU-BC-VTA

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Donna M. Standard, Esq. SBN 225297, 35625 E. Kings Canyon Rd., Squaw Valley, CA. 93675 559-338-0111

DATE: **MAR 17 2014** Michael D. Planet Clerk, by **M. MIJARES** Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

Continuation of Summons

Notice to Defendants: a public sector transportation planning
body created by the legislature; DARREN KETTLE,
Individually and as Executive Director of VENTURA COUNTY
TRANSPORTATION COMMISSION; and DOES 1-100

EW

1 DONNA M. STANDARD, ESQ.
2 35625 E. Kings Canyon Rd.
3 Squaw Valley, CA. 93675
4 (559) 338-0111 Telephone
5 (559) 338-1130 Facsimile
6 E-Mail: ds2758@aol.com
7 SBN 225297

8 IVAN W. HALPERIN, ESQ.
9 1007 West Twenty-Fourth Street
10 Los Angeles, A. 90007-1816
11 (310) 773-3494 Telephone
12 (310) 861-8619 Facsimile
13 E-Mail: iwhalperin@halperin.com
14 SBN 52450

15 Attorneys for Plaintiff, FILLMORE & WESTERN RAILROAD, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF VENTURA

18 56-2014-00450239-CU-BC-VTA

19 FILLMORE & WESTERN RAILROAD, INC.)
20 A California Corporation)
21)
22 Plaintiff,)
23 vs.)
24)
25 COMMISSIONERS OF THE VENTURA COUNTY)
26 TRANSPORTATION COMMISSION, a public)
27 Sector transportation planning body created by the)
28 Legislature; DARREN KETTLE, Individually and)
as Executive Director of VENTURA COUNTY)
TRANSPORTATION COMMISSION; and DOES)
1-100)
Defendants)

CASE NO.

COMPLAINT FOR BREACH OF
CONTRACT; BREACH OF
IMPLIED GOOD FAITH AND
FAIR DEALING; INTEFERENCE
W/PROSPECTIVE ECONOMIC
ADVANTAGE, INTEFERENCE
W/CONTRACTUAL RELATIONS
SPECIFIC PERFORMANCE;
DEFAMATION
DECLARATORY RELIEF
INJUNCTIVE RELIEF

JURY TRIAL REQUESTED

Plaintiff, FILLMORE AND WESTERN RAILROAD, INC. hereby alleges against

Defendants as follows:

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

800 South Victoria Avenue
Ventura , CA 93009
(805) 654-2609
WWW.VENTURA.COURTS.CA.GOV

NOTICE OF CASE ASSIGNMENT AND MANDATORY APPEARANCE

Case Number: 56-2014-00450239-CU-BC-VTA

Your case has been assigned for all purposes to the judicial officer indicated below.

A copy of this Notice of Case Assignment and Mandatory Appearance shall be served by the filing party on all named Defendants/Respondents with the Complaint or Petition, and with any Cross-Complaint or Complaint in Intervention that names a new party to the underlying action.

ASSIGNED JUDICIAL OFFICER	COURT LOCATION	DEPT/ROOM
Hon. Rebecca Susan Riley	Ventura	40
HEARING MANDATORY APPEARANCE CMC/Order to Show Cause Re Sanctions/Dismissal for Failure to File Proof of Service/Default		
EVENT DATE	EVENT TIME	EVENT DEPT/ROOM
08/15/2014	08:15 AM	22B

SCHEDULING INFORMATION

<p>Judicial Scheduling Information</p> <p>AT THE ABOVE HEARING IS MANDATORY. Each party must file a Case Management Statement no later than 15 calendar days prior to the hearing and serve it on all parties. If your Case Management Statement is untimely, it may NOT be considered by the court (CRC 3.725). If proof of service and/or request for entry of default have not been filed: At the above hearing you are ordered to show cause why you should not be compelled to pay sanctions and/or why your case should not be dismissed (CCP 177.5, Local Rule 3.17).</p>
<p>Advance Jury Fee Requirement</p> <p>At least one party demanding a jury trial on each side of a civil case must pay a non-refundable jury fee of \$150. The non-refundable jury fee must be paid timely pursuant to Code of Civil Procedure section 631.</p>
<p>Noticed Motions/Ex Parte Matters</p> <p>To set an ex parte hearing, contact the judicial secretary in the assigned department. Contact the clerk's office to reserve a date for a law and motion matter.</p>
<p>Telephonic Appearance</p> <p>Telephonic appearance at the Case Management Conference is permitted pursuant to CRC 3.670. In addition, see Local Rule 7.01 regarding notice to the teleconference provider. The court, through the teleconference provider, will contact all parties and counsel prior to the hearing.</p>

Date: 03/17/2014

Clerk of the Court,
By: 
Monika Akuna, Clerk

VENUE

1
2 1. Venue is appropriate in Ventura County, in that the real property it concerns is
3 located in this judicial district (CCP 392), the cause of action arose in Ventura County (CCP
4 393), at least one of the Defendants resides in Ventura County (CCP 395) and the Agreement
5 provides for venue in the County of Ventura. (Exhibit #7 attached hereto and referred to herein
6 below, Paragraph 24 (f)(6)).

PARTIES

8 2. Plaintiff, FILLMORE AND WESTERN RAILROAD, INC., (hereinafter referred
9 to as "Plaintiff") at all times herein mentioned was, a corporation organized and existing under
10 and by virtue of the laws of the State of California, and qualified to do business and doing
11 business in Ventura County, State of California, with its principal office located in Fillmore,
12 California and is thereby entitled to invoke the jurisdiction of this court.

14 3. Plaintiff is informed and believes and thereon alleges that at all times mentioned
15 herein, COMMISSIONERS OF THE VENTURA COUNTY TRANSPORTATION
16 COMMISSION (hereinafter referred to as "VCTC") was and is a public sector transportation
17 planning body for Ventura County, California, State of California, duly organized and created by
18 state legislation in 1988 and is thereby subject to the jurisdiction of this court.

20 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
21 herein, DARREN KETTLE, an individual, and the Executive Director for the VENTURA
22 COUNTY TRANSPORTATION COMMISSION, is a resident of Ventura County California.

24 5. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of Defendants sued herein as Does 1 through 100, inclusive, are unknown to Plaintiff
26 who therefore sue said Defendants by such fictitious names. Plaintiff prays leave to amend this
27 Complaint to assert the true names and capacities of said Defendants when ascertained. Plaintiff
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1 is informed and believes and thereupon allege that each of the fictitiously named Defendants are
2 responsible in some manner for the occurrences herein alleged, and that Plaintiffs' losses as
3 herein alleged were legally caused by actions of Defendants.

4 6. Plaintiff is informed and believes and thereon alleges that all of the Defendants
5 and each of them named herein are and were individually and collectively in some manner
6 responsible for the events and happenings alleged herein, contractually and proximately caused
7 damages to Plaintiff as a result thereof as alleged herein.

8 7. Plaintiffs have complied with the claims statute requirements pursuant to Govt.
9 Code 800 seq. and 900 et seq. A letter dated October 8, 2013 was sent to VCTC regarding the
10 claims against the Defendants. (See attached Exhibit #1, attached hereto and incorporated herein
11 by reference as though fully set forth. No rejection notice was received from VCTC.
12

13 PRELIMINARY ALLEGATIONS

14 8. The Santa Paula Branch Line railroad, (hereinafter referred to as "SPBL"), was
15 initially constructed and operated by Southern Pacific Railroad (hereinafter referred to as "SP")
16 for numerous years and ultimately sold portions of the line to the City of Fillmore
17 Redevelopment Agency, the City of Santa Paula and the City of Ventura and ultimately, based
18 on a series of agreements, additional agencies joined the City of Fillmore and the Redevelopment
19 Agency of the City of Fillmore in the full acquisition of the "SPBL". These agencies included;
20 the Ventura County Transportation Commission ("Defendants"), the County of Ventura, The
21 City of Ventura, The City of Santa Paula and its Redevelopment Agency, and the City of
22 Fillmore and its Redevelopment Agency.
23

24 9. The policies, procedures and management for the line were laid out in the Santa
25 Paula Branch Line Master Plan of 1996 adopted by the Defendant "VCTC". (See attached
26 Exhibit #2, attached hereto and incorporated herein by reference as though fully set forth). 2. In
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1 addition, the operations and maintenance on the line are controlled by the regulatory structures of
2 the Federal Railroad Administration (hereinafter referred to as "FRA"), the U.S. Department of
3 Transportation, Surface Transportation Board (hereinafter referred to as "STB"), and the
4 California Public Utilities Commission (hereinafter referred to as "CPUC").

5 10. The purchase of the line was achieved via a Memorandum of Understanding
6 (hereinafter referred to as "MOU") between the above-stated agencies and the branch line
7 purchase was completed. (See Exhibit #3 attached hereto and incorporated herein by reference
8 as though fully set forth).

9 11. In November 19, 1996, FWRY began operating a tourist railroad on the "SPBL"
10 that runs from the Montalvo area of Ventura County, at milepost 405.31 through milepost 435.07
11 (out to the Piru area), which is owned by Defendants, pursuant to the "MOU". The railroad line
12 also encompasses the "Fillmore Segment" of the line, which runs from milepost 414.15 to
13 milepost 435.067, which had also been leased to the CITY OF FILLMORE
14 REDEVELOPMENT AGENCY (hereinafter referred to as "FRDA") by SOUTHERN PACIFIC
15 RAILROAD and prior to Defendant VCTC taking title and after acquisition by Defendant
16 VCTC.
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19 12. Plaintiff's operation was initially based upon a written sub-lease agreement with
20 the "FRDA" and Plaintiff dated November 19, 1996, (a copy is attached as Exhibit #4 attached
21 hereto and incorporated herein by reference as though fully set forth), as well as an agreement
22 made directly with Defendants dated April 2, 1999. (A copy is attached as Exhibit #5, attached
23 hereto and incorporated herein by reference as though fully set forth).

24 13. Prior to the direct lease of 2001 with Defendants, Plaintiffs had also entered into
25 an agreement with Defendant VCTC known as the "Interim Maintenance Agreement", dated
26 November 14, 1997, which provided for payment to Plaintiff for work performed upon the track,
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1 signal and track support structures, and inspections and maintenance services on the branch line.
2 (See attached Exhibit #6, attached hereto and incorporated herein by reference as though fully set
3 forth).

4 14. Thereafter, the agreements were amended and replaced with lease agreements;
5 one dated June 25, 2001 between Plaintiff and Defendant VCTC and one dated July 1, 2001
6 between Defendant VCTC and "FRDA". The agreement between Plaintiff and Defendant
7 VCTC was a direct written lease for the use of the Santa Paula Branch Line between milepost
8 405.31 and 435.07 (hereinafter referred to as the "Direct Lease") and is the Agreement presently
9 in effect between Plaintiff and Defendants, subject to two amendments. The effective date of
10 this Agreement was July 1, 2001. The term for this Agreement is twenty (20) years, expiring
11 June 30, 2021, which is only terminable "with cause" upon a six (6) months written notice of
12 termination. (Paragraph #15(b)). (See Exhibit #7 attached hereto and incorporated herein by
13 reference as though fully set forth). When these contracts were renewed in 2001 the rates being
14 paid to the FWRV were updated to reflect changes in the costs of doing business. These new
15 rates resulted from negotiation between the parties, were fully documented, and signed by each
16 of the parties.

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19 15. The other agreement was executed on or about June 6, 2001, between Defendant
20 VCTC and "FRDA" also amending their written lease agreement (hereinafter referred to as
21 "Fillmore Lease") for use of the railroad line owned by Defendants from milepost 414.45 to
22 milepost 435.07. The effective date of this agreement is also July 1, 2001. The term for this
23 "Agreement is twenty (20) years, expiring June 30, 2021, which is terminable "without cause"
24 upon six (6) months written notice of termination. (A copy is attached as Exhibit #8 attached
25 hereto and incorporated herein by reference as though fully set forth).
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1 16. On July 1, 2001, Plaintiff and “FRDA” amended their prior written lease
2 agreement and this new agreement became effective July 1, 2001 (hereinafter referred to as
3 “Sub-Lease”) for use of the Fillmore Segment of the line from milepost 414.45 to milepost
4 435.07. The term for this Agreement is also twenty (20) years, expiring June 30, 2021, which is
5 terminable “without cause” upon six (6) months written notice of termination. (See Exhibit #9
6 attached hereto and incorporated herein by reference as though fully set forth). This agreement
7 replaced the prior 1996 agreement which began operations on the “SPBL” for “FWRY” with
8 “FRDA”. The direct lease between Defendants and Plaintiff provides for use of the same
9 portions of the line as the Sub-Lease with “FRDA” for specific uses.

11 17. Additionally, Plaintiff entered into agreements with “FRDA” for lease of other
12 property adjacent to the branch line for use and operation of the railroad. (See Exhibit #10
13 attached hereto and incorporated herein by reference as though fully set forth).

14 18. Plaintiff FWRY contends the agreements were based on the expectations of the
15 parties that the contracts acted as a whole, and was a “Memorandum of Understanding” with the
16 further expectation both contracts would be performed to their full term, the year 2021 by all
17 parties. Defendant FWRY relied upon those expectations when FWRY entered into the
18 agreements with VCTC and FRDA. Further, the direct lease also provided for use of the SPBL
19 by FWRY, for Public/Tourist Train Excursion purposes. It was always the understanding
20 between the parties that FWRY operated their Public/Tourist Train Excursions on the “Fillmore
21 Segment” of the SPBL since the inception of the agreements. Defendant FWRY contends any
22 restriction of use contained in the direct lease was only due to the lease that existed with FRDA
23 and its predecessor in interest SOUTHERN PACIFIC at the time of acquisition by VCTC. Once
24 that lease was terminated by VCTC Defendant FWRY would have sole use of the entire line,
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1 which should be without restriction as there are no reservations contained in the agreements
2 regarding that issue.

3 19. During the course of the agreements, the Executive Director of the VCTC at the
4 time, Ginger Gherardi, asked that FWRY apply to the Surface Transportation Board (“STB”)—
5 the successor to the Interstate Commerce Commission (“ICC”)—for authority to haul freight on
6 the branch line. FWRY made the requested application and received the authority in 2002.

7
8 20. The parties established a *modus vivendi* governing their relations and the
9 agreements were amended to reflect updated costs of doing business. The reviews created
10 amendments to the agreements in 2004 and 2007. In each case the amendments were fully
11 negotiated between the parties and executed by the parties. In 2007 Ms. Gherardi retired and Mr.
12 Darren Kettle, the current Executive Director of the VCTC was appointed.

13 21. Pursuant to the Agreements and at the instance and request of Defendant VCTC,
14 Plaintiff became a duly licensed Class 3 common carrier railroad pursuant to the April 25, 2002
15 decision of the U.S. Department of Transportation, Surface Transportation Board, successor
16 agency to the Interstate Commerce Commission in Finance Docket No. 34173 and is the
17 responsible entity for rail operations on the “SPBL” including railroad dispatching and actual
18 freight rail movements. Defendant, VCTC has not filed or served an STB action as of the date of
19 filing this Complaint. Defendant is capable of accepting freight shipments as may be
20 interchanged to it and it authorized to do so pursuant to the agreements outlined above, however,
21 Plaintiff has been prevented from accepting freight because of an embargo placed on the line by
22 DARREN KETTLE, Executive Director of Ventura County Transportation.
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25 22. Plaintiff has been and still is the designated railroad Operator on the “SPBL” by
26 virtue of the Agreement with the owners and lessors of the various leases and subleases
27 discussed above. Plaintiff has been authorized to accept freight, and operate tourist trains and
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1 dinner trains on the entire line since 1996 under these Agreements. Freight railroad operations
2 are subject to the necessary Federal regulatory approval of the U.S. Department of
3 Transportation, Surface Transportation Board ("STB"). Further, the common carrier obligation
4 placed upon the common carrier registered operator on the line with the STB does not terminate
5 Plaintiff's operating rights as a common carrier railroad for the operations on the line until there
6 has been an approval of a subsequent common carrier railroad capable of assuming operations
7 and rail service to all customers as authorized by the "STB", which has not occurred.
8 Cancellation of a contract to operate without subsequent approval by the STB for said
9 replacement creates irreparable harm to Plaintiff.
10

11 23. Further, the Direct Lease, at Paragraph 4 (b)(2), provides for payment of a
12 maintenance allowance to Plaintiff from Defendants in the "lesser amount of One Hundred
13 Seventy Thousand Dollars (\$170,000.00) or *the total of its grade crossing signal maintenance*
14 *funds and the annual income derived from Defendants from its property leases at the time of the*
15 *Effective Date of this Agreement*, excepting revenues derived by Defendants from Fillmore &
16 Western through this Agreement." This paragraph was amended twice thereafter, changing the
17 annual maintenance amount. The first amendment occurred on or about May 10, 2004,
18 providing for an increase of the annual maintenance allowance to Two Hundred and Sixty Four
19 Thousand (\$264,000.00) annually (see attached Exhibit #11, attached hereto and incorporated
20 herein by reference as though fully set forth). The second amendment occurred on September
21 14, 2007 providing for an increase of the annual maintenance allowance to Three Hundred and
22 Twelve Thousand Dollars (\$312,000.00), to commence in the 2007/2008 fiscal year. (See
23 attached Exhibit #12, attached hereto and incorporated herein by reference as though fully set
24 forth).
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1 24. On or about October 14, 2010, Defendants informed Plaintiff, without negotiation
2 or discussion, there would be an adjustment to the monthly maintenance allowance to Plaintiff
3 based upon the lesser amount of the total of its grade crossing signal maintenance funds and the
4 annual income derived from Defendants from its property leases, but provided no documentation
5 to support this reduction. (See attached Exhibit #13, attached hereto and incorporated herein by
6 reference as though fully set forth). Defendant VCTC, by and through its Executive Director,
7 KETTLE, reduced the maintenance allowance contained in Amendment #2 to the Direct Lease.
8 Plaintiff protested and this adjustment has been disputed by Plaintiff since before October 14,
9 2010. In addition, Defendant, VCTC and KETTLE informed Plaintiff of an alleged
10 overpayment of maintenance funds and made demand of FWRV for payment. Defendant
11 KETTLE also publicly exclaimed falsely that FWRV had received a “gift of public funds”.
12 Plaintiff protested and denied any overpayment occurred and further denied FWRV received “a
13 gift of public funds”. Defendant, thereafter deducted payments from the maintenance allowance
14 for this alleged overpayment. Plaintiff contends no overpayment occurred and Plaintiff was paid
15 only some of the amounts required under the Agreements by VCTC.
16

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18 25. In subsequent statements, Defendant KETTLE also exclaimed falsely Plaintiff
19 was being subsidized by VCTC, instead of stating the truth, that the funds expended by VCTC
20 were based on contractual obligations that had been negotiated in good faith at the time of the
21 contract, and acted upon by the parties since inception, which VCTC has failed to perform when
22 they deducted any amount from the maintenance allowance due FWRV, among other things.
23

24 26. Plaintiff’s annual maintenance allowance did not exceed the total of its grade
25 crossing, signal maintenance funds and the annual income derived from its property leases
26 (hereinafter referred to as “Rail Funds”), at the time of “**the Effective Date**” of the Agreement as
27 contended by VCTC and KETTLE. An intentional and/or negligent misrepresentation of the
28

1 terms of the agreement by Defendant KETTLE is causing the dispute regarding the overpayment
2 because Defendant KETTLE is applying each years' "Rail Funds" to the year in question, rather
3 than using the total of the "Rail Funds" *in the year of the effect on the date of the agreement or*
4 *its amendments.*

5 27. Defendants are not using the "Rail Funds" received on the effective date of the
6 agreement as the base amount to determine the maintenance fee, as had been the practice and
7 agreement of the parties. For instance, the "Rail Funds" received in FY 2004/2005 was
8 \$291,210.14 (which would have been the "*effective date of the agreement*" pursuant to the
9 Amendment #1, dated May 10, 2004, included herein as Exhibit #11). The base maintenance
10 allowance for that fiscal year would be \$264,000.00, which is the lesser of the two amounts.
11 \$264,000.00 was an appropriate payment for that period based on the information provided to
12 date.

13
14 28. There was no overpayment. When the true "effective date" of the Agreement is
15 used to determine the amount of maintenance due Plaintiff in the manner it had been, up until the
16 present Executive Director changed the practices of the parties, there is an underpayment of
17 funds by VCTC to FWRV. This was simply an attempt to unilaterally change the terms of the
18 Agreements by Defendant VCTC and/or KETTLE without the consent of FWRV.

19
20 29. Defendant VCTC failed to perform its obligations under the Direct Lease by
21 failing to pay maintenance fees due Plaintiff by Defendant VCTC as well as deducted over
22 \$17,000.00 per month from the maintenance fee due Plaintiff under the Agreement, based on a
23 false claim of an overpayment by VCTC and KETTLE. Defendant VCTC is actually in arrears
24 on the payment of the maintenance allowance to Plaintiff in the amount in excess of
25 \$300,000.00, which has caused a financial hardship for Plaintiff. Plaintiff has been required to
26 terminate numerous employees as a result and the railroad is having to pay for all maintenance
27
28

1 costs necessary to its regulatory obligations, without any contribution toward the SPBL, contrary
2 to the agreements between the parties and has lost substantial income as a result of Defendants
3 conduct.

4 30. On or about May 14, 2013, Plaintiff received a letter from Defendants terminating
5 the Direct Lease for use of the line, *without any cause* stated for its termination, even though the
6 Direct Lease required cause for termination (See Paragraph #15 (b) of the Agreement). (See
7 attached Exhibit #15, attached hereto and incorporated herein by reference as though fully set
8 forth).
9

10 31. Plaintiff was also notified of a claim of termination of the Sub-Lease by the City
11 of Fillmore, rather than the City of Fillmore Redevelopment Agency to terminate the Sub-Lease
12 FWRV had with the FRDA.

13 32. Before entering into the agreements and for years thereafter, Plaintiff relied upon
14 all of the Agreements and made acquisitions and substantial investments into property based
15 upon the reasonable belief he had the right to operate on the entire rail line until 2021.
16

17 33. VCTC and KETTLE has conducted, or allowed to be conducted, a campaign
18 against FWRV to interfere with its prospective economic advantage, as well as its contractual
19 relationships and have made false statements with the intent to force its closing, causing
20 irreparable harm to the reputation of Plaintiff.

21 34. Defendant VCTC and KETTLE have interfered with the prospective economic
22 advantage of FWRV in many respects. The false public comments made by Defendant,
23 DARREN KETTLE, caused damage to Plaintiff's business reputation in the community and has
24 greatly damaged Plaintiff's, in an amount to be determined, as well as the various reasons given
25 for actions taken by VCTC against FWRV which have been based upon a skein of half-truths
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28

1 and misinformation, knowingly perpetrated, by concealing or failing to disclose documents and
2 agreements.

3 35. In 2010 Beserra and California Watercress sued the City of Fillmore, Griffin
4 Industries, VCTC and the FWRV over the construction of a levee system to protect a river
5 bottom housing development. FWRV's only participation was to remove the track structure to
6 facilitate the construction and replacing the track structure. FWRV was dismissed out of the
7 action on two occasions but the VCTC and the City of Fillmore brought FWRV back in based on
8 a spurious allegation that FWRV failed to provide required maintenance.
9

10 36. Further, the blatantly untrue statement made by KETTLE that FWRV received a
11 "gift of public funds for overpayment of maintenance" that was conducted during the prior five
12 years. This was maintenance performed in accordance with the maintenance contract in place
13 and approved by the full Commission. The VCTC's minions never disclosed there were jointly
14 negotiated and executed contracts that specified the payments. VCTC and KETTLE further
15 failed to disclose they receive monies from other sources that are specifically provided to VCTC
16 for "maintenance of the SPBL". This active concealment misled many people and intentionally
17 defamed FWRV's reputation.
18

19 37. Experience leads one to conclude that the Commission knows it has made a
20 specious claim of over-payment that can never be proved. If there was evidence of over-payment
21 it would have been long ago presented. In keeping with the Commissions personnel's habit of
22 making untrue and unsupported claims, one can only conclude that the entire "gift of public
23 funds" was Commission Fable of truly contumacious proportions.
24

25 38. Additionally, the hauling of freight can be a significant source of income to both
26 FWRV and VCTC. In 2011 and again in summer of 2012 Mr. Wilkinson traveled to Omaha,
27 Nebraska and met with the Union Pacific to negotiate the transfer and interchange agreements.
28

1 Union Pacific was agreeable and said it needed a letter from the VCTC to request transfer of
2 freight service to FWRV. This was not a new discussion as evidenced by the 2002 STB filing by
3 VCTC and FWRV.

4 39. FWRV had been contacted by a substantial commercial entity contemplating the
5 purchase of a major property, so long as freight service was available. There were subsequent
6 inquiries from other companies and a specific request for FWRV to deliver steel and lumber. At
7 the point where FWRV was on the verge of the agreement, and for reasons never disclosed, the
8 Commission and its Executive Director embargoed FWRV's ability to move freight over the
9 SPBL which was intentionally done and a complete surprise. It has been further discovered that
10 KETTLE has actually made agreements with these same businesses for freight and/or movie
11 production on the line, excluding FWRV from said agreements for such services, even though
12 FWRV holds those rights.

14 40. The Commission's perfidious declaration of "embargo" vitiated all of the progress
15 toward an active freight line, and cost FWRV between \$150,000.00 and \$250,000 a year and
16 VCTC a considerable amount of maintenance income, plus a substantial number of local jobs
17 lost.

19 41. The Commission never contacted FWRV with any complaint or voiced any issues
20 until after KETTLE terminated the contract with FWRV and FRDA. One can only conclude that
21 the surprise assault on FWRV (and using the FRDA agreement to do so) was planned and
22 perpetrated to cause significant injury to FWRV.

24 42. In 2011 FWRV was involved with the Santa Paula Bike Path. The project would
25 be built on FWRV's right-of-way in cooperation with Santa Paula and VCTC, which arranged
26 the funding needed. The project included both construction of the bike path and bringing the
27 railroad crossings and signals into a state of compliance with bike path itself.

1 43. It was well known by the City of Santa Paula and the Commission staff that some
2 crossings were worn out and in desperate need of replacement, the replacement of which would,
3 unquestionably be items of capital improvement. The various contracts between the parties
4 specified that capital improvement was the responsibility of the Commission. FWRY was not
5 liable for making capital improvements.

6 44. The KETTLE maintained its blatant tradition of mendacity by announcing that
7 FWRY was in breach of its contract for not replacing those crossings. The contracts between the
8 parties did not contain such a provision. Unimpeded by truth and honesty, the KETTLE never
9 disclosed that the contracts contained no such obligation, spread the untruth broadly,
10 demonstrating an unending mindlessness of the possible impact of such unsupported claim.

11 45. In 2012 the Commission personnel, likely having finally reviewed the contracts
12 and discovered that FWRY had no obligation to make the repairs, decided to **modify** their
13 wishful thinking about FWRY's liability, by claiming FWRY had failed to make required capital
14 improvements. This new approach ignored that the contracts contained well-negotiated
15 definitions of capital improvement under which the parties had operated for the previous 16
16 years without a definitional issue.

17 46. In 2013, unsatisfied with the effect of their prior fables, the Commission came up
18 with yet another curious statement when its Executive Director falsely claimed that the FWRY
19 had been suckling at the public teat to the extent of approximately \$600,000.00 dollars a year
20 spent on the FWRY, a for-profit company. The VCTC never spent more than \$300,000 a year in
21 it maintenance contract with FWRY, which was specifically for maintenance of a line that
22 FWRY has use of, but also Union Pacific and which VCTC claims ownership.
23
24
25

26 47. In every respect this claim was false and presented in a misleading way. The
27
28

1 48. Commission personnel concealed that the parties had been properly running in
2 accord with their contracts—the existence of which was never mentioned by the Commission
3 and its personnel—and claimed damages over things that were the Commission’s sole
4 responsibility. Written and spoken requests to discuss the issue with the Executive Director were
5 mostly ignored.

6 49. The Commission’s continuous behavior, and the impact it has on the entire
7 Heritage Valley, has culminated in an “achievement” by the Commission: the leaked
8 misinformation in the press has caused the company that runs the Thomas-the-Tank event—a
9 treasured, beloved Heritage Valley tradition—to cancel the event because of the insecurity
10 engendered by the constant misinformation spread by media at the request of the Commission
11 and its minions. Additionally, Defendants VCTC and KETTLE have leased the property to a
12 movie company and allowed access on the right-of-way, ignoring that FWRV has dispatch rights
13 and responsibilities on the line. All at once, in a blast of damages, the Commission has created
14 the following coruscating losses:
15

16 A. FWRV has lost between 12,000 and 15,000 fares in the Thomas event;

17 B. FWRV has lost significant income as a result of the false allegations of lack
18 of maintenance made by VCTC and KETTLE as the basis for termination of the
19 agreement and making those false allegations public.
20

21 C. The reputation of FWRV has been substantially damaged as a result of the
22 false allegations made of FWRV receiving a “gift of public funds” or is being subsidized
23 by VCTC.
24

25 D. The Heritage Valley has lost between 25,000 and 30,000 cash-carrying and
26 paying consumers coming to the Heritage Valley for the Thomas event alone.
27

1 E. The cancellation of the annual Fillmore Rail Festival, which draws thousands
2 of participants.

3 F. Cancellation of the Easter Train; Pumpkinliner, as well as other significant
4 events held annually in Fillmore and/or Santa Paula areas.

5 50. The Commission's inability or unwillingness to rein-in its personnel and the
6 manner in which the Commission has conducted its business have created direct, provable
7 damages in an amount in excess of \$17,000,000.00 *plus* damages to punish the behavior in a
8 significant and painful amount.

9
10 51. Plaintiff contends Defendant VCTC is no longer willing to honor the Agreement
11 executed in 2001. Based on the false allegations referred to herein, Defendant, VCTC has filed
12 an unlawful detainer, Case No. 56-2014-00449769-CL-UD-VTA Ventura County Transportation
13 Commission v. Fillmore & Western Railway, Inc. to terminate Plaintiff's right to operate on the
14 line before the expiration of the term of the agreements between all the parties and seeks to
15 terminate Plaintiff's business in doing so, not just terminate the Agreement.

16
17 52. Additionally, controversies have arisen between Defendants and Plaintiff
18 requiring the court to determine the rights and responsibilities of the parties to the Agreement.

19 A. There is a dispute as to the definition of a capital improvement and/or
20 repair versus the definition of maintenance under the Agreement. Defendant VCTC
21 claims Plaintiff is the responsible party for making improvements or repairs to grade
22 crossings or repair faulty signal equipment, beyond maintenance. Defendant VCTC is
23 just no longer willing live up to its obligations under the contract and pay for capital
24 improvements and/or repairs even though that was their habit and custom since the
25 inception of the Agreement and is required of them under their Agreement. FWRV"
26 contends it is the responsibility of Defendants to provide Track and Track Support
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1 Structures that are determined to need *extensive replacement, beyond maintenance*, as
2 defined in Section 1 of the Agreement, as VCTC has done throughout the years under the
3 Agreement.

4 B. A determination as to how the annual maintenance allowance is calculated
5 according to the Agreement.

6 53. Plaintiff has performed all things to be performed by them under the terms of the
7 Agreement and/or were excused from such performance by the prior breaches of Defendants.
8

9 54. Defendants breached the agreement and duties to Plaintiff by virtue of, among
10 other things, the following:

11 A. Failure to make numerous necessary capital improvements and repairs
12 Defendants since the inception of the contract;

13 B. Failure to pay the monthly maintenance allowance payments to Plaintiff

14 C. Failure to give the required notice under the agreement that an alleged lack
15 of maintenance or other default in the agreement occurred. This required a 30 day cure
16 period. No such notices were received by FWRVY.
17

18 D. Terminated the Agreement with FRWY without cause, causing irreparable
19 harm to Plaintiff by also terminating his business as a result of the premature and/or
20 unwarranted termination of the Agreement;

21 55. As a consequence of the foregoing wrongful conduct of Defendants, Plaintiff is
22 informed and believes and thereon alleges they have suffered damage in an amount to be
23 determined at trial, for, among other things, economic loss and prejudgment interest resulting
24 from the breach.
25

26 56. In addition to the foregoing damages, Plaintiffs are entitled to recovery of their
27 attorney fees incurred in this action pursuant to the Agreement between the parties.
28

1 **FIRST CAUSE OF ACTION**

2 **Breach of Contract**

3 **As to VCTC**

4 57. Plaintiff re-alleges and incorporates by reference each and every allegation set
5 forth above in paragraphs 1 through 56, inclusive.

6 58. As indicated herein above, on June 25, 2001 Plaintiff and Defendant VCTC
7 entered into an agreement along with another agreement dated July 1, 2001 between Defendant
8 VCTC and "FRDA". The agreement between Plaintiff and Defendant VCTC was a direct
9 written lease for the use of the Santa Paula Branch Line between milepost 405.31 and 435.07
10 (hereinafter referred to as the "Direct Lease") and is the Agreement presently in effect between
11 Plaintiff and Defendants, subject to two amendments. The effective date of this Agreement was
12 July 1, 2001. The term for this Agreement is twenty (20) years, expiring June 30, 2021, which is
13 only terminable "with cause" upon a six (6) months written notice of termination. (Paragraph
14 #15(b)). (See Exhibit #7 attached hereto and incorporated herein by reference as though fully set
15 forth). When these contracts were renewed in 2001 the rates being paid to the FWRY were
16 updated to reflect changes in the costs of doing business. These new rates resulted from
17 negotiation between the parties, were fully documented, and signed by each of the parties.
18

19 59. The other agreement was executed on or about June 6, 2001, between Defendant
20 VCTC and "FRDA" also amending their written lease agreement (hereinafter referred to as
21 "Fillmore Lease") for use of the railroad line owned by Defendants from milepost 414.45 to
22 milepost 435.07. The effective date of this agreement is also July 1, 2001. The term for this
23 "Agreement is twenty (20) years, expiring June 30, 2021, which is terminable "without cause"
24 upon six (6) months written notice of termination. (A copy is attached as Exhibit #8 attached
25 hereto and incorporated herein by reference as though fully set forth).
26
27
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1 60. On July 1, 2001, Plaintiff and “FRDA” amended their prior written lease
2 agreement and this new agreement became effective July 1, 2001 (hereinafter referred to as
3 “Sub-Lease”) for use of the Fillmore Segment of the line from milepost 414.45 to milepost
4 435.07. The term for this Agreement is also twenty (20) years, expiring June 30, 2021, which is
5 terminable “without cause” upon six (6) months written notice of termination. (See Exhibit #9
6 attached hereto and incorporated herein by reference as though fully set forth). This agreement
7 replaced the prior 1996 agreement which began operations on the “SPBL” for “FWRY” with
8 “FRDA”. The direct lease between Defendants and Plaintiff provides for use of the same
9 portions of the line as the Sub-Lease with “FRDA” for specific uses.

11 61. Plaintiff entered into agreements with “FRDA” for lease of other property
12 adjacent to the branch line for use and operation of the railroad. (See Exhibit #10 attached hereto
13 and incorporated herein by reference as though fully set forth).

14 62. Plaintiff FWR Y contends the agreements were based on the expectations of the
15 parties that the contracts acted as a whole, and was a “Memorandum of Understanding” with the
16 further expectation both contracts would be performed to their full term, the year 2021 by all
17 parties. Defendant FWR Y relied upon those expectations when FWR Y entered into the
18 agreements with VCTC and FRDA. Further, the direct lease also provided for use of the SPBL
19 by FWR Y, for Public/Tourist Train Excursion purposes. It was always the understanding
20 between the parties that FWR Y operated their Public/Tourist Train Excursions on the “Fillmore
21 Segment” of the SPBL since the inception of the agreements. Defendant FWR Y contends any
22 restriction of use contained in the direct lease was only due to the lease that existed with FRDA
23 and its predecessor in interest SOUTHERN PACIFIC at the time of acquisition by VCTC. Once
24 that lease was terminated by VCTC Defendant FWR Y would have sole use of the entire line,
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1 which should be without restriction as there are no reservations contained in the agreements
2 regarding that issue.

3 63. Based on these agreements and others, Defendant VCTC agreed to a term of
4 twenty (20) years for the use of the "SPBL" by Plaintiff, which is not due to expire until June 30,
5 2021; agreed to the responsibility of making improvements and/or repairs to the Track and Track
6 Support Structures determined to need extensive replacement, beyond maintenance as defined in
7 Section 1; and agreed to pay an annual maintenance allowance of \$312,000.00.

8
9 64. Defendant VCTC *has breached* the terms of the agreements hereinabove set forth
10 and among other things, as follows:

11 A) terminating the Agreement without cause on May 14, 2013;

12 B) failing and/or refusing to pay for Track and Track Support Structures
13 determined to need extensive replacement, beyond maintenance as defined in Section 1
14 and claiming it is a maintenance issue; and

15 C) failing and/or refusing to pay the annual maintenance allowance to Plaintiff as
16 agreed.

17
18 D) interfering with FWRV's right to provide freight services on the line by
19 embargoing the line; contracting with businesses that would have and had sought such
20 services from FWRV, and offering use of the line to movie companies using for
21 production, without consent of FWRV.

22 E) by making false statements against FWRV, ruining their reputation in the
23 community and affecting causing contracts to be cancelled as a result of their false
24 statements;
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1 F) Failing and/or refusing to make numerous necessary capital improvements and
2 repairs pursuant to the contract, in order for the line to operate to "FRA" regulations,
3 contrary to the habit and practice of Defendant VCTC since inception of the contract;

4 G) Failing and/or refusing to provide any notice of a default in order for FWRV
5 to cure any alleged lack of performance.

6 65. Plaintiff has performed all things to be performed by them under the terms of the
7 Agreement and/or was excused from such performance by the prior breaches of Defendants.
8

9 66. As a proximate result of the foregoing, Plaintiffs have suffered damage in an
10 amount to be determined at trial, for, among other things, economic loss and prejudgment
11 interest resulting from the breach.

12 67. In commencing and prosecuting this action, Plaintiffs have incurred and will
13 continue to incur attorneys' fees which, but for the wrongful conduct of Defendants, would not
14 have been suffered. Under the terms of the Agreement, Plaintiffs are entitled to recovery of their
15 attorney fees and costs, according to proof at time of trial that have been incurred in this action.
16

17 **SECOND CAUSE OF ACTION**

18 **Breach Of Covenant Of Good Faith And Fair Dealing**

19 **As to Defendant VCTC**

20 68. Plaintiff re-alleges and incorporates by reference each and every allegation set
21 forth above in paragraphs 1 through 67, inclusive.

22 69. As indicated herein above, on June 25, 2001 Plaintiff and Defendant VCTC
23 entered into an agreement along with another agreement dated July 1, 2001 between Defendant
24 VCTC and "FRDA", which, among other things, Defendants agreed to a term of twenty (20)
25 years for the use of the "SPBL" by Plaintiff, which is not due to expire until June 30, 2021;
26 agreed to the responsibility of making improvements and/or repairs to the Track and Track
27
28

1 Support Structures determined to need extensive replacement, beyond maintenance as defined in
2 Section 1; and agreed to pay an annual maintenance allowance of \$312,000.00.

3 70. Defendant VCTC *has breached* the terms of the Agreement and the covenants of
4 good faith and fair dealing incorporated therein by law, and have further wrongfully interfered
5 with Plaintiffs' right to enjoyment of the benefits intended to be conferred under the Agreement
6 by, among other things:

7 A) terminating the Agreement without cause on May 14, 2013;

8 B) failing and/or refusing to pay for Track and Track Support Structures
9 determined to need extensive replacement, beyond maintenance as defined in Section 1
10 and claiming it is a maintenance issue; and
11

12 C) failing and/or refusing to pay the annual maintenance allowance to Plaintiff as
13 agreed.

14 D) interfering with FWRV's right to provide freight services on the line by
15 embargoing the line; contracting with businesses that would have and had sought such
16 services from FWRV, and offering use of the line to movie companies using for
17 production, without consent of FWRV.
18

19 E) by making false statements against FWRV, ruining their reputation in the
20 community and affecting causing contracts to be cancelled as a result of their false
21 statements;

22 F) Failing and/or refusing to make numerous necessary capital improvements and
23 repairs pursuant to the contract, in order for the line to operate to "FRA" regulations,
24 contrary to the habit and practice of Defendant VCTC since the inception of the contract;
25

26 71. Plaintiffs has performed all things to be performed by them under the Agreement
27 and/or were excused from such performance by the prior breaches of Defendants.
28

1 81. Defendant, KETTLE and VCTC made one more statements to the general public
2 other than plaintiff regarding FWRY receiving a “gift of public funds” as well as an allegation
3 FWRY was being subsidized by VCTC when in fact it was the contractual obligation of VCTC.
4 Further, Defendants have falsely alleged FWRY have failed to provide maintenance of the
5 SPBL.

6 82. Defendants reasonably understood that the statements were about FWRY and
7 that the general public and others who had entered into contracts with FWRY reasonably
8 understood the statements to mean that FWRY had no right to operate on the SPBL and that
9 cancellation of the contract by VCTC with FWRY was on the basis of receiving an
10 overpayment that was not repaid by FWRY, which is false, and further that FWRY was not
11 maintaining the SPBL or performing under the agreements.
12

13 83. Defendants knew these statements were false when made; and

14 84. Defendants failed to use reasonable care to determine the truth or falsity of the
15 statements.
16

17 85. Defendants and each of them, because of their wrongful conduct, have caused
18 actual damage to Plaintiff and was a substantial factor in causing the following harm to
19 Plaintiff:

- 20 A. Harm to FWRY’s property, business, trade, profession, or occupation;
- 21 B. Expenses FWRY had to pay as a result of the defamatory statements;
- 22 C. Harm to FWRY’s reputation; and
- 23 D. Shame, mortification, or hurt feelings.

24 86. Defendants' actions were undertaken with fraud, malice or oppression, or with a
25 conscious disregard of the rights of plaintiff, and, therefore, plaintiff is entitled to an award of
26 exemplary and punitive damages against defendants, and each of them, in an amount according
27

1 to proof. Plaintiffs and each of them should recover damages to punish the behavior of
2 Defendants in a significant and painful amount because they either knew the statements were
3 false or had serious doubts about the truth of the statements, and that they acted with malice,
4 oppression, or fraud.

5 **FIFTH CAUSE OF ACTION**

6 **Interference with Prospective Economic Advantage**

7 **As to all Defendants**

8
9 87. Plaintiff re-alleges and incorporates by reference each and every allegation set
10 forth above in paragraphs 1 through 86, inclusive.

11 88. Defendants were aware that FWRY and Hit Entertainment, as well as the
12 general public, were in an economic relationship that was resulting or going to result in an
13 economic benefit to FWRY.

14 89. Further, Defendants were aware FWRY had freight rights on the SBPL as
15 hereinabove described and Defendants intentionally and maliciously interfered with those
16 rights by placing an embargo on the SPBL preventing FWRY from providing such services
17 only to then contract directly with the company that had been negotiating with FWRY for
18 freight services.
19

20 90. Defendants, and each of them, knew of the relationships, as the Thomas event
21 had been held annually over the years and widely publicized and the Spears Plastics plant
22 being opened in Santa Paula was also widely known.

23 91. Defendants, and each of them intended to disrupt the relationship by
24 prematurely cancelling the Direct Lease without cause; making false statements regarding
25 FWRY and/or VCTC's obligations under the agreements and interjecting themselves into
26 freight and/or services, when they are not the operator on the line.
27

1 replacement, beyond maintenance, as defined in Section 1 of the Agreement, as VCTC
2 has done throughout the years under the Agreement.

3 B. A determination as to how the annual maintenance allowance is calculated
4 according to the Agreement.

5 102. Plaintiff hereby requests the Court interpret the appropriate provisions of the
6 Agreement and determine and the rights and obligations of the parties pursuant to the
7 Agreement.
8

9 **EIGHTH CAUSE OF ACTION**

10 **Injunctive Relief**

11 **As to VCTC**

12 103. Plaintiff re-alleges and incorporates by reference each and every allegation set
13 forth above in paragraphs 1 through 102, inclusive.

14 104. Plaintiff and Defendants entered into a written contract on June 25, 2001, under
15 the terms of which, among other things, Defendants agreed to a term of twenty (20) years for the
16 use of the "SPBL" by Plaintiff, which is not due to expire until June 30, 2021. (See Exhibit #7,
17 attached hereto and incorporated herein by reference as though fully set forth).

18 105. On or about May 14, 2013, Plaintiff received a letter from Defendants terminating
19 the Agreement for use of the line, without stating any cause for termination, even though the
20 Agreement required cause for termination (See Paragraph #15 (b) of the Agreement). (See
21 attached Exhibit #15, attached hereto and incorporated herein by reference as though fully set
22 forth).
23

24 106. Defendant VCTC is not executing a public statute nor exercising a public office in
25 a lawful manner. Defendant VCTC has breached their agreement with Plaintiff as indicated
26 herein.
27

1 107. Plaintiff's remedies at law are inadequate because cancellation of either of the
2 Agreements terminates Plaintiff's business entirely. Such action irreparably harms Plaintiff
3 because Plaintiff has no ability to move his railroad to another location to continue operations.
4 Plaintiff relied upon the Agreements when they were made that they would be in force through
5 its term. There is no cause for termination of the Agreement by Defendants.

6 108. Plaintiff requests Defendants be restrained from terminating the Direct Lease or
7 the Sub-Lease as hereinabove described and require VCTC to perform under the contract, until
8 the term of the its term which expires in June, 2021.

9
10 **PRAYER**

11 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

- 12 A. For general damages according to proof;
13 B. For special damages according to proof;
14 C. For punitive damages as authorized by law;
15 D. For specific performance of the Agreement by Defendant VCTC with an order
16 allowing FWRY to operate on the entire SBPL until the end of the term of the contract, June 30,
17 2021, as agreed.

18 E. To determine and declare the rights and obligations of the parties by
19 interpreting the Agreement regarding:

20 i. The interpretation and definition of capital improvement and/or
21 repair versus what is maintenance and/or beyond maintenance under the Agreement. \

22 ii. A determination as to how the annual maintenance allowance is to
23 be calculated according to the Agreement

24 F. For an order restraining Defendants from terminating the agreements
25 Defendants entered into with Plaintiff and the FRDA which provides for use of the railroad line

1 from East of Montalvo to end of track past Piru and to allow FWRV to operate until the end of
2 the term of the contract, June 30, 2021, as agreed.

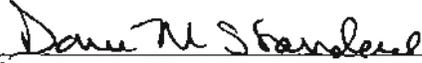
3 G. For costs of suit herein, including, but not limited to attorney fees, as
4 authorized by law or statute;

5 H. For interest to the extent allowable by law;

6 I. For such further relief as the Court may deem proper.
7

8
9 Respectfully submitted,

10 DATED: March 17, 2014


11 _____
12 DONNA M. STANDARD, ESQ.
13 Attorney for Plaintiff, Fillmore and Western Railroad, Inc.
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