

Before the  
**SURFACE TRANSPORTATION BOARD**

Docket No. FD 36005

ENTERED  
Office of Proceedings  
May 25, 2016  
Part of  
Public Record

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC  
- FEEDER LINE APPLICATION -  
IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, CO**

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**MOTION OF V AND S RAILWAY, LLC  
FOR ISSUANCE OF THIRD-PARTY SUBPOENAS**

*(Expedited Consideration Requested)*

Pursuant to 49 USC § 721(c) and (d) and 49 CFR § 1117.1, V and S Railway, LLC (“V&S”) requests that the Board issue subpoenas to the third parties identified below and in the proposed subpoenas attached hereto as Exhibits A – E. In support of its request, V&S states as follows:

**BACKGROUND**

This proceeding was commenced on March 18, 2016, when KCVN, LLC and Colorado Pacific Railroad, LLC (“Applicants”) filed a Feeder Line Application to acquire the “Towner Line” between NA Junction and Towner, Colorado, that is owned by V and S Railway, LLC (“V&S”). In a decision served on April 15, 2016 (the “April 15 Decision”), the Director of the Office of Proceedings made a preliminary finding that the Application was “substantially complete” and established a procedural schedule.

Although the April 15 Decision found that the Applicants had provided substantially all of the information required by 40 CFR 1151.3, it also found that “The applicants should provide some additional information, described below, for the Board’s consideration as the feeder line case proceeds.” April 15 Decision, at 3. The Applicants were given until April 29, 2016 to

provide additional information regarding their financial responsibility, the proposed operating plan, and the limits of the proposed operator's liability insurance. The Applicants filed a Supplement to Feeder Line Application (the "Supplement") on April 29, 2016, but all of the requested additional information was marked as "Confidential" and unavailable to any parties given that there was no protective order in effect. Thereafter, on May 4, 2016, the Applicants filed a motion for a protective order. The Director of the Office of Proceedings granted the motion for a protective order on May 16, 2016. V&S promptly submitted executed Undertakings,<sup>1</sup> and were promptly provided the Confidential version of the Supplement at approximately 5:30 PM on May 16, 2016.

The procedural schedule currently requires that verified statements and comments be filed by June 14, 2016. V&S has filed a motion to extend the dates for filing comments; however, the Board has not yet ruled on the extension request.

The Application, and the relief requested therein, is based in large measure on the Applicants' claim that there is a need for service to grain shippers located along the and near the Towner Line, and that V&S failed or refused or was unwilling to provide service to those shippers. The Application was supported by inter alia, Verified Statements of Joe Griffith, Dusty Tallman, Linly Stum and Shelby Britten. Moreover, the Application suggests that service will actually be provided by Kansas & Oklahoma Railroad ("K&O"), and a Verified Statement of Doug Story, Vice President of Agricultural Marketing of Watco Transportation Services, LLC, the parent of K&O, was submitted in support of the Application and the claims that there would be sufficient traffic to support rail service over the Towner Line. The Supplement contained

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<sup>1</sup> Counsel for the Applicants was also advised at that time that V&S would be filing a motion for an extension of time to file comments. This morning, counsel for the Applicants advised counsel for V&S that the Applicants would be opposing the extension request.

information on the proposed K&O operating plan, and alleged costs of maintenance and operation for the first three years of operation that the Applicants say was provided by K&O (although no additional Verified Statement on behalf of K&O was provided).

As the information provided by the third parties identified above are essential elements of the Application and Supplement, V&S wishes to take discovery from the third parties. Because of the time constraints of the current procedural deadlines, V&S is limiting the discovery to subpoenas for the production of documents; if the deadline for comments is extended, V&S may seek subpoenas to take the depositions of the sponsors of the Verified Statements.

### **ARGUMENT**

Parties may take discovery from third parties, but only by subpoena issued by the Board.<sup>2</sup> Under 49 USC § 721(c) and (d), the Board has the authority to issue subpoenas for the production of documents from any place, and may order a witness to produce records.

V&S requests that the Board issue the subpoenas on the following persons, in the forms attached hereto as Exhibits A-E:

Ex. A Doug Story

Ex. B Joe Griffith

Ex. C Dusty Tallman

Ex. D Linly Stum

Ex. E Shelby Britten

Each of the potential witnesses named provided a Verified Statement in support of the Application. Mr. Story provided testimony in the Application regarding a possible

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<sup>2</sup> By contrast, a party does not need Board authority to take discovery from another party. 49 CFR § 1114.21(b). On May 20, 2016, V&S served interrogatories and requests for production of documents on the Applicants with a return date of June 6, 2016.

lease/operating agreement and service, and information reflected in the Supplement regarding the proposed operating plan and the anticipated costs of maintenance and operations. The other witnesses provided testimony as either a past shipper and/or a potential shipper on the Towner Line that would allegedly ship over the Towner Line if the Application were granted. At this time, V&S seeks only documents from each of the witnesses related to his testimony in order to better understand the bases for Applicants' claims regarding the need for service by a new carrier, as well as the service Applicants propose to provide. By limiting the request to these documents, V&S has sought to minimize the burden on the witnesses.<sup>3</sup>

As the Board has held:

In Board proceedings, parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. 49 C.F.R. § 1114.21(a)(1). Further, it is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2). The requirement of relevance means that the information might be able to affect the outcome of a proceeding. Waterloo Ry.—Adverse Aband.—Lines of Bangor and Aroostook R.R. and Van Buren Bridge Co. In Aroostook Cnty., Me., AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2003).

Ballard Terminal Railroad Company, LLC – Acquisition and Operation Exemption – Woodinville Subdivision. STB Docket No. FD 35731 (served May 17, 2013), slip op. at 2-3 (footnote omitted). In Ballard Terminal, the Board went on to confirm that nonparties are subject to discovery and to Board subpoena's, and to confirm the test that the Board applies in determining whether to issue a subpoena to a nonparty:

In [Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions (Coal Dust), FD 35557 (STB served June 25, 2012)], the

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<sup>3</sup> If the Board grants V&S's request for extension of the time to file comments, V&S may seek to take the oral deposition of some or all of the witnesses depending on the documents that are produced.

Board affirmed the Director's application of a test in which "[a]ll discovery requests entail the balancing of the relevance of the information sought against the burden of producing that information." Coal Dust at 4. The balance between the relevance of the information sought and the burden of producing it hinges on the nonparty's relationship to the proceeding; if the nonparty is a stranger to the litigation (i.e., has no clear interest in the proceeding and will not be directly affected by its outcome) and responding to a subpoena to compel would be expensive, oppressive or burdensome, then a strong foundation regarding the relevance of the information sought is required. Id. (citing Asphalt Supply & Serv., Inc. v. Union Pac. R.R., NOR 40121 (ICC served Mar. 27, 1987)). If, on the other hand, a party seeks a subpoena compelling a nonparty that has a clear interest in the proceeding and will be directly affected by its outcome, then a very strong foundation as to relevance is not a prerequisite to the issuance of the subpoena. Id.

Ballard Terminal, slip op. at 3 (footnote omitted).

Thus, in this instance not only do the witnesses have a clear direct interest in the outcome of this proceeding as evidenced by the Verified Statements they submitted (see Ballard Terminal, slip op. at 3), meaning that a strong foundation as to relevance is not required, but the information sought (as set forth in the forms of subpoena) is clearly relevant to the Applicants' claims for relief, and the production will not be burdensome. Accordingly, the Board should issue the subpoenas.

#### **EXPEDITED CONSIDERATION**

Because of the short time available before the due date for comments to the Application<sup>4</sup>, V&S requests that the Board consider this motion on an expedited basis, requiring any responses or objections of either the Applicants or any third party be filed by June 1, 2016, and that the Board schedule a telephonic hearing for June 2, 2016, to resolve any objections raised. As noted in the forms of subpoena attached hereto, V&S requests that the Board require that documents be

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<sup>4</sup> If the Board grants V&S's request for extension of the time to file comments, then additional time would be available for responses to this Motion, and the consideration of any objections.

produced by June 9, 2016.<sup>5</sup> To facilitate the expedited consideration, V&S is serving a copy of this Motion by email on counsel for the Applicants, and by FedEx (and email where V&S has been able to identify email addresses) on each of the potential third party witnesses.

### CONCLUSION

For the reasons set forth above, V&S requests that the Board expeditiously consider this Motion according to the schedule set forth above, and issue the subpoenas attached as Exhibits A- E.

Respectfully submitted,



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ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V&S Railway, LLC

Dated: May 25, 2016

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<sup>5</sup> Again, if the Board extends the date for the filing of comments, then the date for production could likewise be extended.

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2016, I served a copy of the foregoing document by email on the following:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Doug Story  
Vice President of Agricultural Marketing  
Watco Transportation Services, LLC  
315 W. 35rd Street  
Pittsburg, KS 66762  
[dstory@watcocompanies.com](mailto:dstory@watcocompanies.com)

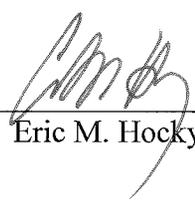
Joe Griffith  
General Director of Transportation  
Bartlett Grain Co., LP  
4900 Main Street, suite 1200  
Kansas City, MO 64112

Dusty Tallman  
Tallman Farms  
1751 County Road 40  
Brandon, CO 81036  
[dustyfarms@yahoo.com](mailto:dustyfarms@yahoo.com)

Linly Stum  
Thunderbird L&L, Inc.  
76475 County Road J  
Towner, CO 81071

Shelby Britten  
44495 County Rd. J  
Haswell, CO 81045  
[shelbybritten@hotmail.com](mailto:shelbybritten@hotmail.com)

By: \_\_\_\_\_

  
Eric M. Hocky

# EXHIBIT A

**BEFORE THE SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36005

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC – LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, COLORADO** : **SUBPOENA TO PRODUCE DOCUMENTS IN A PROCEEDING BEFORE THE SURFACE TRANSPORTATION BOARD**  
: **DATE TO PRODUCE DOCUMENTS:**  
: **June 9, 2016, 2:00 PM EDT**  
:

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To: Doug Story  
Vice President of Agricultural Marketing  
Watco Transportation Services, LLC  
315 W. 35rd Street  
Pittsburg, KS 66762  
[dstory@watcocompanies.com](mailto:dstory@watcocompanies.com)

Pursuant to 49 U.S.C. §§ 721(c) and (d), 49 C.F.R. § 1121.2, 49 C.F.R. part 1114, subpart B, and the decision of the Surface Transportation Board (“STB”) served [ ], YOU ARE HEREBY COMMANDED, at the request of Vand S Railway, LLC (“V&S”), to produce the documents described in Attachment A by **2:00 PM EDT on JUNE 9, 2016**, to the offices of the attorneys for V&S, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, or electronically to [ehocky@clarkhill.com](mailto:ehocky@clarkhill.com), or at such other time and place as the attorneys for V&S and you may agree.

DATED:

CLARK HILL, PLC

---

Eric M. Hocky  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)  
Attorneys for V and S Railway, LLC

## ATTACHMENT A

1. All communications between you and other employees or officers of K&O and representatives of KCVN or CPRR about the future provision of rail service via the Towner Line, including without limitation, documents relating, referring or concerning the terms and conditions for any lease or operating agreement under which K&O would operate the Towner Line, including any subsidies to be provided by, or rehabilitation or maintenance costs to be paid by, KCVN or CPRR.
2. All communications and correspondence between you or other employees or officers of K&O and grain shippers about the future provision of rail service via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
3. All communications and correspondence between you or other employees or officers of K&O and shippers of other commodities about the future provision of rail service via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
4. All documents that support the statement in your Verified Statement in support of the Application that you believe “the Towner Line could eventually be restored to its historic status as part of a route running from points in Kansas to Pueblo, Colorado ...”
5. All communications and correspondence between you or other employees or officers of K&O and Union Pacific Railroad or BNSF Railway regarding the restoration of service to and from points west of NA Junction.
6. Any and all work papers and supporting documentation, in electronic format where available, that support or relate to the rehabilitation plan for the Towner Line referenced in your Verified Statement in support of the Application.
7. Any and all work papers and supporting documentation, in electronic format where available, that support or relate to the amount of “as needed” service that K&O indicates it would provide as described in your Verified Statement in support of the Application.
8. Any and all work papers and supporting documentation, in electronic format where available, that support or relate to the estimates of maintenance of way and operating costs for the first three years of operations that KCVN and CPRR say that you provided for inclusion in the Supplement to Application.
9. Any and all documents comprising K&O’s operating plan for the Towner Line as referenced in the Supplement to Application, and any and all work papers and supporting documentation, in electronic format where available, that support or relate to the operating plan, including support for K&O’s carload projections, the estimate of the number of trains and average cars per train of grain, and the estimate of carloads of the other commodities listed in the Supplement to be handled after the first year.

For the purposes of these requests, the following terms are defined as follows:

“This Proceeding” means STB Finance Docket No. 36005, KCVN, LLC and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of V and S Railway, LLC, Located in Crowley, Pueblo, Otero and Kiowa Counties, Colorado.

“Application” means the Feeder Line Application submitted in this proceeding, including the Supplement to Feeder Line Application.

“KCVN” means KCVN, LLC, an applicant in this proceeding.

“CPRR” means Colorado Pacific Railroad, LLC, an applicant in this proceeding.

“Towner Line” means the railroad line, and associated tracks and facilities, between milepost 747.5 near Towner, Colorado, and milepost 869.4 near NS Junction, Colorado.

“K&O” means Kansas & Oklahoma Railroad.

“V&S” means V and S Railway, LLC.

“Communications and correspondence” means any transmission of information including email, letters, faxes; any attachments thereto; and any notes from oral conversations.

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_ day of \_\_\_\_, 2016, I served a copy of the foregoing

Subpoena by email on the following:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Doug Story  
Vice President of Agricultural Marketing  
Watco Transportation Services, LLC  
315 W. 35rd Street  
Pittsburg, KS 66762  
[dstory@watcocompanies.com](mailto:dstory@watcocompanies.com)

By: \_\_\_\_\_  
Eric M. Hocky

## **EXHIBIT B**

**BEFORE THE SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36005

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC – LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, COLORADO** : **SUBPOENA TO PRODUCE DOCUMENTS IN A PROCEEDING BEFORE THE SURFACE TRANSPORTATION BOARD**  
: **DATE TO PRODUCE DOCUMENTS:**  
: **June 9, 2016, 2:00 PM EDT**  
:

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To: Joe Griffith  
General Director of Transportation  
Bartlett Grain Co., LP  
4900 Main Street, suite 1200  
Kansas City, MO 64112

Pursuant to 49 U.S.C. §§ 721(c) and (d), 49 C.F.R. § 1121.2, 49 C.F.R. part 1114, subpart B, and the decision of the Surface Transportation Board (“STB”) served [ ], YOU ARE HEREBY COMMANDED, at the request of Vand S Railway, LLC (“V&S”), to produce the documents described in Attachment A by **2:00 PM EDT** on **JUNE 9, 2016**, to the offices of the attorneys for V&S, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, or electronically to [ehocky@clarkhill.com](mailto:ehocky@clarkhill.com), or at such other time and place as the attorneys for V&S and you may agree.

DATED:

CLARK HILL, PLC

---

Eric M. Hocky  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V and S Railway, LLC

## ATTACHMENT A

1. Documents showing the amount of wheat purchased by the Eads and Haswell grain elevators, the amount of wheat shipped by each by rail, and the amount of wheat shipped by each by truck, for the years 2010 – 2015.
2. All communications between you and other employees or officers of Bartlett Grain Co., LP (“Bartlett”) and representatives of KCVN or CPRR about the future provision of rail service to Bartlett at Eads and Haswell via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for the volume to be shipped.
3. All communications and correspondence between you or other employees or officers of Bartlett and representatives of K&O about the future provision of rail service to Bartlett at Eads and Haswell via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
4. All communications and correspondence between 2011 and the present between you or other employees or officers of Bartlett and representatives of V&S about the provision of rail service to Bartlett at Eads and Haswell via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped, including particularly the approaches to V&S referenced in your Verified Statement in support of the Application.

For the purposes of these requests, the following terms are defined as follows:

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“KCVN” means KCVN, LLC, an applicant in this proceeding.

“CPRR” means Colorado Pacific Railroad, LLC, an applicant in this proceeding.

“Towner Line” means the railroad line, and associated tracks and facilities, between milepost 747.5 near Towner, Colorado, and milepost 869.4 near NS Junction, Colorado.

“K&O” means Kansas & Oklahoma Railroad.

“V&S” means V and S Railway, LLC.

“Communications and correspondence” means any transmission of information including email, letters, faxes; any attachments thereto; and any notes from oral conversations.

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_ day of \_\_\_\_, 2016, I served a copy of the foregoing

Subpoena by email on the following:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Joe Griffith  
General Director of Transportation  
Bartlett Grain Co., LP  
4900 Main Street, suite 1200  
Kansas City, MO 64112

By: \_\_\_\_\_  
Eric M. Hocky

## EXHIBIT C

**BEFORE THE SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36005

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC – LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, COLORADO** : **SUBPOENA TO PRODUCE DOCUMENTS IN A PROCEEDING BEFORE THE SURFACE TRANSPORTATION BOARD**  
: **DATE TO PRODUCE DOCUMENTS:**  
: **June 9, 2016, 2:00 PM EDT**  
:

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To: Dusty Tallman  
Tallman Farms  
1751 County Road 40  
Brandon, CO 81036

Pursuant to 49 U.S.C. §§ 721(c) and (d), 49 C.F.R. § 1121.2, 49 C.F.R. part 1114, subpart B, and the decision of the Surface Transportation Board (“STB”) served [ ], YOU ARE HEREBY COMMANDED, at the request of Vand S Railway, LLC (“V&S”), to produce the documents described in Attachment A by **2:00 PM EDT on JUNE 9, 2016**, to the offices of the attorneys for V&S, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, or electronically to [ehocky@clarkhill.com](mailto:ehocky@clarkhill.com), or at such other time and place as the attorneys for V&S and you may agree.

DATED:

CLARK HILL, PLC

---

Eric M. Hocky  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V and S Railway, LLC

## ATTACHMENT A

1. A map showing the location of property currently owned or farmed by you, and the location of rail sidings and silos or grain elevators that serve the property, and their relation to the Towner Line.
2. All communications between you and other employees, agents or officers of Tallman Farms and representatives of KCVN or CPRR about the future provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for the volume to be shipped.
3. All communications and correspondence between you or other employees, agents or officers of Tallman Farms and representatives of K&O about the future provision of rail service to Tallman Farms via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
4. All communications and correspondence between 2011 and the present between you or other employees, agents or officers of Tallman Farms and representatives of V&S about the provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
5. Any and all of the work papers and supporting documentation, in electronic format where available, that support or relate to the Verified Statement that you provided to KCVN and CPRR in support of the Application.

For the purposes of these requests, the following terms are defined as follows:

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“CPRR” means Colorado Pacific Railroad, LLC, an applicant in this proceeding.

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“K&O” means Kansas & Oklahoma Railroad.

“V&S” means V and S Railway, LLC.

“Communications and correspondence” means any transmission of information including email, letters, faxes; any attachments thereto; and any notes from oral conversations.

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_ day of \_\_\_\_, 2016, I served a copy of the foregoing

Subpoena by email on the following:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Dusty Tallman  
Tallman Farms  
1751 County Road 40  
Brandon, CO 81036  
[dustyfarms@yahoo.com](mailto:dustyfarms@yahoo.com)

By: \_\_\_\_\_  
Eric M. Hocky

## EXHIBIT D

**BEFORE THE SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36005

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC – LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, COLORADO** : **SUBPOENA TO PRODUCE DOCUMENTS IN A PROCEEDING BEFORE THE SURFACE TRANSPORTATION BOARD**  
: **DATE TO PRODUCE DOCUMENTS:**  
: **June 9, 2016, 2:00 PM EDT**  
:

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To: Linly Stum  
Thunderbird L&L, Inc.  
76475 County Road J  
Towner, CO 81071

Pursuant to 49 U.S.C. §§ 721(c) and (d), 49 C.F.R. § 1121.2, 49 C.F.R. part 1114, subpart B, and the decision of the Surface Transportation Board (“STB”) served [ ], YOU ARE HEREBY COMMANDED, at the request of Vand S Railway, LLC (“V&S”), to produce the documents described in Attachment A by **2:00 PM EDT** on **JUNE 9, 2016**, to the offices of the attorneys for V&S, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, or electronically to [ehocky@clarkhill.com](mailto:ehocky@clarkhill.com), or at such other time and place as the attorneys for V&S and you may agree.

DATED:

CLARK HILL, PLC

---

Eric M. Hocky  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V and S Railway, LLC

## ATTACHMENT A

1. A map showing the location of property currently owned or farmed by you, and the location of rail sidings and silos or grain elevators that serve the property, and their relation to the Towner Line.
2. All communications between you and other employees, agents or officers of Thunderbird L&L, Inc. (“Thunderbird”) and representatives of KCVN or CPRR about the future provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for the volume to be shipped.
3. All communications and correspondence between you or other employees, agents or officers of Thunderbird and representatives of K&O about the future provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
4. All communications and correspondence between 2011 and the present between you or other employees, agents or officers of Thunderbird and representatives of V&S about the provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
5. Any and all of the work papers and supporting documentation, in electronic format where available, that support or relate to the Verified Statement that you provided to KCVN and CPRR in support of the Application.

For the purposes of these requests, the following terms are defined as follows:

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“KCVN” means KCVN, LLC, an applicant in this proceeding.

“CPRR” means Colorado Pacific Railroad, LLC, an applicant in this proceeding.

“Towner Line” means the railroad line, and associated tracks and facilities, between milepost 747.5 near Towner, Colorado, and milepost 869.4 near NS Junction, Colorado.

“K&O” means Kansas & Oklahoma Railroad.

“V&S” means V and S Railway, LLC.

“Communications and correspondence” means any transmission of information including email, letters, faxes; any attachments thereto; and any notes from oral conversations.

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_ day of \_\_\_\_, 2016, I served a copy of the foregoing

Subpoena by email on the following:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Linly Stum  
Thunderbird L&L, Inc.  
76475 County Road J  
Towner, CO 81071

By: \_\_\_\_\_  
Eric M. Hocky

**EXHIBIT E**

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36005

KCVN, LLC AND COLORADO PACIFIC : SUBPOENA TO PRODUCE  
RAILROAD, LLC – LINE OF V AND S : DOCUMENTS IN A PROCEEDING  
RAILWAY, LLC, LOCATED IN : BEFORE THE SURFACE  
CROWLEY, PUEBLO, OTERO AND : TRANSPORTATION BOARD  
KIOWA COUNTIES, COLORADO :  
: DATE TO PRODUCE DOCUMENTS:  
: June 9, 2016, 2:00 PM EDT  
:

---

To: Shelby Britten  
44495 County Rd. J  
Haswell, CO 81045

Pursuant to 49 U.S.C. §§ 721(c) and (d), 49 C.F.R. § 1121.2, 49 C.F.R. part 1114, subpart B, and the decision of the Surface Transportation Board (“STB”) served [ ], YOU ARE HEREBY COMMANDED, at the request of Vand S Railway, LLC (“V&S”), to produce the documents described in Attachment A by **2:00 PM EDT** on **JUNE 9, 2016**, to the offices of the attorneys for V&S, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, or electronically to [ehocky@clarkhill.com](mailto:ehocky@clarkhill.com), or at such other time and place as the attorneys for V&S and you may agree.

DATED:

CLARK HILL, PLC

---

Eric M. Hocky  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V and S Railway, LLC

## ATTACHMENT A

1. A map showing the location of property currently owned or farmed by you, and the location of rail sidings and silos or grain elevators that serve the property, and their relation to the Towner Line.
2. All communications between you and other employees, agents or officers of yours and representatives of KCVN or CPRR about the future provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for the volume to be shipped.
3. All communications and correspondence between you or other employees, agents or officers of yours and representatives of K&O about the future provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
4. All communications and correspondence between 2011 and the present between you or other employees, agents or officers of yours and representatives of V&S about the provision of rail service to you via the Towner Line, including without limitation, documents relating, referring or concerning requests for service, requests for rates, and estimates or commitments for amounts to be shipped.
5. Any and all of the work papers and supporting documentation, in electronic format where available, that support or relate to the Verified Statement that you provided to KCVN and CPRR in support of the Application.

For the purposes of these requests, the following terms are defined as follows:

“This Proceeding” means STB Finance Docket No. 36005, KCVN, LLC and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of V and S Railway, LLC, Located in Crowley, Pueblo, Otero and Kiowa Counties, Colorado.

“Application” means the Feeder Line Application submitted in this proceeding, including the Supplement to Feeder Line Application.

“KCVN” means KCVN, LLC, an applicant in this proceeding.

“CPRR” means Colorado Pacific Railroad, LLC, an applicant in this proceeding.

“Towner Line” means the railroad line, and associated tracks and facilities, between milepost 747.5 near Towner, Colorado, and milepost 869.4 near NS Junction, Colorado.

“K&O” means Kansas & Oklahoma Railroad.

“V&S” means V and S Railway, LLC.

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Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

and by FEDEX (and by email where indicated) on the following:

Shelby Britten  
44495 County Rd. J  
Haswell, CO 81045  
[shelbybritten@hotmail.com](mailto:shelbybritten@hotmail.com)

By: \_\_\_\_\_  
Eric M. Hocky