

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE, COLORADO  
ASSOCIATION OF WHEAT GROWERS, COLORADO WHEAT RESEARCH  
FOUNDATION, AND KCVN, LLC  
v.  
V AND S RAILWAY, LLC

Digest:<sup>1</sup> In this decision, the Board requires V and S Railway, LLC to keep track in place on one of its line segments in Colorado while the Board considers a complaint pertaining to that line segment. The Board also provides guidance on the next steps in this proceeding.

Decided: May 7, 2015

On October 28, 2014, the Colorado Wheat Administrative Committee (CWAC), the Colorado Association of Wheat Growers (CAWG), the Colorado Wheat Research Foundation (CWRP), and KCVN, LLC (KCVN) (collectively, the Colorado Interests) filed a complaint alleging that V and S Railway, LLC (V&S), has violated 49 U.S.C. §§ 11101 and 10903 by removing certain track and related assets from a segment (the Western Segment) of V&S's 121.9-mile line known as the Towner Line<sup>2</sup> (the Complaint).

Concurrently, the Colorado Interests filed a motion seeking: (1) a preliminary injunction barring V&S from “dismantling and removing the tracks and related assets of the line of railroad that is the subject of the Complaint in this proceeding until V&S receives formal abandonment authority from the Board” (the preliminary injunction); and (2) “an order, on an emergency basis before 5:00 EST [sic] on October 31, 2014, enjoining [V&S] from dismantling and removing the tracks and related assets of the line of railroad that is the subject of the Complaint in this proceeding until the Board reviews and rules on [the Colorado Interests’] request for a

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The Towner Line extends between milepost 747.5 near Towner, Colo., and milepost 869.4 near NA Junction. The Western Segment of the Towner Line extends between milepost 808.3 near Haswell, Colo., and milepost 868.5, which is approximately 0.9 miles short of the Towner Line's western terminus at milepost 869.4.

Preliminary Injunction” (the emergency relief). In a decision served on October 31, 2014, the Board granted the emergency relief on a temporary basis while it considered whether to grant the motion for preliminary injunction.

As explained below, the Board will grant the preliminary injunction in part, enjoining V&S from dismantling and removing the tracks and related assets of the Western Segment pending resolution of the Colorado Interests’ Complaint. We will also provide guidance to the parties regarding the next steps in this proceeding.

## BACKGROUND

In 2005, V&S obtained Board authorization to assume an existing lease of the Towner Line from the previous lessee. V&S Ry.—Acquis. & Operation Exemption—Rail Line of Colo., Kan. & Pac. Ry., FD 34779 (STB served Dec. 30, 2005). Later, V&S obtained authority to discontinue operations over the Western Segment. V&S Ry.—Discontinuance of Serv. Exemption—in Pueblo, Crowley, & Kiowa Cntys., Colo., AB 603 (Sub-No. 2X) (STB served June 28, 2012).

When V&S assumed the lease of the Towner Line in 2005, it also purchased that line from its previous owner but did not seek or obtain Board authority to do so. In August 2012, V&S belatedly petitioned the Board for an exemption authorizing that purchase. V&S stated that it expected to seek authority “in the near future” to abandon “the western segment of the Towner Line, between NA Junction and Haswell”<sup>3</sup> and therefore asked that its requested acquisition authority be made retroactive to the consummation date of its lease in 2005. Receiving no opposition to V&S’s petition, the Board authorized the purchase, but it declined to make V&S’s authority retroactive. The decision stated, however, that V&S would be allowed to use the Board’s streamlined class exemption procedures at 49 C.F.R. pt. 1152 subpart F to abandon the Western Segment by waiving the usual requirement for an abandoning carrier to have had Board-authorized ownership of the line for at least two years. See V&S Ry.—Acquis. & Operation Exemption—Colo. Dep’t of Transp., FD 35664 (STB served Nov. 13, 2012). To date, V&S has not filed for authority to abandon the Western Segment.

The Complaint alleges that V&S removed and sold track and associated assets of the Western Segment starting on or about August 11, 2014,<sup>4</sup> shortly after KCVN offered to buy the entire Towner Line and reactivate it for rail service. The track removal and sale was temporarily halted on August 28, 2014, when KCVN obtained a temporary restraining order (TRO) from a Colorado state court. The state court proceeding was removed to the U.S. District Court for the District of Colorado on September 3, 2014. On October 24, 2014, the U.S. Magistrate Judge

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<sup>3</sup> Pet. for Exemption 8-9, V&S Ry.—Acquis. & Operation Exemption—Colo. Dep’t of Transp., FD 35664 (filed Aug. 15, 2012).

<sup>4</sup> The Colorado Interests note that V&S is an affiliate of A&K Railroad Materials, Inc. (A&K), which is engaged in, among other things, selling scrap or salvaged railroad tracks, spikes, tie plates, and other associated materials.

ordered the TRO dissolved but delayed the effectiveness of the dissolution for five business days (to October 31, 2014) to allow KCVN to bring this matter before the Board.

The Colorado Interests filed their Complaint and their motion for emergency and preliminary injunctive relief on October 28, 2014. On October 30, 2014, V&S filed a single reply addressing both pleadings. In a decision served October 31, 2014, the Board granted the Colorado Interests' requested emergency relief, enjoining V&S from dismantling and removing any tracks or related assets on the Western Segment until the Board has ruled on the requested preliminary injunction.

In the motion for preliminary injunction, the Colorado Interests ask that the Board further enjoin V&S from dismantling and removing any tracks or related assets on the Western Segment until V&S receives abandonment authority under § 10903. They fear that, absent this relief, V&S will recommence removing and selling track. The Colorado Interests argue that they would be irreparably harmed by such actions because replacing the track would be prohibitively expensive and would undermine their goal of having rail service available on the Towner Line. The Colorado Interests also claim that granting their preliminary injunction is in the public interest and would not harm V&S.

In its October 30 reply, V&S argues, among other things, that the Colorado Interests have failed to satisfy the Board's standard for granting the preliminary injunction. V&S also disputes the Colorado Interests' presentation of the facts and notes that those parties did not challenge the discontinuance authority the Board granted in 2012. On October 31, the Colorado Interests filed a reply to V&S's October 30 filing and submitted materials from the proceedings in Colorado. V&S submitted a letter on the same day and a correction to its October 30 filing on November 3, 2014.<sup>5</sup>

The Colorado Interests supplemented their request for a preliminary injunction on December 23, 2014. In their supplement, the Colorado Interests assert that since October, V&S has done nothing to address their concerns that V&S has no plans for the Western Segment other than to tear up its track assets and sell them. The Colorado Interests argue that, under these circumstances, the Board should take action that requires V&S to seek abandonment authority for the entire Towner Line, thereby creating the possibility of KCVN or other responsible parties acquiring it through the offer of financial assistance (OFA) process and potentially reinstating rail service over it.

V&S responded to the Colorado Interests' supplement on January 7, 2015. V&S argues, among other things, that KCVN has been unprepared and unwilling to offer a reasonable price to pay for its purchase of the Towner Line. V&S further claims that, contrary to assertions, no rail

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<sup>5</sup> V&S argues in its letter that the Colorado Interests' October 31 filing does not afford the Board a more complete record; however, the filing contains pages from a hearing held before the district court in Colorado. This material sheds light on these related state proceedings, and we therefore accept the October 31 filing into our record.

has been removed from the Towner Line. Rather, V&S asserts that only “a few spikes were pulled.”

As the record on the merits of the preliminary injunction developed, the parties submitted filings concerning procedural matters. On December 5, 2014, the Colorado Interests moved that the Board adopt a procedural schedule. V&S submitted a reply on December 17, 2014, claiming the Board should reject the request as premature in light of the Board’s “stay order.” On December 16, 2014, the Colorado Interests filed a motion to compel discovery, and V&S responded on January 2, 2015, stating that this request is moot given that the railroad had already responded to the discovery requests on December 31, 2014. However, on February 4, 2015, V&S followed this reply with a motion asking that the Board enter an order under 49 C.F.R. § 1114.21 for protective conditions to restrain the Colorado Interests from seeking discovery from V&S beyond the response V&S produced on December 31. The Colorado Interests filed a reply on February 24, 2015. On March 12, 2015, V&S filed a response to the February 24 reply and asked that the Board accept it into the record.<sup>6</sup> On April 29, 2015, KCVN submitted a letter noting that, beyond pursuing the Complaint, it also intends to file an application for an order requiring V&S to sell the Towner Line to KCVN under the “feeder line” provisions of 49 U.S.C. § 10907.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 721(b)(4), the Board may issue an appropriate order, such as an injunction, when necessary to prevent irreparable harm. To obtain an injunction, the requesting party must show: (1) it will suffer irreparable harm in the absence of an injunction; (2) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be enjoined; (3) the public interest supports the granting of the injunction; and (4) other interested parties will not be substantially harmed by an injunction. See Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc. (Holiday Tours), 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n, 259 F.2d 921, 925 (D.C. Cir. 1958); Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 4 (STB served May 4, 2012). As discussed below, the criteria for an injunction have been met in this case.

Irreparable harm to the Colorado Interests in the absence of an injunction. The Colorado Interests claim that they would be irreparably harmed if the Board denies their request for a preliminary injunction. They assert that if V&S removes the remaining track comprising the Western Segment, the restoration of rail service over the entire Towner Line would become prohibitively expensive and that KCVN would not pursue the project.

We find that the “irreparable harm” prong has been met. In determining whether irreparable harm has been demonstrated, the Board looks to whether the requesting party will suffer unredressable actual and imminent harm absent the injunction. Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 5 (STB served May 4, 2012).

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<sup>6</sup> In the interest of a complete record, we will accept V&S’s March 12 filing into the record.

Here, the injury—removal of the track—appears to be actual and imminent. Absent an injunction, V&S has indicated that it will remove the track on the Western Segment to fulfill contractual obligations V&S has with OmniTRAX, Inc. In fact, the record indicates that V&S was in the beginning stages of removing the track at the time that the Colorado Interests first initiated the court proceeding that led to this Board proceeding.

Moreover, although economic injury, by itself, may be insufficient to qualify as irreparable harm,<sup>7</sup> economic losses that are substantial and unredressable can qualify as irreparable injury.<sup>8</sup> Here, the Colorado Interests have shown that they would suffer substantial and unredressable economic losses in the absence of an injunction. If, following V&S's removal of the track on the Western Segment, the Colorado Interests ultimately were to prevail on their Complaint and V&S were, as a result, to file for abandonment, then the Colorado Interests would be entitled to acquire the line through the OFA process at the line's diminished value. But the Colorado Interests would have to expend substantial funds on design, engineering, and labor to install replacement tracks. There is nothing in the Board's OFA process that would require V&S to compensate the Colorado Interests for these additional costs, which would be substantial given that the length of track is approximately 60 miles. If saddled with these substantial and unrecoverable costs, we believe that it is highly unlikely—if not impossible—that the Colorado Interests would be able to ever overcome the high barriers associated with replacing the track.<sup>9</sup>

We note that the facts here differ from those in Ballard Terminal Railroad—Acquisition & Operation Exemption—Woodinville Subdivision (Ballard), FD 35731, et al. (STB served Aug. 1, 2013), a case in which the Board found an argument about expense to be unpersuasive

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<sup>7</sup> Va. Petroleum Jobbers, 259 F.2d at 925.

<sup>8</sup> Odebrecht Constr., Inc. v. Secretary, Fla. Dep't of Transp., 715 F.3d 1268, 1289 (11th Cir. 2012) (finding irreparable injury because plaintiff “has no monetary recourse against a state agency like FDOT because of the Eleventh Amendment.”); Chamber of Commerce v. Edmondson, 594 F.3d 742, 771 (10th Cir. 2010) (finding irreparable harm because the plaintiff's members “face a significant risk of suffering financial harm” and that “because Oklahoma and its officers are immune from suit for retrospective relief . . . these financial injuries cannot be remedied”); Iowa Utils. Bd. v. FCC, 109 F.3d 418, 426 (8th Cir. 1996) (“The threat of unrecoverable economic loss . . . qualif[ies] as irreparable harm.”); Resolution Trust Corp. v. Elamn, 949 F.2d 624, 629 (2d Cir. 1991) (finding irreparable harm from law firm's failure to turn over former client's files to RTC because “[s]ubstantial unrecoverable losses could result”); Boxworth v. Blinder, Robinson & Co., 903 F.2d 186, 205-07 (3d Cir. 1990) (“[T]he unsatisfiability of a money judgment can constitute irreparable injury.”); Texas Children's Hosp. v. Burwell, \_\_\_ F. Supp. 3d \_\_\_, 2014 WL 7373218, at \*13 (D.D.C. Dec. 29, 2014) (finding irreparable harm where plaintiffs' economic injuries were unrecoverable “because neither Washington nor Texas has a procedure for recovering DSH funds once they have been recouped by the state”).

<sup>9</sup> Should V&S remove the tracks, KCVN would face the same type of unrecoverable economic loss if it were to acquire the line through a feeder line application under 49 U.S.C. § 10907.

when denying a request to enjoin the removal of track. There, the Board determined that the party pressing for the project did not appear at the time to be a bona fide entity that could successfully undertake the project even if the rail were to remain in place, and that there was not a demand for rail service. Additionally, the track assets to be salvaged in that case spanned a 5.75-mile segment of railroad right-of-way (less than one-tenth the length of the Western Segment.) Here, in contrast, KCVN, a potential shipper,<sup>10</sup> has made a colorable claim that it has funds (at least \$10 million) to purchase the Towner Line for continued rail service in this case. Finally, other information in the record adds support to the claim that there is a demand for rail service. According to Darrell Hanavan, the Executive Director of CWAC, CAWG, and CWRP, there is a newly developed domestic and international market for Snowmass, a hard white wheat. We cannot here determine whether the development of this wheat variety really would be a “game changer” as Mr. Hanavan asserts, but his statement and the \$10 million offer to buy the line provides the kind of plausible support for rail service that the Board did not find in Ballard.

For these reasons, denying the preliminary injunction request here would result in irreparable harm.

The Colorado Interests’ likelihood of success on the merits. The Colorado Interests argue that there is a likelihood that they will succeed on the merits of their Complaint. They argue that, given V&S’s expressed intention to abandon the Western Segment, its subsequent attempt to remove and sell the track making up the Western Segment without first seeking formal abandonment authority represents an unlawful attempt to circumvent the requirements of § 10903. Similarly, the Colorado Interests claim that V&S’s actions have foreclosed the ability of KCVN or other parties to acquire the Western Segment through the OFA process.

The Colorado Interests also argue that V&S has violated 49 U.S.C. § 11101 and that they will succeed on their claim. They assert that, although the owner of a discontinued line can remove track, it cannot respond to an opportunity to put the line back into common carrier service “by taking immediate steps to dismantle the railroad line and sell the tracks and related assets for their scrap value.”<sup>11</sup> V&S challenges the Colorado Interests’ assertions that it has violated or will violate § 11101 or § 10903.

As noted above, V&S belatedly sought Board authorization in 2012 to acquire the Towner Line. In its submission, V&S stated that it expected to seek abandonment authority for the Western Segment “in the near future” and asked the Board to grant it acquisition authority retroactively to facilitate its doing so. In response, the Board waived the two-year ownership requirement of the class exemption with respect to the Western Segment, thereby permitting V&S to file a notice of exemption seeking abandonment of the Western Segment sooner than otherwise would be permitted. V&S’s statement presumably led interested parties to believe that V&S, the subsidiary of a salvage company, would soon file for abandonment and therefore

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<sup>10</sup> KCVN owns approximately 25,000 acres of land located in close proximity to the Towner Line, on which, among other things, it grows wheat.

<sup>11</sup> Colorado Interests’ Mot. for Emergency & Prelim. Injunctive Relief 14.

provide them with the opportunity to file an OFA under 49 U.S.C. § 10904 to acquire the Western Segment, including the track and track materials, for continued rail service. By thus implying that the OFA process soon would be available, V&S's statement may have forestalled opposition to V&S's request for retroactive authorization to acquire the line—opposition that otherwise might have arisen had V&S explained that, instead of pursuing abandonment, it intended to salvage the Western Segment's approximately 60 miles of track. Based on these facts, we find that denying the preliminary injunction and thus permitting V&S to remove the track could undermine the expectation that V&S created that it would seek abandonment authority for the Western Segment and could ultimately be found to be an attempt to circumvent the OFA process.<sup>12</sup>

We acknowledge there is agency precedent that indicates that, under some circumstances, a party can remove track and track materials once discontinuance has been granted (as it has been here).<sup>13</sup> But there is also agency precedent that holds that parties should not be permitted to remove track until they have received abandonment authority,<sup>14</sup> or where there is a valid OFA request to preserve rail service.<sup>15</sup> The Complaint thus raises novel, important, and serious

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<sup>12</sup> See SF&L Ry., Inc.—Acquis. & Operation Exemption—Toledo, Peoria & W. Ry. Corp. Between La Harpe & Peoria, Ill., FD 33995, slip op. at 17 (STB served Oct. 17, 2002) (“The case for finding that the exemption process was abused here is further strengthened when SF&L’s affiliation with A&K, and the record of A&K and its affiliates in acquiring, abandoning, and salvaging rail lines are considered. The fact that SF&L’s affiliate deals in scrap rail materials is not by itself dispositive but, by the same token, it cannot be wholly ignored.”).

<sup>13</sup> See Colorado Interests’ Mot. for Emergency & Prelim. Injunctive Relief 13; and V&S Reply 7-8 (Oct. 30, 2014). See also Union Pac. R.R.—Discontinuance Exemption—in Weld & Boulder Cntys., Colo., AB 33 (Sub-No. 182X) (STB served Oct. 19, 2001) (acknowledging that, after environmental review and conditioning, railroad will remove bridge based on discontinuance authority).

<sup>14</sup> See Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, EP 678 (STB served April 23, 2008) (“In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board’s ability to carry out its obligations under NEPA and NHPA may then be adversely affected.”); BNSF Ry.—Discontinuance—in Iron & Crawford Cntys., Mo., AB 6 (Sub-No. 476)(STB served Aug. 17, 2011) (noting that carrier obtaining discontinuance authority and indicating that it would not salvage track would not be permitted to salvage the track without an environmental review).

<sup>15</sup> See The Kan. City S. Ry. Co.—Aban. Exemption—Line in Warren Co., Miss., STB Docket No. AB-103 (Sub-No. 21X) slip op. at 4-5 (STB served May 20, 2008) (“Congress’s purpose for enacting section 10904 is clear: rail service should be preserved when there is an offeror willing to provide that service. And it is well-settled that administrative agencies have inherent authority to protect the integrity of the regulatory processes that they are charged with

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questions about the requirements of §§ 10903 and 10904, and about whether V&S has attempted to evade the requirements.

We find that the Colorado Interests have established a sufficient likelihood of success on the merits to warrant continuing to enjoin further track removal on the Western Segment until the Board can examine and rule on the Complaint.

Public interest considerations. The public interest also warrants granting the preliminary injunction. The integrity of the Board's processes is a public-interest consideration and, as discussed above, we are concerned that parties may have relied on V&S's earlier statements that it intended to abandon the Western Segment in the near future (thereby providing an opportunity for an OFA). As noted, the Western Segment is approximately 60 miles long and the cost of replacing that much track once it is removed would be substantial and perhaps prohibitive. The public interest is best served by requiring these existing, significant transportation assets to remain in place while the Board considers the merits of the Complaint, as an injunction will protect the public's potential access to continued rail service in the event the Board finds, when considering the Complaint, that V&S's track removal and failure to seek abandonment authority were unlawful under the circumstances presented here.

Harm to other interested parties from an injunction. As noted above, V&S suggested to the district court that it has entered third-party contracts to sell some of the track and that enjoining further track removal would constitute a breach of those contracts and result in mounting damages.<sup>16</sup> Claimed harm such as this, however, arises from V&S's own actions, specifically, entering into an agreement to sell the track materials prior to resolving the legal uncertainty about whether they could be removed. V&S could remove this uncertainty, thereby stopping the harm, by filing for abandonment authority. If V&S were to receive abandonment authority on the Western Segment and no OFA were filed, it could proceed with any private arrangement (including salvaging the tracks or selling them intact). If, on the other hand, an OFA were used to acquire the Western Segment for continued rail service, V&S would be compensated for the value of the line and presumably could purchase steel or assets from elsewhere to fulfill its other contractual commitments. In any event, we conclude that any inconvenience or harm caused by V&S's failure to follow through on its statements to the Board and other interested parties that it would initiate abandonment is slight in comparison to the public interest in keeping the Western Segment and possibility of rail service intact until the Board can consider the merits of the matters raised in the Complaint.

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administering.[Footnote omitted.] To ensure that the goal of section 10904 is not undermined, the Board holds the abandoning railroad responsible for ensuring that a rail line that is the subject of an OFA remains in substantially the same condition it was in when the railroad filed for abandonment authority. [Citation omitted]. Not only does this policy ensure that the offeror knows what it is acquiring, but it also promotes rail service by ensuring that assets to be used in providing rail service—whether assigned a net salvage value or not—will remain available once the transaction is completed.”).

<sup>16</sup> See Colorado Interests' Reply 72, Ex. 1 (filed Oct. 31, 2014).

Conclusion. As discussed above, we find that the relevant factors weigh in favor of granting the Colorado Interests' preliminary injunction in part—specifically, requiring V&S to keep the Western Segment intact pending our resolution of matters stemming from the Complaint. The Colorado Interests have raised serious and novel questions about V&S's statements and actions with regard to this line, and it is appropriate for the Board to consider the merits of the Complaint before permitting V&S to proceed with any further removal of track from the Western Segment.

Motion for Procedural Schedule. As noted above, the Colorado Interests have asked the Board to set a procedural schedule, asserting that V&S has refused to meet to discuss procedural and discovery matters and to respond to discovery requests. V&S replied in opposition to the December 5 filing, stating that it will not comment on the proposed procedural schedule and not respond to discovery requests until the Board addresses “the stay it entered on October 31, 2014.”

Now that the issue of the preliminary injunction has been resolved, we will provide guidance to the parties on the procedural schedule. As part of V&S's reply to the motion for emergency and preliminary injunctive relief, V&S responded to the Complaint,<sup>17</sup> but it is not clear whether V&S intends this October 30 filing to serve as its answer to the Complaint under 49 C.F.R. § 1111.4. Therefore, we direct V&S to file either (a) its answer or (b) a confirmation that its October 30 filing is its answer, by May 28, 2015. Within 12 days after V&S's submission is filed, the parties shall confer under § 1111.10(a) regarding discovery, if necessary, and other procedural matters and shall thereafter file the required report under the same regulation.

Discovery Motions. The Colorado Interests have moved to compel V&S to provide complete answers to all of Complainants' written interrogatories and responses to the Complainants' document requests, treat their requests for admission as admitted, and require V&S to pay Complainants' expenses, including attorneys' fees. Similarly, V&S filed a motion asking that the Board restrain the Colorado Interests' discovery requests. Given, however, that we are ordering the parties, once V&S's answer or confirmation regarding its answer is filed, to confer regarding discovery matters as provided under 49 C.F.R. § 1111.10, these motions will be denied as moot. This does not foreclose either party from moving to compel responses to discovery or moving for protective conditions in the future as this matter proceeds should circumstances warrant.

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<sup>17</sup> See November 25, 2014 letter from Fritz R. Kahn, counsel for V&S, appended to Complainants' motion for procedural schedule (noting that the Complaint and the motion for emergency and preliminary injunctive relief were pending before the Board and that V&S's October 30 submission was its “[r]eply to both” pleadings.)

It is ordered:

1. The Colorado Interests' October 31 filing is accepted into the record.
2. V&S's March 12 petition to file a reply to a reply is granted, and the material included in the petition is accepted into the record.
3. The Colorado Interests' preliminary injunction is granted in part. V&S is enjoined from dismantling and removing any tracks or related assets on the Western Segment until the Board has ruled on the merits of the Complaint.
4. By May 28, 2015, V&S shall file either (a) its answer or (b) a confirmation that its October 30 filing is its answer. Within 12 days after V&S's submission is filed, the parties shall confer under § 1111.10(a) and shall thereafter report back to the Board as provided under that regulation.
5. The Colorado Interests' motion to compel discovery is denied as moot.
6. V&S's motion for protective conditions is denied as moot.
7. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.