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June 10, 2014

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Re: Docket No. AB 603 (Sub-No. 2X), V and S Railway, LLC—
Discontinuance of Service
Exemption—in Pueblo, Crowley, and Kiowa Counties, Colo.

Docket No. AB 603 (Sub-No. 3X), V and S Railway, LLC—
Abandonment Exemption
--in Kiowa County, Colo.

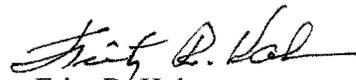
Dear Ms. Brown:

Attached is the Reply of V and S Railway, LLC, to the Comments of the Professional Land Surveyors of Colorado, Inc., served May 28, 2014.

A copy of this letter and its attachment was served on the Professional Land Surveyors of Colorado, Inc. by e-mailing copies to its President.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

Att.

Cc: Mr. Roger Nelson

SURFACE TRANSPORTATION BOARD

Docket No. AB 603 (Sub-No. 2X)

V AND S RAILWAY, LLC—DISCONTINUANCE OF SERVICE EXEMPTION
--IN PUEBLO, CROWLEY AND KIOAWA COUNTIES, COLO.

Docket No. AB 603 (Sub-No. 3X)

V AND S RAILWAY, LLC—ABANDONMENT EXEMPTION
--IN KIOWA COUNTY, COLO.

REPLY
OF
V AND S RAILWAY, LLC

Fritz R. Kahn

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Washington, DC 20036

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Attorney for

V AND S RAILWAY, LLC

Dated: June 10, 2014

SURFACE TRANSPORTATION BOARD

Docket No. AB 603 (Sub-No. 2X)

V AND S RAILWAY, LLC—DISCONTINUANCE OF SERVICE EXEMPTION
--IN PUEBLO, CROWLEY AND KIOAWA COUNTIES, COLO.

Docket No. AB 603 (Sub-No. 3X)

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--IN KIOWA COUNTY, COLO.

REPLY
OF
V AND S RAILWAY, LLC

Applicant, V and S Railway, LLC (“V&S”), pursuant to 49 C.F.R. § 1104.13(a), replies to the Comments of the Professional Land Surveyors of Colorado, Inc. (“Surveyors”), filed May 28, 2014, as follows:

The Surveyors’ comments addressed to the discontinuance proceeding are out of time. The Board’s Decision in V and S Railway, LLC, Discontinuance of Service Exemption—in Pueblo, Crowley and Kiowa Counties AB 603 (Sub-No. 2X) (STB served June 28, 2012), became effective July 28, 2012. The Surveyors did not petition the Board to revoke the exemption, pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), did not petition the Board to grant them extraordinary relief, pursuant to 49 C.F.R. § 1117.1, and did not petition the Board to reopen the proceeding, pursuant to section 722 of the ICC Termination Act of 1995.

V&S' response, accordingly, will relate only to the abandonment exemption proceeding pending before the Board, and V&S will address the Surveyor's Comments in the order in which they were offered.

First. The Surveyors seek to fault V&S for not disclosing that approximately half of the 38-mile segment of the Towner Line between Milepost 749.5 near Towner and Milepost 787.5 near Eads which V&S seeks the Board's authority to abandon was built by the Missouri Pacific Railroad Company upon easements obtained under the General Railroad Right-of-Way Act of 1875. Pursuant to 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1152.50(d)(2), V&S was obliged to send notices to designated U.S. and Colorado officials, including the Chairman of the Colorado Public Utilities Commission and the Chairman of the Kiowa County Commissioners, at least ten days in advance of filing its Notice of Exempt Abandonment with the Board. The notices needed to state, among other things, "Based on information in our possession, the line (does) (does not) contain federally granted rights of way. Any documentation in the railroad's possession will be made available promptly to those requesting it."

In its notices mailed May 2, 2014, V&S stated that the line in question did not contain federally granted rights-of-way for that was what V&S believed to be the case. Nothing in the Purchase Agreement or Quitclaim Deeds pursuant to which the Board in V and S Railway, LLC—Acquisition and Operation Exemption—Colorado Department of Transportation, FD 35664 (STB served November 13, 2012), authorized V&S to acquire the Towner Line from the Colorado Department of Transportation made any mention that portions of the line had been built by the Missouri Pacific Railroad Company on easements secured under the General Railroad Right-of-Way Act of 1875.

V&S is grateful to the Surveyors for bringing to its attention this background information. It will enable V&S to respond correctly in the notices it will need to file, pursuant to 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1152.50(d)(2), in any future discontinuance or abandonment proceedings involving the Towner line. Moreover, V&S will retain the attachment to the Surveyors' Comments so as to make the documentation available promptly to those requesting it.

The Surveyors, however, make too much of an issue of the fact that portions of the Towner Line were constructed on easements rather than on parcels owned in fee by the Missouri Pacific Railroad Company. Indeed, much of the national rail system consists of railroad rights-of-way on easements rather than on parcels owned in fee. For purposes of securing the Board's abandonment authorization it is altogether immaterial whether the railroad line is situated on an easement or fee owned land. The Surveyors did not cite, nor can they cite, a single abandonment proceeding before the Board or its predecessor, the Interstate Commerce Commission, in which a finding that the present or future public convenience and necessity for a line of railroad was influenced by whether the line was on an easement grant or owned outright by the railroad.

The Surveyors appear to be unaware of a recent Supreme Court decision that has altered the Federal government's right of reversion upon the abandonment of a railroad line build upon an easement secured under the General Railroad Right-of-Way Act of 1875. In Case No. 12-1173, Marvin M. Brandt Revocable Trust, et al. v. United States, decided March 10, 2014, the Supreme Court held that, if the Federal government issued a patent of land to an individual subject to a railroad's easement obtained under the General Railroad Right-of-Way Act of 1875, the easement is extinguished upon the abandonment

of the railroad line, and the patentee or his survivors gain unencumbered title to the conveyed land.

Second. The Surveyors contend that Commissioners of the Colorado State Land Board should have received a notice of V&S' Exempt Abandonment filing because the agency was said to have financed two parcels of the 38-mile railroad line. The Commissioners of the Colorado State Land Board, however, are not among the U.S. or Colorado officials that V&S was obliged to notify of its filing, pursuant to 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1152.50(d)(2). Indeed, V&S had no knowledge of the Commissioners of the Colorado State Land Board or of the agency's alleged financing of two parcels of the 38-mile line until it received the Surveyors' Comments. Needless to say, any State law or regulation that would run counter to the Board's sole and exclusive jurisdiction to conduct its abandonment procedures would be preempted, pursuant to 49 U.S.C. § 10501(b). See, 14500 Limited LLC—Petition for Declaratory Order FD 35788 (STB served June 5, 2014); Grafton & Upton Railroad Company—Petition for Declaratory Order. FD 35779 (STB served January 27, 2014).

Third. The Surveyors' reference to Otero County may relate to the discontinuance proceeding. It certainly has no relevance in the pending abandonment proceeding, for the 38-mile line for which the Board's abandonment authority is sought is situated wholly in Kiowa County.

Fourth. The Surveyors' allegations of improprieties by railroads said to be affiliated with A&K Railroad Materials, Inc. ("A&K"), a non-carrier not subject to the Board's jurisdiction, following earlier Board abandonment authorizations is unsupported

as they are out of time. The Surveyors did not petition the Board to revoke exemptions previously granted as they might have, pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), they did not petition the Board to grant them extraordinary relief, pursuant to 49 C.F.R. § 1117.1, and they did not petition the Board to reopen any of the proceedings, pursuant to section 722 of the ICC Termination Act of 1995.

Requested Environmental Conditions. (1) The Surveyors ask that, upon the abandonment authorization being granted by the Board, A&K be required to file a document with the Kiowa County Clerk and Recorder's office that the abandonment has taken place. A&K, of course, is not a party in the pending proceeding. Moreover, the abandonment authorization is merely permissive, not mandatory, and V&S would have a year in which to determine whether it will want to exercise the abandonment authorization, pursuant to 49 C.F.R. § 1152.29(e)(2). Norfolk Southern Railway Company—Abandonment Exemption—in Kanawha County, W. Va., AB 290 (Sub-No. 267X) (STB served June 25, 2010). Furthermore, pursuant to Board's regulation, notice of consummation of the abandonment authorization, if granted by the Board and exercised by V&S, will need to be sent only to the Chief of the Colorado Public Utilities Commission.

(2) The Surveyors ask that A&K turn over all railroad records and mapping data which it received, including a copy of V&S' system diagram map. Again, A&K is not a party in the pending proceeding, as it was not a party in V and S Railway, LLC—Acquisition and Operation Exemption—Colorado Department of Transportation, FD 35664 (STB served November 13, 2012). V&S is seeking the Board's abandonment authorization pursuant to the two-year out-of-service exemption of 49 U.S.C.

§ 1152.50(a)(1), which exempts V&S from the system diagram filing requirements of 49 U.S.C. § 10903(c)(2) and 49 C.F.R. § 1152.10, et seq.

(3) The Surveyors ask that the people of the State of Colorado be informed of what is happening between Milepost 808.3 near Haswell and Milepost 787.5 near Eads. They will need to await V&S' filing of its Notice of Exempt Abandonment of that segment of the Towner Line, expected to be made on or about July 5, 2014. The pending proceeding is based on V&S' Notice of Exempt Abandonment between Milepost 749.5 near Towner and Milepost 787.5 near Eads. The whole point of V&S' filing is that nothing has been happening on that segment of the Towner Line. As attested in the Verification of V&S' President filed with V&S' Notice of Exempt Abandonment, there has been no local traffic on that 38-mile segment of the Towner Line in more than two years' time, and, if there were any overhead traffic, it could be rerouted. If the Board were to authorize V&S' proposed abandonment, an offer for financial assistance to avoid the line's abandonment certainly can be made, pursuant to 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27. The OFA, however, is likely to be rejected for want of any shippers in need of railroad service to sustain the line's operations.

(4) The 38-mile segment of the Towner Line which V&S seeks the Board's authority to abandon is situated in Kiowa County. Thus there is no Otero County issue to be resolved. Otero County is south of Kiowa County and well removed from the Towner Line. As for the towns of Eads and Chivington which the Surveyors say have the right-of-way of the Towner Line running through the middle of town, they have seen no railroad traffic for at least the last two years' time, and it is unlikely that they will see any in the future. And as for the Sand Creek Massacre National Historic Site, it is situated

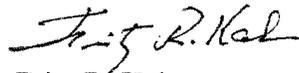
about ten miles north of Chivington and the Towner Line and would be unaffected by the proposed abandonment.

WHEREFORE, V and S Railway, LLC respectfully asks that the so called Environmental Conditions sought by the Professional Land Surveyors of Colorado, Inc. be denied.

Respectfully submitted,

V AND S RAILWAY, LLC

By its attorney,



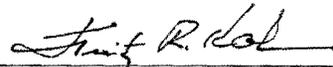
Fritz R. Kahn
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Dated: June 10, 2014

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Reply upon the Professional Land Surveyors of Colorado, Inc. by e-mailing a copy to its President, Mr. Roger D. Nelson, at roger.nelso@merrick.com.

Dated at Washington, DC, this 10th day of June, 2014.



Fritz R. Kahn