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May 28, 2015
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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

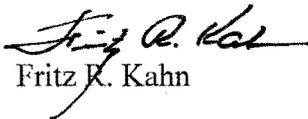
re: Docket No. NOR 42140, Colorado Wheat Administrative Committee,
Colorado Association of Wheat Growers, Colorado Wheat Research
Foundation and KCVN, LLC

Dear Ms. Brown:

Attached is the Answer of V and S Railway, LLC.

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: Thomas W. Wilcox, Esq.
Mr. Terry Whiteside

SURFACE TRANSPORTATION BOARD

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

ANSWER OF V AND S RAILWAY, LLC

Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
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Attorney for

V AND S RAILWAY, LLC

Dated: May 28, 2015

SURFACE TRANSPORTATION BOARD

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

ANSWER OF V AND S RAILWAY, LLC

Defendant, V and S Railway, LLC (“V&S”), pursuant to 49 C.F.R. § 1111.4 and the Board’s decision, served May 7, 2015, answers the Complaint Alleging Violations of 49 U.S.C. § 10903 and § 11101 (“Complaint”), filed October 28, 2014, by Complainants, Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers and Colorado Wheat Research Foundation (together “wheat interests”) and KCVN, LLC (“KCVN”), as follows:

A.

No service need be rendered by V&S on the Western Segment.

1. V&S was authorized to discontinue serving the 60.2-mile western segment of the Towner Line, between Milepost 868.5 near NA Junction and

Milepost 808.3 near Haswell (“Western Segment”) by the Notice of Exempt Discontinuance in Docket No. AB 603 (Sub-No. 2X), V&S Railway, LLC—Discontinuance of Service Exemption—in Pueblo, Crowley and Kiowa Counties, Colo. (STB, served June 28, 2012).

B.

V&S removed no rail or track materials from the Western Segment.

2. Complainants incorrectly contend in their Complaint, at page 2, that “V&S unlawfully began tearing up and selling for scrap the tracks and other track assets that comprise the 60.2 mile ‘Western Segment’ of the Towner Line”; at page 11, that V&S was engaged in the “removal of tracks and related assets making up the Towner Line”, at page 12, that “V&S intentionally circumvented § 10903 and endeavored to unilaterally tear up and remove the tracks on the Western Segment for its personal profit”; at page 13, that V&S was continuing in “the removal of the rails from the Western Segment of the Towner Line”; and at page 14, that “V&S actions [were] to sell and remove the Western Segment track”. The foregoing allegations by the Complainants are completely fabricated and wholly unfounded.

3. In fact, no rail or track materials have been removed from the Western Segment. Attached as Exhibit 1 is the Verified Statement of Mr.

Rocky Smith, Vice President of Field Operations for A&K Railroad Materials, Inc., of which V&S is an affiliate. He states unequivocally, “[N]o rail, spikes or tie plates were removed from the right-of-way of the Western Segment.” Mr. Smith refers to the Verified Statement of Mr. Gerald W. Fauth, III, which was attached to the Complainants’ Supplement to Motion for Preliminary Injunction, filed December 23, 2014. Mr. Fauth claims to have conducted an inspection of the entire Towner Line and, among other things, to have taken photographs of portions of the line. Picture 5 is said by Mr. Fauth to be of an area within the Western Section “where most of the pins had been pulled and many of the tie plates removed in preparation for the removal of the rail.” The photograph, however, revealed that no rail had been removed. For that matter, Mr. Fauth did not say that in his inspection of the entire Towner Line he had seen that any rail had been removed. Referring to Mr. Fauth’s Picture 5, Mr. Smith said, “[I]t shows that all rail is still in place and that while a few spikes have been pulled, none has been removed from the right-of-way. A close examination of the photograph also shows that the tie plates are still in-place, but with brush and dirt on them.” In short, there is not a shred of evidence to support Complainants’ contrived contention that V&S has removed rail or track materials from the Western Segment.

C.

Removal of rail and track materials is not abandonment.

4. Even if were assumed that V&S had removed rail or track materials from the Western Segment before the Board entered its order of October 30, 2014, its action would not have constituted a violation of 49 U.S.C. § 10903 as Complainants recklessly recount in their Complaint. Complainants did not – and cannot -- cite a single Board decision in which the Board found that the removal of rail or track materials constituted an abandonment which required the advance authorization of the Board pursuant to 49 U.S.C. § 10903 or an exemption under 49 U.S.C. § 10502. To the contrary, in Docket No. FD 34869, Honey Creek Railroad, Inc.—Petition for Declaratory Order (STB, served June 4, 2008, slip. op. p. 6), the Board said, “We disagree that [petitioner’s] line of railroad should be abandoned because of the removal of some track. It is well settled that a line of railroad can be abandoned only pursuant to Board authority. A rail carrier cannot bypass this requirement by unilaterally removing track [footnote omitted].” In Docket No. AB 1081X, San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ (STB, served April 13, 2006, slip op. p. 4), the Board stated, “The fact that some tracks were taken up and portions of the line were salvaged is immaterial.

Merely removing track materials does not constitute an abandonment {citations omitted}.” In Finance Docket No. 33508, Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company (STB, served April 30, 1998, slip op. p. 7), the Board declared, “[I]t is well established that a rail line is not abandoned until this agency authorizes abandonment under 49 U.S.C. 10903 or the exemption provisions at 49 U.S.C. 10502 [citations omitted].” In Chelsea Property Owners—Aban.—The Consol. R. Corp., 8 I.C.C.2d 773, 790 (1992), aff’d sub nom., Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994), the Interstate Commerce Commission (“ICC”) said, “[We] recently addressed the status of a rail line unused for 15 years. In holding that the track’s use as part of a line haul operation prior to the unauthorized cessation of service made it a railroad line subject to our abandonment regulations, we stressed the well established principle that a carrier cannot escape our abandonment jurisdiction simply by terminating service or removing track [citations omitted].” In total disregard of the foregoing decisions, the Complainants irresponsibly charge V&S with unlawfully having removed rails and track materials from the Western Segment of the Towner Line in violation of 49 U.S.C. § 10903 or an exemption under 49 U.S.C. § 10502 and irresponsibly portray V&S to be a violator of law.

D.

V&S did not fail to respond to reasonable requests for service.

5. Complainant's reprehensible depiction of V&S as a violator of law, moreover, is not limited to the supposed removal of rails and track materials from the Western Segment of the Towner Line without having secured the advance authorization of the Board, pursuant to 49 U.S.C. § 10903 or an exemption under 49 U.S.C. § 10502. Complainants have the audacity to accuse V&S of having failed to provide transportation or service on reasonable request in violation of 49 U.S.C. § 11101. The Complainants generalized allegation of inadequate service by V&S is as spurious as it is senseless. As the Board stated in STB Finance Docket No. 34337, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority d/b/a Northwestern Pacific Railroad (STB, served January 31, 2007, slip op. p 4), "To prove a violation of the common carrier obligation at 49 U.S.C. 11101(a), the [complainant] must show that the carrier failed to provide service upon reasonable request. A reasonable request is one that is specific as to the volume, commodity, and time of shipment [citations omitted]." In Finance Docket 34019, Montezuma Grain Company, LLP and Parke County Redevelopment Commission v. CSX Transportation, Inc. (STB, served September 13, 2002, slip op. p. 10), the

Board declared, “In order to be found to have violated section 11101(a), however, the carrier must have failed to provide service upon reasonable request. A reasonable request is one that is specific as to the volume, commodity, and time of shipment [citation omitted]”. In their Complaint, Complainants charge V&S with having failed to render service upon reasonable request, but they avoid altogether specifying which of the farmers represented by the wheat interests or KCVR ever advised V&S of the volume, commodity and time of the shipments of freight that it wanted V&S to pick up or deliver. As a matter of fact, not one of the farmers represented by the wheat interests or KCVR ever lodged a complaint with V&S and much less with the Board, whether informally or formally, that V&S had failed to render adequate service on the Towner Line. Attached as Exhibit 2, is the Declaration of Mr. Aaron Parsons, Assistant Vice President of the V&S, dated September 10, 2014. Mr. Parsons identifies himself as the individual at V&S who is to receive requests for service on the Towner Line and who schedules traffic movements and manages all operations on the Towner Line. Mr. Parsons states in his Declaration that he received no calls, written communications or other requests by shippers of any kind for rail service to be provided by V&S on the Western Segment in the preceding two years. He adds that as a matter of fact there have been no freight

shipments on the Western Segment since he went to work for V&S in May of 2007. On page 8 of their Complaint, Complainants assert that V&S has discouraged the reinstatement of rail service over the Towner Line by responding “to recent requests for rail service from wheat producers by establishing rates at prohibitively high levels.” Complainants, however, fail to identify even one farmer who recently requested a rate quotation from V&S for tendering shipments of wheat on the Towner Line. Complainants’ inability to do so is easily explained, for there was no such farmer and no such request. It is yet another example of Complainants’ concocted contentions in the complaint proceeding they initiated.

E.

V&S did not avoid assessing reasonable rates.

6. Complainants surely must have known that 49 U.S.C. § 10702 requires a rail carrier, such as V&S, to establish and maintain reasonable rates for the transportation or service it is authorized to render, and yet not a single farmer represented by the wheat interests or KCVN has lodged a complaint with the Board, whether informal or formal, alleging that V&S’ rates applicable on wheat shipments on the Towner Line were excessive. On page 9 of the Complaint, KCVN seeks to portray itself as one of the farmers by asserting that it “owns approximately 25,000 acres of agricultural

land near the Towner Line where it grows wheat.” KCVR, however, doesn’t bother to identify where its property is located. What is KCVN’s notion of being near the Towner Line? Is it 5 miles, 50 miles or 500 miles? If the property really were near the Towner Line and a potential source of wheat shipments on the line, KCVN wouldn’t have hesitated to remove the doubt that its assertion raises. In any event, KCVN hasn’t complained to the Board about V&S’s rates applicable on shipments of wheat any more that did the farmers represented by the wheat interest. That the Complainants again should have charged V&S to be a violator of law, this time by the contrived contention that it failed to render service on the Towner Line in compliance with 49 U.S.C. § 11101 is scandalous and reprehensible.

F.

V&S was and remains willing to sell the Towner Line.

7. The one thing that comes through loud and clear from the Complaint is that KCVN wants the Towner Line. Why KCVN wants the Towner Line is anyone’s guess. KCVN wraps itself in the mantel of rectitude by claiming at pages 2, 9, 12 and 13-14 of the Complaint that it wants to purchase the Towner Line to take steps to reactivate the line and restore common carrier service over it. The Missouri Pacific Railroad Company (“MoPac”), under the control of the Union Pacific Railroad

Company (“UP”), couldn’t make a go of it and was authorized by the ICC to abandon the Towner Line in Docket No. AB 3 (Sub-No. 130), Missouri Pacific Railroad Company—Abandonment—Towner-NA Junction Line in Kiowa, Crowley and Pueblo Counties, CO, one of the transactions included in Board’s authorization in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996). In the absence of anyone’s filing an offer of financial assistance (“OFA”), pursuant to 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, the Colorado Department of Transportation (“CDOT”) purchased the Towner Line from the UP. It took CDOT some time to find someone willing to try to operate the Towner Line, but eventually the Colorado, Kansas & Pacific Railway Company (“CKPR”) came along to lease the line with option to purchase it. Docket No. FD 33587, Colorado, Kansas & Pacific Railway Company—Lease, Operation, and Future Purchase Exemption—Colorado Department of Transportation (STB, served April 7, 2000). CKPR after only four years gave up trying to operate the Towner Line profitably, and CDOT once more had to look for someone willing to operate the line. V&S agreed to give it a try and assumed CKPR’s lease and at the same time bought the Towner Line. Docket No. FD 34779, V&S Railway, Inc.—Acquisition and Operation Exemption—Rail Line of Colorado, Kansas & Pacific (STB, served December 30, 2005); Docket No. FD 35664, V&S

Railway Line—Acquisition and Operation Exemption—Colorado

Department of Transportation (STB, served November 13, 2012). V&S, as MoPac and CKPR before it, hasn't been able to operate the Towner Line profitably, and, as KCVN points out at length at pages 2 and 5-8 of the Complaint, V&S has indicated that it will want to abandon the Towner Line. It takes some kind of ego for KCVN, totally devoid of background or experience in railroad operations, to offer to purchase the Towner Line to reactivate it and to restore common carrier service over it when its rail carrier predecessors were unsuccessful in doing so. KCVN, of course, doesn't propose undertaking the operations itself. KCVN's Texas representative, Mr. William S. Osborn, at pages 3-4 of his Verified Statement, Exhibit 2 attached to Complainants' Motion for Emergency and Preliminary Injunctive Relief, filed October 28, 2014, indicated that KCVN planned to retain a short line railroad to operate the Towner Line. Mr. Osborn says he had spoken with the Watco Company, and, according to Mr. Osborn, "Watco has indicated an interest in serving this role, subject to agreement on mutually satisfactory commercial terms." KCVN would need to come up with a fairly substantial subsidy for the Watco Company is no more interested in having one of its short line railroads sustain losses in operating the Towner Line than the MoPac, CKPR and V&S were.

8. One thing is clear. KCVN wants to buy the Towner Line on the cheap. Although the manager and primary member of KCVN is Mr. Sheldon H. Solow of New York, NY, listed in Forbes Magazine among the wealthiest persons in the country, with a net worth of \$3.6 billion, KCVN makes a big deal, at pages 2, 8-9 and 13 of the Complaint, of the July 28, 2014, letter in which Mr. Osborn conveyed KCVN's offer to buy the Towner Line for \$10 million. \$10 million, of course, just happens to be about what V&S agreed to pay CDOT for its purchase of the Towner Line more than nine years ago. As most everyone else seems to understand, prices have risen in the meantime, and based upon the Bureau of Labor Statistics' annual rates of inflation, attached as Exhibit 3, the equivalent of \$10 million in 2005 today would be \$17,770. But in all fairness to KCVN, Mr. Osborn in his letter said that KCVN's \$10 million "offer is contingent upon receipt of an inspection report from a recognized consultant." The letter, however, didn't say that KCVN's purchase price would be increased if the report of the consultant indicated that the Towner Line's net liquidation value ("NLV") was greater than \$10 million." Although it was unclear just what function the consultant's report would serve, Mr. Osborn said, "We have in mind retaining for this purpose a company such as R. L. Banks & Assoc., Shelby Railroad Service, Railworks Company, or another

of their caliber for this purpose.” Well, it just so happens that A&K had engaged R. L. Banks & Associates to undertake an appraisal of the Towner Line, and it determined that its NLV is \$26,951,300.00. Mr. Osborn in his letter had suggested a face to face meeting, adding, “We are open to a discussion about valuation, within reasonable limits, and contingent upon review of the inspection report contemplated above.” A&K was and remains prepared to sell the Towner Line, and so it acceded to Mr. Osborn’s proposal for a face to face meeting. A&K’s Chairman and majority stockholder, Mr. Kern Schumacher, and A&K’s Vice President and General Counsel, Doug Davis, Esq., met with Mr. Osborn in Phoenix, AZ, on November 18, 2014, and they advised Mr. Osborn that A&K’s initial counter proposal was to sell the Towner Line to KCVN for \$26.9 million. Mr. Osborn, however, did not come off KCVN’s initial offer to buy the Towner Line for \$10 million. His reaction at the meeting was hostile and antagonistic, and he made it perfectly clear that KCVN would do everything possible to block any efforts V&S might make to abandon the Towner Line.

G.

KCVN seeks to acquire the Towner Line by an OFA.

9. Mr. Osborn evidently had forgotten that less than a month earlier, in his Verified Statement of October 28, 2014, Exhibit 4 attached to the

Complaint, he had stated, “KCVN intends to continue its efforts to acquire the line from V&S, whether it is a mutually agreeable purchase arrangement, or through the means for acquiring such lines of rail available through the statutes and regulations administered by this Board.” That sounded pretty much as if KCVN wanted to obtain the Towner Line through an OFA. If it was unclear from Mr. Osborn’s Verified Statement what he meant, KCVN’s Supplement to Motion for Preliminary Injunction, filed December 23, 2014, removed that uncertainty. On page 3 of the pleading, KCVN explained, “The relevant statutes and regulations to which [Mr. Osborn] alludes include the rules and procedures governing the OFA process under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.57.” The pleading continued:

KCVN continues to stand ready to engage in the OFA process and potentially acquire the entire Towner Line, but it cannot do so until V&S formally seeks to abandon the Towner Line. KCVN is certainly aware of the Board’s “feeder line” statute and procedures, and could pursue that avenue to acquire the line if ultimately necessary,¹ but a responsible party should not be forced to use the more involved and costly processes under 49 U.S.C. § 10907 and 49 C.F.R. Part 1151 to acquire a line of railroad when the owning railroad has repeatedly announced in formal agency and court proceedings that it will not only abandon the track at issue, but that it will do so within a particular time frame.

At page 4 of the Supplement, KCVN contends, “V&S appears to see greater financial benefit from selling the track assets than enabling parties to

¹ By his letter, dated April 29, 2015, counsel for KCVN informed the Board that KCVN intends to submit a feeder line application on or before August 1, 2015.

potentially acquire the line through the Board's OFA process and pursue the possibility of reinstating common carrier rail service over it." V&S' actions belie KCVN's posited perception.

H.

V&S has begun the process for abandoning the Towner Line.

10. Once again KCVN is misinformed and misrepresents what is going on. V&S, in fact, has begun preparing to abandon the Towner Line. On May 14, 2015, its representative sent a letter to each of the U.S. and Colorado agencies which V&S is obliged to consult in the preparation of the environmental and historic report which it must file with the Board, pursuant to 49 C.F.R. § 1105.7(b), at least 20 days in advance of the filing of its Verified Notice of Exempt Abandonment. The letters stated that V&S anticipates filing its Notice of Exempt Abandonment on or about July 1, 2015. Copies of the letters were sent to Victoria J. Rutson, Esq., Chief of the Board's Office of Environmental Analysis.

11. Pursuant to 49 C.F.R. § 152.27(b)(ii), the Board will publish a notice of V&S's proposed abandonment of the Towner Line in the Federal Register 20 days after V&S' Verified Notice of Exempt Abandonment has been filed with the Board, and 30 days after the notice has been published in

the Federal Register KCVN or anyone else having an interest in doing so can file its OFA.

12. V&S' commencement of the process for the abandonment of the Towner Line and KCVN's evident interest in acquiring the Towner Line through the OFA process to reactivate the line and keep it in common carrier service renders the pursuit of the proceeding which the Complainants initiated by their Complaint unnecessary and counterproductive.

Complainants will have achieved the very purpose for which they initiated the instant proceeding. If they were persons of principle and integrity, they would withdraw their Complaint as others before them have done when their objectives had been achieved without the Board's intervention. Docket No. FD 42139, James Valley Grain, LLC v. BNSF Railway Company (STB, served August 8, 2014); Docket No. NOR 42135, Denver Rock Island Railroad Company v. Union Pacific Railroad Company (STB, served December 31, 2013); Docket No. FD 42076, Albany & Eastern Railroad Company v. The Burlington Northern and Santa fe Railroad Company (STB, served January 12, 2004). If, however, the Complainants were to fail to withdraw their Complaint, the Board should dismiss it and discontinue the instant proceeding. Absent the dismissal of the Complaint and the discontinuance of the instant proceeding, Complainants and V&S will be

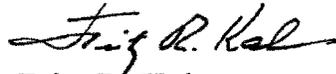
disputing whether V&S removed rail and track materials from the Western Segment of the Towner Line and, assuming it did so, whether its action required the Board's authorization pursuant to 49 U.S.C. § 10903 or an exemption under 49 U.S.C. § 10502 at the very time that KCVN or another offeror would urge the Board to authorize the Towner Line's abandonment pursuant to 49 U.S.C. § 10903 or an exemption under 49 U.S.C. § 10502 so that the Towner Line can be acquired through an OFA to be reactivated and kept in common carrier service. Similarly, Complainants and V&S would be arguing whether V&S failed to render transportation or service on reasonable request on the Towner Line, pursuant to 49 U.S.C. § 11101, at the very time that KCVN or another offeror would try to persuade the Board that its OFA should be accepted to assure that transportation or service is rendered on reasonable request on the Towner Line.

WHEREFORE, V&S Railway, LLC respectfully request that the
Complaint be dismissed and the instant proceeding discontinued.

Respectfully submitted,

V&S RAILWAY, LLC

By its attorney,



Fritz R. Kahn

Fritz R. Kahn, P.C.

1919 M Street, NW (7th fl.)

Washington, DC 20036

Tel.: (202) 263-4152

e-mail: xiccgc@gmail.com

Dated: May 28, 2015

EXHIBIT 1

VERIFIED STATEMENT OF MR. ROCKY SMITH

My name is Rocky Smith, and I am the Vice President of Field Operations for A&K Railroad Materials, Inc. ("A&K").

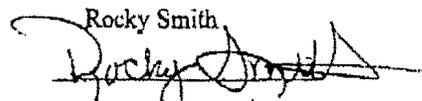
I was assigned by A&K to supervise the removal of the rail from the segment of V&S Railway's Towner Line between NA Junction, CO and Haswell, CO ("Western Segment"), which had been contracted to be sold to the Great Western Railway, LLC ("GWR"), an affiliated railroad of OmniTRAX, Inc., for installation on the GWR.

The ex parte temporary restraining order which KCVR obtained on August 28, 2014, from the Crowley County State of Colorado District Court, continued in effect by the U.S. District Court for the District of Colorado, to which the case was removed, and by the Surface Transportation Board's stay order, served October 31, 2014, barred removal of the rail, and none has been removed.

While V&S in its discovery response admitted that "some tie plates and spikes were removed", the statement was not as clear or complete as it should have been. A few spikes were pulled, but no rail, spikes or tie plates were removed from the right-of-way of the Western Segment.

I have read the Verified Statement of Mr. Gerald W. Fauth, III, appended as Attachment 2 to the Complainants' Supplement to Motion for Preliminary Injunction, and looked at the pictures he claims to have taken at public crossings and other locations on the Towner Line. The first photograph in Mr. Fauth's statement, showing an A&K rail removal machine picking up replacement rail from a relay, is not from the Towner Line. Instead, it is taken from the A&K website. Most revealing is photograph 5, for it shows that all rail is still in-place and that while a few spikes have been pulled, none has been removed from the right-of-way. A close examination of the photograph also shows that the tie plates are still in-place, but with brush and dirt on them.

The foregoing statement is true and correct, and I offer it on the risk of civil or criminal penalties for perjury.

Rocky Smith

Executed January 6 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

COLORADO WHEAT)
ADMINISTRATIVE COMMITTEE,)
COLORADO ASSOCIATION OF)
WHEAT GROWERS, COLORADO)
WHEAT RESEARCH FOUNDATION)
4026 South Timberline Road, Suite 120)
Fort Collins, CO 80525)

And)

KCVN, LLC)
515 Congress Avenue, Suite 2450)
Austin, Texas 78701)

vs)

Docket No. NOR 42140

V&S RAILWAY, LLC)
1505 South Redwood Road)
Salt Lake City, Utah 84104)

VERIFIED STATEMENT OF GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

On December 2 and 3, 2014, I conducted an inspection of the so-called Towner Line in Colorado, which runs a distance of approximately 122 miles from Milepost (MP) 747.5 near Towner, Colorado (which is approximately 2 miles west of the Colorado/Kansas state line) to

North Avondale (NA) Junction, Colorado at MP 869.4 (which is approximately 27 miles east of Pueblo, Colorado). Currently, V and S Railway, Inc. (V&S), a shortline railroad company headquartered in Salt Lake City, Utah, is the owner of the subject line. I conducted this inspection at the request of KCVN, LLC, which is interested in possibly purchasing the Towner Line, whether directly from V&S, or through an Offer of Financial Assistance pursuant to 49 U.S.C. §10904 should V&S seek authority to abandon the Towner Line.

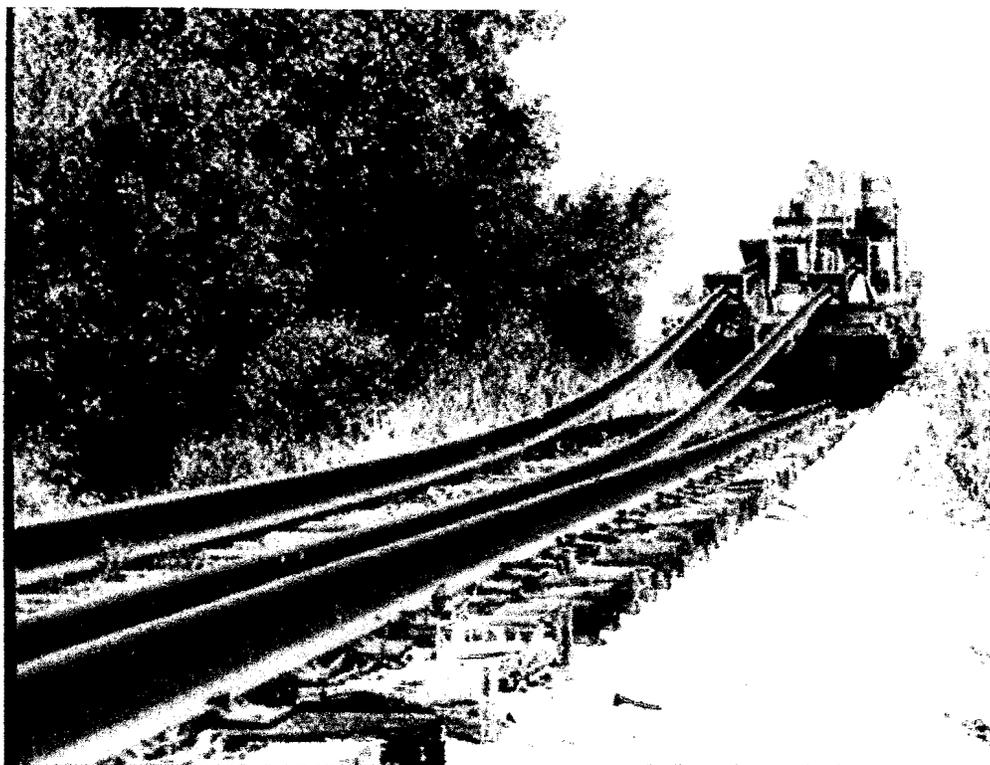
The Towner line generally follows parallel to Route 96 in an east (Towner) to west (NA Junction) direction. I drove the entire 122-mile length of the line twice and stopped at numerous many public crossings and other locations on the line. During this inspection of the line, I observed a parked train on a section of track between Eads and Haswell, Colorado, (between MP 785.8 and MP 807.7, respectively). I have attached pictures as Appendix GWF-2. This parked train included:

- A single locomotive with the markings SMNR 3518 (SMNR is abbreviation for the Southern Manitoba Railway, Inc.) (see Picture 1);
- What appeared to be a rail removal machine (see Picture 2); and,
- Many flats cars with rail racks, most of which had VSR markings (e.g. VSR 332), which I assume are owned by V&S (see Pictures 3 and 4)

The rail removal machine was unmarked, but it appears to be very similar to one featured on the web site of A&K Materials, Inc. (which is affiliated with V&S) and shown below:¹

¹ See <http://www.akrailroad.com/track-removal>. V&S and A&K share the same corporate address with V&S (i.e., 1505 South Redwood Road, Salt Lake City, Utah 84130) and V&S, in its Reply dated October 30, 2014 in this docket describes A&K as an “affiliate” (Reply at page 5).

A&K Rail Removal Machine



As far as I could tell, the rail racks on the cars were all empty and it appeared that the rails were still in place in that section of the line. However, the signs were clearly evident to me that V&S was intending to harvest the rail. In the town of Haswell and other locations, I observed many areas where most of the pins had been pulled and many of the tie plates removed in preparation for the removal of the rail. (see, for example, Picture 5). While stopping for gas in Haswell, the operator of the local gas station confirmed for me that crews had been through town over the summer pulling pins.

VERIFICATION

The foregoing statement is true and accurate to the best of my belief and knowledge.



Gerald W. Fauth, III

Subscribed and sworn to before me this 23 day of December 2014.

County/City of Alexandria

Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before
on the 23rd day of Dec., 2014

by Juan Cam
 Notary Public.

My commission expires 9/30/18


Notary Public

My commission expires: 9/30/18



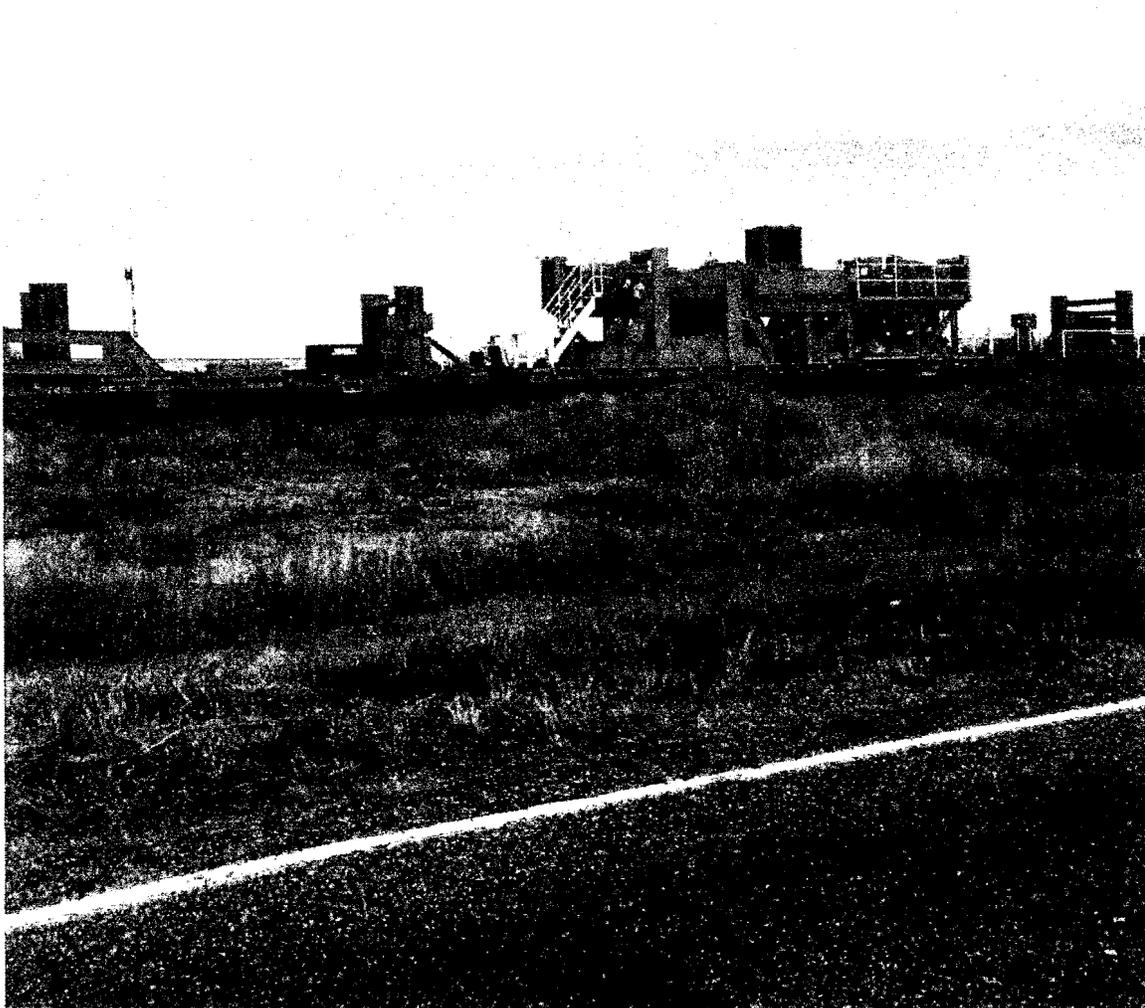
**Pictures From Gerald W. Fauth III's
12/02/14 to 12/03/14 Inspection of Towner Railroad Line**

**Picture 1
Locomotive SMNR 3518**



**Pictures From Gerald W. Fauth III's
12/02/14 to 12/03/14 Inspection of Towner Railroad Line**

**Picture 2
A&K Rail Removal Machine**



**Pictures From Gerald W. Fauth III's
12/02/14 to 12/03/14 Inspection of Towner Railroad Line**

**Picture 5
Picture of Rail With Pins and Tie Plates Removed**



**Pictures From Gerald W. Fauth III's
12/02/14 to 12/03/14 Inspection of Towner Railroad Line**

**Pictures 3 and 4
VSR Flat Cars with Rail Racks**



EXHIBIT 2

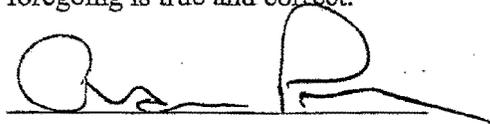
DECLARATION OF AARON PARSONS

I am Aaron Parsons, Assistant Vice President of V&S Railway, Inc. ("V&S"), the defendant in the litigation now on file in the United States District Court in Denver. As the individual at V&S who schedules traffic movements, and manages all operations on V&S's railroad line located between NA Junction, CO and Towner, CO ("Towner Line"), I am also shown as the contact person, to receive requests for service on the Towner Line, in the widely distributed rail industry publication *The Official Railway Guide*.

During the prior two years, I have received no calls, written communications, or other requests by shippers of any kind for rail service to be provided by V&S on the segment of the Towner Line between NA Junction, CO and Haswell, CO ("Western Segment"). More specifically, as it pertains to the litigation now on file in the United States District Court in Denver, CO, there have been no freight shipments on the Western Segment since I commenced my employment in May of 2007.

Finally, I am not aware of anyone connected with KCVN, LLC having contacted me to inquire about either the operations of the Towner Line, or its possible availability for sale.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Aaron Parsons

Executed on September 10, 2014.

EXHIBIT 3

year. They are published by the BLS but are rarely discussed in news media, taking a back seat to a calendar year's actual rate of inflation.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
2015	-0.1	0.0	-0.1										
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6
2009	0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4
2008	4.3	4	4	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2	2.8	3.5	4.3	4.1	2.8
2006	4	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2	2.5	3.2
2005	3	3	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4
2004	1.9	1.7	1.7	2.3	3.1	3.3	3	2.7	2.5	3.2	3.5	3.3	2.7
2003	2.6	3	3	2.2	2.1	2.1	2.1	2.2	2.3	2	1.8	1.9	2.3
2002	1.1	1.1	1.5	1.6	1.2	1.1	1.5	1.8	1.5	2	2.2	2.4	1.6
2001	3.7	3.5	2.9	3.3	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6	2.8
2000	2.7	3.2	3.8	3.1	3.2	3.7	3.7	3.4	3.5	3.4	3.4	3.4	3.4
1999	1.7	1.6	1.7	2.3	2.1	2	2.1	2.3	2.6	2.6	2.6	2.7	2.2

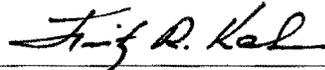
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CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Answer upon the Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers and Colorado Wheat Research Foundation by mailing a copy to their representative, Mr. Terry Whiteside, and upon KCVN, LLC by e-mailing a copy to its counsel, Thomas W. Wilcox, Esq. at twilcox@gkglaw.com.

Dated at Washington, DC, this 28th day of May 2015.



Fritz R. Kahn