

LAW OFFICES
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Washington, DC 20036

Tel.: (202) 263-4152 Fax: (202) 331-8330 E-mail: xiccgc@gmail.com

January 7, 2015

VIA ELECTRONIC FILING

237395

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

ENTERED
Office of Proceedings
January 7, 2015
Part of
Public Record

Re: Docket No. NOR 42140, Colorado Wheat Administrative Committee.
Colorado Association of Wheat Growers, Colorado Wheat Research
Foundation and KCVB, LLC v. V&S Railway, LLC

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Reply of V and S Railway, LLC to the Supplement to Motion for Preliminary Injunction, filed by the Complainants on December 23, 2014.

Copies of this letter and its attachments are being served on the Complainants' representative and attorney.

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

Sincerely yours,


Fritz R. Kahn

Att.

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

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINSTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWER,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

REPLY
OF
V AND S RAILWAY, LLC

Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Attorney for

V AND S RAILWAY, LLC

Dated: January 7, 2015

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINSTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWER,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

REPLY
OF
V AND S RAILWAY, LLC

V and S Railway, LLC (“V&S”), the owner of the Towner Line in Colorado, pursuant to 49 C.F.R. § 1104.13(a), replies to the Supplement, filed December 23, 2014, to Motion for Preliminary Injunction filed on behalf of the Complainants in this proceeding¹, as follows:

Complainants’ pleading is most ludicrous submission imaginable. After faulting V&S in their Complaint Alleging Violations of 49 U.S.C. §10903 and §11101, filed October 28, 2014, for allegedly having indicated its intent to abandon the Towner Line, Complainants now criticize V&S for not having done so. Complainants say they are prepared to acquire the Towner Line through the OFA process of 49 U.S.C. § 10904 and 49 C.F.R. §1152.57. But the OFA process is available only as an alterative to abandonment.

¹ Complainants finally acknowledge that their Motion for Emergency and Preliminary Injunctive Relief, filed October 28, 2014, was nothing more than a Motion for Preliminary Injunction.

On page 3 of their Supplement, Complainants say, “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 procedure, and could pursue that avenue to acquire the line if ultimately necessary, but a responsible party should not be forced to use the more involved and costly process 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.”

Complainants cannot be serious. KCVN, LLC is a Delaware limited liability company registered as a foreign limited liability company in Texas. Exhibit A. Its foremost member is Mr. Sheldon H. Solow of New York, listed by Forbes Magazine among the richest people in America, with an estimated fortune of \$3.6 billion dollars. Exhibit B.

The principal address of KCVN, LLC is 515 Congress Avenue (Suite 2450), Austin, Texas 78701. That just happens to be the address of the law firm of Osborn, Griffith & Hargrove. Exhibit C. It was William Osborn, Esq., of that firm, identifying himself as the attorney-in-fact for KCVN, LLC, who wrote the letter, dated July 28, 2014, to Mr. Kern Schumacher, member and manager of V&S, offering to buy the Towner Line for \$10 million cash. Mr. Osborn concluded his letter by stating, “We are mindful that your company may consider the line more valuable than our initial offer. We are open to a discussion about valuation, within reasonable limits, and contingent upon review of the inspection report contemplated above.” His reference was to an

appraisal of the Towner Line by R. L. Banks & Associates, Inc. or another firm of its caliber.

It just so happened that V&S engaged R. L Banks & Associates, Inc., and it appraised the entire Towner Line as having a net liquidation value of \$26,951,300. Responding to Mr. Osborn's invitation to have an open discussion about the Towner Line's net liquidation value, Mr. Schumacher, accompanied by V&S' General Counsel, Doug Davis, Esq., met with Mr. Osborn in Phoenix, Arizona, on Tuesday, November 18, 2014. In an effort to try to settle the disagreement between the parties, Mr. Schumacher indicated that he would be willing to sell the Towner Line for the amount of the appraisal of R. L. Banks & Associates, Inc. KCVN's response was quick and quite certain. In the view of KCVN, the proposal was unconstructive; the offer was rejected.

Complainants' Supplement renders it evident that KCVN doesn't know what it wants to do. To date, it has been unprepared and unwilling to offer a reasonable price to pay for its purchase of the Towner Line. It evidently is waiting for V&S to abandon the Towner Line so that it can use the OFA process to try to acquire it. The OFA process, however, will not resolve the differences between the \$10 million that KCVN apparently thought was a reasonable price to pay for the Towner Line and the \$26,951,300 that at a minimum V&S would want to receive from KCVN for the property. KCVN, which is reluctant to assume what it terms to be the involved and costly process of a feeder line acquisition, however, in addition to having to pay a firm of the caliber of R. L. Banks & Associates, Inc. for an appraisal of the Towner Line will probably wind up paying the \$23,800 filing fee to have the Board to set the terms and conditions for the sale of the property.

The Supplemental Verified Statement of Mr. Hanavan, Attachment 1 to KCVN's Supplement, adds absolutely nothing to what he already asserted in his Verified Statement, Attachment 3 to Complainants' Motion for Emergency and Preliminary Injunctive Relief.

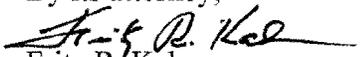
The photographs which are provided by Mr. Gerald W. Fauth III, Attachment 2 to KCVN's Supplement, are very helpful indeed for they confirm that, contrary to KCVN's earlier assertions, not a single piece of rail has been removed from the Western Segment of the Towner Line. A locomotive and empty flat cars may have been seen by Mr. Fauth as he drove back and forth on Route 96 paralleling and adjacent to the entire 122-mile length of the Towner Line, but, look as he might have, he saw nothing which indicated that a single piece of rail had been removed from the Towner Line. To the contrary, as the Verified Statement of Mr. Rocky Smith, attached as Exhibit D, indisputably demonstrates, while a few spikes were pulled, no rail, spikes or plates have been removed from the right-of-way.

WHEREFORE, V and S Railway, LLC respectfully requests the Board either to reject or to deny Complainants' Supplement to Motion for Preliminary Injunction.

Respectfully submitted,

V AND 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

Dated: January 7, 2015

EXHIBIT A

corporationwiki (0)

Kcvn LLC

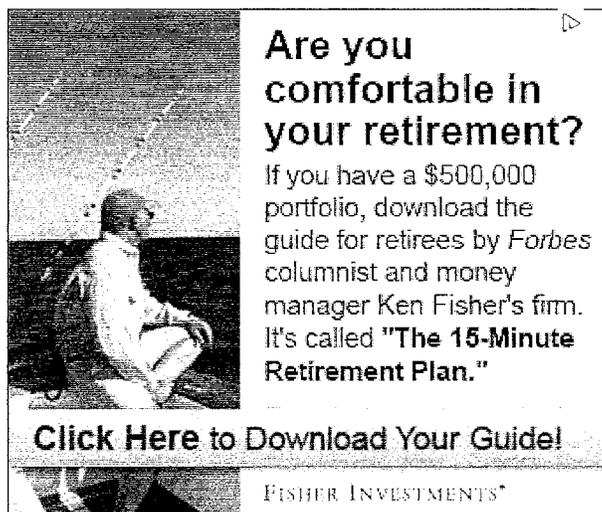
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📍 Austin (/Texas/Austin/BusinessDirectory.aspx), TX (/Texas/BusinessDirectory.aspx)

📄 D&B Company Report (/link/dnb/37505312)

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FISHER INVESTMENTS*

📄 Overview of Kcvn LLC in Austin, TX

Kcvn LLC filed as a **Foreign Limited Liability Company (LLC)** in the **State of Texas** and is **no longer active**. This corporate entity was filed approximately eight years ago on Friday, September 15, 2006, according to public records filed with **Texas Secretary of State**. It is important to note that this is a foreign filing. A foreign filing is when an existing corporate entity files in a state other than the one they originally filed in. This does not necessarily mean that they are from outside the United States.

Key People

Sheldon Solow (/New-York/New-York/sheldon-h-solow/34578437.aspx) was the **Member** of Kcvn LLC. Sheldon's additional corporate interests include Sour Lake Oil & Gas, LLC (/New-York/New-York/sour-lake-oil-gas-llc/34578426.aspx) located in New York, NY. Sheldon's past corporate affiliations include Federal Law Enforcement Foundation, Inc. (/p/2cxthu/federal-law-enforcement-foundation-inc)

The registered agent for the company is Serve Secretary of State for Mailing to. Also known as a statutory or resident agent, the registered agent is responsible for receiving legal notifications regarding court summons, lawsuits, and other legal actions involving the corporate entity.

👤 Key People & Organizations for Kcvn LLC

Kcvn LLC (<http://www.corporationwiki.com/Texas/Austin/kcvn-llc/37505312.aspx>)

📍 Austin (/Texas/Austin/BusinessDirectory.aspx), TX (/Texas/BusinessDirectory.aspx)

Inactive

📄 D&B Company Report (/link/dnb/37505312)

👤 2 Inactive Members Found

🔑 Key roles for Kcvn LLC

👤 Stefan O. Soloviev (/New-York/New-York/stefan-o-soloviev/37505326.aspx)

MANAGER

Inactive

👤 Sheldon H. Solow (/New-York/New-York/sheldon-h-solow/34578437.aspx)

MEMBER

Inactive

📁 Corporate Records

Texas Secretary of State

Filing Type: Foreign Limited Liability Company (LLC)

Status: Inactive

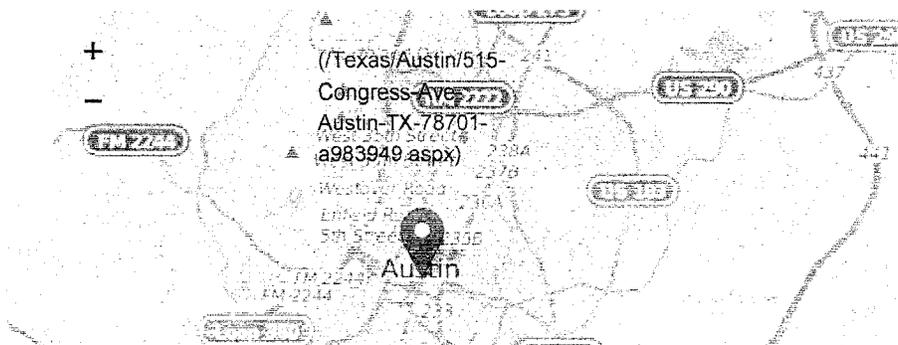
State: Texas

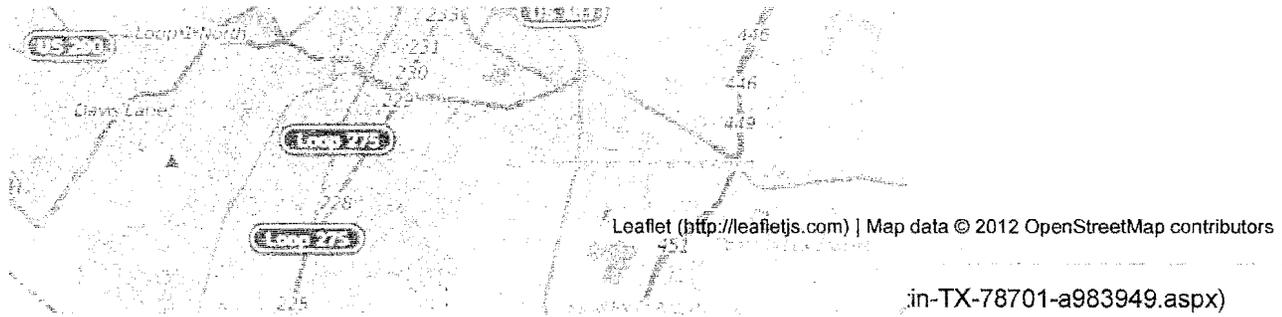
State ID: 800708127

Date Filed: Friday, September 15, 2006

Registered Agent: Serve Secretary of State for Mailing to

📍 Locations





📍 Alternate Names:

Kcvn LLC - Legal

📄 Records Similar to Kcvn LLC



Kcvn LLC (/p/m999e/kcvn-llc)

Search for additional records for Kcvn LLC (/research/kcvn-llc)

📖 Business Reports for Kcvn LLC

Comprehensive Insight Plus Report

★ Learn More

(/link/dnb/37505312)

The D&B Comprehensive Insight Plus Report for Kcvn LLC combines D&B's proprietary statistical scoring with business, payment and financial information all in one report.

US Company Profile Report

★ Learn More

(/link/dnb/37505312)

The D&B U.S. Company Profile contains basic information such as address and telephone number, executive names and titles, line of business and SIC codes, D-U-N-S Numbers, organization status, and year and location of incorporation for Kcvn LLC.

All Public Arrest Records

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👁 Source

Texas Secretary of State refreshed 12/3/2013

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Introduction

KCVN LLC

TEXAS LIMITED-LIABILITY COMPANY
Data Updated April 17, 2014

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Complete LLC Operating Agreement. Legally Binding in All States.

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Kcvn LLC is a Texas Limited-Liability Company filed on September 15, 2006. The company's filing status is listed as No Standing, Franchise Responsibility Ended and its File Number is 0800708127.

The Registered Agent on file for this company is Corporation Service Company Dbc - Lawyers Inco and is located at 701 Brazos Suite 1050 Austin, TX 78701. The company's principal address is 515 Congress Ave Ste 2450 Austin, TX 78701-3558.

The company has 2 principals on record. The principals are Sheldon H Solow from New York NY and Stefan O Soloviev from New York NY.

Company Information

Company Name: KCVN LLC
File Number: 0800708127
Filing State: Texas (TX)
Domestic State: Delaware (DE)
Filing Status: No Standing, Franchise Responsibility Ended
Filing Date: September 15, 2006
Company Age: 8 Years
Registered Agent: Corporation Service Company Dbc - Lawyers Inco
 701 Brazos Suite 1050 Austin, TX 78701
Principal Address: 515 Congress Ave Ste 2450 Austin, TX 78701-3558

Arrest Records: 2 Secrets

instantcheckmate.com

1) Enter Name and State. 2) Access Full Background Checks Instantly.

Company Contacts

SHELDON H SOLOW
Member
9 West 57th Street Suite 4500
New York, NY 10019

STEFAN O SOLOVIEV

Manager
C/O Solow Development 9 W 57th Street Suite 4500
New York, NY 10019

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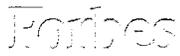
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EXHIBIT B

Rank	Name	Popular	Real Time Lists	Forbes 400*	Age	Residence	Source
#156	Isaac Perlmutter	America's Youngest Billionaire	\$3.6 B	\$3.5 B	72	Palm Beach, FL	Marvel comics
#157	Sheldon Solow		\$3.6 B	\$3.6 B	86	New York, NY	real estate
#158	Steven Spielberg		\$3.6 B	\$3.6 B	68	Pacific Palisades, CA	Movies
#159	Jim Davis & family		\$3.6 B	\$3.3 B	71	Newton, MA	New Balance
#160	Randal Kirk		\$3.6 B	\$3.1 B	60	Manalapan, FL	pharmaceuticals
#161	Edward Lampert		\$3.6 B	\$3.1 B	52	Miami Beach, FL	Sears
#162	Dagmar Dolby & family		\$3.5 B	\$3.5 B	73	San Francisco, CA	Dolby Laboratories
#163	Bernard Marcus		\$3.5 B	\$3 B	85	Atlanta, GA	Home Depot
#164	Riley Bechtel		\$3.5 B	\$4 B	62	San Francisco, CA	engineering, construction
#164	Stephen Bechtel Jr		\$3.5 B	\$4 B	89	San Francisco, CA	engineering, construction



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Sheldon Solow

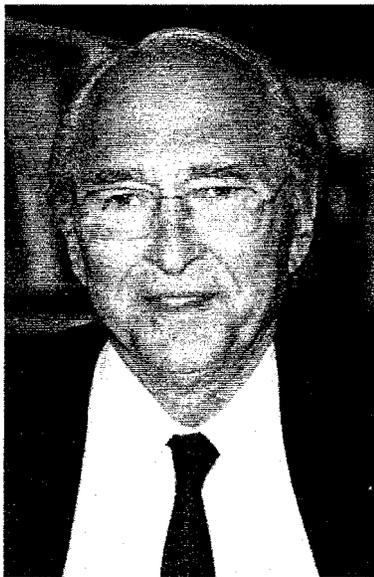


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Real Time Net Worth

\$3.6 Billion

\$0 | 0%

As of 10/23/2014 @ 3:20PM *

Follow (19)

Age **86**

Source Of Wealth **real estate, Self Made**

Self-Made Score **9**

Residence **New York, NY**

Citizenship **United States**

Marital Status **Married**

Forbes Video



- Forbes 400 2014
- Fast Facts of the Forbes 400
- Billionaire First Jobs
- Forbes Richest: Now & Then
- Forbes 400 2014: Meet The Richest
- Inside The Forbes 400: Facts & Figures
- Buy Like Buffett: A Love Story

New York real estate mogul Sheldon Solow is finally set to break ground on a 275-unit residential building on the Con Edison Redevelopment site on Manhattan's East River. He paid \$630 million for the property in 2005, but the project stalled amid the Great Recession and a lawsuit filed by his former partners that was eventually settled in 2010. Son of a bricklayer and a homemaker in Brooklyn, Solow [...] more

*Reflects changes since 5pm EST last trading day

More On Forbes

Real Estate Royalty: Mapping New York City's Billionaire Landlords

Forbes Magazine: Issue

New York City's real estate market is booming, as residential and commercial prices rise and huge new projects get under way. These are nine of the richest developers with skin in the game. Not included are some of the

http://www.forbes.com/.../sheldon-solow/



10/23/2014

EXHIBIT C

Osborn, Griffith & Hargrove

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 - [Ana Maria Marsland-Griffith](#)
 - [Rob Hargrove](#)
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Austin, texas

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Our firm focuses on the stewardship and administration of land and mineral holdings, with a particular focus on oil & gas matters, including operation, regulation, and litigation.

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Osborn, Griffith & Hargrove

<http://www.osborn-griffith-and-hargrove-1626834-f/>

Osborn, Griffith & Hargrove

Law Firm in Austin, TX

512-476-3529 512-476-3529 (tel:512-476-3529)

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Areas of Law

Areas of Law

- Oil and Gas
- Administrative Law.

Peer Rating

Peer Rating

Average Peer Rating
Based on this firm's rated lawyers

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• Lawyers rated at this firm meet very high criteria of general ethical standards



William S. Osborn (<http://www.lawyers.com/austin/texas/william-s-osborn-1626838-a/>)

Member
5.0 out of 5.0

(<http://www.lawyers.com/austin/texas/william-s-osborn-1626838-a/>)



Ana Maria Marsland-Griffith (<http://www.lawyers.com/austin/texas/ana-maria-marsland-griffith-1627343-a/>)

Member
5.0 out of 5.0

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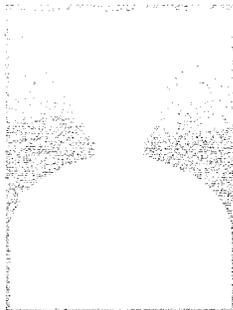
People at This Firm

People at This Firm

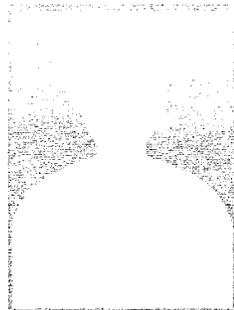
Lawyer Name:

Area of Law:

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Elmer F. Patman
Member
(1907-1987)



Philip F. Patman
Member
(1937-2005)

Firm Details

Firm Details

3

Firm Size

Anadarko Petroleum Corporation; CML Exploration LLC; Jones Energy, Ltd.; Upland Resources, Inc.

Clients

Contact Information

Contact Information

Osborn, Griffith & Hargrove (/austin/texas/osborn-griffith-and-hargrove-1626834-f/)

Suite 2450 Bank of America Center, 515 Congress Avenue,

Austin, TX 78701-3504

U.S.A.

Firm Address

512-476-3529

Phone

512-476-8310

Fax

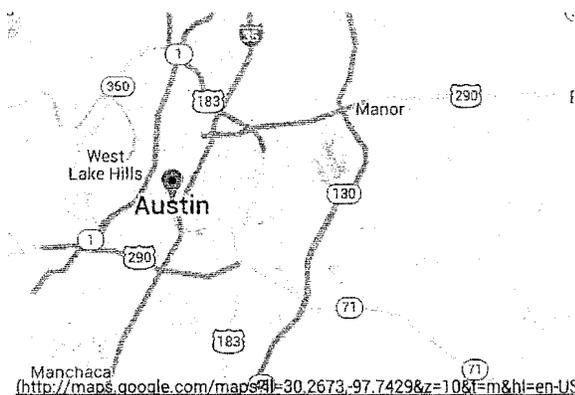
Office Information

Office Information

Osborn, Griffith & Hargrove (/austin/texas/osborn-griffith-and-hargrove-1626834-f/)

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EXHIBIT D

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").

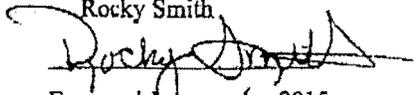
I was assigned by A&K to supervise the removal of the rail from the segment of V&S Railway's Towner Line between NA Junction, CO and Haswell, CO ("Western Segment"), which had been contracted to be sold to the Great Western Railway, LLC ("GWR"), an affiliated railroad of OmniTRAX, Inc., for installation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

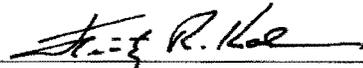
The foregoing statement is true and correct, and I offer it on the risk of civil or criminal penalties for perjury.

Rocky Smith

Executed January 6 2015

CERTIFICATE OF SERVICE

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

Dated at Washington, DC, this 7th day of January 2015.



Fritz R. Kahn