

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 22, 2015
Part of
Public Record

TOWN OF NORTH JUDSON, INDIANA)		
-- ADVERSE DISCONTINUANCE OF)		DOCKET NO.
SERVICE – IN LAPORTE, PORTER,)		AB-1232
AND STARKE COUNTIES, IN)		

**CHESAPEAKE & INDIANA RAILROAD COMPANY, INC.’S
MOTION TO COMPEL**

Chesapeake & Indiana Railroad Company, Inc. (“CKIN” and/or “Respondent”) hereby moves the Board pursuant to 49 C.F.R. § 1114.31 to compel the Town of North Judson, Indiana (the “Town” and/or “Petitioner”) to answer fully to CKIN’s First Set of Interrogatories (“Interrogatories”) and First Set of Requests for Production (“Requests”) (collectively, the “Discovery Requests”) served on April 29, 2015.

**I.
BACKGROUND**

This motion concerns a proceeding initiated by the Town on April 16, 2015, whereby it seeks the adverse discontinuance of rail service provided by CKIN as the lessee and operator over a line of railroad putatively owned by the Town (the “Rail Line”). On April 29, 2015, CKIN served discovery on the Town consisting of a request for admissions, interrogatories, and a set of requests for production. At issue here are CKIN’s interrogatories and requests for production.

In general, the Discovery Requests seek information that either (1) defines the procedure and manner of the adverse discontinuance proceeding; or (2) defines the interests that will be burdened and affected by a discontinuance and/or abandonment of the Rail Line. As to the first category of information, CKIN seeks to define: (a) the

Town's interests in the adverse discontinuance proceeding;¹ (b) the Town's Interest in the Rail Line;² and (c) the likelihood of the Rail Line's cessation of service upon grant of the discontinuance.³ As to the second category of information, CKIN seeks to define: (a) the Town and/or the Hoosier Valley Railroad Museum, Inc.'s (the "Museum") ability to operate or market a grain carrying railroad;⁴ (b) the Town's satisfaction with CKIN's operations prior to 2014;⁵ (c) the danger to on-line customers that service will deteriorate or cease entirely;⁶ and (d) the Town and Museum's failure to preserve the Rail Line as a historic resource.⁷

On May 1, 2015, the Town filed its Responses to CKIN's First Request for Admissions. Due to the Town's inadequate response, CKIN was forced to file a Motion to Compel on May 11, 2015 in order to obtain answers to its First Request for Admissions while its interrogatory and document production responses were still outstanding. On May 13, 2015, the Town filed its Responses to First Set of Interrogatories and Responses to First Set of Requests for Production (collectively, the "Responses"). The Town failed to produce a single document in response to CKIN's Requests. And out of the twenty-seven Interrogatories requested by CKIN, the Town answered a mere three by including selective, self-serving communications that do not adequately address the Interrogatories requested.

¹ See CKIN's Request for Production Nos. 3-10, 15-18, as reflected in the Town's Responses to First Set of Requests for Production, attached as **Exhibit A**; CKIN's Interrogatory Nos. 25-26, as reflected in the Town's Responses to First Set of Interrogatories, attached as **Exhibit B**.

² See CKIN's Request for Production Nos. 1-2, 19; CKIN's Interrogatory Nos. 10-13, 22-23.

³ See CKIN's Interrogatory Nos. 14-18, 24.

⁴ See CKIN's Request for Production Nos. 20-22.

⁵ See CKIN's Request for Production Nos. 23-24; CKIN's Interrogatory Nos. 4-9, 19-20.

⁶ See CKIN's Request for Production No. 25.

⁷ See CKIN's Interrogatory No. 21.

Instead, as with its Responses to CKIN's First Request for Admissions, the Town largely objected to the Discovery Requests on the grounds that the subject matter of each request is not relevant to the subject matter and the information sought is not reasonably calculated to lead to the production of admissible evidence or has no bearing on whether discontinuance of rail service is permitted. However, as set forth more fully below, each of the seven categories of information requested by CKIN directly pertains to whether public convenience and necessity permits or requires discontinuance and/or abandonment and/or directs the parties and the Board as to the manner in which the proceeding should be treated.

The Town's objections are yet another attempt to avoid answering any discovery request by CKIN. Thus, the Town should be compelled to respond to the Discovery Requests.

II. **ARGUMENT**

The Board's Rules of Practice generally provide that a motion to compel will be granted when the information sought is either relevant *or likely to lead to the production of relevant evidence*. See 49 C.F.R. § 1114.21. Discovery is available in abandonment and discontinuance proceedings where the information sought is relevant and might affect the result of the case. *SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ*, AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997). The overriding issue in any case involving the adverse discontinuance of rail service or the adverse abandonment of a rail line is whether the public convenience and necessity permit termination of rail service. See *New York Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1185 (D.C. Circ. 2004); *Paulsboro Refining Company, LLC—Adverse Abandonment—In*

Gloucester County, NJ, STB Docket No. 1095, slip op. at 2 (STB served July 26, 2012). The evidence that CKIN expects to get through its discovery will at the very least establish the Town's interests in and therefore its right to bring the impending application for discontinuance. Similarly, the information to be discovered will define the issues that will be before the Board in the adverse proceeding. Further, the information is highly relevant as to whether the public convenience and necessity require the termination of the rail service CKIN has been providing over the Rail Line for the past eleven years under an agreement that has been extended twice.

1. CKIN's Discovery Requests Will Define the Procedure and Manner of the Adverse Discontinuance Proceeding.

(a) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Town's Interests in the Adverse Discontinuance Proceeding.

The documents and information requested in CKIN's Request for Production Nos. 3-10 and 15-18, and CKIN's Interrogatory Nos. 25-26 seek information relevant in establishing the Town's interests in—and therefore its ability to bring—the adverse discontinuance proceeding. As discussed in CKIN's Motion to Compel admissions, it is questionable whether the Town has the right to bring a discontinuance proceeding in the first place. The Town originally acquired the Rail Line through an offer of financial assistance. *CSX Transportation, Inc.—Abandonment Exemption In LaPorte, Porter, and Starke Counties, IN*, AB-55 (Sub.-No. 643X) (STB served May 14, 2004). It is CKIN's understanding that the acquisition was financed by the Indiana Department of Transportation and the three counties (LaPorte, Porter, and Starke)—not the Town itself. Thus, the Town may not have the right to terminate CKIN's service without the cooperation and approval of these other partners.

(b) CKIN's Discovery Requests Seek Relevant Information as to the Town's Interest in the Rail Line.

CKIN is confident that the documents and information requested in Requests 1-2 and 19, and Interrogatories 10-13, and 22-23, particularly with regard to the Railroad Committee minutes, will establish that the Town is the non-operating common carrier of the Rail Line and that the Town's stewardship of the Rail Line has been so intertwined with that of the Museum so that both have been actively involved in the day-to-day management. More specifically, CKIN expects to confirm that the Town and the Museum have commingled funds and responsibilities. Indeed, the Operating Agreement for operations on the Rail Line after December 31, 2015, believed have been drafted by the Museum, specifically identifies the Museum as a party to the agreement.⁸ See Railroad Operating Agreement (Draft), attached as **Exhibit C**. Moreover, CKIN believes that the mysterious "experienced Class III rail operator" that the Town intends to replace CKIN with will very likely be the Museum. Thus, this proceeding should not be viewed as one in which a landlord is seeking to evict an undesirable rail carrier tenant. Rather, this proceeding is more akin to a forced discontinuance of trackage rights of the tenant rail carrier. See *Thompson v. Texas Mexican R. Co.*, 328 U.S. 134 (1965); *The Kansas City Southern Railway Company—Adverse Discontinuance Application—A Line of Arkansas and Missouri and Railroad Company*, AB-103 (Sub-No. 14) (STB served Mar. 26, 1999) (denying adverse trackage rights discontinuance application where the effect of the application would denigrate the quality of service to dependent shippers).

(c) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Likelihood of the Rail Line's Cessation of Service Upon Grant of Discontinuance.

⁸ The current Operating Agreement also contains provisions inuring to the benefit of the Museum.

Through Interrogatory Nos. 14-18 and 24, CKIN seeks to ascertain the likelihood of the Rail Line's cessation upon the Board's grant of the Town's application for discontinuance. As raised in CKIN's Motion to Compel admissions, there is a serious question as to whether the Town is required by Indiana law to solicit proposals to operate the line by issuing a Request for Proposal (RFP) to potential operators. Back in 2004, the Town issued an RFP to solicit potential operators and picked CKIN as the best candidate. CKIN anticipates that Indiana law will once again require it to issue an RFP. To the best of CKIN's knowledge, the Town has not begun this process with the possible result that all rail service will terminate should the Town's application be granted and CKIN be evicted from the line. Alternatively, CKIN believes that the Town may offer a new lease and operating agreement to the Hoosier Valley Railroad Museum, a nonprofit entity that has no expertise operating a common carrier line of railroad handling grain. Accordingly, cessation of rail service is a distinct possibility and this application should be viewed as one for adverse abandonment and judged under those standards. *See City of S. Bend v. Surface Transp. Bd.*, 566 F.3d 1166 (D.C. Cir. 2009); *New York Cross Harbor R.R.*, 374 F.3d 1177.

2. CKIN's Discovery Requests Will Define the Interests That Will Be Burdened and Affected By a Discontinuance and/or Abandonment of the Rail Line.

(a) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Town and/or Museum's Ability to Operate or Market the Rail Line.

CKIN's Request for Production Nos. 20-22 seek documents pertaining to the Town and/or Museum's ability to operate or market the Rail Line, which is highly relevant to the Board's determination of whether the Town's discontinuance request would be permitted or required by public convenience and necessity. Given that CKIN's operator-

successor will in all probability be the Town and/or the Museum, it will be necessary for the Board to determine the impact the change in operators would have on the Rail Line. *See New York Cross Harbor R.R.*, 374 F.3d at 1183 (recognizing that the railroad's interest is a factor the Board must consider in evaluating public convenience and necessity). CKIN simply cannot take confidence in the Town's empty assurances that operations on the Rail Line will continue if the application were to be granted. Specifically, CKIN expects to confirm that neither the Town nor the Museum has the ability or expertise to run a common carrier railroad, let alone a grain carrying railroad. Without competent operators for the Rail Line, all service on the Rail Line will necessarily be doomed.

(b) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Town's Satisfaction with CKIN's Operations Prior to 2014.

CKIN's Request Nos. 23-24 and Interrogatory Nos. 4-9, and 19-20 will establish that there was no dissatisfaction with CKIN's operations over the Rail Line prior to 2014. Although the Town claims that it is seeking the discontinuance "in view of the imminent expiration of the incumbent's Operating Agreement," the Town never expressed any dissatisfaction until recently. As CKIN understands, the Town's dissatisfaction was conveniently raised only after the Town had already solicited for carriers at a Railroad Committee meeting. By that time, CKIN's investment and efforts had produced significant increases in the productivity of the Rail Line, raising traffic from a meager 363 car loads per year to over 3,000 car loads per year for the past several years. As such, this case must be distinguished from those cases in which a tenant's service is no longer wanted or needed. *See, e.g., New York Cross Harbor R.R.*, 374 F.3d at 1185.

(c) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Danger to On-Line Customers Should the Discontinuance Be Granted.

Through Request No. 25, CKIN expects to establish that the interests of the two current shippers on the Rail Line are not paramount for either the Town or the Museum. As such, the grain shippers will inevitably be seriously harmed as a result of the discontinuance. Moreover, harm to the shippers will result in a ripple-effect in the grain industry and interstate commerce. Thus, this information is directly relevant to the proceeding before the Board. *See New York Cross Harbor R.R.*, 374 F.3d at 1183 (emphasizing that the Board must weigh the impact on the shippers and the broader public in evaluating the public convenience and necessity). Indeed, the Town itself has conceded that the paramount effect is on the shippers on the Rail Line. *See Reply in Opposition to Motion to Compel Responses to Request for Admissions*, p. 3 (filed May 20, 2015).

(d) CKIN's Discovery Requests Seek Relevant Information Pertaining to the Museum's Failure to Preserve the Rail Line as a Historic Resource.

As will be established by CKIN's Interrogatory No. 21, the Town and the Museum have proven to be poor historic preservation stewards. As evidenced by the photos attached hereto as **Exhibit D**, the Town and the Museum have failed to adequately preserve the Rail Line as a historic resource, despite being required to do so under funding requirements. As discussed above, this information is directly pertinent to the Board's consideration of the impact handing over operations to the Town and/or Museum would have on the community.

**III.
CONCLUSION**

For the reasons stated above, the Board should issue an Order overruling the Town's meritless objections and compel the Town to respond in full to CKIN's First Set of Interrogatories and First Set of Requests for Production.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2015, I served a copy of the foregoing requests for production upon all parties of record by first-class United States mail and, where available, by e-mail.



MOIRA J. CHAPMAN

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF) DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,) AB-1232
AND STARKE COUNTIES, IN)

RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION

TOWN OF NORTH JUDSON, INDIANA
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DATE SERVED: May 13, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)	
-- ADVERSE DISCONTINUANCE OF)	DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,)	AB-1232
AND STARKE COUNTIES, IN)	

RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION

The Town of North Judson, Indiana (the Town) hereby responds to the First Set of Requests for Production submitted by Chesapeake & Indiana Railroad Company, Inc. (CKIN) on April 29, 2015. Abbreviations in this Response have the same meaning as in the Definitions 3-4 of the Requests for Production, unless otherwise noted.

Where, as here, the adverse discontinuance is sought in conjunction with a change of operators in view of the imminent expiration of the incumbent's Operating Agreement, the factors that bear on whether discontinuance of the incumbent operator's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d) are highly circumscribed. For that reason, objections as irrelevant are posed as to all Requests except Request No. 25, which deals with communications between the Town and shippers on the Rail Line.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All documents relating to or constituting reports, meeting minutes, notes, and/or a summary of any meeting of the Railroad Committee.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of

evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to meetings of the Railroad Committee do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 2: All documents relating to or constituting agreements and/or contracts under which you received funding to fund a tie replacement program through the federal transportation program TEA-21.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to funding of a tie replacement program through TEA-21 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 3: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and INDOT that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from INDOT re that Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 4: All documents relating to or constituting agreements and/or contracts between you and INDOT that refer or relate to the Rail Line, including, but not limited to, the original agreement with INDOT dated July 13, 2004, entitled "Agreements for Transportation Funds".

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to an original Agreement with INDOT dated July 13, 2014, entitled "Agreement for Transportation Funds" do not bear on whether

discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 5: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and Porter County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from Porter County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 6: All documents relating to or constituting agreements and/or contracts between you and Porter County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting agreements or contracts between the Town and Porter County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 7: all communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and LaPorte County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from LaPorte County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 8: All documents relating to or constituting agreements and/or contracts between you and LaPorte County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting agreements or contracts between the Town and LaPorte County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 9: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and Starke County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from Starke County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 10: All documents relating to or constituting agreements and/or contracts between you and Starke County, Indiana, that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting agreements or contracts between the Town and Starke County, Indiana re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 11: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and Stella-Jones Corporation that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from Stella-Jones Corporation re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 12: All documents relating to or evidencing payments to Stella-Jones Corporation from the Railroad Fund in July 2014. This is intended to include any invoices or receipts from Stella-Jones Corporation that refer or relate to the Railroad Fund.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or evidencing payments from the Railroad Fund in July, 2014 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 13: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by or between you and Koppers, Inc. that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from Koppers, Inc. re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 14: All documents relating to or evidencing payments to Koppers, Inc. from the Railroad Fund in 2011. This is intended to include any invoices or receipts from Koppers, Inc. that refer or relate to the Railroad Fund.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or evidencing payments to Koppers, Inc. from the Railroad Fund in 2011 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 15: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and Porter County Treasurer that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from the Porter County Treasurer re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 16: All documents relating to or evidencing payments to Porter County Treasurer from the Railroad Fund in 2010 and 2011. This is intended to include any invoices or receipts from Porter County Treasurer that refer or relate to the Railroad Fund.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or evidencing payments to Porter County Treasurer from the Railroad Fund in 2010 and 2011 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 17: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and LaPorte County Treasurer that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from the LaPorte County Treasurer re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 18: All documents relating to or evidencing payments to LaPorte County Treasurer from the Railroad Fund in 2013 and 2014. This is intended to include any invoices or receipts from LaPorte County Treasurer that refer or relate to the Railroad Fund.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or evidencing payments to the LaPorte County Treasurer in 2013 and 2014 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 19: All documents relating to or evidencing Railroad Fund transactions from December 17, 2014 through the present. This includes, but is not limited to, bills, invoices, receipts, reimbursement requests, reports, ledgers, agreements, and contracts.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or evidencing Railroad Fund transactions from December 17, 2014 to the present do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 20: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and the Museum that refer or relate to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents sent to or received from the Museum re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 21: All documents relating to or constituting agreements and/or contracts between you and the Museum that refer or relate to the Rail Line, including, but not limited to access to the Rail Line.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting agreements or contracts between the Town and the Museum re the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 22: All maps, photographs, video tapes, sketches, or renderings of or relating to the Museum's operations over the Rail Line, whether generated by you or others.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents constituting maps, photographs, video tapes, sketches, or renderings relating to the Museum's operations over the Rail Line do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 23: All documents relating to or constituting notices of default sent by you to CKIN between 2004 and 2009.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]),

and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting notices of default sent by the Town to CKIN between 2004 and 2009 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 24: All documents relating to or constituting notices of default sent by you to CKIN between 2009 and 2014.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating to or constituting notices of default sent by the Town to CKIN between 2009 and 2014 do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 25: All communications, notes of oral communications, and all other documents or writings sent to or received from, or exchanged by and between you and the on-line customers, including, but not limited to, Kova Ag Products and Co-Alliance.

Response:

The only such communication -- an e-mail message from Ms. Elizabeth A. South, attorney for Co-Alliance, to Rachel Arndt, attorney for the Town, dated February 11, 2015, is not produced because it is protected from discovery as a result of the Attorney Work Product Privilege. *See, e.g., United States v. Nobles*, 422 U.S. 225 (1975).

The privileged matter consists of a draft of a proposal by Co-Alliance to lease the majority of the Rail Line. That proposed lease was reviewed by official representatives of the Town, who decided that the Town does not want to lease any part of the Line to Co-Alliance, but instead intends itself to contract with a rail carrier to operate the entire Line. Accordingly, the proposed lease is not relevant to whether discontinuance of CKIN's rail service over the Line is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 26: All documents relating to or constituting any resolution or ordinance by the Town adopting Indiana Code 5-23 *et seq.* pertaining to public-private agreements.

Response:

Objection on the grounds that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the documents sought are not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Documents relating or constituting any resolution or ordinance of the Town adopting Indiana Code 5-23 *et seq.* pertaining to public-private agreements do not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST FOR PRODUCTION NO. 27: To the extent not already produced, all documents or communications identified in your responses to CKIN's Interrogatories.

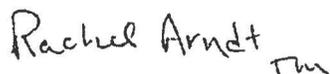
Response:

No such documents are identified in the Town's responses to CKIN's Interrogatories.

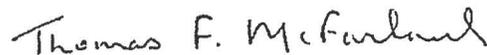
Respectfully submitted,

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
North Judson, IN 46366

Respondent

Rachel Arndt 

RACHEL ARNDT
PETERSON WAGGONER & PERKINS, LLP
125 E. Tenth Street
Rochester, IN 46975
(574) 223-4292
rachel@peterson-waggoner.com

Thomas F. McFarland 

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Respondent

DATE SERVED: May 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2015, I served a copy of the foregoing Responses to First Set of Requests For Production by e-mail and first-class, U.S. mail, postage prepaid, on the following:

John D. Heffner, Esq.
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
john.heffner@strasburger.com

Moira J. Chapman, Esq.
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
moira.chapman@strasburger.com



Thomas F. McFarland

EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF) DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,) AB-1232
AND STARKE COUNTIES, IN)

RESPONSES TO FIRST SET OF INTERROGATORIES

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
North Judson, IN 46366

Respondent

RACHEL ARNDT
PETERSON WAGGONER & PERKINS, LLP
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THOMAS F. McFARLAND
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(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Respondent

DATE SERVED: May 13, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)	
-- ADVERSE DISCONTINUANCE OF)	DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,)	AB-1232
AND STARKE COUNTIES, IN)	

RESPONSES TO FIRST SET OF INTERROGATORIES

The Town of North Judson, Indiana (the Town) hereby responds to the First Set of Interrogatories (Interrogatories) submitted by Chesapeake & Indiana Railroad Company, Inc. (CKIN) on April 29, 2015. Abbreviations in this Response have the same meaning as in the Definitions on pages 2-4 of the Interrogatories, unless otherwise noted. Affidavits of Donna M. Henry and Mark Knebel in support of factual responses are attached to these Responses.

Where, as here, the adverse discontinuance is sought in conjunction with a change of operators in view of the imminent expiration of the incumbent's Operating Agreement, the factors that bear on whether discontinuance of the incumbent operator's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d) are highly circumscribed. For that reason, objections as irrelevant are posed as to all Interrogatories except Interrogatory Nos. 19, 20, and 21, which deal with environmental, safety, and historic matters.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify the persons answering these Interrogatories, supplying information, or in any way assisting with the preparation of the answers.

Response:

(1) Donna M. Henry, Clerk-Treasurer, Town of North Judson, Indiana, 310 Lane Street, North Judson, IN 46366.

(2) Mark Knebel, Hoosier Valley Railroad Museum, 507 Mulberry Street, North Judson, IN 46366-0075.

INTERROGATORY NO. 2: Identify persons with knowledge of any discoverable matter, other than those individuals used to support claims. For each person identified, please state the person's name, address, telephone number, and summarize the information they have.

Response:

Mark Knebel, 507 Mulberry Street, North Judson, IN 46366-0075, (574) 896-3950.

INTERROGATORY NO. 3: Identify and give the location of documents, electronically stored information (ESI), and tangible things, other than those used to support claims, that are relevant or will lead to relevant evidence. Please state the name, address, and telephone number of each person who has possession of the documents, ESI, and tangible things.

Response:

See materials attached as Appendices A-C in response to Interrogatory Nos. 19, 20, and 21.

INTERROGATORY NO. 4: Specifically state the dates on which you allege you provided CKIN with notice of default between 2004 and 2009.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Issuance of notices of default under the Railroad Operating Agreement between the Town and CKIN is governed by Indiana contract law, not by federal law administered by the Surface Transportation Board (STB). Even if the STB had jurisdiction over contractual issues involving the Railroad Operating Agreement, issuance of notices of default would not be relevant because the legal basis for replacement of CKIN as operator of the Rail Line is expiration of that Agreement by its terms on December 31, 2015, not termination of the Agreement for default.

INTERROGATORY NO. 5: Identify all communications exchanged between you and CKIN relating to or constituting any notice of default sent by you to CKIN between 2004 and 2009. Include in your answer the parties to the communication, the date and location of the communication, and the content of the communication.

Response:

Same grounds for objection as Interrogatory No. 4 and same explanation as for that objection.

INTERROGATORY NO. 6: For each notice of default identified in Interrogatory No. 4 and/or Interrogatory No. 5, please explain in detail the basis for the notice of default, and if such alleged default was resolved, how it was resolved.

Response:

Same grounds for objection as Interrogatory No. 4 and same explanation as for that objection.

INTERROGATORY NO. 7: Specifically state the dates on which you allege you provided CKIN with notice of default between 2009 and 2014.

Response:

Same grounds for objection as Interrogatory No. 4 and same explanation as for that objection.

INTERROGATORY NO. 8: Identify all communications exchanged between you and CKIN relating to or constituting any notice of default sent by you to CKIN between 2009 and 2014. Include in your answer the parties to the communication, the date and location of the communication, and the content of the communication.

Response:

Same grounds for objection as Interrogatory No. 4 and same explanation as for that objection.

INTERROGATORY NO. 9: For each notice of default identified in Interrogatory No. 7 and/or Interrogatory No. 8, please explain in detail the basis for the notice of default, and if such alleged default was resolved, how it was resolved.

Response:

Same grounds for objection as Interrogatory No. 4 and same explanation as for that objection.

INTERROGATORY NO. 10: Explain all responsibilities, projects, and/or tasks performed by the Railroad Committee.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). The activities of the Railroad Committee have nothing to do with whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 11: Identify any and all members constituting the Railroad Committee. For each person and/or entity identified, state the person's or entity's name and title, and explain their role in the Railroad Committee.

Response:

Same grounds for objection as Interrogatory No. 10 and same explanation as for that objection.

INTERROGATORY NO. 12: Explain in detail the basis of your understanding as to why CKIN is not a party to the Tie Replacement Service contract.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). The reason(s) why CKIN is not a party to the Tie Replacement Service contract does not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 13: Explain in detail how and why the Museum became a party to the Tie Replacement Service contract.

Response:

Same grounds for objection as Interrogatory No. 12. The reason(s) why the Museum is a party to the Tie Replacement Service contract does not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 14: Explain in detail why you undertook an RFP process to solicit potential railroad operators at the time of the original acquisition in 2004.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Whether the Town undertook an RFP process to solicit potential rail operators in 2004 does not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 15: Do you plan to issue an RFP to solicit interested operators post-2014?

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Whether the Town will use a request-for-proposal process to select a replacement operator for the rail line has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 16: If you answered yes to Interrogatory No. 15, please identify any and all documents and/or communications reflecting plans to solicit interested operators post-2014.

Response:

See Response to Interrogatory No. 15.

INTERROGATORY NO. 17: Identify each entity that has (a) expressed an interest operating the Rail Line post-2014 along with any correspondence evidencing their interest, (b) to whom the Town has approached or solicited an interest for possible post-2014 operation of the line, and (c) that were provided an inspection of the line. For each entity identified, state the entity's name, address, telephone number, and its company affiliations.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Whether there have been expressions of interest in operating the Rail Line, or solicitations for such expressions, or inspections of the Rail Line, does not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 18: For each entity identified in Interrogatory No. 17 above, identify all communications evidencing the entity's interest in operating the Rail Line post-2014. Include in your answer the names of the parties to the communication, the date and location of the communication, and the content of the communication.

Response:

Same grounds for objection as Interrogatory No. 18 and same explanation as for that objection.

INTERROGATORY NO. 19: Identify all communications between you and any state or federal agency from 2007 to the present date relating to any potential environmental violations by the Town, the Museum, and/or CKIN. For each communication identified, state the names of the parties to the communication for both the Town and the agency, the date and location of the communication, and the content of the communication.

Response:

Copies of all such communications are attached as Appendix C.

INTERROGATORY NO. 20: Identify all communications between you and any state or federal agency having jurisdiction over railroad safety including the Federal Railroad Administration from 2007 to the present date relating to any potential safety violations by the Town, the Museum, and/or CKIN. For each communication identified, state the names of the parties to the communication for both the Town and the agency, the date and location of the communication, and the content of the communication.

Response:

Copies of all such communications are attached as Appendix A.

INTERROGATORY NO. 21: Identify all communications between you and any local, state, or federal agency from 2007 to the present date having responsibility over historic preservation matters. For each communication identified, state names of the parties to the communication for both the Town and the agency, the date and location of the communication, and the content of the communication.

Response:

Copies of all such communications are attached as Appendix B.

INTERROGATORY NO. 22: Identify all past, current, or known future Town employees, authorized representatives, consultants, and lawyers having any involvement with the Rail Line from 2007 to the present date. For each person identified, please state the person's name, job, title, and explain their job responsibilities for the Town.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). This Interrogatory is also objectionable as overly broad and unduly general. The identity of the Town's employees does not bear on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 23: Identify all past, current, or known future Town employees, authorized representatives, consultants, and lawyers to whom the Town provided any track maintenance information, confidential traffic information, and confidential financial information generated by CKIN. For each person identified, please state the person's name, job title, and describe the information that he or she was provided.

Response:

Same grounds for objection as Interrogatory No. 22 and same explanation as for that objection.

INTERROGATORY NO. 24: Identify all documents by which the Town has adopted Indiana Code 5-23 *et seq.* pertaining to public-private agreements.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Whether the Town has adopted Indiana Code 5-23 *et seq.* has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d). The STB has no jurisdiction over matters arising under Indiana Code 5-23 *et seq.*

INTERROGATORY NO. 25: Identify all funding sources of the 2004 purchase of the Rail Line from CSX. For each source identified, please state the source's name, the date that the funds were provided by the source, and the amount provided.

Response:

Objection on the grounds that the subject matter of this Interrogatory is not relevant to the subject matter in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in this discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). The funding source(s) for acquisition of the Rail Line in 2004 has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

INTERROGATORY NO. 26: Identify all entities that provided funding for the 2004 purchase of the Rail Line from CSX. For each entity identified, please state the entity's name, the date that the funds were provided by the source, and the amount provided.

Response:

Same grounds for objection as Interrogatory No. 25 and same explanation as for that objection.

INTERROGATORY NO. 27: If you denied any of CKIN's Request for Admission, please state, in detail, the factual basis for that denial.

Response:

The Requests for Admission were objected to on legal grounds, not denied on a factual basis.

Respectfully submitted,

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
North Judson, IN 46366

Respondent

Rachel Arndt
TM

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PETERSON WAGGONER & PERKINS, LLP
125 E. Tenth Street
Rochester, IN 46975
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mcfarland@aol.com

Attorneys for Respondent

DATE SERVED: May 13, 2015

APPENDIX A

ATTACHED TO RESPONSES TO FIRST SET OF INTERROGATORIES

Communications between the Town and federal agencies having jurisdiction over railroad safety, including the Federal Railroad Administration (FRA) from 2007 to the present relating to potential safety violations by the Town, the Museum, and/or CKIN.

1. Item 1 - series of e-mail messages, attached, i.e.:
 - (a) Hoosier Valley Railroad Museum to Fred Blaydes, FRA, August 6, 2014;
 - (b) Mark Knebel to Powell Felix and Dan Wantola, July 23, 2014;
 - (b) C. McGoldrick to C.K. Bennett, July 22, 2014.
2. Item 2 - Track Inspection Report, August 3, 2014, attached
3. Item 3 - series of e-mail messages, attached, i.e.:
 - (a) Hoosier Valley Railroad Museum to Fred Blaydes, FRA, August 10, 2014;
 - (b) Mark Knebel to Powell Felix and Dan Wantola, August 9, 2014;
 - (c) Rachel Arndt to Powell Felix, August 5, 2014, including photographs.
4. Item 4 - series of e-mail messages, attached, i.e.:
 - (a) Fred Blaydes (FRA) to Hoosier Valley Railroad Museum, August 26, 2014;
 - (b) Hoosier Valley Railroad Museum to Fred Blaydes (FRA), August 10, 2014.

----- Forwarded Message -----

From: Hoosier Valley RR Museum <hvrm@yahoo.com>
To: "Fred.Blaydes@dot.gov" <Fred.Blaydes@dot.gov>
Sent: Wednesday, August 6, 2014 4:35 AM
Subject: Re: E-Mail address for Fred Blaydes

Hello Fred,

Attachments: Clem track inspection. Holland report.

I will sum it up with some copies of emails below, and the above attachments. So here goes:

HVRM decided not to run the tourist passenger trains last Saturday (8/2) on CKIN because we determined that the track repair that CKIN crew performed on Monday (7/28) (west of Arlington Ave) and tried to remedy again on Friday (8/1) still wasn't safe to operate over. CKIN crew was trying to address the wide gauge area on the Holland report. I called Powell last Saturday morning to say we felt the track job was half-ass, and he said we weren't qualified to make that judgement and said we could run over it that it was class 1 track, even though he hadn't visited the site. We (HVRM) decided to get a "qualified" second opinion with the blessing of town councilman Tim Cummins. That second opinion is the track inspection attached from George K. Clem, which was performed this past Sunday morning. I called you Friday (8/1) for some guidance on the matter, but since I didn't hear back by the time Saturday rolled around we had to make a decision at HVRM. The Town Council was given a copy of the track

...
inspection done by George Clem on Monday night, and the Town's legal
arm was going to make sure that Powell received a copy Tuesday (yesterday).

Fred, below are some emails received and sent, and it pretty much explains
the present matter. HVRM Pres Cory Bennett requested and received a
Holland report. Holland uses the track between North Judson and LaCrosse
for equipment calibrations to their trucks.

Thank you for your time.

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee
574-225-0255 c

----- Original Message -----

From: Mark Knebel
To: Hoosier Valley RR Museum
Sent: Wednesday, July 23, 2014 3:58 PM
Subject: Fw: track defects

----- Original Message -----

From: Mark Knebel
To: Powell Felix ; Don Wantola
Cc: Donna Henry ; John Brammeier ; Joe & Louise Kingsbury ; Robert Barcus ; Bob Albert ;
Doug & Loretta Kosloske ; John/Nancy LaOrange ; Cory BenLapt ; joyce.newland@dot.gov ;
brian.spaulding@mail.house.gov
Sent: Wednesday, July 23, 2014 5:12 AM
Subject: track defects

Powell / Don / CKIN;

Be so notified of the following track defects between North Judson and LaCrosse. The
information provided below was generously provided by Holland.

Also, attached are two CKIN 2012 inspection reports as reminders to CKIN that the
downgrading of track in North Judson from class 1 is not an allowable modification. To this
date, those 18-ties marked for replacement have not been replaced.

CKIN's own Tie Math letter of September 28, 2010 indicates that CKIN should be replacing 58-
ties per mile/per year to maintain operations at a safe 10mph for freight and 15 mph for HVRM
passenger excursions

passenger excursions.

The operating agreement requires CKIN to maintain the rail line between LaCrosse and North Judson Museum Connection MP 212.55, in such a way as to maintain FRA class 1 or better.

Please take immediate action and correct the defects. Lack of action by CKIN that would limit HVRM's ability to provide passenger excursions is detrimental to the public.

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
574-225-0255 c

To: CKbennett1@hotmail.com
CC: GCoyne@hollandco.com
Subject: HVRM Track Data and Track Charts from HOLLAND
From: CMcGoldrick@hollandco.com
Date: Tue, 22 Jul 2014 11:38:44 -0500

Mr. Bennett,

I have included in this email the data we have collected on 7/10/2014 of the track from 222.3-213.2. These results have been repeatable over the last few weeks of testing using TrackSTAR 486.

From the data collected we have seen two major areas of concern in the track that would be good areas to key up on for maintenance. The first spot is on the track at 219.616 which is 3251' North of the 219 mile post. This is a WIDE_GAGE DEFECT that is 7' in length and 1.11" wide on the chart. We have gone and verified this defect and it is actually growing over time. This is a concern area because it is repeatable and getting larger each test. I have highlighted this defect on the Defect Summary on Page 1 of the report. There is also GPS coordinates available in that report that will allow you to go directly to the defective area.

The next section that we have concern for is between 213.767 - 213.522. This section of track has quite a few defects that should be a target area in your efforts to strengthen your track. 213.767 shows a LGAGE_WIDE defect of 1.31" and it is 5' in length. LGAGE stands for Loaded Gage. On our truck, we have the ability to load the track with vertical and lateral forces which allows us to get a better look at the overall strength of the track. On this particular run we were running UNLOADED. We run unloaded on the HVRM track since we test out there so frequently, there is no need to load the track. Since we picked up a Loaded Gage defect without there being a load, it shows that particular point in track is weak. We have gotten out to verify this defect and it indeed is there. We use a device called a PTLF (Portable Track Loading Fixture), which allows us to load the track laterally with 3000lbs of force. Upon doing this, and checking the track with a track level, we discovered that the track is more likely +3" wide in that section. The rest of the defects in that string of defects are much of the same. I have highlighted them on the defect report and on the strip chart.

The last section I have highlighted on the defect report is in the Frogs and Switches down on the North Judson side. We are showing a pretty constant +1" wide gage through those track features, but are not necessarily there due to our Optical Measuring System losing the Gage Point through the features. It is still an area worth looking into.

If you have any questions concerning the data, please feel free to email me or contact me directly.

Thank you,

Cory McGoldrick - Development Engineer
Holland LP
1000 Holland Drive, Crete, IL 60417-2120
Office:708-672-2443 Cell:216-262-6706
Fax:708-672-0119

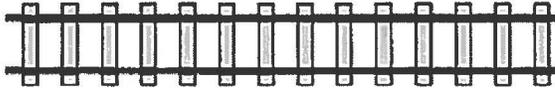
From: "Fred.Blaydes@dot.gov" <Fred.Blaydes@dot.gov>
To: hvrm@yahoo.com
Sent: Tuesday, August 5, 2014 10:37 PM
Subject: E-Mail address for Fred Blaydes

Mark,

Below is my contact information.

Thanks,
Fred E. Blaydes
Track Safety Inspector
US DOT / FRA
Region 4
575 North Pennsylvania Street
Room 268
Indianapolis, Indiana 46204
E-Mail – fred.blaydes@dot.gov
Cell Phone – 1 (765) 720-4659

GKC CONSULTING COMPANY



501 Graham Drive
Chesterton, Indiana 46504
Phone/FAX: 219-926-1378
www.GKCConsulting.com

Appendix A, Item 2
(12 pp.)

August 3, 2014

Mr. Mark Knebel, Secretary
Hoosier Valley Railroad Museum
North Judson Railroad Advisory Committee

Re: Track Inspection Report

On August 3, we inspected the track owned by the Town of North Judson, from MP 213.61 (Arlington St.), north to MP 214. This section of track is maintained and inspected by the Chesapeake & Indiana Railroad (CKIN). The track has a maximum authorized speed of 15MPH for passenger service, with occasional freight service at 10MPH authorized speed.

The most notable conditions were defective crosstie clusters. We found 12 clusters of 4 defective ties in a row, and 10 clusters of 3 defective ties in a row.

Between MP 213.7 and MP 213.8, several crossties had been recently changed out. The rails had been lifted and left approximately 1½ inches for the installation of the ties. This resulted in seven crossties dropping from the rails; crossties dropped from the rail are considered defective because they will not hold spikes. The CKIN foreman of the repair gang should have taken the track out of service if proper repairs could not be made. The CKIN foreman should have been qualified under Federal Railroad Administration, Track Safety Standards §213.7(a).

We found the following FRA Track Safety Standards Defects at this location:

- FRA TSS §213 Scope "Combination of Track Conditions"
- FRA TSS §213.53 Gage (defect code 53B1)
- FRA TSS §213.13 Measuring track not under load (defect code 0013)
- FRA TSS §213.109 Crossties (defect code 109B1i) 7 defective crossties in a row
- FRA TSS §213.127 Rail Fastenings (defect code 127A) 7 defective crossties in a row will not hold spikes

Hoosier Valley RR Museum provided us with the results of a geometry and gauge restraint test done with by Holland Company's TrackSTAR Unit 486, on July 10, 2014. The data showed that this track segment (Exceptions 025 and 026) was unsafe at any speed. They also used a hand gage loading device which showed the gage was more than one inch wider than the maximum allowable limit of 58".

In summary, we find that this segment of track is not being maintained to prevent FRA Class I defects from occurring. CKIN can be subject to penalties per FRA TSS §213.15. The track should remain out of service until the above stated defects are corrected.

Sincerely,

George K. Clem, President
George@GKCConsulting.com

HOLLAND TRACK TESTING SERVICES - DEPECTS SUMMARY REPORT

Vehicle: TrackSTAR 486 Direction: E Units: MILES 07/10/2014 11:20am Page 1

Client: HVRR #: 0003 Div: HVRR Sub: CKIN RR Person: WONTOLA Trk Info: 0003

Def #	Worst Loc. (MP)	TRACK INFO	R/Y Defect	Max(in)	Len(ft)	Cls	Safe(MPH)	LM+FT	Gage	Latitude	Longitude	Crv
0015	221.668(3525)	M:0	(SIMN) Y UNBL_LIN	2.36	0007	3	074/067	CR - 61	+0.03	041.31483	086.87227	C
0016	220.759(4008)	M:0	(SIMN) R GAGE_TGHT	-0.58	0013	3	-E--		-0.58	041.30484	086.86107	T
0017	220.748(3948)	M:0	(SIMN) R GAGE_TGHT	-0.54	0006	3	-E--		-0.54	041.30471	086.86094	T
0018	219.616(3251)	M:0	(SIMN) Y GAGE_WIDE	1.11	0007	3			+1.11	041.29166	086.84780	T
0019	218.210(1108)	M:0	(SIMN) Y UNBL_LIN	2.10	0005	3	129/117	CR - 62	+0.18	041.27544	086.83156	C
0020	218.136(0716)	M:0	(SIMN) Y GAGE_WIDE	1.07	0007	3		RX - 106	+1.07	041.27457	086.83074	S
0021	217.459(2421)	M:0	(SIMN) Y UNBL_LIN	2.16	0137	3	133/121	CR - 123	+0.11	041.26663	086.82271	C
0022	216.715(3773)	M:0	(SIMN) R GAGE_TGHT	-0.56	0006	3	-E--	RX - 536	-0.56	041.25801	086.81407	T
0023	216.040(0208)	M:0	(SIMN) R GAGE_TGHT	-0.71	0017	3	-E--		-0.71	041.25024	086.80628	T
0024	216.031(0165)	M:0	(SIMN) R GAGE_TGHT	-0.60	0011	3	-E--		-0.60	041.25015	086.80618	T
0025	213.767(4052)	M:0	(SIMN) Y LGAGE_WIDE	1.31	0006	3			+1.06	041.22359	086.77964	T
0026	213.768(4054)	M:0	(SIMN) Y GAGE_WIDE	1.08	0008	3			+1.08	041.22360	086.77964	T
0027	213.522(2754)	M:0	(SIMN) Y LGAGE_WIDE	1.31	0003	3		CR - 161	+1.12	041.22098	086.77841	S
0028	213.522(2754)	M:0	(SIMN) Y GAGE_WIDE	1.12	0008	3		CR - 165	+1.12	041.22098	086.77641	S
0029	213.493(2801)	M:0	(SIMN) R GAGE_TGHT	-0.71	0010	3	-E--	FR - 27	-0.71	041.22075	086.77597	T
0030	213.481(2540)	M:0	(SIMN) Y WARP62_62	-1.85	0007	3		SW - 22	-0.57	041.22064	086.77577	T
0031	213.462(2440)	M:0	(SIMN) Y GAGE_WIDE	1.15	0009	3		FR - 47	+1.15	041.22048	086.77548	S
0032	213.462(2446)	M:0	(SIMN) Y LGAGE_WIDE	1.41	0009	3		FR - 51	+1.15	041.22048	086.77547	S
0033	213.425(2244)	M:0	(SIMN) R GAGE_WIDE	1.39	0015	3	-E--	FR - 245	+1.24	041.22019	086.77486	S
0034	213.425(2244)	M:0	(SIMN) R LGAGE_WIDE	1.76	0016	3	-E--	FR - 244	+1.12	041.22020	086.77486	S
0035	213.414(2183)	M:0	(SIMN) Y LGAGE_WIDE	1.28	0005	3		CR - 48	+0.92	041.22012	086.77467	C

POST 0213+1039 End of Territory Defect Parameter Summary for ALL Tracks

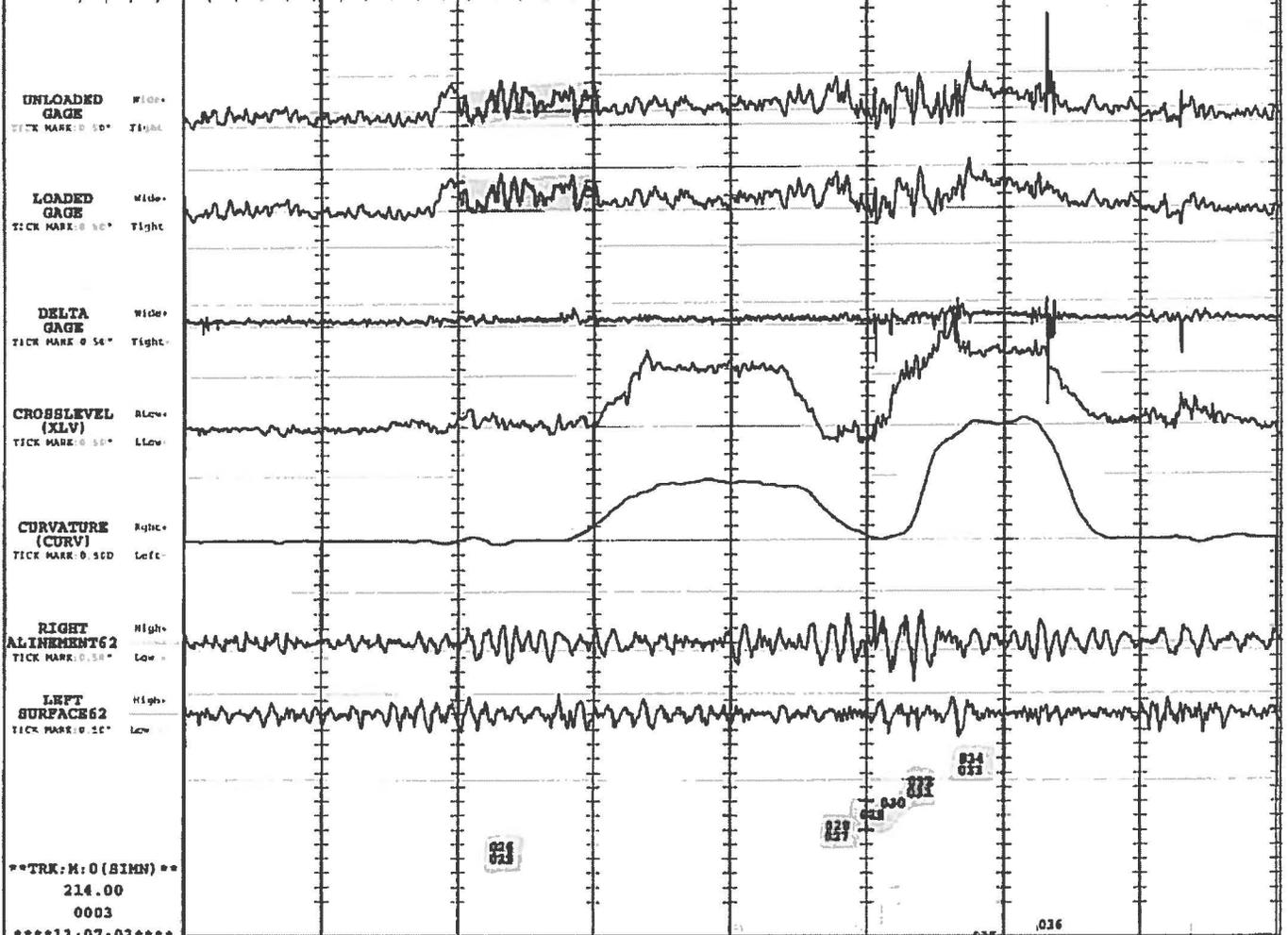
DEFECT	RED	YEL	DEFECT	RED	YEL
GAGE	008	009	XLEVEL	000	000
SURFACE	000	000	REVERSE_XLV	000	000
DIP31	000	000	JOINT	000	000
SUPER_XLV	000	000	UNBALANCE	000	003
TWIST	000	000	ALIGN62	000	000
WARP62	000	001	TANK_CAR	000	000
OVERLEV	000	000	HARM_XLV	000	000
CANT	000	000	HIGH_ROAD	000	000
	RED	YEL			
Total	008	013			

HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date: 07/10/2014

Client: HVRR Hdr. Number: 0003 Division: HVRR Sub-Division: CKIN RR Person: WONTOLA Pg: 010

PSPD10 CLR:3
PSPD10 CLR:3
PSPD10 CLR:3
PSPD10 CLR:3



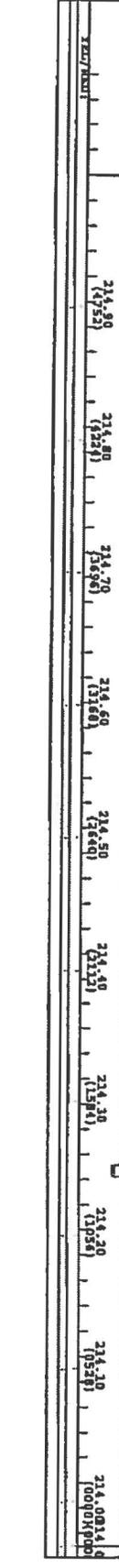
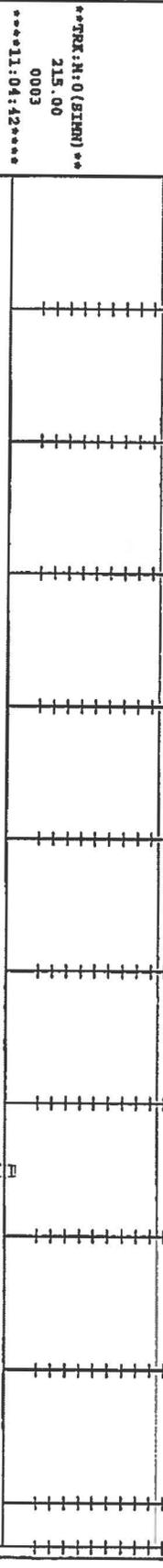
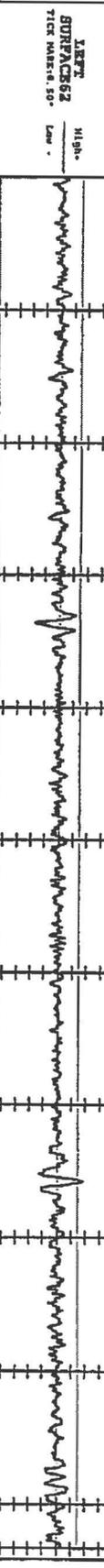
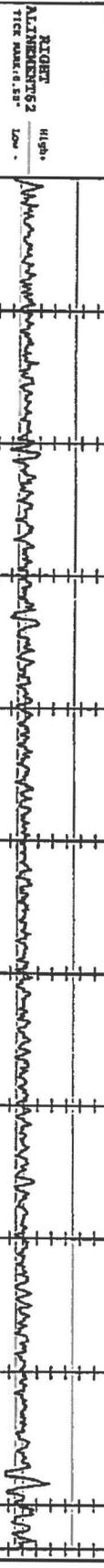
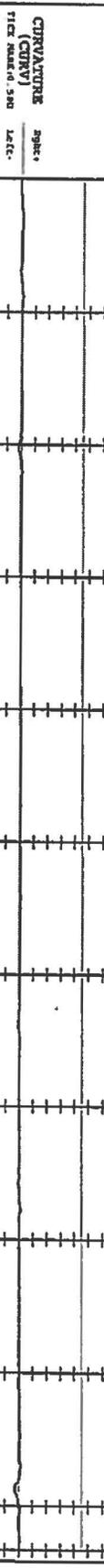
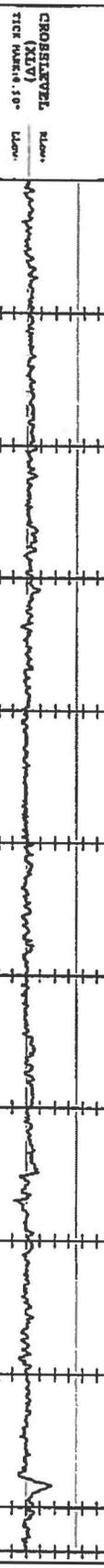
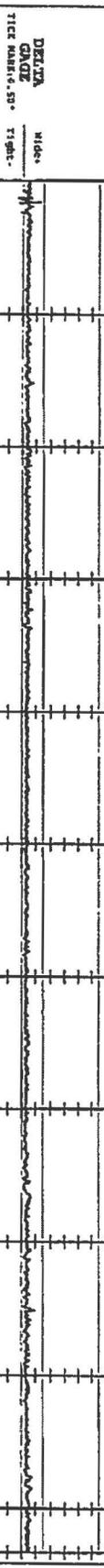
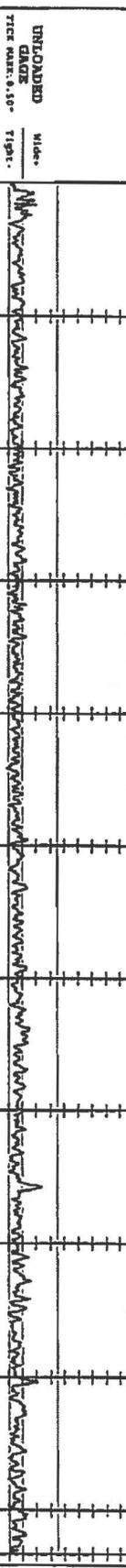
**TRK: M: 0 (SIHN) **
214.00
0003
****11:07:03****

213.90 (4752) 213.80 (4229) 213.70 (3696) 213.60 (3168) 213.50 (2640) 213.40 (2112) 213.30 (1584) 213.20 (1056)

VEL/RAU

HOLLAND Track Testing Battery - Servo Chart UNIT:TrackSDA 486
 Client: HVRR Mr. Number: 0003 Division: HVRR Sub-division: CCMN Date Recd.: 07/30/2014
 REPORT NO: 200130

BRIDGED GAGE TICE MARK: 50° High: Low:



HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date - 07/10/2014

Client: HVRR Mtr. Number: 0003 Division: HVRR Sub-Division: CKLN RR Person: WONTOLA Pg: 008

FBPDT:00 CLS:1
FBPDI:00 CLS:1

FBPDT:00 CLS:1
FBPDI:00 CLS:1

UNLOADED GAGE
TICK MARK: 0.50"

Wide+
Tight-

LOADED GAGE
TICK MARK: 0.50"

Wide+
Tight-

DELTA GAGE
TICK MARK: 0.50"

Wide+
Tight-

CROSSEVEL (XLV)
TICK MARK: 0.50"

High-
Low-

CURVATURE (CURV)
TICK MARK: 0.900

Right-
Left-

RIGHT ALIGNMENT 62
TICK MARK: 0.50"

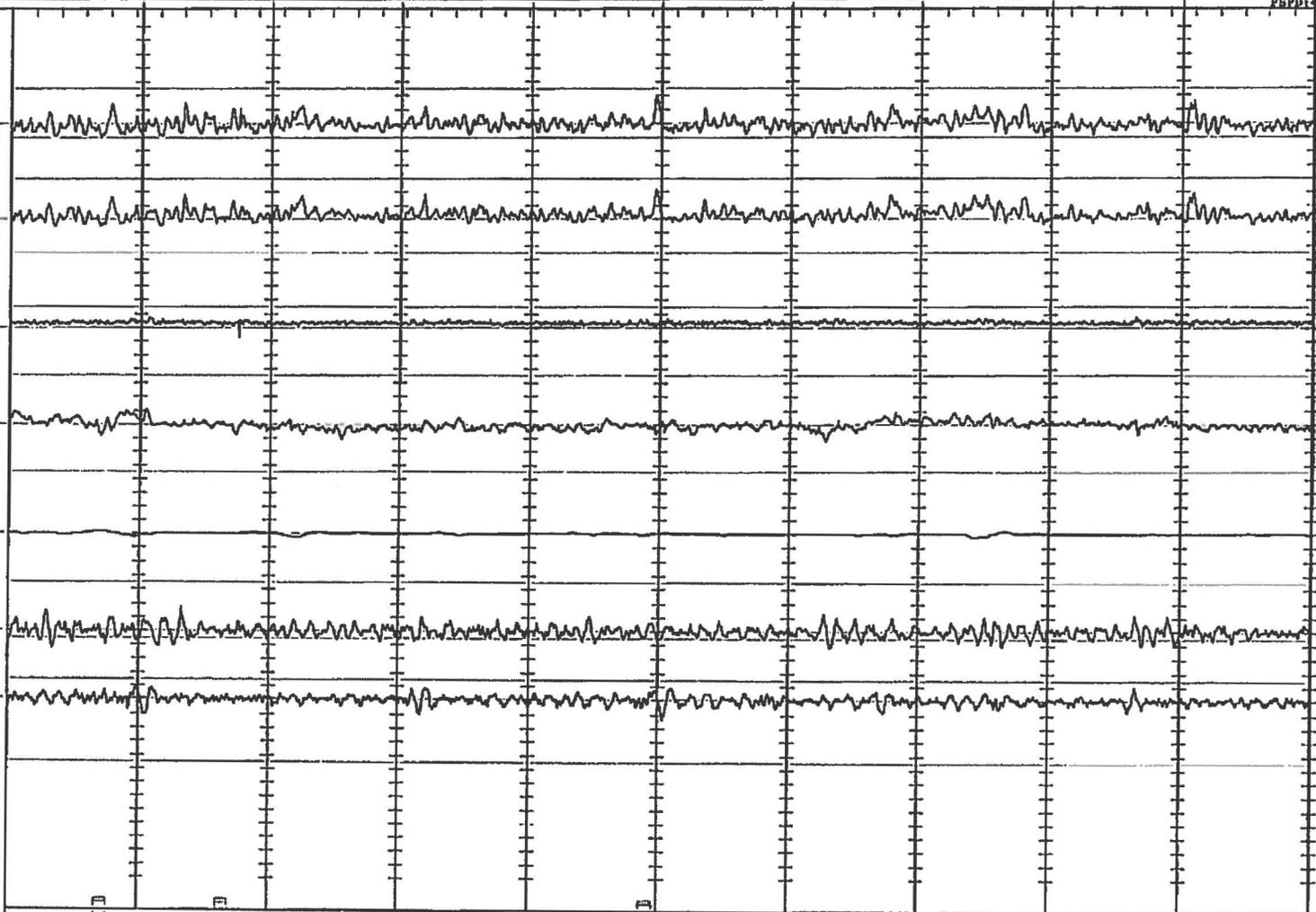
High-
Low-

LEFT SURFACE 62
TICK MARK: 0.50"

High-
Low-

**TRK: N: 0 (SIMN) **
215.00
0003
****11:02:25****

YEL/RED

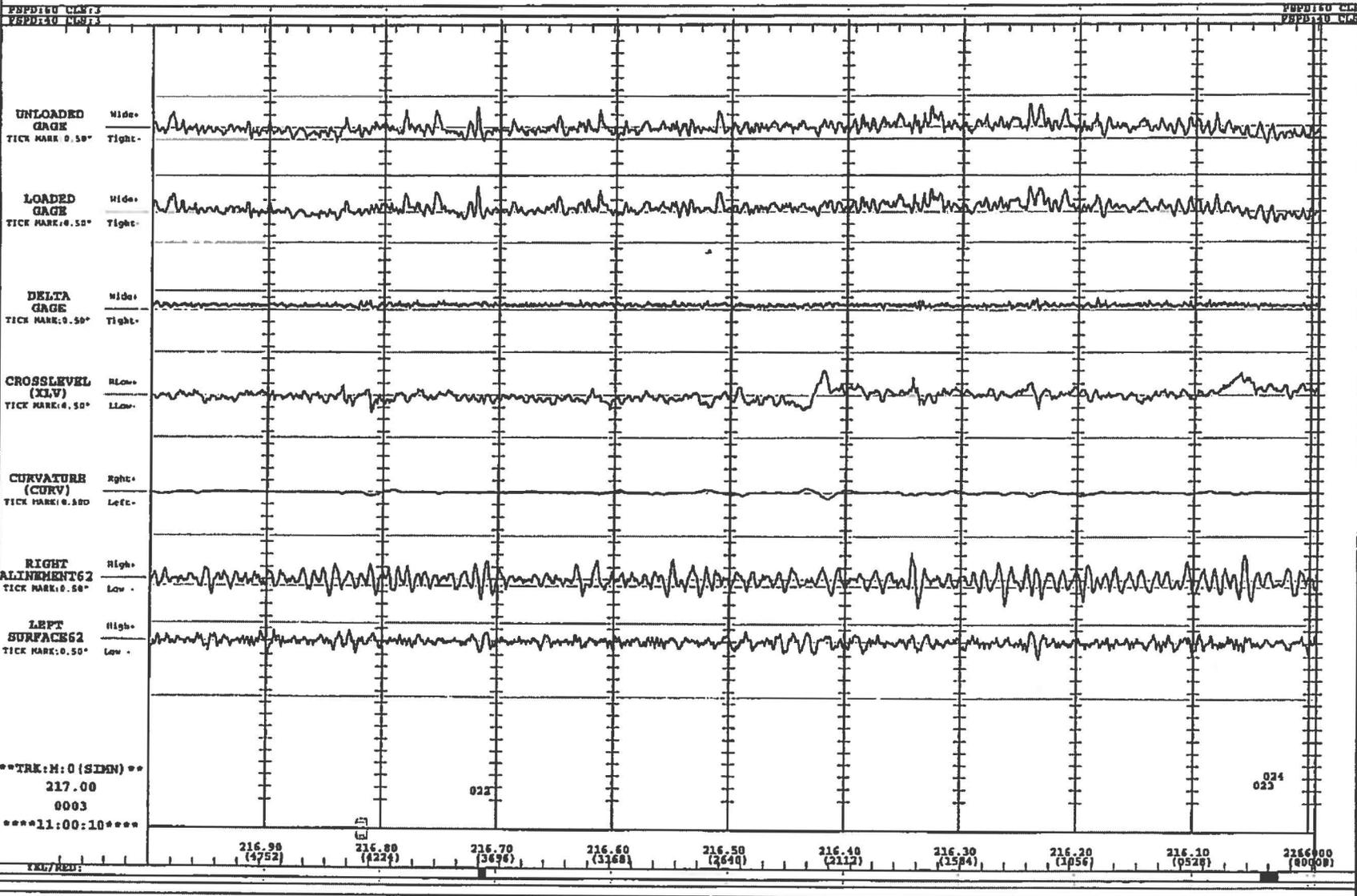


215.90 (4752) 215.80 (4224) 215.70 (3696) 215.60 (3168) 215.50 (2640) 215.40 (2112) 215.30 (1584) 215.20 (1056) 215.10 (528) 215.00 (0000)

HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 466

Test Date - 07/10/2014

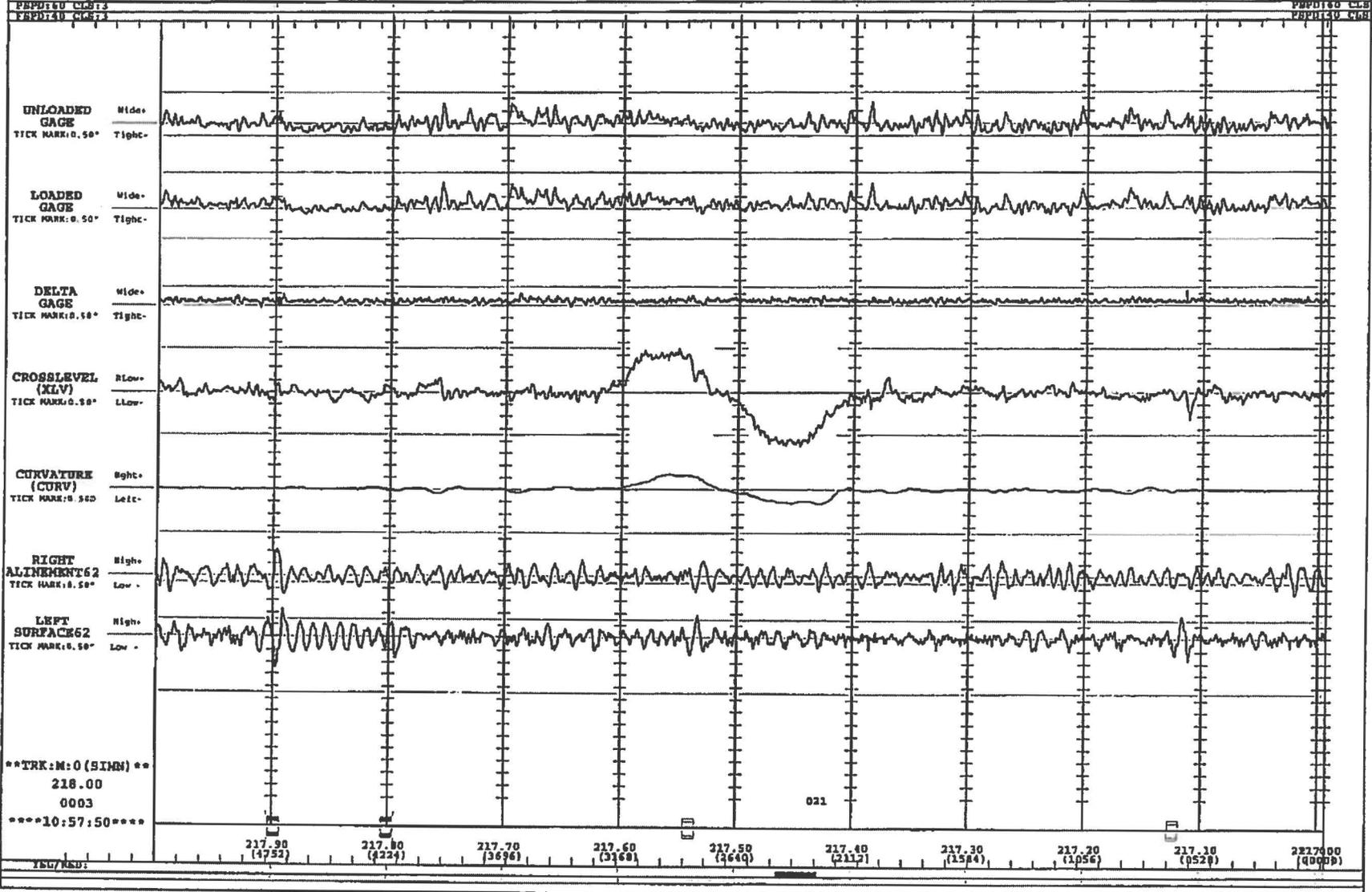
Client: HVRR Mtr. Number: 0003 Division: HVRR Sub-Division: CKIN RR Person: WONTOLA Pg: 007



HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date - 07/10/2014

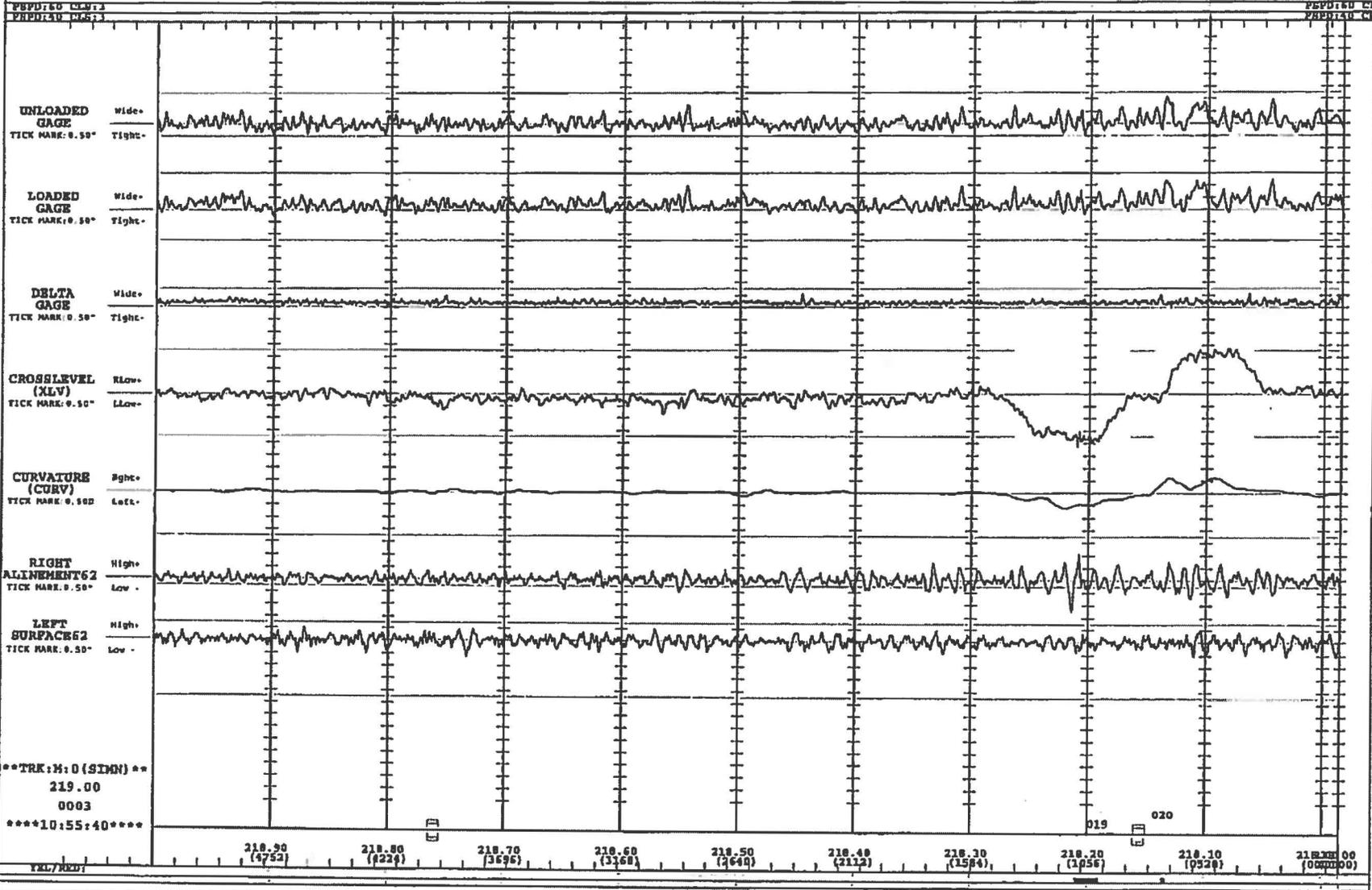
Client: HVRR Mtr. Number: 0003 Division: HVRR Sub-Division: CKIN RR Person: WONTOLA Pg: 006



HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date - 07/10/2014

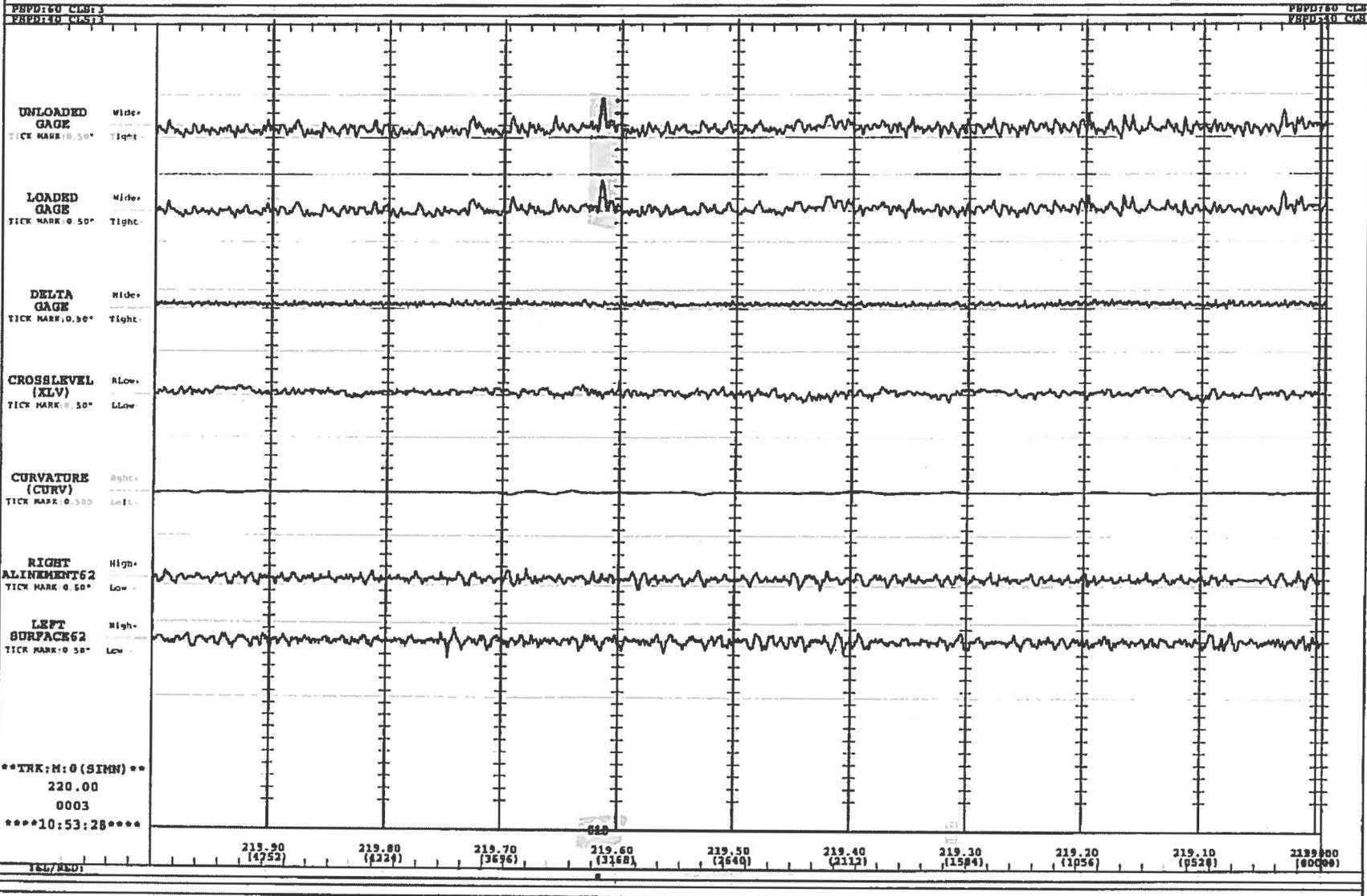
Client: HVRR Hdc. Number: 0003 Division: HVRR Sub-Division: CCKN RR Person: WONTOLA Pg: 005



HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date 07/10/2014

Client: HVRR A/c Number: 0003 Division: HVRR Sub-Division: CKLN RA Person: WONTOLA Pg: 004



HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date - 07/10/2014

Client: HVRR Rdr. Number: 0003 Division: HVRR Sub-Division: CCKN AX Person: WONTOLA Pg: 003

PERFORMED CLOS
PERFORMED CLOS

PERFORMED CLOS
PERFORMED CLOS

UNLOADED GAGE
TICK MARK: 0.50"

Wide
Tight

LOADED GAGE
TICK MARK: 0.50"

Wide
Tight

DELTA GAGE
TICK MARK: 0.50"

Wide
Tight

CROSSLEVEL (XLV)
TICK MARK: 0.50"

High
Low

CURVATURE (CURV)
TICK MARK: 0.500

Right
Left

RIGHT ALIGNMENT 62
TICK MARK: 0.50"

High
Low

LEFT SURFACE 62
TICK MARK: 0.50"

High
Low

017
016

TRK:M:0 (SIMN)
221.00
0003
****10:51:10****

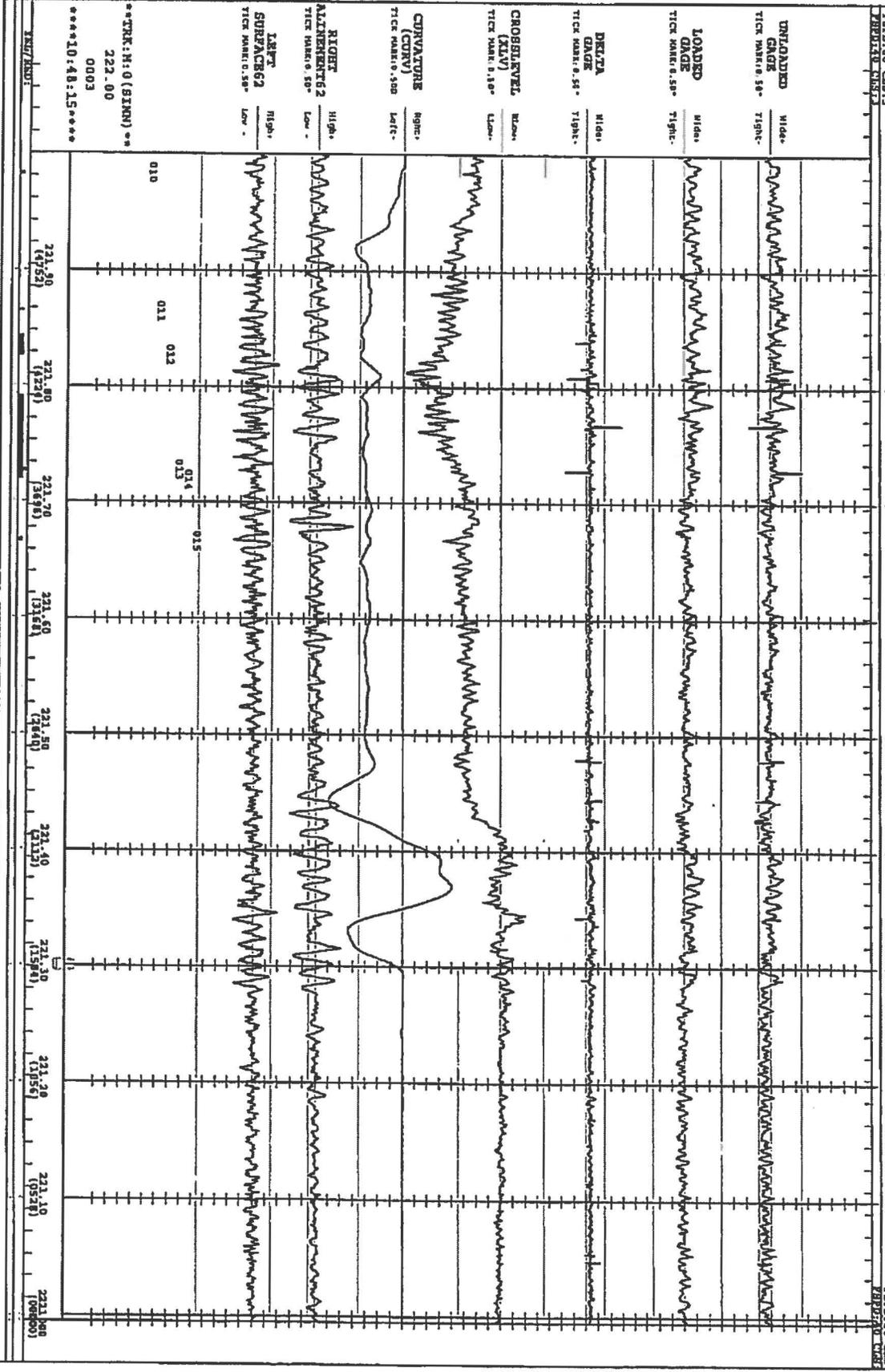
TRK/REU

220.90 (4752) 220.80 (4224) 220.70 (3696) 220.60 (3168) 220.50 (2640) 220.40 (2112) 220.30 (1584) 220.20 (1056) 220.10 (528) 220.00 (0000)

HOLLAND Truck Teaching Services - Stead Chart UNIT: TEACHER 486

Test date: 07/10/2014

Client: HYER Mfr. Number: 0003 Division: HYER Sub-division: CRIN MA Person: HORTOLA Pg: 002



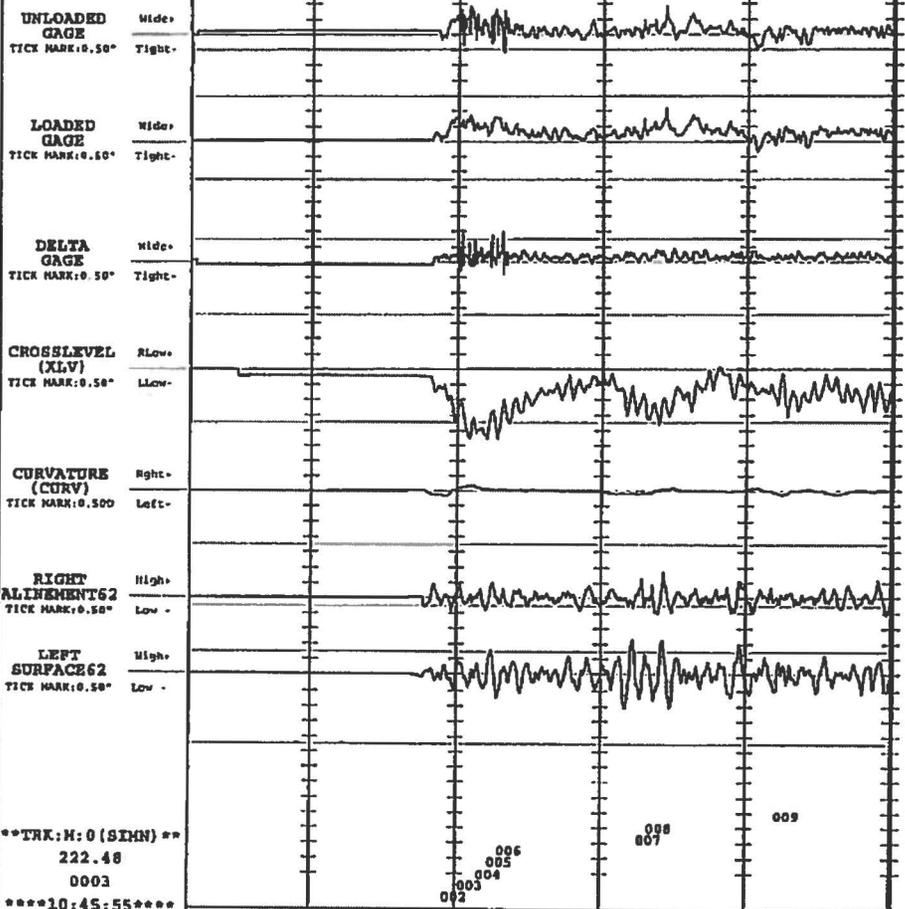
ERR: H:0 (SINK)
222.00
0003
****10:48:15****

HOLLAND Track Testing Services - Strip Chart UNIT:TrackSTAR 486

Test Date - 07/10/2014

Client: HVRR Mtr. Number: 0003 Division: HVRR Sub-Division: CKIN RR Person: NONTOLA Pg: 001

PEP100 C1873 PEP140 C1873 PEP100 C1873 PEP140 C1873



**TRK: M: 0 (SIGN) **
222.48
0003
****10:45:55****

002
003
004
005
006
007
008
009

222.40 (1112) 222.38 (1584) 222.20 (1056) 222.10 (0528) 222.08 (0000)

END/END:

Fwd: Federal Railroad Track Inspector email #3 - 'att.net Mail'

Appendix A, Item 3
(9 pp.)

----- Forwarded message -----

From: Hoosier Valley RR Museum <hvrm@yahoo.com>
Date: Tue, May 5, 2015 at 8:49 PM
Subject: Federal Railroad Track Inspector email #3
To: Rachel Arndt <rachel@peterson-waggoner.com>

----- Forwarded Message -----

From: Hoosier Valley RR Museum <hvrm@yahoo.com>
To: Fred Blaydes <Fred.Blaydes@dot.gov>
Sent: Sunday, August 10, 2014 8:35 PM
Subject: Track Issue W of Arlington Ave North Judson

Fred,

An update: attached are some photos from this past Saturday afternoon. Below are some emails. I will send a video in a separate email, due to file constraints.

I called Powell Felix of CKIN on the phone Friday afternoon since he did not contact myself or the Town in regards to the Town attorney's email request that he contact us when repairs to the track were done. Those repairs were to be done before this past Saturday.

On the phone Friday late afternoon, Powell said they (CKIN) put in some more ties and were planning to do more work this coming week and that the track was good to go as far as HVRM trains this Saturday. Saturday morning, upon examining the track west of Arlington Ave, it did appear CKIN put in a couple more ties, but thats it. They did not pull out the earlier ties they installed that raised the rails and that caused surrounding ties to drop, thus leaving the track unanchored and the ballast disturbed.

Saturday afternoon I went out to look at the track just prior to the arrival of the HVRM train returning on its trip to LaCrosse, and the track had developed a kink. I radioed the train to cross the spot at no more than 3mph, and we were able to get the passengers back to the depot to unload.

Attached are photos, and I will attempt to send a video that you might be able to see the rail moving up and down under the train as it passes the spot. I simply cannot see how CKIN can say this track meets class 1 track safety standard. I understand it is the subjective opinion of the CKIN inspector, but the repairs don't seem to correspond to the care that must be taken when working on welded rail trackage. But then I'm not qualified to make that judgement according to CKIN...

Thank you,

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee
574-225-0255 c

— Original Message —

From: Mark Knebel
To: Powell Felix ; Don Wantola
Cc: Donna Henry ; John Brammeier ; Joe & Louise Kingsbury ; Robert Barcus ; Bob Albert ; Doug & Loretta Kosloske ; John/Nancy LaOrange ; Cory BenLapt ; joyce.newland@dot.gov ; Spaulding, Brian ; hvrn@yahoo.com
Sent: Saturday, August 09, 2014 10:51 PM
Subject: CKIN defect repairs

Powell, Don, CKIN,
The attempted CKIN track repair west of Arlington Ave has now caused the formation of a lateral mis-alignment (kink). The CKIN initial installation of a few ties which raised the rail and dropped adjacent ties and anchors and the disturbance of the roadbed has reduced the soundness of the track structure.
The attached photographs were taken at approximately 4pmCT this afternoon. The HVRM tourist train was returning from LaCrosse and reduced speed to 3mph to pass over the mess and return the passengers to the depot.

CKIN needs to remove their poorly installed ties and allow the track to sit back down and then properly install good ties, anchor, and tamp the track.

As Chesapeake & Indiana Railroad is the contract railroad operator, please repair properly the track owned by the Town of North Judson, purchased with Federal Highway Administration Funds and used by Hoosier Valley Railroad Museum's tourist trains.
Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee

From: Rachel Arndt [mailto:rachel@peterson-waggoner.com]
Sent: Tuesday, August 05, 2014 11:22 AM
To: mark.knebel@hvrn.com

TO: rachel@peterson-waggoner.com

Cc: rachel@peterson-waggoner.com

Subject: FW: Track Inspection

From: Rachel Arndt [mhtml:{45B7221D-A294-482B-8422-13FA0E8C158D}mid://00000057/lx-usc:mailto:rachel@peterson-waggoner.com]

Sent: Tuesday, August 05, 2014 11:20 AM

To: mhtml:{45B7221D-A294-482B-8422-13FA0E8C158D}mid://00000057/lx-usc:mailto:ivcx@frontier.com

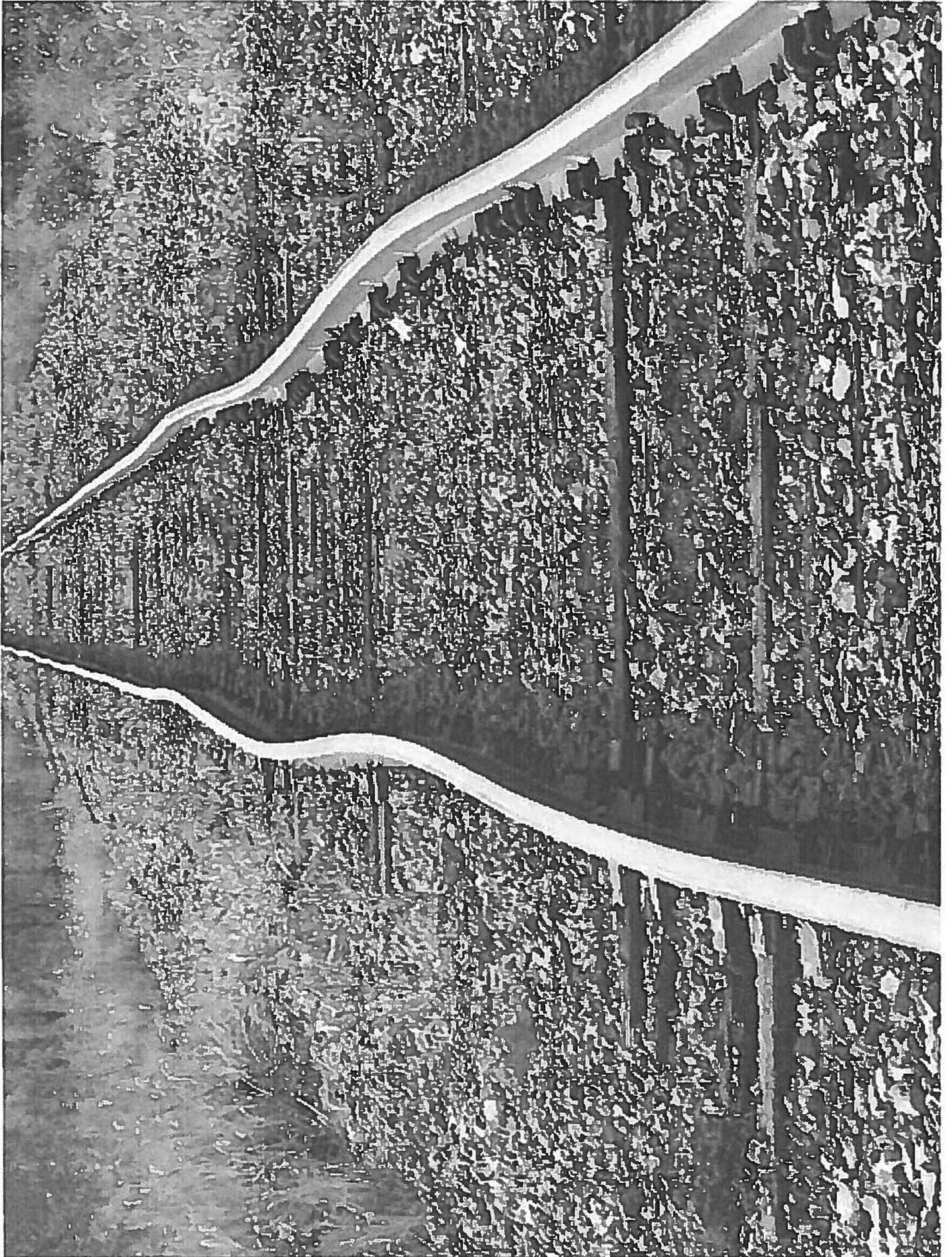
Cc: mhtml:{45B7221D-A294-482B-8422-13FA0E8C158D}mid://00000057/lx-usc:mailto:rachel@peterson-waggoner.com; 'Donna Henry'

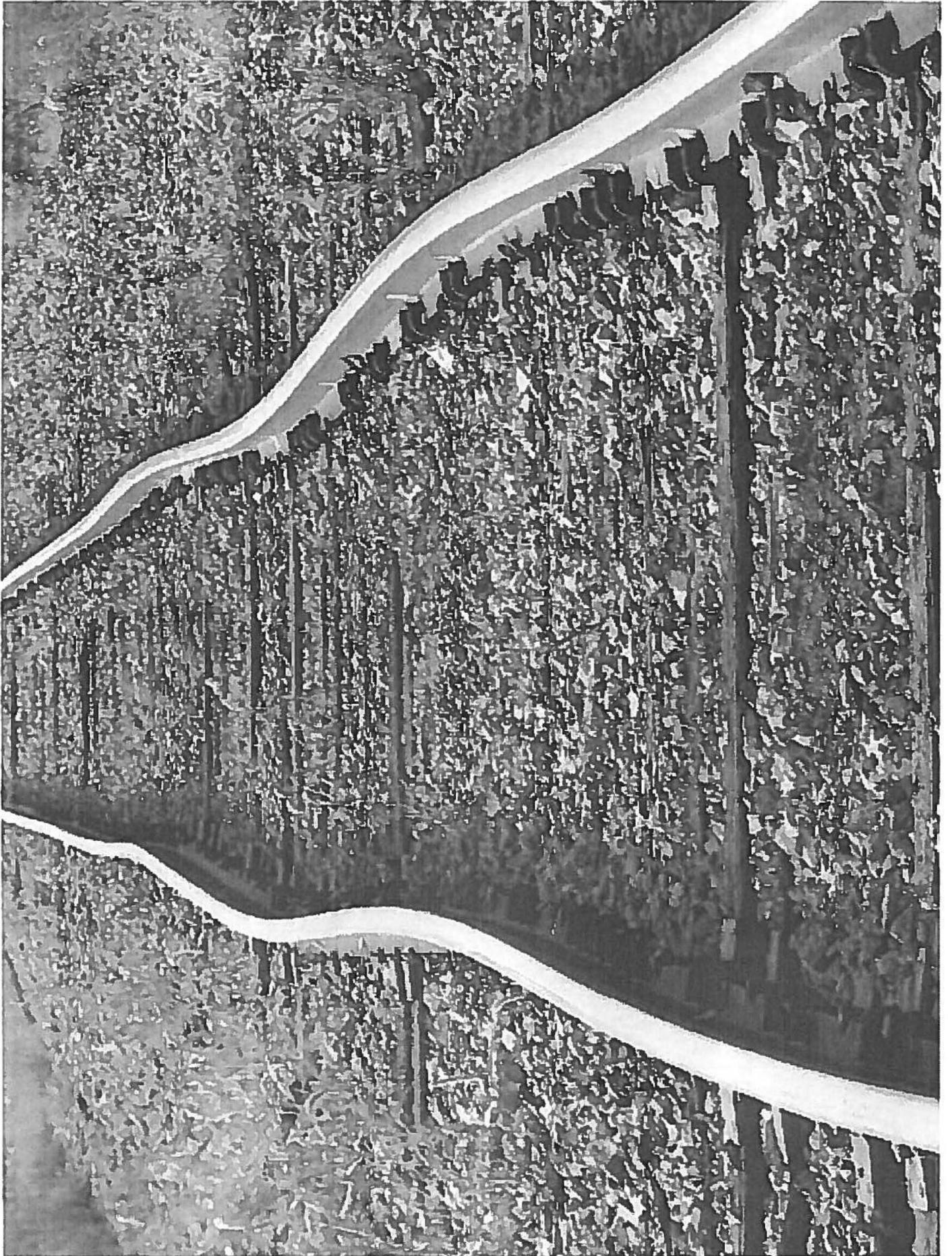
Subject: Track Inspection

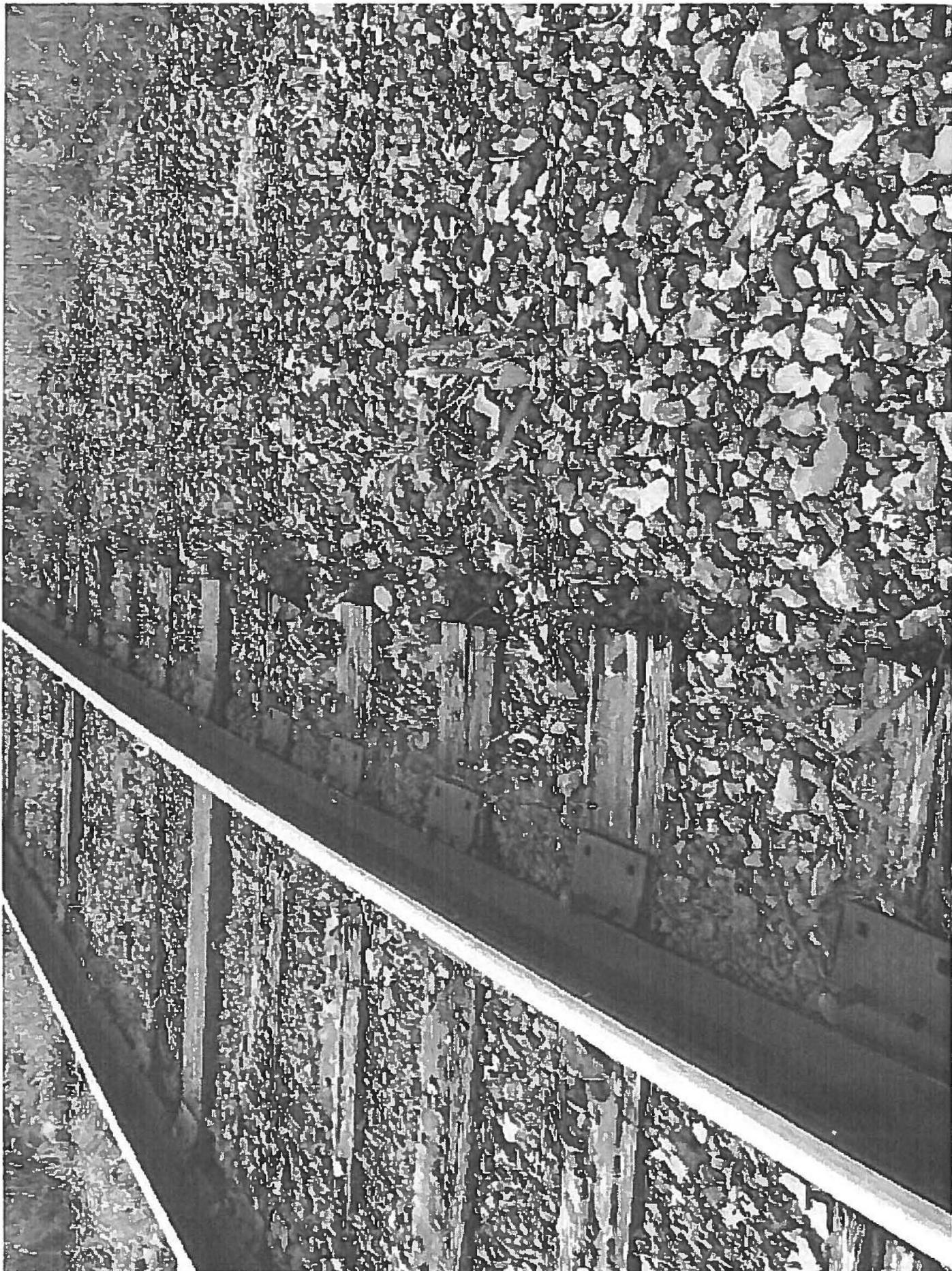
Mr. Felix:

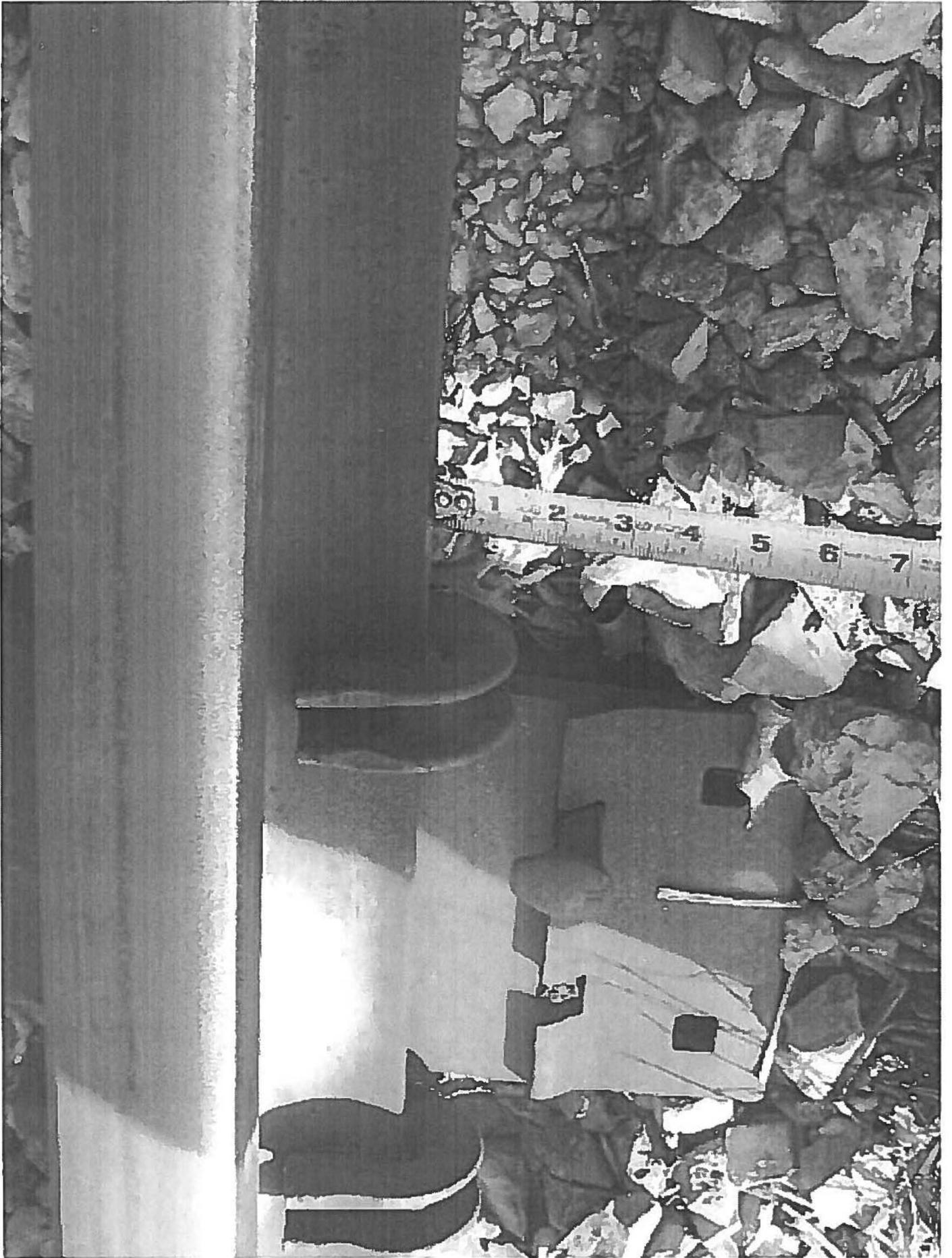
Attached is a track inspection report that was recently performed. The Town Council discussed this last night and has asked me to send this to you. The Council requests the all necessary repairs to the track be completed on or before August 8, 2014. As you may know, the condition of the track this past weekend made it such that no passenger trains were able to use the track. It is the expectation of the Council that all repairs will be done by August 8, 2014 so that passengers may utilize the track this coming weekend.

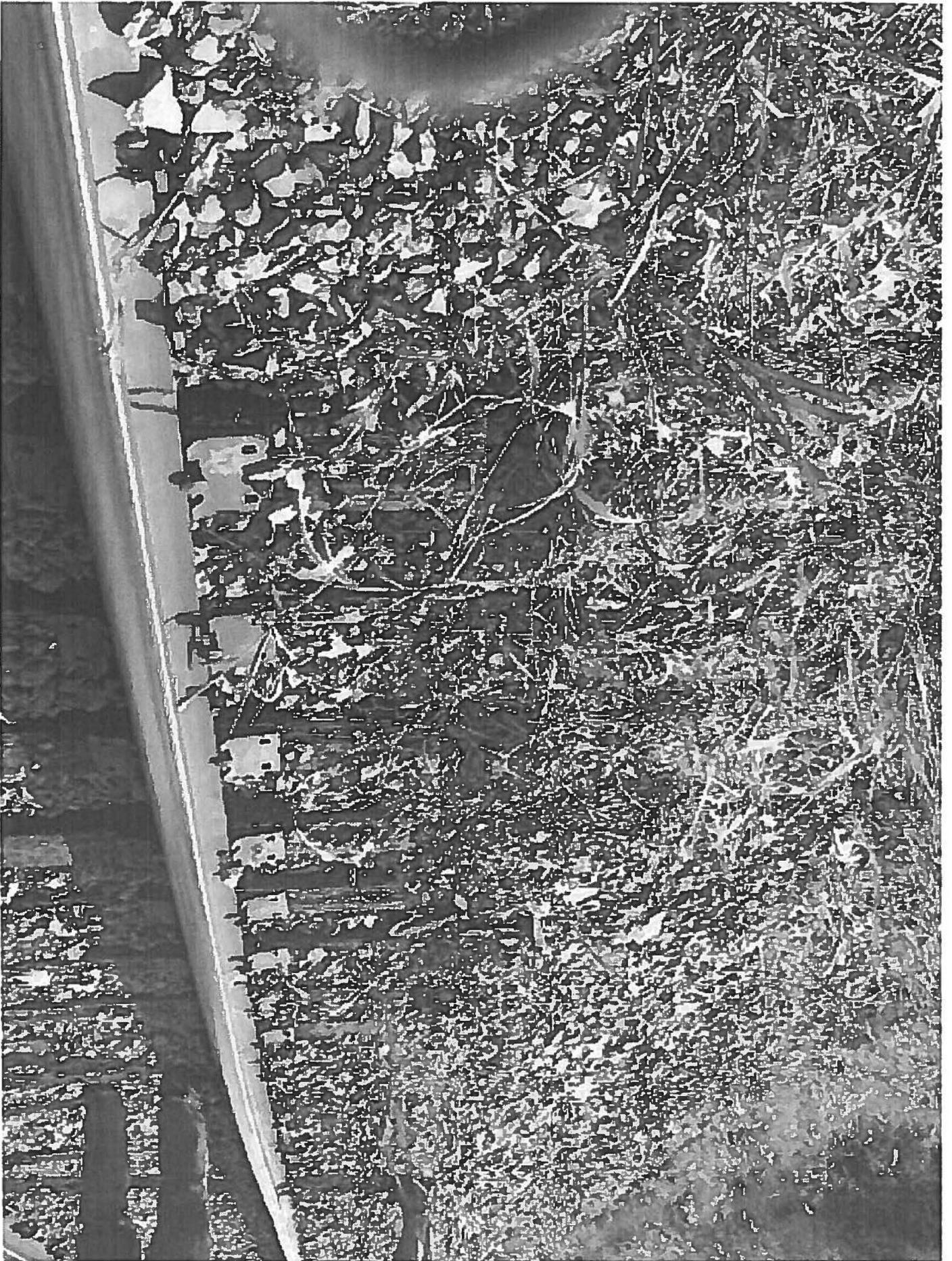
This is not open for debate, and I will not argue with you about the contents of the report. Please notify me by email when the repairs are made as well as Wendy Hoppe and Mark Knebel. Thank you for your prompt attention in this matter.













Fwd: Federal Track Inspector email #4 - 'att.net Mail'

Appendix A, Item 4
(2 pp.)

----- Forwarded message -----

From: Hoosier Valley RR Museum <hvrm@yahoo.com>
Date: Tue, May 5, 2015 at 8:57 PM
Subject: Federal Track Inspector email #4
To: Rachel Arndt <rachel@peterson-waggoner.com>

Rachel, there are a few other communications pertaining to the same subject and timeline, but If you need more let me know. Its kinda hard going between the sent and inbox files. I think this should about touch upon the subject and dates. Let me know.

Mark

----- Forwarded Message -----

From: "Fred.Blaydes@dot.gov" <Fred.Blaydes@dot.gov>
To: hvrm@yahoo.com
Sent: Tuesday, August 26, 2014 8:11 PM
Subject: RE: Track Issue W of Arlington Ave North Judson

Mark,

Thank you for the pictures and information. I visited the railroad on Wednesday, August 13, 2014 for an inspection. I will return on Thursday, September 18, 2014 for a re-inspection. I have addressed some of your concerns with the CKIN and will follow up to ensure corrections and improvements are made. If you have any questions, please call or e-mail me. I will stay in contact with you about your complaint until resolved.

Thanks,
Fred E. Blaydes
Track Safety Inspector
US DOT / FRA
Region 4
575 North Pennsylvania Street
Room 268
Indianapolis, Indiana 46204
E-Mail – fred.blaydes@dot.gov
Cell Phone – 1 (765) 720-4659

From: Hoosier Valley RR Museum [mailto:hvrm@yahoo.com]

From: Robert Valley [mailto:robert.valley@frrm.com]
Sent: Sunday, August 10, 2014 8:35 PM
To: Blaydes, Fred (FRA)
Subject: Track Issue W of Arlington Ave North Judson

Fred,

An update: attached are some photos from this past Saturday afternoon. Below are some emails. I will send a video in a separate email, due to file constraints.

I called Powell Felix of CKIN on the phone Friday afternoon since he did not contact myself or the Town in regards to the Town attorney's email request that he contact us when repairs to the track were done. Those repairs were to be done before this past Saturday.

On the phone Friday late afternoon, Powell said they (CKIN) put in some more ties and were planning to do more work this coming week and that the track was good to go as far as HVRM trains this Saturday. Saturday morning, upon examining the track west of Arlington Ave, it did appear CKIN put in a couple more ties, but thats it. They did not pull out the earlier ties they installed that raised the rails and that caused surrounding ties to drop, thus leaving the track unanchored and the ballast disturbed.

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Attached are photos, and I will attempt to send a video that you might be able to see the rail moving up and down under the train as it passes the spot. I simply cannot see how CKIN can say this track meets class 1 track safety standard. I understand it is the subjective opinion of the CKIN inspector, but the repairs don't seem to correspond to the care that must be taken when working on welded rail trackage. But then I'm not qualified to make that judgement according to CKIN...

Thank you,

APPENDIX B

ATTACHED TO RESPONSES TO FIRST SET OF INTERROGATORIES

Communications between the Town and local, state, or federal agencies from 2007 to the present having responsibility over historic preservation matters.

1. Item 1 - 2011 Indiana Department of Transportation
 - (a) Transportation Enhancement (TE) Application by Town seeking funds for establishment of transportation museums railroad tie replacement at Hoosier Valley Railroad Museum (copy attached).

2. Item 2 - Indiana Department of Transportation
 - (a) Award, dated June 17, 2011 (copy attached).

2011 INDIANA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION ENHANCEMENT (TE) APPLICATION

Local Public Agency (LPA): Incorporated Town of North Judson
 Address: 204 Keller Ave
 County: Starke City/Town: North Judson IN 46366
 Employee in Responsible Charge: Dan Anderson - Town Board President Certification date: Elected H-2008
 Urbanized Area: _____ MPO: _____
 Name(s) of Other Agencies Involved: Hoosier Valley Railroad Museum Inc.
 Contact Person: Mark Knebel - NJ RR Advisory Com Phone: 574-946-6499 h / 574-225-0255 c
 Will this project involve a railroad crossing? Yes or No: No
 Does this project include former IROWCO properties? Yes or No. No
 Does the project include any land donated/acquired from the Indiana Department of Natural Resources (IDNR). Yes or No. NO
 If property was formerly owned/acquired from IROWCO or IDNR, please include the legal descriptions of those parcels/pieces. (Does not count in 20 page limit)

PROJECT QUALIFYING ACTIVITIES: To be eligible, the project must fall under one of the following 12 categories. Check the most appropriate activity(s) and complete the attached category application form(s). These categories are not listed in any order of priority.

- Provision of facilities for pedestrians and bicycles.
- Provision of safety and educational activities for pedestrians and bicyclists.
- Acquisition of scenic easements and scenic or historic sites.
- Scenic or historic highway programs (including provision of tourist and welcome center facilities).
- Landscaping and other scenic beautification.
- Historic preservation.
- Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
- Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bike trails).
- Control and removal of outdoor advertising.
- Archaeological planning and research.
- Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.
- Establishment of Transportation Museums.

Project Cost: (In the year the costs will be incurred)

Planning Activities.	FY	\$
Project Development and Environmental Studies.	FY	\$
Engineering and Final Plans Preparation Work.	FY	\$
Right-of- Way Acquisition.	FY	\$
Construction.	FY2011-2012	\$ 253,200.00
Construction Engineering and Inspection Activities.	FY	\$
Other. (Describe)	FY	\$
TOTAL:		\$

How will the project be funded?

Transportation Enhancement Funds \$ 202,560 (Is this a request for additional funds to an existing des. no.? Yes No)
 Local Funds \$ 50,640 (existing des. no. _____)
TOTAL \$ 253,200

PLEASE RESPOND TO ALL OF THE FOLLOWING ITEMS. ATTACHMENTS ARE O.K.

GENERAL DESCRIPTION OF PROJECT – Insert a clear and concise description of the project. If the project involves construction or other activities that will be done in phases, explain the phases and include timelines. Please be clear as to which phase(s) is involved in this funding request. If there is some urgency due to imminent danger to the project/facility/land, please explain.

If the project involves land acquisition, be specific about the amount of land, its location, and the intended use of the land once it is acquired. Does the project currently have interest or ownership in real property within the project area? If so, what interest or rights are owned in all sections/phases of the projects and what are the terms of those interests? Will less than fee simple or permanent easement be acquired? If yes, describe what interest will be acquired.

This project involves a program of rehabilitation to the cross-tie base to 6-miles of railroad trackage between North Judson and English Lake (Starke County). The project will see the replacement of 3,000 old railroad ties, with new railroad ties to continue a sound and safe standard of railroad line for the operations of the Hoosier Valley Railroad Museum in North Judson.

1. PROJECT'S RELATIONSHIP TO THE QUALIFYING ACTIVITY CRITERIA – How does the project meet one or more of the 12 qualifying activities? Describe how at least one category best describes your project? If the project could fall under more than one activity, describe how the project relates to each applicable activity. One (or more) of the attached category application forms must be completed.

Upon consultation and direction of FHWA agents in January 2010, this project would fall under the category of Establishment of Transportation Museums. This project enables Hoosier Valley Railroad Museum to continue to commemorate surface transportation, through the operations of the transportation museum using restored railroad locomotives and cars for public passenger excursions between North Judson and LaCrosse, IN.

This project involves all aspects of rail transportation, show casing the iron-horse mode of surface transportation from the track structure to the railroad rolling-stock.

2. PROJECT'S RELATIONSHIP TO TRANSPORTATION – Transportation enhancements are transportation related activities that strengthen the cultural, aesthetic and environmental aspects of the Nation's transportation system. Transportation enhancement activities should improve the transportation experience in and through a community. Describe how this project relates to the surface transportation system (excludes aviation).

This project is directly related to transportation. This project enhances 6-miles of municipal owned railroad trackage, preserved through the TE process in 2004. This project will strengthen this rail-transportation segment, insuring continued public experience with the rail mode of transportation through the operations of the Hoosier Valley Railroad Museum.

3. PUBLIC PARTICIPATION AND PROJECT SUPPORT – Describe what has been done on the project to date in terms of the extent of public participation, community/organizational support, local government support and/or the formation of special groups.

Describe any work and/or activities that have been done to date such as planning, design, and/or coordination and consultation with State or local government partners. Describe what remains to be done on the project before it is ready to be constructed. Include any unresolved issues, which may cause delays. If the project is connected to a previously approved TE project, provide a status report on the previously approved project.

This project of improving or enhancing this segment of railroad to insure the operations of the Hoosier Valley Railroad Museum has been demonstrated through 5 years of previous application attempts and support letters to accomplish this project. Hoosier Valley Railroad Museum has hauled over 15,000 passengers over this segment of railroad since 2006 on weekend excursions. The public support for this project is evidence from the passengers themselves, paying for a ticket to ride the rails through rural Indiana farmscapes.

This project is not complicated in details. This project is simply a program of tie replacements to rehabilitate trackage.

4. PROJECT FUNDING:

a. Describe the plan for providing the local match including the source of funding and assurances that the match will remain available. Explain what cash or in-kind funds have already been expended toward this project, if any. List any other funds that will be used and/or sought in addition to TE funds. (Attach funding commitment letter on the LPA official letterhead, signed by the fiduciary body of LPA – letter content requirements are -1) estimated local contribution by phase and by year; 2) commitment of funds availability; 3) commitment to the project)

The local match amounts to \$50,640. Of that amount, HVRM will provide \$15,000 cash. The Starke County Development Foundation has pledged \$15,000 cash, a match to HVRM's cash-match input into the project. The Town of North Judson has approved \$20,640 cash towards the project match from the Railroad Capital Account.

b. Explain the plan for maintaining the project including the source of funding. Who will oversee long term maintenance and safety, and estimated annual maintenance expenditures.

This project is simply replacing worn-out railroad ties on a segment of railroad used by Hoosier Valley Railroad Museum. The life-span of a new railroad tie is roughly 35-45yrs. There will be little maintenance required to this project after completion.

c. Include a detailed budget (itemized cost estimate) for your project. Phase the funding for large projects that request over \$1million in federal funds. Indicate any previously funded phase (s). Example: "this application is requesting funding for phase 2 of 3 phases. Phase 1 was funded in calendar year 2000 with TEA 21 funds for \$1,000,000. The attached \$1,200,000 budget shows the details of Phase 2."

North Judson to LaCrosse / Mile Post 212.5 to Mile Post 218 + NJ Pass Track .5 mile.
6-Mile rehabilitation for transportation museum operations.

3,000	7x9 IG Ties installed mechanically @ \$73/tie	\$219,000
3,000	Mark Old, Handle & Distribute New Ties @ \$4/tie	\$ 12,000
6	Surface 6-miles of trackage @ \$3,700/mile	\$ 22,200
		<hr/>
		\$253,200
	Less 20% Match Requirement	\$ 50,640
	Federal TE Funds Requested	\$202,560

d. After projects are determined to be initially eligible, submission of evidence must be submitted to the responsible District Right-of-Way staff to ensure the Uniform Act was applied correctly.

SPECIAL NOTE: The budget and schedule provided in this application and the financial commitment letter must be the budget and schedule used in the quarterly reports as required by the LPA Process Guidance Document. Adjustments to that information will have to be justified and approved by INDOT before it may be changed.

5. **PLAN SUPPORT** – Describe how the project fits within the adopted plans and specific goals of other organizations and the local units of government. These plans could include local comprehensive land use plans, strategic plans, state or local trail plans, historic or tourism development plans, neighborhood development plans, parks and recreation plans, transportation plans, etc.

This project improves a segment of rail transportation and benefits the operations of the Hoosier Valley Railroad Museum. Thus, this project enhances the goal of local municipal government to improve existing transportation assets within the community and region. This project will ensure tourism as an important source of local economic stimulus, thus playing to the local and state agencies promoting tourism in Indiana.

6. PROJECT IMPACT/COMMUNITY BENEFIT & NEED – In addition to transportation enhancement, explain what the project's broader value is as an economic, tourism, recreational, historic, or cultural development tool. Please quantify where possible – i.e., number of annual users of/visitors to the project, percent of community/region using/visiting the project, additional revenues produced, etc.

This project as an economic tool provides sustained operations for the Hoosier Valley Railroad Museum. Since the preservation of the entire 33-mile railroad in 2004 by the Town of North Judson, this 6-mile of an 11-mile segment of trackage has been exclusively used by HVRM for tourist passenger operations. Since 2006, which was the start of HVRM operations on this corridor, just over 15,000 passengers have been entertained experiencing the thrill of railroad travel.

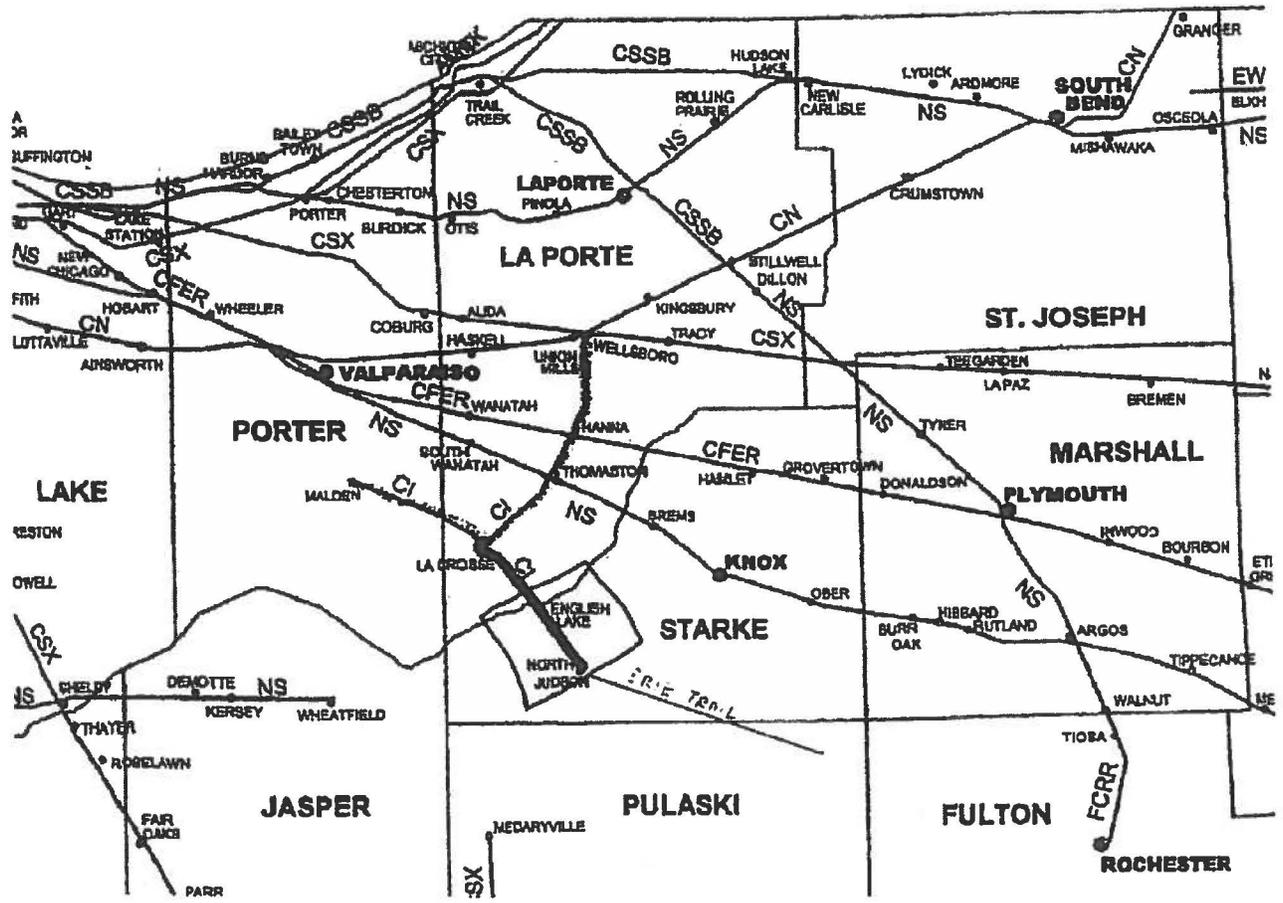
Total economic impact of Hoosier Valley Railroad Museum operations in 2010, had an impact of nearly 9 jobs and produced more than \$175,000 in residential household income. The museum generated nearly \$31,000 in revenue for the state and local governments. The figures were derived from an economic prosperity chart designed to estimate the economic impact of an organization.

Few families can experience the rail mode of transportation and its many historic facets and importance to the development of the United States. Many families simply don't travel by rail due to logistics to a rail line, or the lack of direct train service to popular destinations. Hoosier Valley Railroad Museum affords the opportunity to experience train travel in a modest simple setting using real transportation assets from track to structures to trains.

7. PROJECT LOCATION – Attach/insert a copy of a map, which clearly indicates the project's location within the city/county. Additional maps, photos, and graphics may be attached showing detailed site plans, design renderings, existing conditions, cross sections, or other types of detail.

(See Attachments)

INDIANA RAIL



CERTIFICATIONS

The information below must be provided and appropriate signatures obtained to be considered for approval.

Sponsor Information (LPA or State Agency)

If, for any reason, the Indiana Department of Transportation (INDOT) is required to repay the Federal Highway Administration (FHWA) the sum, or sums, of federal funds paid to the Local Public Agency (LPA) through the INDOT, then the LPA will repay to the INDOT such sum, or sums, upon receipt of a billing from the INDOT.

Signature, Date, & Title of the Highest Local Elected Official (i.e., Mayor, Town Council Pres., President of County Commissioners)

Contact Person:	Dan Anderson, Pres.		
Signature & Date:	<i>[Signature]</i> 3-7-2011		
Affiliation/Agency Name:	North Judson Town Council		
Address:	204 Keller Ave		
City/State/ZIP:	North Judson	IN	46366
Phone Number/FAX Number:	574-896-3340	574-896-2153	
Email address:	njclerk@embarqmail.com		hvrme@yahoo.com

Metropolitan Planning Organization (If Applicable)

If the project is located within a metropolitan planning area, the MPO must sign below indicating acceptance of the project for inclusion in the Transportation Improvement Program (TIP) if approved.

Contact Person:			
Signature & Date:			
Affiliation/Agency Name:			
Address:			
City/State/ZIP:			
Phone Number/FAX Number:			
Email address:			

Consultant Information (If Application is for additional funds to existing project)

Contact Person:			
Affiliation/Agency Name:			
Address:			
City/State/ZIP:			
Phone Number/FAX Number:			
Email address:			

Establishment of Transportation Museum Category Application

1. Which of the following describes your facility?
 - a) Restored transportation facility **Restored Transportation Facility**
 - b) Renovation of an existing building
 - c) New construction

2. How will this project provide a quality visitor experience? Please address issues regarding the following.
 - a) Staffing
 - b) Interpretive
 - c) Authenticity of exhibits/artifacts/collections
 - d) Operating hours
 - e) Adequacy of restroom/parking facilities

The project will enable passenger trains to operate out of Hoosier Valley Railroad Museum, providing the visitor the experience of rail travel at a leisurely pace through rural farm country. For many, it's the first and only time their connection is made with rail transportation.

- A) HVRM is a non-profit 501-c-3 organization with all volunteer staffing. Operating staff are certified where necessary to perform their operational duties, per regulations.
 - B) Modest exhibits are created to display donated railroad related articles. Some displays are housed inside the depot and some are housed inside railroad cars with public access.
 - C) The exhibits are the real deal. Items are railroad related from the railroad cars and locomotives to the timetables and photographs.
 - D) HVRM is open and staffed on Saturdays 9-4 CT, and special operating weekends. Trains operate on regular schedules May thru Oct with occasional specials outside those regular months. The grounds of the railroad museum are open year round, and arrangements can be made for tours through the week with advance notice.
 - E) ADA accessible restrooms are available in the depot. Portable units are brought in during large events. Parking is adequate.
3. Are you showcasing your exhibits/collections based on a professionally prepared interpretive plan? If not, will one be prepared? **Exhibits are prepared based upon space and funds and done through volunteer workmanship.**
4. Is an operational plan in place to address how exhibits/collections will be appropriated, documented, maintained, and presented/interpreted?
 - a) What will be the overall theme or story the museum will highlight?
 - b) Briefly describe how the exhibit/collections will be displayed and interpreted.

Exhibits are appropriated per space allocation and available funds. Exhibits are maintained and presented by volunteer staff.

- A) The overall theme of the railroad museum is railroad history. The railroad museum will convey the historical and current aspects of railroading by means of a working railroad museum and display site.
 - B) The exhibit/collections depending on what they are will be displayed on track such as a railroad locomotive or car. Other exhibits will fit inside display cases inside the depot or static display railroad cars. Interpretation through the display itself or volunteer staffing.
5. Is there a marketing plan in place? Who is anticipated to be your target audience and what are your marketing strategies for the first five years of operation? (Please list by bullet points.)

Yes, there is a marketing plan. The audience is general, but mostly families.

- **World Wide Web www.hoosiervalley.org**
- **Advertising: print, radio, magazine, newspaper, billboard.**
- **Theme Events**

204 Keller Avenue

"Home of the Mast Festival"

574 896-3340
Fax 574 896-2153

INCORPORATED TOWN OF
NORTH JUDSON
INDIANA 46366

March 11, 2011

Indiana Dept of Transportation
Transportation Enhancement Program

We the undersigned do hereby confirm that the \$50,640 cash-match for the 2011 Transportation Enhancement application being submitted by the Town of North Judson for the Hoosier Valley Railroad Museum has been approved and allocated.

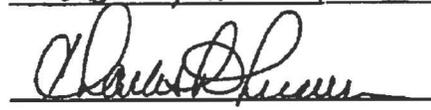
\$ 20,640.00 from the Town Railroad Capital Acct.


Town Council North Judson

\$15,000.00 from Hoosier Valley Railroad Museum


Treasurer, HVRM

\$15,000.00 from Starke County Development Foundation


Executive Director



**Hoosier Valley
Railroad Museum, Inc.**



January 29, 2011

Incorporated Town of North Judson
C/o: Town Board
204 Keller Ave
North Judson IN 46366

Re: 2011 TE Application

Hoosier Valley Railroad Museum is in full support of the 2011 Transportation Enhancement application being submitted to INDOT for rehab work to the section of railroad owned by the Town between North Judson and LaCrosse. This section of railroad line is vital to the operations of the Hoosier Valley Railroad Museum.

Hoosier Valley Railroad Museum is committed to contributing ~~670,000 worth of~~ ~~in-kind work into the project and~~ \$15,000 cash towards the required total match. HVRM feels this is a very worthy project and does very much thank the Town Board for its support through submission of a TE application for this work.

Sincerely,

Jason Annen, President

P.O. Box 75, North Judson, IN 46366



STARKE COUNTY
Economic Development Foundation

Charles W. Weaver, J.D., Executive Director

February 16, 2011

Mr. Mark Knebel
Hoosier Valley Railroad Museum
507 Mulberry Street
PO Box 75
North Judson, IN 46366

RE: 2011 HVRM Application Transportation Enhancement Grant

Dear Mr. Knebel:

The Executive Board of the Starke County Economic Development Foundation is pleased to support the application by Hoosier Valley Railroad Museum for a transportation enhancement grant in the approximate sum \$386,160 by contributing \$15,000 towards the local match requirement. This money is on hand and will be disbursed in accordance with the terms of the grant when awarded.

Should anything further be required, please do not hesitate to contact me.

Very truly yours,

Charles W. Weaver, J.D.
Executive Director

CWW/ld

**STARKE COUNTY
BOARD OF COUNTY COMMISSIONERS**

**53 EAST MOUND STREET
KNOX, IN 46534
574-772-9106**

**Dan Bridegroom, President
Kathryn Norem, Vice-President
Jennifer Davis**

**Martin Lucas, County Attorney
Katherine Chaffins, Secretary
& County Auditor**

Feb. 15, 2011

**Hoosier Valley Railroad Museum, Inc.
Mark Knebel, Secretary
PO Box 75
North Judson, IN 46366**

Dear Mr. Knebel,

The Starke County Commissioners are in full support of the joint efforts of the Town of North Judson and the Hoosier Valley Railroad Museum at securing Transportation Enhancement Funding through the Indiana Dept. Of Transportation for rehab work to the Chesapeake & Indiana railroad.

If there is anything further we can do to help you obtain this funding, please let us know.

Sincerely,



**Katherine Chaffins
Auditor of Starke County and
Secretary to the Starke County Board of Commissioners**



**BOARD OF COMMISSIONERS
LAPORTE COUNTY**

555 Michigan Avenue, Suite 202
LaPorte, IN 46350
Phone: (219) 328-8808 ext. 2229 - FAX: (219) 328-9103

Ken Layton
President
Barbara Huston
Vice President
Willie Milsap
Member

February 15, 2011

Mark Knebel, Sec.
Hoosier Valley Railroad Museum
P.O. Box 75
North Judson, IN 46366-0075

RE: Letter of Support

To Whom It May Concern:

The La Porte County Board of Commissioners would support any and all efforts to capture available transportation funds to rehab the branch of the Chesapeake & Indiana railroad that runs between LaCrosse (La Porte County) and North Judson (Starke County).

In 2004, the counties of La Porte, Porter and Starke saw the impact the Railroad contributes to the history of our counties, especially through the operations of the Hoosier Valley Railroad Museum. These aforementioned counties allocated funds for the continued support of railroad history for generations to enjoy.

Sincerely,

Barbara Huston
La Porte County Commissioner

TOWN OF LA CROSSE

OFFICE OF THE CLERK-TREASURER

P. O. Box 246
LA CROSSE, INDIANA 46348-0246
219-754-2512

February 11, 2011

Indiana Department of Transportation
100 North Senate Ave., Rm N901
Indianapolis, IN 46204-2218

Dear To Whom It May Concern:

LaCrosse Town Council wish to express our support for the transportation museum at North Judson, Indiana known as the Hoosier Valley Railroad Museum. We further support the TE application being submitted by the Town of North Judson to enhance the track segment between North Judson and LaCrosse, Indiana to the benefit of the Hoosier Valley Railroad and its efforts to commemorate the rail mode of surface transportation.

Since 2006, Hoosier Valley Railroad Museum has provided just over 15,000 passengers, mostly families the experience of a train ride through rural Indiana. This experience provides the public a hands-on knowledge of the rail mode of transportation and its many benefits past and present to a modern society.

The Hoosier Valley Railroad Museum is in a sense a transportation enhancement that brings people together to celebrate and enjoy the history and heritage of railroading through realistic experience. This project to enhance the track between North Judson and LaCrosse will enable the Hoosier Valley Railroad Museum to continue to utilize this important transportation asset to the benefit of the public for years into the future.

Sincerely,

LaCrosse Town Council


Robert Wheeler, President


Kim Bos, Council Member


Jack Turner, Council Member



NORTHERN INDIANA
**COMMUNITY
FOUNDATION**
STARKE FULTON MIAMI

P.O. Box 807, 715 Main Street
Rochester, Indiana 46975
Phone: (574) 223-2227 • Toll Free: (877) 432-6423
Fax: (574) 224-3709 • www.nicf.org

February 3, 2011

Transportation Enhancement Coordinator
INDOT
100 N. Senate Ave.
Indianapolis, IN 46204-1499

Dear Transportation Enhancement Coordinator,

We wish to express our support for the transportation museum at North Judson, Indiana known as the Hoosier Valley Railroad Museum. We further support the Transportation Enhancement grant application being submitted by the Town of North Judson to enhance the track segment between North Judson and LaCrosse, Indiana to the benefit of the Hoosier Valley Railroad Museum (HVRM) and its efforts to commemorate the rail mode of surface transportation.

The HVRM brings people together to celebrate and enjoy the history and heritage of railroading through realistic experience. This project to enhance the track between North Judson and LaCrosse will enable the HVRM to continue to utilize this important transportation asset to the benefit of the public for years into the future.

The Starke County Community Foundation an affiliate fund of the Northern Indiana Community Foundation, Inc. has granted funds to the HVRM in the past for various projects. The HVRM has always completed these projects in a timely manner and used their grant money very effectively.

It is our hope that the Indiana Department of Transportation will thoughtfully consider this application for the Transportation Enhancement Program. Please contact me at 574-223-2227 with any questions.

Sincerely yours,

Terri L. Johnson
Executive Director



February 10, 2011

INDOT Transportation Enhancement

The LaPorte County Convention and Visitors Bureau is pleased to support the Hoosier Valley Railroad Museum (HVRM) in their quest to receive funding from the Transportation Enhancement Program to make some track improvements between LaCrosse and North Judson.

The purpose for the request is to enhance the railroad track between LaCrosse and North Judson for the continued operations of heritage passenger trains from the Hoosier Valley Railroad Museum. The Hoosier Valley Railroad Museum is the area's largest operating transportation museum exhibiting the rail mode of transportation. Over the last five years, Hoosier Valley Railroad Museum has transported 15,000 tourists through rural Starke and southern LaPorte county riding the rails. We feel that using transportation enhancement funds to enhance this track segment is a proper investment of this program's protocols.

The HVRM project is of great importance to our County, and Northwest Indiana, as a tourist attraction and will help encourage other agri-tourism development in those areas touched by this preserved rail line. Tourism in LaPorte County alone accounted for \$553.6 million in economic impact in 2009 and \$179.9 million in tax revenues. In 2009, the tourism industry provided 5,372 jobs and \$92.6 million in wages in LaPorte County.

Research tells us that among the features visitors to LaPorte County and Northwest Indiana are looking for are: quaint hometown atmospheres; self-guided scenic tours; and places of historical significance. The HVRM project will provide all of this and more. However, they need your help to fund the enhancement of the railroad track between LaCrosse and North Judson. On behalf of the Town of North Judson, owner of the railroad, we respectfully request you give serious consideration and approval to the Hoosier Valley Railroad Museum's grant request and support an attraction of which the entire State of Indiana can be proud.

Sincerely,

Jane Daley
Community Relations Manager

JOE DONNELLY
2ND DISTRICT, INDIANA

COMMITTEES:
FINANCIAL SERVICES
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515

1530 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3915
FAX: (202) 225-6798

DISTRICT OFFICES:
207 WEST COLFAX
SOUTH BEND, IN 46801
(574) 288-2780
FAX: (574) 288-2825

LAPORTE COUNTY COMPLEX
813 SOUTH MICHIGAN, SUITE 100
LAPORTE, IN 46350
(219) 326-6808 EXT. 414
FAX: (574) 288-2825

300 EAST BROADWAY, SUITE #102
LOGANSPORT, IN 46947
(574) 753-2671
FAX: (574) 753-7815

February 3, 2011

Mr. Mark Knebel
Hoosier Valley Railroad Museum, Inc.
P.O. Box 75
North Judson, IN 46366-0075

Re: Hoosier Valley Railroad Museum, Inc. INDOT Transportation Enhancement Grant

Dear Mr. Knebel:

I am pleased to lend my support the TE application being submitted by the Town of North Judson to enhance the track segment between North Judson and LaCrosse, Indiana. This funding will benefit the Hoosier Valley Railroad Museum and its efforts to commemorate the rail mode of surface transportation.

Since 2006, Hoosier Valley Railroad Museum has provided just over 15,000 passengers, mostly families, the experience of a train ride through rural Indiana. This experience provides the public a hands-on knowledge of the rail mode of transportation and its many benefits, past and present, to a modern society.

The Hoosier Valley Railroad Museum celebrates the history and heritage of railroading through a realistic experience. The improvement of the track between North Judson and LaCrosse will enable the Hoosier Valley Railroad Museum to continue to utilize this important transportation asset, bringing tourism dollars to the community and offering an educational experience to the public for many years to come.

Sincerely,



Congressman Joe Donnelly

RICHARD G. LUGAR

INDIANA

306 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
202-224-4814

<http://lugar.senate.gov>

COMMITTEES:
FOREIGN RELATIONS, RANKING MEMBER
AGRICULTURE, NUTRITION, AND FORESTRY

United States Senate

WASHINGTON, DC 20510-1401

February 28, 2011

Mr. Michael Cline, Commissioner
Indiana Department of Transportation
100 North Senate Avenue
Indianapolis, Indiana 46204-2249

Dear Mr. Cline:

I am writing to indicate my support and encouragement in connection with an application submitted to the Indiana Department of Transportation (INDOT) for rehabilitation and preservation of a 33-mile railroad track located in LaPorte, Porter and Starke Counties. The Town of North Judson in conjunction with the Hoosier Valley Railroad Museum, Inc. has submitted a proposal to INDOT for transportation enhancement funding.

I am pleased to see the leadership and coordination that the Town of North Judson and the Hoosier Valley Railroad Museum, Inc. and other partners have exhibited in proposing this project for multiple benefits to the areas served by this line. This project can contribute to the enhancement and growth of this tourist usage of this historic rail corridor. The benefits for agriculture, industrial development, tourism and historical preservation and appreciation of our heritage are all very evident in this proposal.

I believe that your project is demonstrative of the principle that Congress intended when the transportation enhancement program was initiated in 1991. I am pleased to support this worthwhile community effort to provide these important improvements. I look forward to learning of your decisions on these transportation enhancement proposals for 2011. Thank you.

Sincerely,



Richard G. Lugar
United States Senator

RGL/lar

cc: Wendy Hoppe, North Judson Town Board
Mark W. Knebel, Secretary, Hoosier Valley Railroad Museum, Inc.

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT

SUPPLEMENT NUMBER 2
EDS No.: A249-12-320137A
CFDA #: 20.205

This Supplemental Contract, is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Supplemental Contract, by and between the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and the Town of North Judson, (hereinafter referred to as "LPA").

WITNESSETH

WHEREAS, INDOT and the LPA did, on October 18, 2011, enter into a Contract, and did on December 10, 2013 enter into Supplement Number 1, providing for Services required in connection with INDOT Designation Number 1173192 for enhancement for the Hoosier Valley Railroad Museum tie replacement and

WHEREAS, it has been determined by INDOT that a supplement of the previously executed INDOT/LPA Contract for Services is necessary due to a change in the Federal aid allocated to the Project, and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" above are hereby made an integral part of and specifically incorporated into this Contract Supplement Number 2.

1. Section I.B (2) of Attachment "D" of the original Contract is amended to read as follows:

Federal-aid Funds made available to the LPA by INDOT will be used to pay 80% of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ 409,652.80.

2. All other matters previously agreed to and set forth in the original Contract dated October 18, 2011 and Supplement Number 1 dated December 10, 2013, and not affected by this Supplement shall remain in full force and effect.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA Town of North Judson

STATE OF INDIANA

MARSHALL HORSTMAN
Type or print name

Marshall Horstman 11/21/14
Signature and date

Wanda J. Hoppe
Type or print name

[Signature] 11/21/2014
Signature and date

Attest:
[Signature]
Clerk Treasurer or Auditor

Date: 11/21/2014

This instrument prepared by:
Ellen Hite
Date: November 19, 2014

Department of Transportation

[Signature]
Robert D. Cales, Director
Contract Administration Division

Date: 12/16/2014

Executed by:
[Signature] DEPUTY COMMISSIONER (FOR)
Karl B. Browning, Commissioner
12/17/2014
Department of Administration

[Signature]
Jessica Robertson, Commissioner
Date: 12/19/14

State Budget Agency
[Signature]
Brian E. Bailey, Director
Date: 12-24-14

Approved as to Form and Legality:
[Signature] (FOR)
Gregory F. Zoeller, Attorney General of Indiana
Date: 12.30.14



LaPorte District
315 E Boyd Boulevard, P.O. Box 429
LaPorte, IN 46350, 46352

PHONE: (219) 362-8126
FAX: (219) 325-7518

Mitchell E. Daniels, Jr., Governor
Michael B. Cline, Commissioner

June 17, 2011

Mr. Dan Anderson
Town of North Judson
204 Keller Avenue
North Judson, IN 46366

RE: HVRM Railroad Tie Replacement

Dear Mr. Anderson

Congratulations! Your community has been awarded \$202,560.00 in Federal Highway Administration (FHWA) Transportation Enhancement funds for the HVRM RR Tie Replacement. Please understand that award amounts are contingent upon funding availability through Congressional Appropriations. With these funds, you will join the Indiana Department of Transportation (INDOT) as we build and improve Indiana's infrastructure during a decade of record-setting construction thanks to Governor Mitch Daniels' Major Moves program.

The FHWA funds, which are administered by INDOT, may be used for funding up to 80% of any phase of your project. This reimbursement funding cannot exceed 80% of the total project cost. North Judson will be required to submit paid bills before reimbursement unless other arrangements are specifically made. In addition, North Judson will be required to submit 20% of total construction costs before the Notice to Proceed for construction will be issued.

You will be required to maintain a schedule to demonstrate your willingness to complete your project in a timely manner or the funding for your project may be withdrawn. The steps to start your project are as follows:

1. A Designation Number (DES. NO.) will be assigned by the district.
2. The LPA shall contact the District Local Programs Coordinator to schedule and Early Coordination Meeting within 60 days of receipt of this letter. I will be your Coordinator and can be reached at 219/325-7564
3. The LPA is required to send quarterly reports to the district reporting progress and changes to the project.

The actual year in which the federal reimbursement funds are available for construction shall be 2014. Please note that work done without prior FHWA approval is not eligible for reimbursement. Furthermore, any increase in project cost above the apportionment amount must be paid for locally.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Marcia Blansett
Local Programs Coordinator

-cc: Audra Blasdel
file

APPENDIX C

ATTACHED TO RESPONSES TO FIRST SET OF INTERROGATORIES

Communications between the Town and any state or federal agency from 2007 to the present relating to any potential environmental violations by the Town, the Museum, and/or CKIN.

1. Item 1 - e-mail message from Christien T. Reynolds (Indiana DOT) to Dale Koons, et al. (Hoosier Valley Railroad Museum), September 19, 2014, re removed railroad ties may be left along the railroad right-of-way.

From: Reynolds, Christien T [<mailto:CReynolds1@indot.IN.gov>]
Sent: Friday, September 19, 2014 11:42 AM
To: Dale Koons; Marshall Horstmann; Mark Knebel (hvrm@yahoo.com)
Cc: Walt Reeder; Jeffrey Banning; Scott Manson; Jeffers, Marcy
Subject: RE: DES 1173192 Hoosier Valley

Although there is no guarantee that the following will be approved when submitted, the project may move forward considering the following:

The removed railroad ties may be left on the railroad right-of-way with the owner of the railroad maintaining possession. The removed ties must be handled and eventually disposed of in a manner meeting all regulatory requirements, federal codes, state codes, local ordinances and any other authorities requirements having jurisdiction over the referenced work.

Having talked with Mr. Knebel, I understand that the materials that the Museum proposes to supply to the project were salvaged from maintenance operations on the railroad. A PIF can be submitted for approval to use materials salvaged and stored from past maintenance operations of the railroad as replacement materials where necessary during the railroad tie replacements. A link to the form is listed below.

<http://www.in.gov/dot/div/contracts/design/dmforms/ECer17-1E.doc>

Per previously submitted project USPs, proposed salvaged materials to use are:

Tie plates

Anchors

Ballast

The spikes and ties would be purchased new as part of the contract.

Please contact me if you have questions. I understand that the ITAP account is working for you again. Please submit the documents for a stage 3 review and the final tracing documents for review.

Sincerely,

Christien Reynolds, P.E.

Project Manager - LPA
INDOT, LaPorte District
O: (219) 325-7524

DISCOVERY AFFIDAVIT

Donna M. Henry, being duly sworn upon her oath, states:

1. That Donna M. Henry is the Clerk-Treasurer of the Incorporated Town of North Judson, Indiana.
2. That Donna M. Henry has reviewed the Discovery requests submitted to the Town.
3. That Donna M. Henry hereby affirms that the answers provided are true and accurate to the best of her knowledge.


Donna M. Henry, Affiant

STATE OF INDIANA)
)
) SS
COUNTY OF ~~FULTON~~ ^{Stark})

Before me, the undersigned, a Notary Public in and for said State and County, personally appeared Donna M. Henry, who acknowledged the execution of the foregoing Discovery Affidavit, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 11th day of May, 2015.


Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2015, I served a copy of the foregoing Responses to First Set of Interrogatories by e-mail and first-class, U.S. mail, postage prepaid, on the following:

John D. Heffner, Esq.
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
john.heffner@strasburger.com

Moira J. Chapman, Esq.
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
moira.chapman@strasburger.com

Thomas F. McFarland

Thomas F. McFarland

EXHIBIT C

RAILROAD OPERATING AGREEMENT

This Agreement, made this ____ day of *****, 201* between the Incorporated Town of North Judson Indiana (Town), Hoosier Valley Railroad Museum Inc., (Museum), and the ((insert name)*New Operator Railroad*), Incorporated (*NOR*) witnesses that,

Whereas, Town is owner of approximately thirty-three miles of railroad extending from Wellsboro, IN to LaCrosse, IN and from North Judson, IN to Malden, IN described under “Definitions”, hereinafter “Rail Line”, and,

Whereas, NOR desires to operate the Rail Line for Town and Town has agreed to have NOR operate the Rail Line under the terms and conditions set forth herein,

Now Therefore, in consideration of the mutual benefits derived from such an arrangement, the parties agree to be mutually bound as follows:

1. Definitions:

As used in this Agreement

- A) “Rail Line” means the ex-CSXT line of railroad described as the Western Region, Chicago Division, Wabash Subdivision, extending from Milepost CF 0.23 at LaCrosse to Milepost CF 15.23 at Wellsboro and from Milepost CI 212.55 at North Judson to Milepost CI 230.92 at Malden, a total distance of approximately 33.37

miles in LaPorte, Porter, and Starke Counties, Indiana, purchased by the Town for the purposes of Historic Rail Preservation and Operation.

- B) "INDOT Agreement" means the Agreement for Transportation Enhancement Funds between the Indiana Department of Transportation and the Town of North Judson, dated July 22, 2004.
- C) "Book Value" means the difference between initial asset cost and remaining undepreciated cost per IRS Depreciation Standards as outlined in IRS Publication 946 or its subsequent replacement, at Modified Accelerated Cost Recovery System (MACRS) standard asset life classifications, with depreciation calculated at a straight-line, half-year convention methodology, including specific railroad asset class designations for track and improvements.
- D) "Railroad Fund" means a designated bank account held by the Town, for the sole purposes of providing capital and ongoing maintenance funds for track and property maintenance at the discretion of the Town council, and for the benefit of the transportation railroad museum.
- E) "Museum" shall mean the Hoosier Valley Railroad Museum, Inc., North Judson, IN, a 501(c)(3) Nonprofit incorporated for preservation and educational purposes.

2. **Rail Line**

Town owns the property designated as the "Rail Line". The Rail Line includes all land, track, bridges, structures and improvements thereon. NOR shall have access to all parts of the Rail Line as may be required for common-carrier railroad freight operations. Title to the Rail Line shall at all times remain with Town and NOR

shall make no claim of ownership of the Rail Line other than that expressly provided herein. Title to all locomotives, rolling stock, vehicles, machinery, inventory, and equipment provided by NOR for the operation of the Rail Line shall remain with NOR and not become a part of the Rail Line.

3 Initial Inspection

NOR and Town, with any designated representatives, shall perform an initial joint inspection of "Rail Line" within the first sixty days from initial operations, documenting existing conditions of assets, not limited to but including a detailed inventory of initial rail and tie condition, drainage, vegetation and bridge conditions. (referred to as the Initial Inspection defect inventory).

- a) Specific attention shall be made as to tie, rail, and track geometry defects and conditions that would prevent designation of Federal Railroad Administration (FRA) track Class I or Class II passenger operations over the Rail Line from Milepost CI 223 (LaCrosse) to Milepost CI 212.55(N. Judson Museum Connection), and portions inclusive of the wye connecting trackage at LaCrosse, and 1000' west of the point of switch (to Malden) and 1000' north of the point of switch (to Wellsboro). Portions of the Rail Line between those points that are found to not conform to FRA Class I track safety standards, shall be corrected by NOR to conform to such standards within (120) days of the initial effective date of this Agreement, and thereafter shall be maintained to not less than FRA Class I track safety standards during the Term of this Agreement.

The results of the Initial Inspection defect inventory are to be made available to both parties within (30) days following the completion of the inspection.

4. Operations

NOR shall exclusively provide all originating and terminating common-carrier rail freight service on the Rail Line. NOR shall permit the Hoosier Valley Railroad Museum to use the Rail Line in common with NOR, consistent with safety, liability and regulatory considerations, for passenger excursion operations, and other Museum operations such as, but not limited to: engineer-for-an-hour, motor car outings, photo freights, and exhibit trains, consistent with Preservation and Educational goals. NOR shall permit the Museum to use the Rail Line in common for Museum related switching moves, car handling, and car storage. The parties shall reasonably cooperate with each other on the location of stored railcars on the Rail Line.

NOR shall be solely responsible for all cost incurred in the operation and maintenance of the Rail Line as outlined herein and NOR shall not permit any vendor to lien or encumber either the Rail Line or Town. NOR shall be entitled to all freight revenue derived from its operation on the Rail Line and Town shall make no claim to such revenue unless herein permitted. NOR shall provide rail service to all customers located along the Rail Line, including the Museum, in such a manner as to accommodate their needs. At a minimum, service will be provided by NOR at least once per calendar week when so needed. NOR shall enter into such agreements with connecting railroads as may be required to fulfill

NOR's common carrier obligations. NOR shall keep open and maintain the interchanges with the current connecting railroads; CSX and Norfolk Southern. If both the Town and NOR agree, additional interchanges with other connecting railroads shall be established and maintained to the benefit of the Rail Line.

During the Term of this Agreement, NOR agrees to perform safe, consistent and reliable rail services, including but not limited to timely response to derailments, all of which services shall be consistent with the provision of quality rail service as recognized in the rail industry, to existing and potential customers located on the Rail Line and assist in developing economic growth along the Rail Line, provided that such services shall be increased/modified as the volume of rail traffic on the Rail Line changes. All fees charged to users of services offered by NOR shall be reasonably competitive with similar services offered by rail service providers in the rail service industry. NOR shall be required to maintain and periodically demonstrate adequate working capital and capex reserve funding to operate efficiently.

NOR shall provide rail services as required by each individual customer located on the Rail Line. NOR shall use its best commercial efforts to develop the Rail Line for rail related services, which may include, but not be limited to railcar switching, transloading, bulk storage, warehouse and distribution services, container services, car cleaning, car storage, car repair, and locomotive repairs and remanufacture, and any other rail related services, provided that any such services shall be pre-approved by Town and Museum.

NOR shall maintain at least one locomotive at the Rail Line with a reserve locomotive available to insure service to customers is maintained when primary locomotive is out of service. NOR shall also maintain adequate equipment and staffing consisting of at least one full operations crew and a general manager or such personnel as reasonably determined by NOR in order to maintain quality rail service.

NOR shall operate the Rail Line under Yard Limits, unless mutually agreeable by Town and Museum to operate segments, or the Rail Line under other authority/modes that can accommodate the Museum and NOR.

a) Additional Freight Activities and Notification

NOR acknowledges that it is subject to INDOT Agreement, which states, in part, that increased freight operations may impact use of the Rail Line for historic railroad excursions and would therefore require additional coordination with Federal Highway Administration Division Office (FHWA). Therefore, NOR shall notify Town, and Museum, in writing, of any pending operational change/increase of freight activity on the line that:

- 1) Would take place over any portion of the Rail Line on which excursion services are currently being provided, or are planned in writing by Museum; or
- 2) Would require additional operational coordination with Museum to avoid schedule or timing conflicts between freight and excursion passenger operations, or;

- 3) Would effectively exclude or prevent all passenger excursions on a practical basis on any portion of Rail Line, including a portion not currently in passenger service.

In the event that the Town and Museum find that no operational conflict would exist, Town shall respond to NOR with an approval letter not more than 30-days from written notice of freight operational changes.

The Division Office of FHWA shall be entitled to review any dispute or conflict between the Museum and NOR before such dispute is resolved or such conflict is litigated.

5. Passenger Excursions

NOR and Town acknowledge that the establishment of passenger excursion activity on the Rail Line is a stated purpose and goal of the INDOT Agreement. NOR agrees that it will not impede or prevent the creation of additional, special, or regular passenger excursion activity by Museum on any portion of the Rail Line.

- a. Rental or maintenance fees for passenger activities conducted by NOR are to be paid to the Railroad Fund.
- b. Passenger activities on the Rail Line are subject to rules and regulations of the FRA and other agencies having regulatory authority. Operations shall comply with safety and equipment standards, and at least FRA Class I track standards.

- c. Additional track inspections required exclusively for regular passenger operations shall be the responsibility of NOR or its designees, or by NOR approving a qualified Museum individual approved by NOR to perform such inspections.
- d. NOR may, at its option, negotiate independently with the Museum, to provide locomotives, cars, and qualified crew members for excursion passenger services on an interim basis as a contractor for Museum, provided that Town may require proof of adequate insurance for excursion passenger services as a condition to Town's approval of NOR's provision of such services.
- e. NOR shall at all times have the right to inspect equipment owned, leased, or borrowed by Museum and the right to require proof of operator qualifications, training, and other regulatory requirements, prior to permitting excursion operations over the Rail Line. Equipment may, at the request of NOR, be subject to prior engineering review to ensure that operation may not damage or unduly deteriorate Rail Line beyond comparable freight wear-and-tear standards and impacts.
- f. NOR shall not conduct passenger operations for the general public without written permission from Museum, and without proof of adequate Liability Insurance for passenger operations.
- g. Museum reserves the right to designate, at its option, non-Museum passenger operators to provide excursion services, provided that they meet all applicable regulatory, safety, equipment and financial obligations under

this Agreement to the satisfaction of NOR and subject to all other provisions of this Agreement.

- h. Museum shall provide NOR with not less than (30) calendar days' written notice of intent to operate passenger excursions on a special or regularly scheduled basis, including designated equipment, milepost limits of the operation, and a list of qualified crewmembers. NOR shall not refuse to permit Museum to perform passenger excursion operations without just cause, i.e., for reasons of safety or because of direct un-reimbursed financial loss to NOR.
- i. Museum will provide for the training and certification of its own operating crews in conformity with the requirements of the Federal Railroad Administration. Museum reserves the right to participate in any training and safety activities conducted by NOR and shall reimburse NOR for any additional expense resulting from Museum's participation in such activities.

6. Historic Preservation

NOR hereby acknowledges and accepts provisions of the INDOT Agreement, designating the Rail Line as a Historic Rail Corridor purchased with Transportation Enhancement Funds. NOR shall not modify, sell, or remove assets from the Rail Line that may be subject to restrictions designated by the Indiana State Historic Preservation office (DNR) under the terms of the INDOT Agreement. NOR shall request the Town's approval in writing not less than (30)

days prior to NOR's proposed removal, sale, modification or improvement to Rail Line property other than for customary maintenance purposes. Modifications to the property to enhance rail freight efficiency and safety that are not in conflict with State Historic Preservation goals are not to be unreasonably restricted by the Town or Museum.

7. Regulatory Compliance

NOR at its own expense shall comply with all applicable local, state and federal laws and regulations in its operation of the Rail Line; condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated over the Rail Line. Such compliance shall include, but not be limited to, the Federal Railroad Administration (FRA), Railroad Retirement Act, Federal Employers Liability Act, Surface Transportation Board and the provisions of the Federal Safety Appliance Act, as amended. Town shall comply with such local, state and federal laws and regulations as may be applicable to its ownership of the Rail Line. NOR shall indemnify, protect, defend, and save harmless Town and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Town or its officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable in any manner to the failure of NOR to comply with its obligations under this article.

8. Maintenance

NOR shall at its sole expense provide all Capital and Routine Maintenance of the Rail Line as defined herein. Routine Maintenance shall include those items identified in Attachment A, which is made a part of this Agreement. All materials and labor expended by NOR in the performance of Routine Maintenance shall become a part of the Rail Line. At all times during which this Agreement is in effect, NOR shall perform maintenance so that the Rail Line shall comply with FRA Class I track safety standards between Milepost CI 230.92 (Malden) and Milepost CI 212.55 (N. Judson Museum Connection) and between LaCrosse wye trackage and Milepost 15.23 Wellsboro. Any trackage within those limits found not to be in compliance with FRA Class I track safety standards at the time of Initial Inspection shall be brought into compliance with that standard by NOR within 18-months of the execution date of this Agreement, except for trackage identified in Section 3(a) of this Agreement.

- A) In addition, between MP 212.55 North Judson and MP 223 LaCrosse, NOR shall maintain the main track to no less than FRA Class II track safety standards no later than 30-months from the effective date of this Agreement, and thenceforth maintain such track to that standard throughout the Term of this Agreement.
- B) In addition, between MP 223 LaCrosse and MP 230.92 Malden and between the LaCrosse wye trackage and MP 15.23 Wellsboro, NOR shall maintain the main track to no less than FRA Class II track safety standards no later than 6-

years from the effective date of this Agreement and thenceforth maintain such track to that standard throughout the Term of this Agreement.

The Town reserves the right to have independent maintenance inspections (such as track and bridge) undertaken at its discretion and expense as performance checks against data provided by NOR. The Town and/or its designated agents will coordinate with NOR when an independent maintenance inspection is planned, and NOR shall reasonably accommodate such inspections.

The parties agree to mutually cooperate to seek rehabilitation funding from State, Federal, and Local sources to assist in the ongoing maintenance of the Rail Line. NOR shall supply the Town, within (30) days from the close of each calendar year, a detailed and itemized maintenance and rehabilitation plan for the following calendar year, outlining recommended capital and maintenance items to maintain safe and efficient services to customers and Museum, along with an estimate of the cost of such plan.

9. Railroad Fund

The parties agree to mutually cooperate to seek rehabilitation funding. Town shall establish and hold a Railroad Fund, for the sole purpose of providing property maintenance and improvements at the discretion of the Town, in addition to those provided by NOR. All revenues derived by Town as a direct result of the ownership of Rail Line by Town shall be deposited in this Fund and shall not be used for Town purposes beyond preservation, maintenance of the Rail Line

including administrative, insurance and legal expense, and the benefit of the Museum. Revenues include, but are not limited to, proceeds from Revenue Sharing, Right-of-Way Occupations, Rentals of Rail Property, and any fees for Museum-related activity. The Railroad Fund, may, at the discretion of the Town, be used for local-match purposes for any future State or Federal grant track-rehabilitation programs.

10. Capital Expenditures by NOR

NOR and Town agree that capital expenditures of a permanent and non-removable nature, may, at the option of NOR, be made to the Rail Line for the purposes of efficiency and safety in ongoing freight operations. Non-removable property improvements paid for wholly or in part by NOR shall become the property of the Town, subject to any claim by NOR as to remaining Book Value of such improvement, to be settled at the expiration or termination of this Agreement. Such remaining Book Value claim shall be calculated as follows:

- A) Cost of the Improvement shall be documented by receipt and/or other written evidence, including date of completion and/or service.
- B) Life of the Improvement shall be subject to IRS Definitions of Asset Life as outlined in IRS Publication 946 or its replacement, MACRS designation, specifically including rail assets.
- C) Book Value shall be the difference between Cost of the Improvement less Depreciation at straight-line, half-year convention, calculated to the end of the previous calendar prior to contract expiration or termination.

Remaining Book Value shall be paid to NOR only in the event of expiration or termination of this Agreement, regardless of cause.

11. Utilities

NOR, at its sole cost and expense, shall arrange for and obtain necessary water, electricity, and other utility services required for its use, including ongoing electrical supply to required crossing signal equipment. Town shall not be liable for any such services, or the suspension of such services.

12. Occupation of the Rail Line

Town shall have the exclusive right to all revenue generated from leases, licenses, easements and occupations located along the Rail Line. Such revenue is to be deposited in the Railroad Fund. In the event Town elects to grant new leases, licenses or easements for occupations of the Rail Line, such new occupations shall be subject to the reasonable review by NOR for impact on the safe operation of the Rail Line. NOR may charge and collect for its account, a one-time fee at a customary amount based upon complexity of analysis for review of such proposed occupations. NOR may elect to impose minimum engineering requirements consistent with standard railroad practices on such occupations.

13. Taxes

Each party shall be exclusively responsible for any taxes associated with the revenue it derives through this Agreement. Town shall be responsible for all

property taxes, if any, attributable to the ownership of the Rail Line. NOR shall be responsible for any property taxes associated with the ownership of equipment used on the Rail Line. It is expressly understood that NOR shall not be responsible for property taxes based on the ownership of the Rail Line and Town agrees to reasonably support NOR in contesting any such assessment.

14. **Insurance**

NOR shall, at its own cost and expense, provide and procure Railroad Liability Insurance and, as applicable, Worker's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the Term of the Agreement. All insurance required to be carried by NOR hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as A:VII or better and licensed or authorized to do business in the State of Indiana. Each policy shall name Town and any other party reasonably designated by Town as an additional insured, as their respective interests may appear. Each policy shall contain (i) a separation of insureds condition, and (ii) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Town and that any coverage carried by Town shall be excess insurance for Town's interest only. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Town within thirty (30) days after the signing of this Agreement, and thereafter, within thirty (30) days

after any demand by Town therefor. Town may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by NOR hereunder. No such policy shall be cancelled, materially changed or reduced in coverage except with the prior approval of Town. NOR shall furnish Town with a certificate of renewal of any such policy at least ten (10) days prior to the expiration thereof.

The Railroad Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least (\$10,000,000) each occurrence or claim and at all times an unimpaired aggregate limit of at least (\$20,000,000). Such insurance shall contain broad form contractual liability covering the indemnity provisions contained in this Agreement, coverage for construction or demolition work on or near railroad tracks, and any other coverage requested by Town which is customarily required in the railroad industry.

Workers' Compensation or FELA insurance shall cover the statutory liability as determined by the compensation laws of the State of Indiana or FELA, as applicable, with a limit of at least (\$1,000,000).

Town shall, at its own cost and expense, provide and procure General Public Liability insurance to be kept in force during the Term.

NOR shall be required to obtain and keep in force a commercial general form of insurance policy covering NOR's operation of the Rail Line, including public liability, personal injury, property damage, FELA, bill of lading, foreign rolling stock and contractual liability with per occurrence and aggregate limits of no less

than \$40,000,000. Town shall be named as additional insured in such policy. Upon reasonable request, NOR shall make such policy available for inspection and review by Town.

15. Indemnity

To the fullest extent permitted by law, NOR shall indemnify, defend, and hold harmless Town, its consultants, sub-consultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them (“Town Indemnified Parties”), against and from any and all claims, liabilities and damages arising under, by reason of, related, or incidental to this Agreement or any negligent performance of the railroad services, to the extent not caused by the negligence or willful misconduct of Town Indemnified Parties. Such indemnification by NOR shall include, but not be limited to, the following:

- a. Liability or claims of liability arising by reason of injury or damage to person (including death) and/or property (tangible or intangible) occurring as a result of railroad services performed pursuant to the terms of this Agreement;
- b. Liability or claims resulting directly or indirectly from the negligence or carelessness of NOR, its employees, or agents in the performance of the railroad services, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of NOR, its employees, or agents;

- c. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of NOR's subcontractor's, or supplier's own employees or agents engaged in the railroad services resulting in actions brought by or on behalf of such employees against Town Indemnified Parties.
- d. Liability or claims arising directly or indirectly from or based on the violation of any law or regulation, whether by NOR, its employees, or agents;
- e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to Town Indemnified Parties or any other parties by NOR, its employees, or agents;
- f. Liability or claims arising directly or indirectly from the willful misconduct of NOR, its employees, or agents;
- g. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by NOR; and
- h. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by NOR, subcontractor, suppliers, or any of their employees or agents.

16. Revenue Sharing

NOR agrees to contribute a portion of the freight revenue it derives from operation of the Rail Line to the Town based upon the following schedule.

Term Years 1 thru 5, the Town shall be paid \$75,000.00 each January.

Term Years 6 thru 10, the Town shall be paid \$100,000.00 each January.

NOR shall provide Town a carload count monthly. NOR shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing the loaded freight cars moved over the Rail Line. Such books of account, records, cash receipts, and other pertinent data shall be kept by NOR for a period of three (3) years after the end of the Term. It is the intentions of the parties that the Revenue Sharing paid by NOR to Town is to build funds to be deposited to the Railroad Fund. However, NOR shall have no claim as to the disposition of such Revenue Sharing funds held by the Town. In the event of a material change in freight traffic patterns on the Rail Line, the parties agree to negotiate in good faith to equitably revise the Revenue Sharing formula.

17. Financial Reporting

During the Term of this Agreement, the NOR shall, within sixty (60) days after the end of its fiscal year provide the Town with unaudited (preliminary) financial statement, and within one hundred five (105) days after the end of its fiscal year,

provide the Town either with a audited financial report, or a Certified copy of the applicable final corporate tax report and supporting schedules as filed with the Internal Revenue Service, applicable only to NOR rail operations. In addition, NOR shall provide Town with monthly reports for (i) the number of carloads at the Rail Line, (ii) number of switch moves performed, (iii) number of stored cars on the Rail Line, (iv) the names of all users of the Rail Line, (v) new business prospects (vi) total revenue generated on the Rail Line segmented by customer and (vii) any other information reasonably requested by Town regarding the railroad services. Additionally, NOR shall provide Town with quarterly financial statements, including a balance sheet, cash flow, and profit and loss statements, reflecting the financial condition of NOR. Representative/s of NOR agree to meet not less than quarterly with Town or Town's agent/s to review railroad operations.

18. Trackage Rights and Payments

Town reserves the right to allow the use of Rail Line for freight services by rail carriers other than NOR, if any such carrier:

- a) Does not either originate or terminate any freight activity on the Rail Line in competition with NOR;
- b) agrees in writing to indemnify NOR and hold it harmless against any and all liability arising in any way whatsoever from such carrier's use of the Rail Property, other than normal track wear and tear addressed below;
- c) is a bona-fide carrier legally and financially capable of providing such services;

- d) Agrees that at all times, the operations of such carrier shall be conducted in a manner which does not unduly interfere with NOR operations and shall be in compliance with all dispatching orders, operating rules, and schedules of NOR;
- e) Agrees to pay a users fee or trackage rights charge to the NOR of not less than sixty-six cents per car mile for any car or locomotive; loaded or empty, subject to annual escalation based on the change in the Rail Cost Recovery Index published by the Association of American Railroads.
- f) Does not conflict with provisions of this Agreement in relating to Historic Corridor Preservation, or conflict with approval of additional freight services.
- g) Does not require investment by NOR for improvement of designated track class, inspection standards, frequency, or additional insurance limitations to allow such service.

19. Hazardous Substances and Wastes.

For the purpose of this Section, “Hazardous Materials” shall mean any substance:

- (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contamination under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., or (b) that is toxic,

explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and “Hazardous Materials Laws” shall mean all present and future government statues, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

NOR shall comply with Hazardous Material Laws in performing its railroad services. Without first obtaining Town’s written permission, NOR shall not treat or dispose of Hazardous Materials on the Rail Line, and shall not transport by railcar, or transload to or from railcars, or bring any Hazardous Materials onto the Rail Line, except such Hazardous Materials which have been approved by Town. NOR shall assume all responsibility for and shall indemnify, defend and hold harmless Town against all costs and claims associated with (i) a release or leak of any such Hazardous Materials caused by NOR unless such event was caused by the negligence or willful misconduct of Town, or (ii) the violation of Hazardous Materials Law by NOR.

If NOR knows, or has reasonable cause to believe, that a Hazardous Material which has not been approved by Town has come to be located under or about the Rail Line, other than as specifically provided herein or as previously consented to by Town, NOR shall immediately give notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any

governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

20. Status Of NOR

It is understood and agreed that NOR (including NOR's employees) is an independent contractor and that no relationship of employer employee exists between the parties hereto. NOR's assigned personnel shall not be entitled to any benefits payable to employees of Town. Town is not required to make any deductions or withholdings from the compensation payable to NOR under the provisions of this Agreement; and as an independent contractor, NOR hereby indemnifies and holds Town harmless from any and all claims that may be made against Town based upon any contention by any third party that an employer employee relationship exists by reason of this Agreement.

It is further understood and agreed that as an independent operator and not an employee of Town, neither NOR nor NOR's assigned personnel shall have any entitlement as a Town employee, nor the right to act on behalf of Town in any capacity whatsoever as agent, or to bind Town to any obligation whatsoever. NOR, or its employees shall not be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by Town to employees of Town.

It is further understood and agreed that NOR must issue W2 and 941 Forms for income and employment tax purposes for all of NOR's assigned personnel under the terms and conditions of this Agreement.

21. **Term, Default, and Termination**

This Agreement shall be in full force for Ten (10) years from the Effective Date; provided, however, that this Agreement can be renewed for ten additional years from the date it otherwise would expire if, no later than (60) days before such expiration date, both Town and NOR provide written notice to each other of their intent to renew this Agreement for such additional ten-year period ("Term"); and provided further that Town shall have the right to terminate this Agreement immediately by written notice if NOR becomes bankrupt or unwilling or unable to operate this Rail Line at any time during the initial or renewed Term of this Agreement. If NOR defaults in the performance of any covenant or agreement required by this Agreement for a period of thirty (30) days, or fifteen (15) days for any monetary default, after written notice from Town to the NOR specifying such default, Town may, at its option, in addition to any other legal and/or equitable rights, terminate this Agreement by written notice; provided, however, that if such default cannot reasonably be cured within thirty (30) days, Town shall not terminate this Agreement if NOR begins to cure the default within the thirty (30) day notice period and proceeds diligently to complete such cure; provided that in no event shall such cure period exceed one hundred and eighty (180) days unless approved by Town, in writing. In addition to the forgoing rights, and without

limiting such right, upon any non-monetary default by NOR, upon not less than ten (10) days prior written notice (except in the case of an emergency) to NOR, Town may elect to cure such default and NOR shall reimburse Town for all expenses incurred to complete such cure, which reimbursement shall be due within ten (10) days following NOR's receipt of written demand from Town. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Town may have, and to any remedies Town may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Town of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of the Revenue Share by Town subsequent to any breach hereof shall not be deemed a waiver of any proceeding breach other than a failure to pay the particular Revenue Share so accepted, regardless of Town's knowledge of any breach at the time of such acceptance of amount. Town shall not be deemed to have waived any term, covenant or condition unless Town gives NOR written notice of such waiver.

22. Removal of Operator Equipment, Personnel and Property Upon Termination

Upon the termination of this Agreement, NOR shall, at NOR's sole expense, remove its equipment, personnel, and other property from the Rail Line and shall restore, to the reasonable satisfaction of Town, such portions of that Line in good a condition, excepting normal wear and tear. NOR, at its sole expense, shall

insure that any environmental remediation is completed to the reasonable satisfaction of Town.

23. Force Majeure

In the event of Acts of God, war, insurrection, civil disorder or labor actions, each party shall be reasonably relieved of its obligations herein, provided that the affected party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A party claiming force majeure under this Agreement must expeditiously notify the other party of the force majeure situation and any actions being taken toward mitigation, and when force majeure ends.

24. Notices

Any notices, demands, requests or submissions which are required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by e-mail, or by such other means as the parties may agree, and shall be, except as otherwise noted herein, addressed as follows:

Name of New Operator Railroad

Address

City, State Zip Code

Phone:

Fax:

Email:

Incorporated Town of North Judson

204 Keller Ave

North Judson, IN 46366

Phone: (574) 896-3340

Fax: (574) 896-2153

Email: njclerk@embarqmail.com

Hoosier Valley Railroad Museum Inc.

PO Box 75

North Judson IN 46366-0075

Phone: (574) 896-3950

Email: hvrm@yahoo.com

25. Assignment

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. NOR may not assign this Agreement without the written consent of Town, which shall not be unreasonably withheld.

26. No Waiver

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised

from time to time as often as may be deemed necessary by the non-breaching party.

27. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

28. No Abandonment

The NOR shall not apply for abandonment or discontinuance of service over any portion of the Rail Line without concurrence of the Town. Upon the termination of this Agreement, NOR shall file for necessary authorization from the STB or other regulatory authority, to discontinue rail service over the Rail Line or shall cooperate in a Notice of Exemption for change of operators.

29. Modification to Agreement

The provisions of this Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Agreement. Any agreement made after the Effective Date and related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed by NOR and Town and Museum.

30. General Provisions

A. Authority. Each party represents and warrants to the other party that it is fully authorized to enter into and be bound by this Agreement.

B. Time. Time is of the essence of this Agreement.

C. Governing Law. This Agreement shall be construed and enforced under the law of the State of Indiana.

In witness whereof, the parties have below indicated their acceptance of this Agreement by their authorized signature:

For NOR:

For Town:

By: _____

By: _____

Title: _____

Title: _____

For Museum:

By: _____

Title: _____

ATTACHMENT A

Routine Maintenance

1. All Vegetation Control, spraying the Rail Line at least annually, including but not limited to clearing of vegetation obstructions at grade crossings and side ditches, removal of any trees encroaching on the track, bush-hogging of accessible areas in towns and along the Rail Line, debris removal dumped by third parties. NOR shall keep the Rail Line in a clean condition.
2. All Signal Maintenance, including but not limited to electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring, replacement of unusable heads, mast, cantilevers, electronic boards, bungalows, cabinets, gate mechanisms, underground wiring, or signal upgrades. Signalization maintained to FRA Class I or better.
3. All Grade Crossings, including but not limited to patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, re-driving lags, repair or replacement of cross-bucks sign posts and all signage, rebuilding of surface, replacement of track structure to the same designated track class, but no less than FRA Class I.

4. All FRA required Track and Bridge Inspections, copies available for Town upon request, to designated track class, but no less than FRA Class I.
5. All Switches, including but not limited to, inspection, lubrication and adjustment of all switches to designated track class, but no less than FRA Class I. Replacement of loose or missing bolts and cotter pins, replacement of banners as required, welding of points and frogs. Replacement of switch components, replacement of switch timbers. New switch timbers shall be used for any switch timber replacements.
6. Derailments, rerailing of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Rail Line may be used in the replacement if available, if not available NOR must purchase material at its expense.
7. All Joints and Broken Rails, including but not limited to, replacement of all missing or failed bolts (to no less than designated track class, but no less than FRA Class I), replace broken joint bars, repair/replace broken and/or worn rails and pull-aparts.
8. All Crossties: maintain tie conditions to designated FRA class in Section 8A or 8B of this Agreement, but no less than FRA Class I track safety standards. During the Term of the Agreement, there shall be not less than (15) non-defective crossties per each 39-foot rail and not more than one defective crosstie in lineage sequence. New crossties shall be used for any crosstie replacements.

9. All Plates, Spikes and Anchors, including but not limited to position loose plates and redrive loose anchors. Purchase of plates, anchors, spikes to maintain designated track class.
10. All Ballast Regulation, Surface, Spot Jacking and Tamping to meet designated track class, but no less than FRA Class I track. Additional ballast as needed to support designated track class, but no less than FRA Class I track safety standards.
11. All Interlocking Plants, including but not limited to inspection and repair as specified in agreements, including welding and bolts. Replacement of obsolete equipment, new crossing diamonds.
12. All Bridges-Trestles-Culverts, including but not limited to inspection, cleaning of drift, erosion control, installation, repair and replacement of walkways and walkway components, preventing ballast erosion. Replacement of piles, sills, caps, bents, stringers, deck boards, side boards, headwalls or other components associated with bridges, including replacement if necessary. Replacement of culverts.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring. NOR shall develop a Bridge Management Program conforming to FRA rules and regulations.

EXHIBIT D



