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September 22, 2015  
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Before the

**SURFACE TRANSPORTATION BOARD**

Docket No. AB 603 (Sub-No. 4X)

**V AND S RAILWAY, LLC  
- ABANDONMENT EXEMPTION -  
IN PUEBLO, CROWLEY AND KIOWA COUNTIES, CO**

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**REPLY OF V AND S RAILWAY, LLC TO REQUEST  
FOR INFORMATION RELATED TO OFFER OF FINANCIAL ASSISTANCE**

ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V&S Railway, LLC

Dated: September 22, 2015

Before the  
**SURFACE TRANSPORTATION BOARD**

Docket No. AB 603 (Sub-No. 4X)

**V AND S RAILWAY, LLC  
- ABANDONMENT EXEMPTION -  
IN PUEBLO, CROWLEY AND KIOWA COUNTIES, CO**

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**REPLY OF V AND S RAILWAY, LLC TO REQUEST  
FOR INFORMATION RELATED TO OFFER OF FINANCIAL ASSISTANCE**

On August 24, 2015, KCVN, LLC and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (“Offerors”) filed a notice of intent to file an offer of financial assistance to purchase the approximately 121.9 miles of railroad line which are the subject of this abandonment proceeding, and which are known as the Towner Line. In accordance with the requirements of 49 USC § 10904(b) and 49 CFR § 1152.27(a)(1)(ii), V and S Railway, LLC (“V&S”) hereby responds to the requests of the Offers as follows:

1. V&S’s minimum purchase price for the Towner Line.

V&S’s minimum purchase price for the Towner Line is \$27,023,500, which is the net liquidation value (“NLV”) of the Towner Line.

2. V&S’s most recent reports on the physical condition of the Towner Line.

V&S does not have any current reports on the physical condition of the Towner Line. Service over the western end of the line (between MP 868.5 and MP 808.3 has been discontinued since July 2012 (and had not had service for at least two years prior to then). *V & S Railway, LLC—Discontinuance of Service Exemption—in Pueblo, Crowley and Kiowa Counties, Colo.*, STB Docket No. AB 603 (Sub-No. 2X) served June 28, 2012). There has been no service over

the remainder of the line for more than two years. *See* V&S Notice of Exempt Abandonment filed in this proceeding on August 3, 2015. The Track Valuations of RL Banks & Associates (“RLBA”) referenced in the response to request no. 3 below contain general descriptions of the condition of the track materials.

3. V&S’s estimate of the Net Liquidation Value of the Towner Line.

Attached hereto as Exhibit 1 are the RLBA Track Valuation dated October 2, 2014, and an updated Track Valuation dated August 7, 2015. (Exhibit 1 has been marked “Highly Confidential” in accordance with the Protective Order entered by the Board on September 11, 2015, and is being produced as part of a separate appendix.) The Track Valuations set forth the RLBA calculation of NLV in accordance with the Board’s standards. The NLV calculation includes assessments of the quality and quantity of track material, and removal cost estimates.

The NLV does not contain any information reflecting appraisal of the real estate. Portions of the line were constructed on easements through public lands obtained under the General Railroad Right-of-Way Act of 1875, and the use of such property for other than rail purposes is limited. There is also a question whether the State of Colorado has reversionary rights to the real estate under Colorado statute C.R.S. 43-1-1306(4) if the line were to be abandoned. Accordingly, V&S has not included any value for the real estate in its calculation of NLV. Copies of the RLBA Track Valuations were provided to counsel for the Offerors by email on August 26, 2016.

4. Data necessary to determine the amount of financial assistance required to restore and maintain operations over the Towner Line.

Under 49 CFR 1152.27(a)(1)(ii), V&S is only required to provide information related to the type of financial assistance indicated in the offeror’s formal expression of intent. Since

Offerors only indicated that they were interested in purchasing the Towner Line, this information which relates only to a potential offer for subsidy, is not relevant.

In any event, the information requested would not be available since there has been no service over the Line for more than two years, and there are no outstanding requests for service, or any evidence that there will be traffic to subsidize, upon which V&S could determine the amount or type of service that would be required, or even the origins or interchange points that would be utilized. *See generally Delaware & Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption*, STB Docket No. AB 156 (Sub-No. 27X) (served August 13, 2015), slip op. at 7.

5. Relevant documentation concerning easements and rights-of-way that are associated with the Towner Line, including certain information related to the December 1, 2005 Purchase Agreement between the State of Colorado and V&S (the “Purchase Agreement”).

The information requested is not the type of information that V&S is required to provide under 49 CFR § 1152.27(a)(1)(ii) as it does not relate to the calculation of NLV or the establishment of the minimum purchase price for the line. Without waiving this position, V&S responds to Offerors’ specific requests as follows:

- a. A copy of the Line Sale Contract between Union Pacific Railroad Company and the Colorado Department of Transportation, if V&S has this document in its possession.

A copy of the Line Sale Contract is attached hereto as Exhibit 2.<sup>1</sup> (Exhibit 2 has been marked “Highly Confidential” in accordance with the Protective Order entered by the Board on September 11, 2015, and is being produced as part of a separate appendix.)

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<sup>1</sup> The exhibits to the Line Sale Contract were not located in V&S’s files. If located, V&S will review them and determine whether they will be produced as a supplement to this response.

b. Exhibit A-E to the Purchase Agreement, particularly Exhibit B.

Copies of the four recorded deeds (Exhibits A-1, A-2, A-3 and A-4) are attached hereto as Exhibit 3. Copies of the Assignment of Contract Rights (Exhibit B), Bill of Sale (Exhibit C), and Promissory Note (Exhibit D) are attached hereto as Exhibits 4-6, respectively.<sup>2</sup> (Exhibits 4-6 have been marked “Highly Confidential” in accordance with the Protective Order entered by the Board on September 11, 2015, and are being produced as part of a separate appendix.)

c. To what extent would the purchase of the Towner Line by Offerors pursuant to the OFA process be subject to any of the terms and conditions of the Purchase Agreement?

This request seeks a legal opinion which V&S is not in a position, nor is it required, to provide. Offerors have counsel who can advise them on this issue.

d. Offerors respectfully request permission from V&S to inspect the Towner Line at Offerors’ cost.

V&S is willing to allow Offerors to inspect the Towner Line at Offerors’ cost and expense under the following conditions:

Offerors will be required to sign a standard Release of Liability, Indemnity and Non-Disclosure Agreement. (V&S provided copies of the form of Release to counsel for Offerors by email on August 26, 2015.)

Offerors will need to be accompanied by a V&S representative, and will be required to pay V&S for the reasonable costs of the escort and for use of a V&S hi-rail vehicle if required.

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<sup>2</sup> The Deed of Trust (Exhibit E) was not located in V&S’s files. If located, V&S will review it and determine whether it will be produced as a supplement to this response.

Offerors' inspector should make arrangements for the inspection directly with V&S.  
V&S is separately providing counsel for Offerors with contact information.

Respectfully submitted,



ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
215-640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Attorneys for V&S Railway, LLC

Dated: September 22, 2015

## CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2015, I served a copy of the foregoing document on the parties listed below by the method indicated:

By email:

Thomas W. Wilcox  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
[twilcox@gkglaw.com](mailto:twilcox@gkglaw.com)

By email and US First Class Mail, postage prepaid:

Richard Scott  
Cindy McLoud  
Donald Oswald  
Kiowa County  
1305 Goff Street  
PO Box 100  
Eads, CO 81036  
[kiowaco100@gmail.com](mailto:kiowaco100@gmail.com)

The Appendix of Highly Confidential Exhibits has been served only on counsel for Offerors who has previously provided signed undertakings under the Board's protective order.

By: \_\_\_\_\_

  
Eric M. Hocky

## **EXHIBIT 3**



1654263

Page: 1 of 4

12/22/2005 03:17P

Chris C. Munoz PuebloCityClk&Rec QUIT R 21.00 D 0.00

### QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Pueblo, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the



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Page: 2 of 4  
12/22/2005 03:17P  
D 0.00

Chris C. Munoz PuebloCtyGik&Rec QUIT R 21.00

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett  
Chief Clerk *for Right of Way*

By: Thomas E. Norton  
Title: Ex. Dir.

(SEAL)





1654263

Page: 4 of 4  
12/22/2005 03:17P

Chris C. Munoz PuebloCtyClk&Rec GUIT R 21.00 D 0.00

Attachment I  
(Exhibit A-1)

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION  
Pueblo County, Colorado

That portion of the right of way of the Towner railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company) as now constituted, as said Towner railroad line extends in a westerly direction from the Crowley/Pueblo county line to Mile Post 869.40 in, over, and across the following legal subdivisions:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
N ½	1	22S.	60W.	6TH
NE ¼ NE ¼	2	22S.	60W.	6TH
S ½ S ½	35	21S.	60W.	6TH
(INDIAN CLAIM 3)	34	21S.	60W.	6TH
(INDIAN CLAIM 2)	33	21S.	60W.	6TH
SW ¼ SW ¼	28	21S.	60W.	6TH
(INDIAN CLAIM 1)	29	21S.	60W.	6TH

Also, that portion of the right of way of said Towner railroad line, situate in Indian Claim No. 1 of Section 30, Township 21 South, Range 60 West of the Sixth Principal Meridian in Pueblo County, Colorado, that lies between the east line of said Section 30 and a line (Mile Post: 869.40) drawn at right angles through the centering of said main track at a point thereon that is 1,677.0 feet distant westerly, measured along said centerline of the main track from said east line of Section 30.

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162882 12/22/2005 03:06P QCD L. Nichols  
1 of 4 R 21.00 D 0.00 N 0.00 Crowley Co, CO

## QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Crowley, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the

162882 12/22/2005 03:06P QCD L. Nichols  
2 of 4 R 21.00 D 0.00 N 0.00 Crowley Co, CO

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett  
Chief Clerk for Right of Way

By: Thomas E. Norton  
Title: Exec. Dir.

(SEAL)





Attachment I  
 (Exhibit A-2)

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION  
 Crowley County, Colorado

That portion of the right of way of the Towner railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company) as now constituted, as said Towner railroad line extends in a westerly direction from the Crowley/Otero county line to the Crowley/Pueblo county line in, over, and across the following legal subdivisions:

SUBDIVISION	SECTION	TOWNSHIP	RANGE	MERIDIAN
N $\frac{1}{2}$ N $\frac{1}{2}$	1	21S.	55W.	6TH
N $\frac{1}{2}$	2	21S.	55W.	6TH
N $\frac{1}{2}$	3	21S.	55W.	6TH
N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	4	21S.	55W.	6TH
S $\frac{1}{2}$	5	21S.	55W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	6	21S.	55W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	7	21S.	55W.	6TH
N $\frac{1}{2}$	12	21S.	56W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	11	21S.	56W.	6TH
S $\frac{1}{2}$	10	21S.	56W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	15	21S.	56W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	9	21S.	56W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	16	21S.	56W.	6TH
N $\frac{1}{2}$	17	21S.	56W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$	18	21S.	56W.	6TH
S $\frac{1}{2}$	13	21S.	57W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	14	21S.	57W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	23	21S.	57W.	6TH
N $\frac{1}{2}$	22	21S.	57W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	21	21S.	57W.	6TH
S $\frac{1}{2}$	20	21S.	57W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	19	21S.	57W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	30	21S.	57W.	6TH
N $\frac{1}{2}$	25	21S.	58W.	6TH
SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$	26	21S.	58W.	6TH
S $\frac{1}{2}$ SE $\frac{1}{4}$	27	21S.	58W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	34	21S.	58W.	6TH
N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	33	21S.	58W.	6TH
S $\frac{1}{2}$	32	21S.	58W.	6TH
SE $\frac{1}{4}$ SE $\frac{1}{4}$	31	21S.	58W.	6TH
N $\frac{1}{2}$	6	22S.	58W.	6TH
E $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	1	22S.	59W.	6TH
S $\frac{1}{2}$	2	22S.	59W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	11	22S.	59W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	10	22S.	59W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	9	22S.	59W.	6TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	8	22S.	59W.	6TH
S $\frac{1}{2}$	5	22S.	59W.	6TH
S $\frac{1}{2}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$	6	22S.	59W.	6TH

Also, that portion of the right of way of said Towner railroad line, situate in the S1/2SE1/4 of Section 36, Township 20 South, Range 55 West of the Sixth Principal Meridian in Crowley County, Colorado, that lies between the east line of said Section 36 and the south line of said Section 36.

263273

State of Colorado }  
County of Kiowa } as

INDEX

BOOK 441 PAGE 976

MICROFILMED

I hereby certify that this instrument  
was filed in my office at 4:15 o'clock

P.M. DEC 22 2005 and

recorded in Book 441 Page 976-981

*Betty J. Brown*  
Recorder

QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Kiowa, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

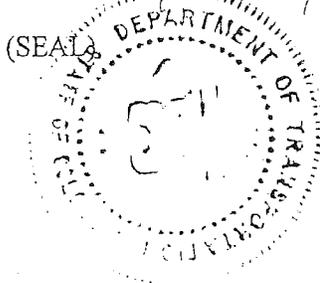
IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett  
Chief Clerk for Right of way

By: Thomas E. Norton  
Title: Ex. Dir.





Attachment I  
(Exhibit A-4)THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION  
Kiowa County, Colorado

## EXHIBIT "A"

That portion of the right of way of the Tower railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company), as now constituted, as said Towner railroad line extends in a westerly direction from Mile Post 747.50 to the Kiowa/Crowley county line in, over, and across the following legal subdivisions:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½S½	22	18S.	42W.	6TH
S½S½	21	18S.	42W.	6TH
S½S½	20	18S.	42W.	6TH
S½S½	19	18S.	42W.	6TH
S½S½	24	18S.	43W.	6TH
S½S½	23	18S.	43W.	6TH
S½S½	22	18S.	43W.	6TH
S½S½	21	18S.	43W.	6TH
S½S½	20	18S.	43W.	6TH
N½N½	29	18S.	43W.	6TH
N½	30	18S.	43W.	6TH
N½	25	18S.	44W.	6TH
S½N½, N½SW½	26	18S.	44W.	6TH
N½S½	27	18S.	44W.	6TH
S½	28	18S.	44W.	6TH
S½S½	29	18S.	44W.	6TH
SE½SE½	30	18S.	44W.	6TH
N½N½	31	18S.	44W.	6TH
N½	36	18S.	45W.	6TH
S½N½	35	18S.	45W.	6TH
ALL	34	18S.	45W.	6TH
S½	33	18S.	45W.	6TH
S½	32	18S.	45W.	6TH
SE½SE½	31	18S.	45W.	6TH
N½N½	6	19S.	45W.	6TH
N½N½	1	19S.	46W.	6TH
S½S½	36	18S.	46W.	6TH
N½	2	19S.	46W.	6TH
S½N½	3	19S.	46W.	6TH
N½	4	19S.	46W.	6TH
SW½	33	18S.	46W.	6TH
E½E½	32	18S.	46W.	6TH
S½	29	18S.	46W.	6TH
N½S½	30	18S.	46W.	6TH
E½, S½NW½	25	18S.	47W.	6TH
S½N½	26	18S.	47W.	6TH
N½	27	18S.	47W.	6TH
N½N½	28	18S.	47W.	6TH
SW½SW½	21	18S.	47W.	6TH
S½S½	20	18S.	47W.	6TH

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½	19	18S.	47W.	6TH
S½	24	18S.	48W.	6TH
S½, S½NW¼	23	18S.	48W.	6TH
S½N½	22	18S.	48W.	6TH
N½	21	18S.	48W.	6TH
N½N½	20	18S.	48W.	6TH
N½N½	19	18S.	48W.	6TH
S½SW¼	18	18S.	48W.	6TH
S½S½	13	18S.	49W.	6TH
S½	14	18S.	49W.	6TH
S½	15	18S.	49W.	6TH
ALL	16	18S.	49W.	6TH
S½N½	17	18S.	49W.	6TH
N½	18	18S.	49W.	6TH
N½N½	13	18S.	50W.	6TH
N½N½	14	18S.	50W.	6TH
S½S½	11	18S.	50W.	6TH
S½S½	10	18S.	50W.	6TH
S½	9	18S.	50W.	6TH
S½	8	18S.	50W.	6TH
S½	7	18S.	50W.	6TH
NW¼NW¼	18	18S.	50W.	6TH
E½, S½SW¼	13	18S.	51W.	6TH
NW¼NW¼	24	18S.	51W.	6TH
N½, NW¼SW¼	23	18S.	51W.	6TH
SE¼NE¼, S½	22	18S.	51W.	6TH
S½SE¼	21	18S.	51W.	6TH
N½	28	18S.	51W.	6TH
E½, SW¼	29	18S.	51W.	6TH
S½	30	18S.	51W.	6TH
N½NW¼	31	18S.	51W.	6TH
N½	36	18S.	52W.	6TH
N½	35	18S.	52W.	6TH
N½, SW¼	34	18S.	52W.	6TH
SE¼	33	18S.	52W.	6TH
N½	4	19S.	52W.	6TH
E½, SW¼	5	19S.	52W.	6TH
SE¼SE¼	6	19S.	52W.	6TH
N½, NW¼SW¼	7	19S.	52W.	6TH
S½	12	19S.	53W.	6TH
NW¼	13	19S.	53W.	6TH
E½	14	19S.	53W.	6TH
N½, SW¼	23	19S.	53W.	6TH
NW¼NW¼	26	19S.	53W.	6TH
E½, SE¼SW¼	27	19S.	53W.	6TH
W½	34	19S.	53W.	6TH
W½NW¼	3	20S.	53W.	6TH
E½	4	20S.	53W.	6TH
E½, SE¼SW¼	9	20S.	53W.	6TH
W½	16	20S.	53W.	6TH

SUBDIVISION	SECTION	TOWNSHIP	RANGE	MERIDIAN
W $\frac{1}{2}$	16	20S.	53W.	6TH
SE $\frac{1}{4}$ SE $\frac{1}{4}$	17	20S.	53W.	6TH
E $\frac{1}{2}$ , SW $\frac{1}{4}$	20	20S.	53W.	6TH
NW $\frac{1}{4}$ NW $\frac{1}{4}$	29	20S.	53W.	6TH
N $\frac{1}{2}$	30	20S.	53W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$	25	20S.	54W.	6TH
SE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ S $\frac{1}{2}$	26	20S.	54W.	6TH
S $\frac{1}{2}$	27	20S.	54W.	6TH
S $\frac{1}{2}$ SE $\frac{1}{4}$	28	20S.	54W.	6TH
N $\frac{1}{2}$	33	20S.	54W.	6TH
E $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$	32	20S.	54W.	6TH
S $\frac{1}{2}$	31	20S.	54W.	6TH

Also, that portion of the right of way of said Towner railroad line situate in the SW $\frac{1}{4}$  of Section 23, Township 18 South, Range 42 West of the Sixth Principal Meridian in Kiowa County, Colorado, that lie between the west line of said Section 23 and a line (Mile Post 747.50) drawn at right angles through the centerline of the main track of said Towner railroad line at a point thereon that is 2,499 feet distant easterly, measured along said centerline of the main track, from said west line of Section 23.



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Sharon Sisnroy  
Otero County Clerk

## QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Otero, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

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Sharon Sisroy  
Otero County Clerk

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

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TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of December, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett  
Chief Clerk for Right of Way

By: Thomas E. Norton  
Title: Ex. Dir.

