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February 7, 2011

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
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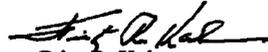
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Dear Ms. Brown:

Attached for filing in STB Finance Docket No. 35459, V&S Railway, LLC—
Petition for Declaratory Order—Railroad Operations in Hutchinson, Kansas, is the Reply
of V&S Railway, LLC to the Petition for Leave to Intervene and File a Reply of the
Association of Railway Museums, Inc. and the Tourist Railroad Association, Inc.

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

Sincerely yours,


Fritz R. Kahn

cc: Edward J. Fishman, Esq.
Robert T. Opal, Esq.

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Finance Docket No. 35459

**V&S RAILWAY, LLC
-- PETITION FOR DECLARATORY ORDER --
RAILROAD OPERATIONS IN HUTCHINSON, KANSAS**

**REPLY OF V&S RAILWAY, LLC
TO PETITION FOR LEAVE TO INTERVENE AND FILE A REPLY
OF THE ASSOCIATION OF RAILWAY MUSEUMS, INC.
AND THE TOURIST RAILROAD ASSOCIATION, INC.**

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Attorneys for

V&S RAILWAY, LLC

Dated: February 7, 2011

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB Finance Docket No. 35459

V&S RAILWAY, LLC
-- PETITION FOR DECLARATORY ORDER --
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REPLY OF V&S RAILWAY, LLC
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The Petition for Declaratory Order was filed by V&S Railway, LLC in compliance with Memorandum and Order of the United States District Court for the District of Kansas, filed December 20, 2010, in Case No. 08-1402-WEB, V&S Railway, LLC v. Hutchinson Salt Company, Inc., Hutchinson Transportation Company, Inc. and BNSF Railway Company, a copy of which was attached to the Petition for Declaratory Order as Exhibit A. The Court sought the expeditious determination by the Board of three questions which the Court framed:

1. Is V&S the sole rail carrier authorized to operate on the railroad line between Milepost 0.0 and Milepost 5.14 in Hutchinson, Reno County, Kansas, and to interchange traffic with Defendant BNSF Railway Company?
2. Does HSC and/or HTC have the right to operate on the railroad line and to interchange traffic with Defendant BNSF Railway Company by virtue of the fact that they own part of the real property underlying the railroad line and/or the fact that they claim ownership of some of the tracks and improvements

that are part of the railroad line the Board authorized V&S to acquire and operate?

3. Did the Hutchinson & Northern Railway Company or any successor-in-interest abandon the right-of-way on Parcel 1 granted by virtue of the 1925 Easement?

The Court's questions are clear and explicit, and they were referred to the Board under the primary jurisdiction doctrine enunciated in United States v. Western Pacific RR. Co., 352 U.S. 59, 63-64 (1956), in the belief that the matters in controversy were within the special competence of the Board.

The dispute arose over a 5.14-mile railroad line which V&S acquired from the HN pursuant to the Board's authorization in STB Finance Docket No. 34875, V&S Railway, LLC—Acquisition and Operation Exemption—The Hutchinson and Northern Railway Company, served May 31, 2006, 71 Fed. Reg. 30978, May 31, 2006.

Notwithstanding V&S ownership and operation of the acquired line, HSC and/or HTC operated their own trains on it, hauling carloads of salt to the interchange tracks where the loaded cars were turned over to the BNSF for their line-haul movement and empty cars were picked up for return to the mine. When in response to V&S's request HSC and/or HTC refused to stop operating on V&S's railroad line without its consent, V&S brought its suit against them and BNSF.

The Association of Railway Museums, Inc. ("ARM"), as the name implies, is an association of railway museums located throughout the country. Most often the museums are defunct passenger railroad stations housing railroad memorabilia, frequently with adjacent tracks on which antiquated locomotives, cars and other are displayed. None is in

Hutchinson. There are three railway museums in Kansas, the nearest one to Hutchinson being the Great Plains Transportation Museum in Wichita about 59 miles away.

The Tourist Railroad Association, Inc. ("TRAIN") is a nationwide association principally of intrastate passenger excursion train operators. None is located in Hutchinson. There are two intrastate passenger excursion train operators in Kansas, the nearest one to Hutchinson being the Abilene & Smoky Valley Railroad in Abilene about 95 miles away.

Intrastate passenger excursion train operations do not come within the jurisdiction of the Board. Citing Finance Docket No. 29161, Magner-O'Hara Scenic Ry.—Operation—in the State of Michigan, served May 12, 1981, aff'd sub nom., Magner-O'Hara Scenic Ry. v. ICC, 692 F. 2d 441 (6th Cir. 1982), the Interstate Commerce Commission in Napa Valley Wine Train, Inc.—Pet. for Declaratory Order, 7 I.C.C.2d 954, 969 (1991), concluded that intrastate passenger excursion train operations are not subject to its jurisdiction. The Board reached a similar conclusion in STB Finance Docket No. 33472, Fun Trains, Inc.—Operation Exemption—Lines of CSX Transportation, Inc. and Florida Department of Transportation, served March 5, 1998.

Pursuant to agreements between them, some intrastate passenger excursion trains are operated on the tracks of rail carriers subject to the Board's jurisdiction. The Skunk Train operating on the tracks of the California Western Railroad, the Blue Goose Train operating on the tracks of the Yreka Western Railroad, the Old Road Dinner Train on the tracks of the Adrian and Blissfield Rail Road Company and The Royal Gorge Route Railroad operating on the tracks of Rock and Rail, Inc., readily come to mind.

In their petition for leave to intervene and file a reply, ARM/TRAIN suggest that their members' intrastate passenger excursion train operations are private operations. The railroads may be privately owned, but that can be said no less with respect to some rail carriers subject to the Board's jurisdiction. See, i.e., Docket No. FD 35365, Michael Williams—Control Exemption—St. Maries River Railroad, Inc., served April 28, 2010; STB Finance Docket No. 35337, Paul Didelius—Continuance in Control Exemption—YCR Corporation, served December 31, 2009; STB Finance Docket No. 35296, Anthony Macrie—Continuance in Control Exemption—New Jersey Seashore Lines, Inc. served December 11, 2009. If their claim to being engaged in private operations is intended to infer that they do not operate their intrastate passenger excursion trains for compensation, ARM/TRAIN mislead. An adult round-trip ticket to ride the Skunk Train costs \$47.00, to ride the Blue Goose Train, \$20.00, the Old Road Dinner Train, \$70.00 and to ride the trains of The Royal Gorge Route Railroad, \$33.00.

ARM/TRAIN seize upon an excerpt from a single sentence taken out of context in V&S' Petition for Declaratory Order as affording them a basis for seeking leave to intervene and reply. They ascribe to V&S the claim that "private rail operations [can only be] conducted over private track." In fact, citing Finance Docket No. 34952, Devens Recycling Center, LLC—Petition for Declaratory Order, served January 10, 2007, slip, p.2, V&S, at pages 3-4 of its Petition for Declaratory Order, said, "The Board . . . has made it perfectly clear that 'private rail operations [can only] be conducted over private track." The cited proceeding involved a shipper's proposal to build approximately 2,282 feet of track connecting its construction and demolition debris recycling center with the main line of the Boston and Maine Corporation to be used

solely to meet the shipper's own needs. The Board concluded, "As past cases make clear, where, as here, track is built to meet a shipper's own transportation needs and there is no holding out of the possibility for any other shipper to obtain service, the track is private track."

Nothing in the Board's Devens decision or in its decision in STB Finance Docket No. 34013, B. Willis, C.P.A., Inc.—Petition for Declaratory Order, served October 3, 2001, also cited in ARM/TRAIN's petition, gives any indication that the Board would find improper the consensual operations of a private carrier on the tracks of a rail carrier, and ARM/TRAIN are disingenuous in suggesting the contrary. Indeed, in STB Finance Docket No. 34133, S.D. Warren Company d/b/a Sappi Fine Paper North America—Acquisition and Operation Exemption—Maine Central Railroad Company and the Springfield Terminal Railway Company, served September 30, 2002, the Board found that the consensual operations of the shipper on the line of a rail carrier to be in the nature of private carriage, beyond the scope of the Board's jurisdiction.

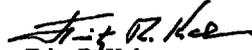
ARM/TRAIN offer nothing which would aid the Board in expeditiously answering the three questions posed by the United States District Court for the District of Kansas. The insertion of how intrastate passenger excursion train operations may be conducted would be an unwarranted diversion and distraction. The Board's rules, 49 C.F.R. §1112.4(a)(2), disallows intervention if it were to unduly broaden the issues raised in the proceeding. The petition of ARM/TRAIN most certainly would do that and, accordingly, should be denied.

Respectfully submitted,

V&S Railway, LLC

By its attorneys,

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Dated: February 7, 2011

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Reply on Hutchinson Salt Company, Inc., Hutchinson Transportation Company, Inc. and BNSF Railway Company by e-mailing a copy to their counsel, Edward J. Fishman, Esq., at ed.fishman@klgates.com, and upon the Association of Railway Museums, Inc. and the Tourist Railroad Association, Inc., by e-mailing a copy to their counsel, Robert T. Opal, Esq., at RobertTOpal@aol.com.

Dated at Washington, DC, this 7th day of February, 2011.


Fritz R. Kahn