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January 30, 2002

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423



204652

**Re: Finance Docket No. 33980, Riverview Trenton Railroad Company --  
Acquisition and Operations Exemption -- Crown Enterprises**  
**Finance Docket No. 34040, Riverview Trenton Railroad Company --  
Petition for Exemption**

Dear Secretary Williams:

204653

Enclosed for filing please find the original and ten copies of the Reply of Riverview Trenton Railroad Company ("RTRR") to the Notice by County of Wayne and Grand Trunk Western Railroad.

Respectfully,

David H. Coburn  
Attorney for Riverview Trenton  
Railroad Company

Enclosure

cc: All parties of record

WASHINGTON

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JAN 31 2002

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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33980

204652

RIVERVIEW TRENTON RAILROAD COMPANY - ACQUISITION AND  
OPERATIONS EXEMPTION - CROWN ENTERPRISES

Finance Docket No. 34040

204653

RIVERVIEW TRENTON RAILROAD COMPANY --  
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN

REPLY OF RIVERVIEW TRENTON RAILROAD COMPANY  
TO NOTICE BY COUNTY OF WAYNE  
AND GRAND TRUNK WESTERN RAILROAD



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*Attorneys for Riverview Trenton Railroad Company*

January 30, 2002

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 33980**

**RIVERVIEW TRENTON RAILROAD COMPANY - ACQUISITION AND  
OPERATIONS EXEMPTION - CROWN ENTERPRISES**

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**Finance Docket No. 34040**

**RIVERVIEW TRENTON RAILROAD COMPANY --  
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN**

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**REPLY OF RIVERVIEW TRENTON RAILROAD COMPANY  
TO NOTICE BY COUNTY OF WAYNE  
AND GRAND TRUNK WESTERN RAILROAD**

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Wayne County does not want RTRR to operate a railroad in the Riverview/Trenton area because the County is concerned with truck traffic and like issues in an historically industrial area that it would prefer, at some future stage, to redevelop for non-industrial use. GTW does not want RTRR's railroad to operate because it apparently perceives commercial disadvantage relative to other Class I railroads in the area. For these plainly insufficient reasons, the County and GTW seek to impede interstate commerce and the transportation benefits that would flow from RTRR's shortline operation and the intermodal yard that it plans to develop in conjunction with its rail operations.

Apparently desperate to stop RTRR from rehabilitating the track on its property and moving forward with its plans, the County and GTW have now resorted to a last minute about-face in their own position in this proceeding. Whereas they sought last May to consolidate the

class exemption investigation (Docket No. 33980) with consideration of RTRR's Petition for Exemption (Docket No. 34040), they now ask the Board to ignore what they said before and decouple its consideration of these proceedings. Through incompetence or design, they have waited until only three weeks before the February 15 statutory deadline for a decision in Docket No. 33980 to now reiterate their request to the Board for a procedural schedule to accommodate yet more filings on RTRR exemption petition. They have, however, failed to identify what more it is they would say in any such further filings that they have not already said. Indeed, in their Notice pleading, these parties repeat the same arguments, already answered by RTRR, that have been raised before. Wayne County reiterates its arguments to further its political agenda, while GTW seeks to provide nothing more than its economic self-interest.

To state what it painfully transparent from their filing, the County and GTW want only delay. Delay will allow them more time to further orchestrate their political campaign against RTRR.<sup>1</sup> They didn't say this in so many words in their unusual "Notice" filing, but the message and the "file at the last minute" strategy is loud and clear. The Board should not play along. The record in these proceedings is already robust; the parties have fully laid out their cases, informed by discovery taken in the federal court action; environmental review is complete or near completion (no significant adverse impacts having been found to RTRR's knowledge); and the issues are ripe for decision. The Board should issue a decision by the February 15 deadline

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<sup>1</sup> GTW, in fact, seems to be making 11th hour pleas for delay its modus operandi in regard to the RTRR matter, having recently filed an eve-of-hearing request to submit an amicus brief in the federal court proceeding, which was filed over one year ago, in which RTRR seeks to enjoin Wayne County from taking its rail property. See *Riverview Trenton Railroad Company v. County of Wayne*, Case No. 01-70078 (filed Jan. 5, 2001 E.D. Mich.). As previously reported, the Court has preliminarily enjoined the County and has scheduled a hearing in February on RTRR's October 2001 motion for summary judgment.

disposing of both proceedings so that all of the parties involved may then know where they stand, and RTRR can proceed with its rail transportation plans.<sup>2</sup>

**I. The Board Should Decide Both Proceedings By the February 15 Deadline**

Putting aside the rhetoric and invective that have marked the claims of the parties favoring revocation, the class exemption investigation and the RTRR Petition for Exemption raise the same essential issue, namely: has RTRR met the standards for exemption from section 10901 regulation set forth in 49 U.S.C. 10502? The answer is plainly yes.

First, no party has questioned that RTRR's planned shortline rail operation, which contemplates the transfer of freight between trucks and rail for a variety of area shippers, the loading/unloading of containers onto and off of railcars at an intermodal container facility, and the transportation of containers by rail from the yard area to the lines of nearby Class I carriers, will meet Rail Transportation Policy ("RTP") goals. It will, specifically, promote competition and the demand for rail services, ensure efficient services, and foster sound economic conditions in the industry, among other RTP goals. 49 U.S.C. 10101(1), (4), (5) and (7). Second, no party has questioned that the transaction is of limited scope (it involves only about 1.5 miles of line on property owned by RTRR) and no party has claimed that it might result in an abuse of market power.

The criteria for exemption are therefore met. The Board has all of the relevant facts before it to allow it to so find. The County and GTW do not explain why a delay in ruling on the RTRR Petition would somehow bring the issues into sharper focus. Nor do they explain what

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<sup>2</sup> RTRR officials met with GTW officials months ago, at a time when there was no hint of GTW opposition to the project. Since then, RTRR has endeavored to set up a meeting with GTW officials to discuss this matter, but to date GTW has failed to advance the ball in terms of scheduling a meeting. RTRR officials have been more successful in meeting with County and local officials in an effort to resolve the land use concerns that underpin their opposition.

more they would say, if given the opportunity to say more, were the Board to fix a procedural schedule at this late date. Surely, if they had additional information or arguments to bring to the Board's attention, they would have done so by now, and they would not have waited until almost 8 months after RTRR filed its Petition for Exemption to press the Board for an elaborate procedural schedule.

At the risk of stating the obvious, the Board does not normally fix a procedural schedule in proceedings on petitions for exemption. While RTRR suggested a schedule at the time it filed its Petition, it did so in the event that the Board believed that further submissions would be informative here. The fact that the Board has not heretofore chosen to provide a schedule for further submissions, and that it has moved forward with a thorough review of the environmental impacts of the RTRR operations, suggests that the Board may have concluded – quite logically – that the record is adequate to allow the Board to decide both proceedings.<sup>3</sup>

The only “argument” that the County and GTW advance in support of delay in the issuance of a decision in Docket No. 34040 is that there is some local opposition to the RTRR project and that the Board should take the views of these largely unnamed opponents into account. January 25 Notice at 18-19. The full answer to this argument is that local individuals opposed to RTRR have had ample opportunity to date to make their views known to the Board, particularly during the environmental review process. Several of these individuals have in fact done so, and the local governments of the communities affected by the project (Trenton, Riverview and the County), as well as a series of state and regional entities, have submitted comments to SEA which are found in the Draft EA. The notion that a decision on the Petition

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<sup>3</sup> The Board also had an opportunity to fix a procedural schedule when it launched its investigation in Docket No. 33980. It chose not to do so.

for Exemption should be delayed because some other individuals or groups that have heretofore not submitted their views to the Board may choose at some future point to do so is, on its face, an inadequate basis for delay.

The County and GTW suggest at page 19 of their Notice submission that the local opposition is focused on environmental impacts, issues related to the consistency of the RTRR project with land use objectives, and concerns about the need for the RTRR project. Each of these issues has already been fully aired, and the views of local interests have been submitted. The environmental process assessed the impacts and the Draft EA recommended modest mitigation measures upon concluding that those impacts will not be substantial. The County and GTW, among others, participated fully in the environmental process.<sup>4</sup>

With respect to land use concerns, as RTRR advised the Board in its January 25 letter, some recent opposition to the project has surfaced from individuals that claim, falsely, that RTRR intends to use its facility to transfer waste imported from Canada. This scenario has no basis in reality; it is an imagined horrible manufactured by RTRR's opponents to incite a letter-writing campaign to this Board. In any event, while land use concerns are not a matter for the Board, it bears reiterating that RTRR is simply rehabilitating an existing rail infrastructure which GTW previously used when McLouth Steel owned the property, and that RTRR will operate fewer trains in the area than operated when McLouth was in business. RTRR would not be

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<sup>4</sup> The County, through its Department of Public Services, submitted a November 21, 2001 Comment on the October 15, 2001 Draft EA. GTW commented through its counsel on November 26, 2001, criticizing the Draft EA in several respects and asking that SEA reissue a "supplemented and corrected" Draft EA.

Further, the resolution passed by the Michigan House of Representatives stating concerns about the environmental impacts of RTRR's rail plans (Exhibit D to the County/GTW Notice) was, as explained in RTRR's January 25, 2002 letter to the Board, sponsored by a representative who at the time was entirely unaware of the environmental review process.

prepared to invest in this industrial area were it not an ideal site for its shortline and intermodal facility. At the same time, RTRR is trying to work with local officials to address land use concerns by providing for recreational access to the Detroit River.

The County and GTW also suggest that other parties may wish to argue to the Board that the RTRR project is inconsistent with the RTP. But neither the County nor GTW have even come close to demonstrating such inconsistency.<sup>5</sup> There is no legitimate reason for the Board delay a decision in Docket No. 34040 so that unnamed entities, that have chosen not to appear to date, might raise such an argument.

Delaying a decision at this stage would serve only the interests of those who oppose the RTRR project. RTRR is currently receiving and shipping containers that are being placed on rollcars at other locations, and is prepared to move forward and intends in the coming months, prior to next winter, to complete the rehabilitation of the tracks on its property and initiate rail operations. The Board should facilitate RTRR's ability to do so in furtherance of interstate commerce and RTP goals.

## **II. The Supplemental Comments Offered by the County and GTW Are a Selective Rehash of the Claims They Have Previously Submitted**

### **A. The Board has Jurisdiction over RTRR**

The County and GTW repeat the same canards about Board jurisdiction. The facts, however, dispose of these claims. First, RTRR is not a private railroad beyond Board

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<sup>5</sup> GTW clearly would prefer, presumably for commercial reasons, to wait for a still-unfunded, highly speculative intermodal facility that might, several years from now, be constructed in Detroit. The environmental record in this proceeding discloses that the Michigan Department of Transportation, the prime mover behind the Detroit project, has not opposed the RTRR project. See MDOT letter attached at Exhibit F to the October 15, 2001 Draft EA. In any event, it is not the role of this Board under the RTP to choose one rail project over another. There is indisputably a need for upgraded intermodal facilities in the area, and having recognized that need some time ago, RTRR intends to help meet it.

jurisdiction for the simple reason that it was not established to transport the freight of a single entity with which it is affiliated. Rather, RTRR – which is affiliated with entities that are motor common carriers – will transport freight for a variety of shippers in the Southeast Michigan area, including vehicle manufacturers and other automotive-related industries. It will interchange the freight of those shippers with trucking companies with which it is affiliated and with trucking companies with which it is unaffiliated. And it will operate its shortline for the benefit of the shipping public. In these circumstances, as RTRR demonstrated at pages 16-18 of its March 8 Reply to the County, RTRR will be a common carrier just like GTW.<sup>6</sup>

The County/GTW claim that its affiliated entities operate similar facilities that do not function as common carriers is flatly wrong and GTW knows it is wrong. CenTra-owned trucking companies, like other trucking companies, operate trucking/container yards as part of their motor common carrier operations. The RTRR project, however, would be CenTra's first shortline rail operation. Given the nature of its planned operations, RTRR was required to come before the Board, and it did so appropriately.

Second, the fact that the acquired track may not previously have been owned by a carrier surely does not mean that it could never be acquired and operated by an entity that intends to operate as a rail carrier subject to Board jurisdiction. RTRR's April 2, 2001 Reply to the Petitions to Revoke describes (at pages 7-10) a series of proceedings in which carriers have invoked class exemption procedures to assume control of track not previously subject to Board jurisdiction for use in connection with jurisdictional operations.<sup>7</sup> This is precisely what the

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<sup>6</sup> See, e.g., *Association of P&C Dock Longshoremen v. Pittsburgh and Conneaut Dock Co., et al*, 8 I.C.C.2d 280 (1992).

<sup>7</sup> See, e.g., F.D. No. 33528, *Effingham Railroad Company -- Notice of Exemption -- Operation of Rail Trackage to be Acquired by TQW* (notice published December 30, 1997 at 62 (Continued ...))

exemption process was designed for. Further, the County and GTW do not appear to contend that RTRR's Petition for Exemption is beyond the Board's jurisdiction or procedurally defective in some respect, and plainly it is not.

Further, the County/GTW do not take issue with the fact that even if the class exemption process were unavailable to RTRR due to the prior status of the acquired track, the Petition for Exemption process is available.<sup>8</sup> Instead, they argue that because they have made this case controversial, the Board should not issue an exemption and instead subject RTRR to regulation, presumably meaning that RTRR would have to file a section 10901 application. This argument is no better than frivolous. How such a process – apart from resulting in the delay that they seek – would serve any legitimate interest is left to the imagination. In fact, it would not. The Board would be confronted with the same facts and no doubt the same claims it already has before it.

The environmental review process, in which the quality of life issues raised by the County/GTW have been fully aired, has been completed or is nearing completion. The Draft EA found no significant adverse environmental impacts associated with the RTRR project.<sup>9</sup> Armed

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Fed. Reg. 67937, aff'd by decision served Sept. 18, 1998); F.D. No. 33797, *Keystone Railroad, Inc. d/b/a Lake Michigan and Indiana Railroad Company -- Lease and Operation Exemption -- Bethlehem Steel Corp.* (notice published Sept. 13, 1999 at 64 Fed. Reg. 51573).

<sup>8</sup> RTRR's May 1, 2001 Petition for Exemption observes that since the track at issue will be RTRR's entire line, it is not exempt from Board jurisdiction as a spur or industrial track. See Docket No. 41986, *Effingham Railroad Company -- Petition for Declaratory Order -- Construction at Effingham, IL.* (served Sept. 12, 1997).

<sup>9</sup> The County/GTW cite *The Indiana & Ohio Railway Company -- Construction and Operation -- Butler, Warren, and Hamilton Counties, OH*, 9 I.C.C.2d 783 (1993) for the proposition that the Board public safety is a reason for denying the RTRR Petition. However, the Draft EA issued in this proceeding, in stark contrast to the environmental analysis in the cited construction case, found no basis for any public safety concerns at all, much less concerns that could not be mitigated.

with the recommendations of SEA, and the views expressed by the parties, the Board should proceed to a decision on RTRR's Petition.

**B. RTRR Has Fully Advised the Board of the Relevant Facts and Circumstances, The Same Cannot be Said of the County or GTW**

The County and GTW try once again to show that RTRR is a sham railroad that was quickly organized for the sole purpose of avoiding the County's eminent domain jurisdiction; that RTRR does not really intend to use the property for rail purposes and that RTRR has misled the Board at all stages by failing to disclose relevant facts or its true intentions. These claims have been made before and RTRR has already responded to them at length in its March 8 and April 2 replies to the petitions to revoke and like filings. They were also made, unsuccessfully, to the federal court that enjoined the County from proceeding with its eminent domain action. Rather than burden the Board with another detailed reply, RTRR will summarize the key facts below. It is beyond doubt that Wayne County initiated eminent domain proceedings solely to thwart RTRR's planned rail operations.

**1. RTRR Has Long-Planned its Rail Operations and the County Has Long-Known of Those Plans**

RTRR and its affiliated entities have been planning a rail facility for what is now the RTRR property since at least early 2000, ten months before the County initiated the first steps in the eminent domain process, and County and other local officials were well aware of these plans for months prior to the County's eminent domain actions in late 2000. RTRR has so demonstrated in its prior submissions,<sup>10</sup> showing that:

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<sup>10</sup> See March 8 Reply at 7-15 and April 8 Reply at 4-6 and 15-20.

- RTRR's ultimate parent, CenTra, had outlined plans for a rail development in the area in a January 2000 memorandum.<sup>11</sup>
- Officials of Crown, RTRR's direct corporate parent, advised County and local officials in March 2000, and thereafter, regarding the plans for rail use of the property. Those very officials admitted this under oath; indeed, those very officials conducted a search for alternative sites, recognizing that similar rail access would be critical for an alternative property.<sup>12</sup> All this occurred months before eminent domain was ever mentioned.
- A June 26, 2000 article in a local business publication discussed Crown's acquisition of the property and its plans to take advantage of the property's rail potential. The Mayor of Trenton was quoted as opposing the project in that same article.<sup>13</sup>
- A July 22, 2000 letter from the Mayor of Trenton to the residents of that community announced a town meeting to discuss the plans for using the property "as an intermodal rail, shipping and trucking facility."<sup>14</sup>

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<sup>11</sup> See March 7 Blashfield Verified Statement (V.S.), submitted with RTRR's March 8 Reply to the County, at paragraphs 2 through 6 and Exhibits 1 and 2.

<sup>12</sup> See Affidavit of Dan Stamper, President of Detroit International Bridge Company, a subsidiary of CenTra, Inc. at ¶ 8; Deposition of Patricia D. Hartig (Mayor of Trenton) at pp. 15-25; Deposition of DeWitt Henry (Wayne County Assistant County Executive) at pp. 22-23. The Stamper Affidavit is attached to RTRR's March 8 Reply and excerpts of the Henry and Hartig deposition transcripts are also attached to that same filing at Exhibits 5 and 6, respectively, to Mr. Blashfield's March 7 V.S.

<sup>13</sup> See Blashfield March 7 V.S., Exhibit 4.

<sup>14</sup> See Blashfield March 7 V.S., Exhibit 7.

- A September 6, 2000 internal CenTra memorandum discusses CenTra's need to form a rail subsidiary "to accommodate the new railroad operations and intermodal entities."<sup>15</sup>

Wayne County initiated an eminent domain proceeding purely in reaction to RTRR's planned rail operations, not the other way around. Moreover, the County and GTW are incorrect when they claim that GTW was not incorporated on November 1, 2000, prior to the earliest County letter raising an eminent domain issue. They cite Michigan's general corporation statutes for the proposition that a corporation is not formed until its articles of incorporation are filed, which in RTRR's case was on November 27. What they overlook is that RTRR was instead incorporated under Michigan's Railroad Code, which provides that, "One or more persons may *form* a corporation for the purpose of constructing, operating and maintaining a railroad, railroad bridge, or railroad tunnel by *subscribing* articles of association." Mich Comp. Laws § 462.201(1). RTRR was thus formed on November 1, when its incorporators subscribed the articles.<sup>16</sup>

They are also wrong to the extent that they rely (once again) on Crown's September 26, 2000 initial site plan filed with the Cities of Riverview and Trenton. As discussed in RTRR's March 8 Reply at 11, the site plan was not intended to describe RTRR's use of the property, just the temporary use that Crown was making of the property for container storage.

In short, the fact that the County and local officials knew of the planned rail use of the property for months prior to the eminent domain efforts fully responds to the claims that the

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<sup>15</sup> See Blashfield April 2 V.S. at ¶ 5 and Exhibit 1 to that Verified Statement.

<sup>16</sup> The Railroad Code provides that a railroad may be constructed and operated, in contrast to being formed, only after the articles are filed. See Mich Comp. Laws § 462.213(3). As noted, RTRR's articles were filed on November 27, 2001.

RTRR rail project was manufactured in response to the possibility that the County might take that property. RTRR has already invested a large amount of time and resources into planning its rail line, including the completion of a thorough environmental report. Its project is real, and has been planned for a long time, as the County well knows. Yet to further political agendas the County deliberately omits those pesky facts that lay waste to its argument.

**2. RTRR Learned of the Eminent Domain Threat After it Filed its Class Exemption Notice**

At the time that RTRR filed its class exemption notice, the County had not initiated any eminent domain actions directed at RTRR's property or even specifically identified the RTRR property as the possible subject of an eminent domain proceeding. The County/GTW argue that RTRR's affiliates were made aware of the County's interest in condemnation of the RTRR property by a November 17, 2000 letter to attorney Alan Ackerman and a November 28, 2000 letter to Mr. Bartscht of Crown, both transmitted before RTRR filed its class exemption notice with the Board. As a threshold matter, the November 17 letter never reached RTRR until after the November 28 letter had arrived.<sup>17</sup>

However, as the president of Crown, Mr. Arnold Mistura, has testified in the federal court action, the County failed in its November 28 letter (as it did in its November 17 letter to Mr. Ackerman) to identify the property to which its request for information pertained and thus it was not clear -- until the County provided a fuller legal description in its December 29, 2000 letter --

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<sup>17</sup> The November 17 letter to Mr. Ackerman, who sometimes served as counsel for Crown, never reached RTRR prior to RTRR's filing of its class exemption notice.. Mr. Blashfield has testified in the deposition in the federal court proceeding that he was not aware of the November 17 letter or any discussions at CenTra, Crown or RTRR about that letter. See attached excerpt of deposition of B. Michael Blashfield at pages 49-50.

that the County was interested in the RTRR site.<sup>18</sup> Crown owns several properties in the area, and the RTRR property itself consists of several parcels, all or any one of which might have fit within the County's interest in taking property "located at Bridge Road a/k/a Riverview Avenue and Jefferson Avenue," the vague description provided in the November 17 and 28 letters. In fact, the County's November letters most accurately described a 1.5 acre parcel that runs along Bridge Road, near what is now the 76 acre RTRR property. Further, when the County did provide its description of the property in its December 29 letter, it excluded 5 acres of what is now the RTRR property, underscoring the reasonableness of RTRR's request for what is surely the bare minimum degree of information that should be imparted in any eminent domain proceeding -- a full legal description of the property at issue.<sup>19</sup> Again, RTRR did not obtain that description until December 29, and only then was it clear that the County's efforts were directed at the bulk of the RTRR property.

### **3. RTRR At All Times Has Acted Reasonably to Protect its Interests**

RTRR was well within its rights in seeking to protect its interests and enjoin the County's baseless eminent domain claims. GTW would have acted no differently if the County had sought to take property it intended to use for a rail facility. RTRR also acted at all times consistent with its strategic plan to operate a shortline railroad. It made its December 11, 2000 class exemption filing with the Board when it was ready to make that filing for a project that was, and remains, ready to progress.

The County/GTW now argue that Mr. Blashfield testified in a deposition taken in the federal court proceeding that RTRR expedited the filing because of the possibility of the

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<sup>18</sup> See Affidavit of Arnold M. Mistura, attached to RTRR's March 8 Reply.

<sup>19</sup> Mistura Affidavit at p. 6.

County's eminent domain action. The fact is that he testified directly to the contrary, as the following exchanges show:

Q: Was the formation of Riverview Trenton Railroad Company related in any way to the letters – letter or letters that were received regarding potential eminent domain proceedings involving this site?

A: The decision made to form a stand-alone railroad corporation was made well prior to receiving any correspondence whatsoever from Wayne County.

\* \* \*

Q: Mr. Blashfield, if I understand your testimony, you are saying that the formation of this railroad company was independent of and had nothing to do with the County's evaluation of this property for potential condemnation. That was your testimony; right?

A: Um-hmm.

MR. KOEGEL: You need to answer orally.

THE WITNESS: Oh, I am sorry, yes.<sup>20</sup>

Indeed, Mr. Blashfield reiterated this point in the very excerpts of his testimony attached to the County/GTW Notice filing, when he testified (at page 53) that, "The formation of the decision [to file with the STB] and the formation of the corporation had nothing to do to my knowledge of anything going on with Wayne County.

Moreover, even if RTRR had expedited its long-standing rail plans based on a concern that the County would improperly exercise eminent domain authority, RTRR would have been well within its rights. Businesses regularly take actions that are designed to advance and protect their commercial interests, just as RTRR did when it initiated an action to enjoin the County

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<sup>20</sup> See excerpts of Deposition of Mickey Blashfield, attached hereto.

from taking its property.<sup>21</sup> The County and GTW in effect ask this Board to punish RTRR for taking those steps it needed to take to operate a railroad that they do not want operated. The Board should not respect their wishes.

#### **4. RTRR Has Made No Misrepresentations**

There was no misrepresentation, no hiding the ball here – except perhaps on the part of the County. RTRR advised the Board on January 4, 2001, within days after learning by the December 29 letter of the County's intentions to take the RTRR property. It has kept the Board fully apprised at all stages, including the issuance of preliminary injunctive relief. Further, in contrast to RTRR's plans to advance the transportation needs of the area, the County's eminent domain efforts were not designed to achieve some public purpose. They were instead designed only to prevent the operation of a railroad that Trenton and Riverview do not want. This is therefore not a situation, in contrast to the *Jefferson Terminal* proceeding cited by the County and GTW, where an eminent domain proceeding had been instituted to further some public end (there, a waste treatment facility) and a preemption defense based on rail plans for the property was interposed during the course of the taking proceeding. Here, bowing to political pressures from local communities, the County sought to use eminent domain to defeat a rail plan that was being brought to fruition by RTRR.<sup>22</sup> Not surprisingly then, the County has never identified or

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<sup>21</sup> RTRR believes that it is entitled to the preemption protections of 49 U.S.C. § 10501(b), and has so asserted in its federal court action. In his April 10, 2001 decision granting RTRR preliminary injunctive relief, U.S. District Court Judge Cook plainly agreed, relying on that statute and the case law developed under it to grant RTRR preliminary relief. A copy of that April 10 Decision is attached as Exhibit 5 to RTRR's Petition for Exemption.

<sup>22</sup> Even if one were to accept the contention of the County/GTW that RTRR timed its filing with this Board in order to gain an advantage against a possible eminent domain taking, there would be nothing wrong with that strategy as long as RTRR in fact intends to do just what it has consistently told this Board and as long as RTRR has been truthful in its filings

articulated a clear purpose for its taking action, and a County witness has acknowledged in deposition testimony that the County has neither set aside any funds to pay RTRR for its property and that he was unaware of whether the County even has plans for the property.<sup>23</sup>

### CONCLUSION

At this late stage, the Board should deny the request of the County and GTW to initiate further proceedings in response to the RTRR Petition for Exemption. The filings in this proceeding, including the environmental submissions of several parties, have clearly elucidated the issues, which are ripe for Board determination. There has already been extensive discovery in the parallel federal court action. An environmental review, which in draft form found no substantial adverse impacts on traffic or safety or other local issues of concern, has already been undertaken, or is nearing completion. The phantom parties described by the County and GTW that might have more to say about the local impacts of the RTRR project have not materialized.<sup>24</sup>

Delay would advantage the parties that do not want RTRR to operate its railroad, but it would prejudice RTRR substantially by depriving it of an opportunity it has now pursued before

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<sup>23</sup> See attached Deposition Testimony of Cameron G. Priebe, Wayne County Director of Public Services at 49, 56.

<sup>24</sup> Were they to materialize with concerns that have not already been addressed, the Board always has authority to reopen this proceeding to consider new environmental conditions that might be warranted.

this Board for well over one year. The Board should thus act by February 15 in both of the pending RTRR proceedings, and put these matters to rest.

Respectfully submitted,



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*Attorneys for Riverview Trenton Railroad Company*

January 30, 2002

**EXCERPTS OF DEPOSITION OF  
B. MICHAEL BLASHFIELD**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF MICHIGAN  
3                   SOUTHERN DIVISION  
4

5   RIVERVIEW TRENTON RAILROAD       Case No.  
6   COMPANY,                           01-70078  
7                   Plaintiff,

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9                   vs.

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11   COUNTY OF WAYNE, a Michigan  
12   municipal corporation,  
13                   Defendant.

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16           The Deposition of B. MICHAEL BLASHFIELD, a  
17   Witness in the above-entitled cause, taken before  
18   Shari J. Pavlovich, CSR-5926, Certified Shorthand  
19   Reporter, Registered Professional Reporter, and  
20   Notary Public for the within and for the County of  
21   Wayne, State of Michigan, at 1900 Buhl Building,  
22   Detroit, Michigan, on Tuesday, March 6, 2001,  
23   commencing about 2:40 p.m., pursuant to the Michigan  
24   General Court Rules.

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(Short recess.)

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BY MR. ZAUSMER:

Q Tell me what your role is -- your role was in the formation of RTR.

A I had retained some consultants and some attorneys to implement some corporate goals that I had been working on personally for quite a number of years.

Q And what were those goals?

A Well, one of our long-range goal has been to -- has been to be positioned properly to take advantage of the intermodal opportunities here in Detroit. Both researchwise and groups that I've participated with locally and sat on boards and whatnot, has been to gain, I guess, an appreciation for the lack of intermodal capacity within the City of Detroit or in Southeast Michigan; and as a full-service transportation company, to make those opportunities be something that we can take advantage of and offer to our customers.

Q Can you -- and this is a little bit off what we've been talking about right now. But I want to address what you just talked about.

Tell me how what you intended this particular site for the seventy-six acres would be

different than the way business was conducted elsewhere. In other words, what could you do on this site that you couldn't do elsewhere?

MR. KOEGEL: Objection to the form of the question.

You may answer if you can.

THE WITNESS: I think I've answered it a couple of times but it offered -- the opportunity of having three railroads connecting to the same site, adding to that the water capabilities, it opens up the diverse pallet of transportation services that I offer to clients. Similar to my air freight division, similar to the other value-added services that I can provide to customers seeking out our transportation service.

BY MR. ZAUSMER:

Q That's what you have been looking for that you said as a long range goal?

A Yes. Yes.

Q Was the formation of Riverview Trenton Railroad Company related in any way to the letters -- letter or letters that were received regarding potential eminent domain proceedings involving this site?

A The decision made to form a stand-alone railroad corporation was made well prior to receiving any

correspondence whatsoever from Wayne County.

Q In the documents that you provided to us I did not see any materials that would document this answer. That is, that it would corroborate the answer you gave.

Are you aware of any such documents? In other words, any kind of written materials that would confirm what you said regarding the intention to form RTR previously?

A Some are privileged documents, yes. And I don't know if they were reduced to writing or not. Other recommendations were with consultants that, here are your opportunities. Here's what I would recommend. And in our internal discussions or decision-making process that the decision had been made that well in advance to --

Q You said some are privileged. Are they all privileged?

A I guess I am not sure -- I don't know fully what you would -- were provided with.

Q Let's assume that I wasn't provided with any documents that show that there was an intention to form a railroad company prior to receipt of the letter from the County --

A Which letter from the County?

Q I believe it's October 29th. The letter I believe from me to Alan Ackerman dated -- I guess it's November 17th.

MR. KOEGEL: Are you aware of any letter dated October 29th?

MR. ZAUSMER: No. I said November 17th. I corrected that.

MR. KOEGEL: I just wanted to make certain that you were correct in that.

BY MR. ZAUSMER:

Q Let me rephrase it and ask it to you this way, sir: Before November 1st are you aware of there being any document in evidence that Crown -- or excuse me, that Crown or CenTra or an affiliate or subsidiary of either of them intended to form a railroad company?

A Yes. I am thinking of some correspondence with Mr. Sullivan, my attorney.

Q Anything else?

A Again, I don't know if it was reduced to writing or not, but at the beginning of -- at the beginning of the year when another rail consultant that we had dealt with there were a series of opportunities that he outlined.

Q Beginning of what year?

1 A. Beginning of year 2000. And I don't remember if  
 2 there was anything in writing. Or I know that it  
 3 was discussed over lunch of here are opportunities  
 4 that CenTra should position or could position  
 5 themselves in in the rail field to take advantage of  
 6 and here are some recommendations. Do with them  
 7 what you will. And one of those recommendations was  
 8 to form a short line railroad.  
 9 Q And who provided that to you?  
 10 A The consultant's name is Mike Kenney(?).  
 11 Q And I assume you would agree that's not between you  
 12 and a lawyer?  
 13 A If it's in writing, no.  
 14 Q And do you have a copy of that document or those  
 15 documents?  
 16 A I've seen it. I don't know if -- like I say, I  
 17 don't know -- I haven't seen my files since they've  
 18 been looked at by counsel and copies -- notorious  
 19 copies made.  
 20 Q If there's such a document, you believe that would  
 21 have been produced by you to your lawyers as part of  
 22 this production?  
 23 MR. KOEGEL: Objection to the form of the  
 24 question.  
 25 You may answer.

1 THE WITNESS: I don't -- if it hasn't  
 2 been, I mean, I believe it has been provided.  
 3 MR. ZAUSMER: Counsel, do you intend to  
 4 provide us with a privilege log?  
 5 MR. KOEGEL: Yes.  
 6 MR. ZAUSMER: When?  
 7 MR. KOEGEL: I don't know.  
 8 MR. ZAUSMER: When can you get us the  
 9 date of this letter from Mr. Sullivan?  
 10 MR. KOEGEL: Number one, I don't  
 11 necessarily accept your characterization of any  
 12 communication. You'll look at it when you get a  
 13 privilege log.  
 14 BY MR. ZAUSMER:  
 15 Q Mr. Blashfield, if I understand your testimony, you  
 16 are saying that the formation of this railroad  
 17 company was independent of and had nothing to do  
 18 with the County's evaluation of this property for  
 19 potential condemnation. That was your testimony;  
 20 right?  
 21 A Um-hmm.  
 22 MR. KOEGEL: You need to answer orally.  
 23 THE WITNESS: Oh, I am sorry, yes.  
 24 BY MR. ZAUSMER:  
 25 Q Was the timing of the formation of this railroad

1 company in response to the County's condemnation  
 2 activities?  
 3 A What do you mean by timing?  
 4 Q When the railroad company was formed and how quickly  
 5 it was formed.  
 6 A On November 1st the corporate incorporation?  
 7 Q Yes.  
 8 A No, it was -- no.  
 9 Q And how about the quit claiming of -- strike that.  
 10 Do you know the date that RTR was formed?  
 11 A You mean incorporated?  
 12 Q Incorporated, right.  
 13 A I believe it was November 1st.  
 14 Q And who did the legal work to form that corporation?  
 15 A I don't know that there was any legal --  
 16 Q Who filed the documents?  
 17 A Our director of -- or our vice president of  
 18 corporate development, Norman Harned.  
 19 Q How do you spell the last name?  
 20 A H-A-R-N-E-D.  
 21 Q Do you know whether Mr. Harned was aware of the  
 22 County's or the city's interest in this property?  
 23 A I don't know. I don't believe so.  
 24 Q And when was this property conveyed from Crown to  
 25 RTR?

1 A I am not sure.  
 2 Q Who was involved in that transaction?  
 3 A That would have been instruction at -- of the real  
 4 estate department after the corporation had been set  
 5 up legally. But I don't know. It would have been  
 6 someone in the legal -- or the real estate  
 7 department, I should say.  
 8 Q Do you know whether there were any discussions  
 9 between Alan Ackerman and anybody in CenTra's group?  
 10 I am not interested in the substance of them. I  
 11 want to know if there were any discussions.  
 12 MR. KOEGEL: Mr. Zausmer, you were aware  
 13 that Mr. Ackerman is counsel of record for Crown  
 14 Enterprises in the legal action pending between  
 15 Crown and the City of Detroit where your firm is  
 16 counsel of record for the City of Detroit.  
 17 Are you -- does your question go to  
 18 communications on any subject between Mr. Ackerman  
 19 and CenTra? Or is it more focused?  
 20 MR. ZAUSMER: I'll make it more focused.  
 21 BY MR. ZAUSMER:  
 22 Q Do you know whether there were any discussions  
 23 between Mr. Ackerman and anybody at CenTra, Crown,  
 24 or RTR regarding the letter that I sent to  
 25 Mr. Ackerman on November 17th, 2000?

1 A. I am not aware of it, no. I don't -- I mean, I  
 2 don't even know that I've seen the letter.  
 3 Q And if I am understanding your testimony, it is that  
 4 the timing of the formation and filing of the  
 5 articles of incorporation for RTR was completely  
 6 independent of any actions by the County's -- the  
 7 County or the cities of Trenton and Riverview with  
 8 respect to these properties; is that correct?  
 9 MR. KOEGEL: Objection to form of the  
 10 question.  
 11 You can answer.  
 12 THE WITNESS: I am trying to -- I am  
 13 trying to decide exactly what point in time because  
 14 I know that at some point things were -- there was  
 15 an encouragement to get things going because of the  
 16 county had expressed an interest in some property  
 17 but I am not certain.  
 18 BY MR. ZAUSMER:  
 19 Q Who said -- in other words, the things had to move  
 20 along related to RTR because of the County's  
 21 interest in the property?  
 22 A I am sorry. That's not quite what I said.  
 23 Q Let me tell you what I am driving at and then you  
 24 can help me with it. Okay?  
 25 A Okay.

1 Q What I am trying to understand is, were the  
 2 decisions that were made including but not limited  
 3 to timing decisions related to the formation of RTR  
 4 driven in any way by the County's expressed interest  
 5 in this property, the seventy-six acres?  
 6 MR. KOEGEL: Objection to the form of the  
 7 question.  
 8 You may answer.  
 9 THE WITNESS: I don't know that there was  
 10 a direct relationship.  
 11 BY MR. ZAUSMER:  
 12 Q I thought you just got done telling me that there  
 13 was a decision by somebody or directive by somebody  
 14 to hurry up because of the County's expressed  
 15 interest in the property.  
 16 A No, that's not quite what I said. I am not sure at  
 17 what point in time. I know that later on in  
 18 December there was -- there was discussion of that.  
 19 I don't know.  
 20 I don't know when those original  
 21 discussions took place or decisions were made. But  
 22 I do know that there was -- there was incentive to  
 23 move this business plan forward. And part of that  
 24 was driven -- and this is what I am having trouble  
 25 differentiating, how much was due to the

1 conflagration that we were undergoing with Jefferson  
 2 Terminal Railroad and how much was because the  
 3 County had filed this notice.  
 4 Q I am really not interested in amount. I am  
 5 interested in whether there was some motivation in  
 6 the timing of all of this related to the County's  
 7 expressed interest in the property. And at least I  
 8 am hearing you say that some of the actions were  
 9 driven to a degree by the County's interest.  
 10 MR. KOEGEL: Object to the form of the  
 11 question. It's essentially --  
 12 MR. ZAUSMER: You keep your opinions to  
 13 yourself.  
 14 BY MR. ZAUSMER:  
 15 Q Sir, I don't think I am trying to misstate your  
 16 answer. But if I am, don't hesitate to tell me  
 17 that.  
 18 If I am understanding your testimony, you  
 19 are saying that at least to some degree the timing  
 20 of CenTra slash RTR's formation of this corporation  
 21 was driven by the County's expressed interest in the  
 22 property?  
 23 A No. The formation of the decision and the formation  
 24 of the corporation had nothing to do to my knowledge  
 25 of anything going on with Wayne County.

1 Q What was it that you said was to be hurried along?  
 2 A The things to -- the things to put it into place  
 3 later on. And that's where I am having trouble as  
 4 far as what was happening.  
 5 Q Let me ask you this: Was it -- how about the notice  
 6 of exemption that was filed with the Surface  
 7 Transportation Board, you were involved in that?  
 8 A Yes.  
 9 Q What was your involvement in that?  
 10 A I directed my attorney to prepare and file that.  
 11 Q And was the timing of that at all driven by or  
 12 affected by the County's expressed interest in this  
 13 property?  
 14 A The filing of the exemption I am sure that there was  
 15 some -- there was because we had just -- my gross  
 16 characterization of it -- because we had just gotten  
 17 burned on our efforts to initiate a railroad, I knew  
 18 that we wanted to file it sooner rather than later  
 19 if we were going to -- if we were going to be able  
 20 to do that.  
 21 Q I mean, there's no mystery here. The intention of  
 22 RTR in filing this notice of exemption was to divest  
 23 the County of the ability to condemn this property.  
 24 A No.  
 25 Q That wasn't part of the motivation to form RTR?

**EXCERPTS OF DEPOSITION OF  
CAMERON PRIEBE**

1           IN THE DISTRICT COURT OF THE UNITED STATES  
2           FOR THE EASTERN DISTRICT OF MICHIGAN  
3           SOUTHERN DIVISION  
4   RIVERVIEW TRENTON  
5   RAILROAD COMPANY,  
6           Plaintiff,  
7  
8           -vs-                   No. 01-70078  
9   COUNTY OF WAYNE, a Michigan  
10   municipal corporation,  
11           Defendant,  
12   \_\_\_\_\_  
13           The deposition of CAMERON G.  
14   PRIEBE, a witness of lawful age, taken in the  
15   above-entitled cause, wherein RIVERVIEW TRENTON  
16   RAILROAD is the Plaintiff and WAYNE COUNTY is the  
17   Defendant, pending in the District Court of the United  
18   States for the Eastern District of Michigan, Southern  
19   Division, pursuant to the Federal Rules of Civil  
20   Procedure, before Jennifer A. Makelke, CSR-3666,  
21   Registered Professional Reporter, and Notary Public in  
22   and for Oakland County, Michigan, at 1900 Buhl  
23   Building, Detroit, Michigan, on Monday, March 5, 2001,  
24   commencing at 10:15 o'clock a.m.  
25           \* \* \* \*

18 mean in Riverview and Trenton. Can you give us better  
19 information. And it was immediately after that, you  
20 know, within a few days that I first heard of Crown or  
21 first heard of the railroad. I'm not sure that I ever  
22 heard of Crown or Centra prior to the litigation.  
23 Q. Why did you send the letter you just referred to?  
24 A. The advice of counsel. Frankly, we wanted to  
25 negotiate but we were told, if you choose to condemn

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46

1 some later time you have to do it this way.  
2 Q. Before sending that letter had you made any attempt  
3 whatsoever to negotiate the acquisition of the  
4 property?  
5 A. No.  
6 Q. Why not?  
7 A. Again, it was my intent to attempt to negotiate a  
8 purchase. We talked to the lawyers, they said under  
9 the law this is the way you have to do it.  
10 Q. What did Wayne County do to authorize the sending of  
11 the letter you've described?  
12 A. Well, we met and we discussed it with the lawyers and  
13 corporation counsel and it was decided that, I guess

6 A. I believe so, yes.

7 Q. What did you say?

8 A. I said we were advised by the lawyer that according to  
9 the Uniform Condemnation Act and that is what we have  
10 to do.

11 Q. What did she say?

12 A. I don't recall specifically but basically, oh, okay.

13 Q. Has anyone affiliated with the county commission  
14 questioned or criticized the act of sending the  
15 letter?

16 A. Not to my knowledge.

17 Q. Has Wayne County designated, allocated or budgeted any  
18 money for acquisition of the property?

19 A. No.

20 Q. Have you spoken with anyone affiliated with either  
21 Crown Enterprises or Riverview Trenton Railroad  
22 Company regarding the property?

23 A. Yes.

24 Q. Who?

25 A. Mickey somebody.

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1 Q. Mickey Blashfield?

2 to it being sent, but in the letter that refers to the  
3 Uniform Condemnation Act and wanting to get  
4 information. I knew we were going to do that.

5 Q. Do you know why this letter was addressed to Alan  
6 Ackerman?

7 A. Specifically, no, but I think Mr. Ackerman was thought  
8 to be Mr. Moroun's lawyer.

9 Q. How did you acquire that understanding?

10 A. As I recall from Mr. Zausmer, my attorney, our  
11 attorney.

12 Q. Again, Mr. Priebe, I'm not interested in what you  
13 learned from Mr. Zausmer.

14 At the time this letter was sent did  
15 Wayne County have any type of master plan for land use  
16 in Wayne County?

17 A. I don't -- it's a very good question. I don't know.

18 I don't know if we do or not.

19 Q. At the time this letter was sent, did the city of  
20 Trenton have a master plan for land use in the city of  
21 Trenton?

22 A. I assume so.

23 Q. Do you know or is it just a guess?

24 A. I guess at this point just a guess.

25 Q. At the time this letter was sent did the city of

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of January 2002, a copy of the foregoing Reply was served by hand delivery or first class mail, postage pre-paid upon the following:

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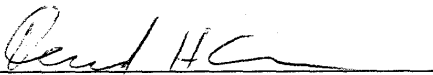
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