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**SURFACE
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Piero Kusunose
eMail: tkusunose@bpmlaw.com

DID# 0101906001

March 16, 2002

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**SURFACE
TRANSPORTATION BOARD**



VIA FEDERAL EXPRESS

Honorable Vernon A. Williams
Surface Transportation Board
1925 K. Street N.W.
Washington, D.C. 20423-0001

204992

Re: **STB Docket No. AB-573X**, *Trinidad Railway, Inc. – Abandonment Exemption – in Las Animas County, CO*

STB Finance Docket No. 34087, *Trinidad Railway, Inc. – Lease and Operation Exemption – Kern Valley Railroad Company*

STB Finance Docket No. 33956, *Kern Valley Railroad Company – Lease and Operation Exemption – Trinidad Railway, Inc.*

Dear Mr. Williams:

On behalf of our client, Rail Ventures, Inc. we ask that you please find enclosed, the following items:

- 1) The original and ten copies of the Request on Behalf of Rail Ventures, Inc. to Establish Terms and Conditions of Sale ("Request") for filing;
- 2) A check in the amount of Fifteen Thousand Six Hundred and No/100 Dollars (\$15,600.00) payable to the order of the Surface Transportation Board for the filing fee in accordance with the Board's regulations at 49 C.F.R. § 1002.2(26);
- 3) A computer diskette with the Request saved in the required Word Perfect format;
- 4) A certificate of service;
- 5) An additional copy of the face-sheet of the Request; and
- 6) A stamped, self-addressed envelope.

March 16, 2002

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If you would be so kind as to direct someone in your office to send us the additional face-sheet copy with a "received" stamp, or some other stamp of similar designation, affixed, in the enclosed envelope, it would be greatly appreciated. Please call us with any questions or concerns ((206) 268-8646).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Taro Kusunose", with a horizontal line extending to the right.

Taro Kusunose
Stephen L. Day

TK:ltg

Enclosures

cc: Mr. John W. Reed
Mr. Fritz Kahn (via overnight delivery)
Mr. John D. Heffner

Certificate of Service

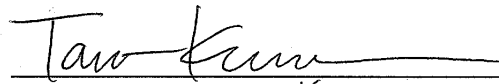
STB Docket No. AB-573X, *Trinidad Railway, Inc. – Abandonment Exemption – in Las Animas County, CO*

STB Finance Docket No. 34087, *Trinidad Railway, Inc. – Lease and Operation Exemption – Kern Valley Railroad Company*

STB Finance Docket No. 33956, *Kern Valley Railroad Company – Lease and Operation Exemption – Trinidad Railway, Inc.*

I certify that I have this day served copies of the attached REQUEST ON BEHALF OF RAIL VENTURES, INC. TO ESTABLISH TERMS AND CONDITIONS upon all parties of records in this proceeding, by first class mail, postage-prepaid, except for to Mr. Fritz Kahn, to whom the a copy of the attached was served by overnight mail, postage-prepaid.

DATED this 16th day of March, 2002.


Print Name: TARO KUSUNOSE

(49 C.F.R. § 1104.12; 49 U.S.C. 10321; 5 U.S.C. 553)

BEFORE THE
SURFACE TRANSPORTATION BOARD

204992

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC. --
ABANDONMENT EXEMPTION -- IN LAS ANIMAS COUNTY, CO

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC. --
LEASE AND OPERATION EXEMPTION -- KERN VALLEY RAILROAD COMPANY

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

REQUEST ON BEHALF OF RAIL VENTURES, INC.
TO ESTABLISH TERMS AND CONDITIONS OF SALE

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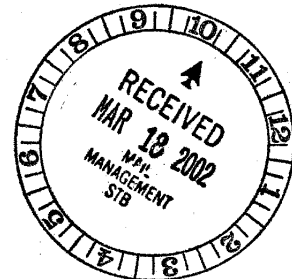
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC. - -
ABANDONMENT EXEMPTION - - IN LAS ANIMAS COUNTY, CO

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC. - -
LEASE AND OPERATION EXEMPTION - - KERN VALLEY RAILROAD COMPANY

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

**REQUEST ON BEHALF OF RAIL VENTURES, INC.
TO ESTABLISH TERMS AND CONDITIONS OF SALE**

SUMMARY

Pursuant to 49 U.S.C. § 10904(e) and the regulations of the Surface Transportation Board ("Board") at 49 C.F.R. § 1152.27(g) and (h), Rail Ventures, Inc. ("Offeror") hereby submits its case-in-chief request ("Request") that the Board set terms and conditions in this OFA proceeding. This Request is due March 18, 2002. Although Offeror will continue to negotiate with Kern Valley Railroad Company and/or Trinidad Railway, Inc. (collectively "Carrier"), in view of the absence of an agreement as of today, March 16, 2002, Offeror hereby requests that the Board review the net liquidation value assessments prepared by each party and establish reasonable terms and conditions for sale of the rail line in question (the "Line").

BACKGROUND

The history of this proceeding is long and complex. Fortunately, much of this history has been succinctly summarized by the Board in the "Background" discussion in its Decision served January 15, 2002 as follows:

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures at 49 C.F.R. 1152.50 to abandon a 28-mile segment of rail in Las Animas County, CO, between milepost 2.0 at Jansen and the end of its line at milepost 30. Before that notice went into effect, Rail Ventures timely filed a notice of its intent to invoke the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 in order to acquire the line for continued rail service. That filing, and subsequent extensions, stayed the effective date of the abandonment exemption covered by the notice. On December 5, 2000, Rail Ventures timely filed its OFA, offering to buy the line for \$2.5 million.

Meanwhile, on October 31, 2000, after having received notice of Rail Ventures' forthcoming OFA, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority in this proceeding) to Kern Valley, which subsequently invoked the class exemption procedures at 49 C.F.R. 1150.31 to obtain authorization for the purchase. Kern Valley Railroad Company-Acquisition and Operation Exemption-Trinidad Railway, Inc., STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000). Kern Valley conceded that it acquired the line segment not to provide rail service, but rather to salvage the rail property once it is abandoned. Kern Valley, however, also acknowledged that the line remained subject to the section 10904 OFA process, to RTC's request for issuance of a NITU, and to other conditions imposed on the abandonment exemption.

In a decision served December 8, 2000, the Director of the Office of Proceedings found that Rail Ventures was a financially responsible entity. The Director also denied a request by Kern Valley to reject the OFA and a request by RTC to dismiss the OFA.

By a decision served August 13, 2001, addressing various challenges to the propriety of Kern Valley's acquisition and of Rail Ventures' OFA, the Board affirmed the Director's decisions approving Kern Valley's purchase and finding Rail Ventures to be financially responsible under section 10904. The Board set September 12, 2001, as the date by which Kern Valley or Rail Ventures could ask the agency to establish the terms and conditions for an OFA purchase of the line, if the parties were unable to agree on a purchase price.

On August 30, 2001, Rail Ventures, asserting a lack of cooperation by Kern Valley, filed a petition to grant Rail Ventures access to inspect the line and to compel Kern Valley to disclose the purchase price it had paid for the line. Rail Ventures also requested an extension of the due date for a request to establish the terms and conditions for an OFA purchase of the line. In a decision served September 12, 2001 (the Disclosure Order), the Board granted Rail Ventures' requests. On the same day, Kern Valley petitioned for reconsideration of that decision.

In a decision served December 12, 2001, the Board inter alia, denied Kern Valley's petition for reconsideration of the Disclosure Order and ordered Kern Valley, by

January 21, 2002, to: (1) disclose to Rail Ventures the purchase price Kern Valley paid for the line; and (2) grant Rail Ventures access to the line in order to inspect it.¹

By way of a petition filed December 21, 2001, Carrier asked the Board to stay enforcement of its December 2001 Order. In its January 2002 Order, the Board denied Carrier's petition. Carrier then appealed the January 2002 Order. By its Order served February 5, 2002, the Board denied Carrier's appeal, and again ordered that Carrier comply with the terms of its December 2001 Order.

The end-result of this long history is that, as the Board ordered in its December 2001 Order:

If [Offeror] and [Carrier] cannot agree on a purchase price for the line, either party may request the Board to establish the terms and conditions for the purchase on or before a date 20 days after the date Rail Ventures receives the relevant purchase price information and is granted access to the line. . . .²

Offeror received the purchase price information from Carrier on February 8, 2002. Offeror then accessed the Line on February 26, 2002. Subsequently, upon request, the Board set the due date for either party to request the Board to establish terms and conditions as March 18, 2002.³

Offeror is willing to continue to negotiate with respect to various aspects of this transaction. In the event that the parties are able to reach an agreement, Offeror will immediately notify the Board.

¹ *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO*, STB Docket No. AB-573X (2002); *Trinidad Railway, Inc. – Lease and Operation Exemption – Kern Valley Railroad Company*, STB Finance Docket No. 34087 (2002) (notice served and published January 15, 2002).

² *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO*, STB Docket No. AB-573X (2001) (notice served and published December 12, 2001).

³ In its Decision served February 28, 2002, the Board ordered that the parties have until March 18, 2002, or 20 days from February 26, 2002, to request that the Board establish the terms and conditions for the purchase of the line. *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO*, STB Docket No. AB-573X (2002) (notice served and published February 28, 2002).

DESCRIPTION OF THE SUBJECT LINE

The Line is a 28-mile segment of rail line in Las Animas County, CO, between Mile Post 2.0 at Jansen, and the end of the line at the former New Elk Mine at Mile Post 30 (east of Stonewall). At one point, some (if not all) of the Line was owned by the Denver and Rio Grande Western Railroad Company. Subsequent owners of the Line include the Colorado and Wyoming Railway Company and Trinidad Railway, Inc. ("Trinidad").

Although Offeror has not been able to confirm ownership of the Line real property (please refer to the discussion at Section (3), *infra*, concerning the ambiguity surrounding current ownership of the property underlying the Line), it appears to Offeror that in late-October/early-November, 2000, Trinidad sold all of its interest in the Line to Kern Valley Railroad Company ("Kern Valley"). This last transfer of the Line property is evidenced both by a quitclaim deed by Trinidad to Kern Valley,⁴ and an Easement Agreement between the same parties.⁵

With the quitclaim deed, Trinidad deeded to Kern Valley whatever ownership interest Trinidad had in that Line property between Mile Post 2.0 and Mile Post 15.11, in consideration of the sum of Ten Dollars (\$10).⁶ With the Easement Agreement, Trinidad granted to Kern Valley the right to use the rail property between Mile Post 15.11 and Mile Post 32 (although the Line ends at Mile Post 30), again in consideration of the sum of Ten Dollars (\$10).⁷

⁴ See Quitclaim Deed from Trinidad Railway, Inc. to Kern Valley Railroad Company of October 30, 2000 (Exhibit A).

⁵ See Easement Agreement between Trinidad Railway, Inc. and Kern Valley Railroad Company of November 1, 2000 (Exhibit B).

⁶ See *supra* note 4.

⁷ See *supra* note 5.

DISCUSSION

1) The Applicable Valuation Standard is Net Liquidation Value ("NLV"), Not Going Concern Value

In the Interstate Commerce Commission's ("I.C.C.") landmark 1981 "*Lake Geneva Line*" decision,⁸ the I.C.C. held that in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under section 10904 is the net liquidation value ("NLV"). [The Board applies I.C.C. orders on determinations in effect at the date of the Board's creation pursuant to section 204 of the I.C.C. Termination Act of 1995 (Pub. L. 104-88). The I.C.C. and the Board will hereafter be collectively referred to simply as "the Board."] *Lake Geneva Line* continues to be the seminal decision concerning "set terms" requests.⁹

Substantially all, if not all of the Board's set terms decisions since *Lake Geneva Line* recite at least facially in one form or another, that "in the absence of a higher going concern value for continued rail use," the applicable valuation standard should be NLV for the highest and best nonrail use.¹⁰ Despite this repeated reference to "going concern value," in none of these decisions has a going concern value ever been applied.¹¹

⁸ *Chicago and North Western Transportation Co. – Abandonment Between Ringwood, IL and Geneva, WI*, 363 I.C.C. 956, 1981 WL 22668 (I.C.C., 1981) ("*Lake Geneva Line*").

⁹ See e.g., *CSX Transportation, Inc. – Abandonment in Harnett County, NC – In the Matter of a Request to Set Terms and Conditions*, Docket No. AB 55 (Sub No. 190), 1987 WL 99393 (I.C.C.); *Fillmore Western Railway Co. – Abandonment Exemption – In Fillmore County, NE – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-492 (Sub No. 2X), 2001 WL 1343110 (I.C.C.).

¹⁰ See e.g., *CSX Transportation, Inc. – Abandonment in Harnett County, NC – In the Matter of a Request to Set Terms and Conditions*, Docket No. AB 55 (Sub No. 190), 1987 WL 99393 (I.C.C.); *Conrail Abandonment of the Shamokin Cluster in Northumberland County, PA – In the Matter of a Request to Set Terms and Conditions*, Docket No. AB-167 (Sub No. 989N), 1987 WL 98405 (I.C.C.); *Chicago and North Western Transportation Co. – Abandonment – Between Steamboat Rock and Hampton in Hardin and Franklin Counties, IA – In the Matter of a Request to Set Terms and Conditions*, Docket No. AB-1 (Sub No. 217), 1989 WL 238616 (I.C.C.); *Portland Traction Co. – Abandonment Exemption – In Multnomah and Clackamas Counties, OR – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-225 (Sub No. 2X), 1990 WL 287141 (I.C.C.); *The Grand Trunk Western Railroad Co. – Abandonment – In Clark, Madison and Fayette Counties, OH – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-31 (Sub No. 29), 1990 WL 288276 (I.C.C.); *CSX Transportation, Inc. – Abandonment Exemption – In Sanilac and St. Clair Counties, MI – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-55 (Sub No. 321X), 1990 WL 287801 (I.C.C.); *Boston and Maine Corporation and Springfield Terminal Railway Co. – Abandonment and Discontinuance Exemption – In Berkshire County, MA – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-32 (Sub No. 42X), 1990 WL 300534 (I.C.C.); *Boston and Maine Corporation and Springfield Terminal Railway Co. – Abandonment and Discontinuance of Service in Hartford County, CT – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-32 (Sub No. 43), 1991 WL 158233 (I.C.C.); *Central Michigan Railway Co. – Abandonment – East of Ionia to West of Owosso – In Michigan – In the Matter of a Request to Set Terms and*

This is the result of the Board, in its *Lake Geneva Line* decision, having effectively closed the door on carriers attempting to “have it both ways.” The Board in effect stated that it would not permit carriers who asked it for authorization to abandon a line based upon economic factors,¹² to then turn around and ask for a going concern value for “continued rail use” in that same proceeding.

In *Lake Geneva Line*, the offeror (“GLA”) based its purchase price offer on NLV. Carrier (“C&NW”) on the other hand, argued that the line had a value for rail transportation purposes which exceeded its value for nonrail purposes.¹³ Upon review of the situation, the Board found C&NW’s argument simply unacceptable, noting that:

[C&NW’s argument] is inconsistent with its position and the Commission’s finding in the original abandonment proceeding. C&NW’s abandonment application showed that the burden of continued operation of the line imposed a burden on interstate commerce which outweighed the benefits of continued operation. See *Colorado v. United States*, 271 U.S. 193 [sic] (1926). C&NW showed that the line lost money. . . , incurred opportunity costs. . . , required rehabilitation. . . , had increased future annual maintenance. . . , and suffered declining traffic. This was sufficient to show that the line did not warrant continued retention as a rail line. Hence, C&NW admitted that the assets tied up in the line were more valuable to it in uses other than the continued operation of a rail corridor. This position was adopted by the Commission when it authorized the abandonment. It would be inconsistent for the Commission to make a contrary finding here.¹⁴

Conditions, STB Docket No. AB-308 (Sub No. 1), 1991 WL 195821 (I.C.C.); *Chesapeake Western Railway Co. – Abandonment – Between Pleasant Valley and Staunton in Rockingham and Augusta Counties, VA – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-290 (Sub No. 120), 1992 WL 224874 (I.C.C.); *Buffalo Ridge Railroad, Inc. – Abandonment Exemption – Between Manley, MN and Brandon, SD – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-377X, 1993 WL 130543 (I.C.C.); *Norfolk Southern Railway Co. – Abandonment Exemption – Between Red Bay and Haleyville, AL in Franklin, Marion and Winston Counties, AL – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-290 (Sub No. 123X), 21993 WL 405276 (I.C.C.); *Fillmore Western Railway Co. – Abandonment Exemption – In Fillmore County, NE – In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-492 (Sub No. 2X), 2001 WL 1343110 (I.C.C.).

¹¹ See *id.*

¹² The United States Supreme Court in effect held in *Colorado v. United States*, 271 U.S. 153, 168, 46 S.Ct. 452, 456 (1926) that in order for a carrier to abandon a line, it must demonstrate to the Board that the burden of continued rail operation of the line outweighs public necessity and convenience.

¹³ *Lake Geneva Line*, *supra* note 8 at 957.

¹⁴ *Id.* at 957-58 [emphasis supplied].

After *Lake Geneva Line*, the possibility that a carrier which has been granted the right to abandon a line based upon economic factors would also be granted a going concern value for “continued rail use” has remained only hypothetical. As will be demonstrated to the Board *infra*, the facts in this proceeding ensure that it will continue to remain hypothetical.

As applied to the facts in this proceeding, *Lake Geneva Line* prohibits Carrier, like C&NW, from receiving a going concern value. Kern Valley’s predecessor-in-interest in this matter,¹⁵ Trinidad Railway, Inc. (collectively with Kern Valley Railroad Company: “Carrier,” as noted previously) filed its *Notice of Exemption Under 49 C.F.R. 1152.50* (“*Notice of Exemption*”) with the Board on September 1, 2000.¹⁶ In its *Notice of Exemption*, Carrier implied that continued operation of the Line would impose economic burdens which outweighed the resulting benefits. Carrier noted:

A. P. Maxwell Development Co., LLC purchased the stock of [Carrier] in 1996 in anticipation of hauling coal over the Line. The coal mine owners have now determined that it is not economically feasible to open and operate a coal mine in this area.¹⁷

In this same *Notice*, Carrier also argued that “[t]he proposed abandonment. . . will eliminate a line that has not been operated in over four years. The only alternative to this action would be not to abandon the Line and to prevent its owner, A. P. Maxwell Development Co., LLC from disposing of the assets.”¹⁸

Carrier convinced the Board. As a result, on September 21, 2000, the Board issued its decision that so long as no formal expression of intent to file an OFA was received, the abandonment exemption would be effective on October 21, 2000.¹⁹ As the Board itself even pointed out later, “Kern Valley conceded that it acquired the line segment not to provide rail

¹⁵ For a discussion of the relationship between Trinidad Railway, Inc. and Kern Valley Railroad Company, please refer to the “Background” discussion *supra*.

¹⁶ See *Notice of Exemption* (Exhibit C).

¹⁷ *Id.* at ¶ (10)(ii)(5).

¹⁸ *Id.* at (1) [emphasis supplied].

¹⁹ *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO*, STB Docket No. AB-573X (2001) (notice served and published September 21, 2001).

service, but rather to salvage the rail property once it was abandoned.”²⁰ Accordingly, Carrier should not receive a going concern value.

Offeror has been made aware that a coal mine owner recently re-opened a mine close to the Line. Clearly, this was either not the situation at the time Carrier chose to file its *Notice of Exemption* with the Board, or Carrier misrepresented the mine-owner’s status at that time. If the former occurred, then the current existence of the re-opened coal mine must be disregarded. As the *Lake Geneva Line* discussion, *supra*, demonstrates, the only facts that matter are those which existed at the time the Board decided to grant or deny the abandonment.

The possibility that conditions may later change is a risk that all carriers contemplating abandonment must carefully assess. It is the same possibility that purchasers of such lines themselves must also assess in the future. In this proceeding, Carrier weighed the risks, and chose to argue before the Board that the benefits of liquidating the Line outweighed the foreseeable opportunity values to itself, and to the public interest. The Board agreed. Carrier should not now be heard to argue that a going concern value (rather than NLV) should apply based upon circumstances which have changed during this undeniably lengthy proceeding.²¹

Almost all of the delays in this proceeding can be attributable to Carrier’s maneuvering. Kern Valley is the interloper. Had Kern Valley not acquired rights to the property for the admitted purpose of tearing up the tracks for salvage, it is likely that Offeror would have already been in possession of the Line when the decision to re-open the mine was made. In that event, it would have been Offeror, not Carrier, that reaped a short-term windfall. It was merely serendipity for Carrier that its aggressive pursuit of litigation forestalled Offeror’s acquisition of the Line under the OFA procedures.

Although Offeror is unwilling to go so far as to state that Carrier has abused the Board’s processes to frustrate transfer of the Line to a long-term operator, Offeror feels it is imperative to

²⁰ *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO*, STB Docket No. AB-573X (2002); *Trinidad Railway, Inc. – Lease and Operation Exemption – Kern Valley Railroad Company*, STB Finance Docket No. 34087 (2002) (notice served and published January 15, 2002).

²¹ Carrier invoked the class exemption procedures at 49 C.F.R. 1152.50 on September 1, 2000.

point out that valuation for purposes of an OFA proceeding should date from the time of the proposed abandonment. Carrier should not be allowed, through its own delay, to re-open doors it had already slammed shut.

Should Carrier still insist that a going concern value be applied based upon the re-opening of the local mine, Offeror hereby disputes the weight attributable to that operation. The coal-mining operation at issue began in the summer of 2001.²² By March of this year (less than six months later) however, the operating company's parent filed for Chapter 11 bankruptcy protection.²³ Despite recent assurances by the operating company to the local press that there will be no impact from the bankruptcy, certain local subcontractors already remained unpaid for a period of time.²⁴ The re-opened mining operations cannot be counted to support a going concern value.

Finally, as the Board is well aware, as soon as the price of natural gas falls again, the market for coal will fall along with it. Nevertheless, as it is not Offeror's intent to harm the public interest, but rather to serve it, Offeror is willing to haul any tendered freight along the Line for as long as such freight exists. It must be pointed out however, that Offeror does not rely upon coal revenues for its plan to operate the Line. Offeror's plan (and dream) has always been, and to this day remains, to operate a passenger operation taking full advantage of the physical beauty of the surrounding property. It is only in addition to this primary operation that Offeror would service any shipper on the Line. Offeror plans to preserve this line and to operate it. For all of the reasons listed above, NLV, not going concern value, should be applied.

2) No Assemblage Should Be Applied

Entirely separate from the issue of going concern value, is that of "assemblage." Unless Carrier demonstrates that there is a market for the Line as an assembled non-rail corridor,

²² See Catherine Arkley, *Lorencito: No Local Impact From Bankruptcy Proceedings*, Trinidad Plus, March 5, 2002 <<http://www.trinidadco.com/stories2002/news/03/05/lorencito.html>> (Exhibit D).

²³ See Mike Garrett, *Bankruptcy Not Hindering Lorencito Mines*, The Pueblo Chieftain, March 9, 2002 <<http://www.chieftain.com/print/Saturday/news/articles/ni17.htm>> (Exhibit E).

²⁴ See *supra* note 22.

assemblage should not be applied. As the Board is aware, assemblage refers to that enhancement factor applied to land value when the right of way is to be sold as an assembled non-rail corridor.²⁵ The Board wrote in *Lake Geneva Line* that:

An assemblage value may be applied if the property has value as a corridor for other than rail use. (e.g., a utility corridor). There is, however, no evidence in the record that there is a market for this parcel as a nonrail corridor. Accordingly, the [assemblage] increase. . . was improper.²⁶

Here, Carrier too must also demonstrate that there is a market for the assembled corridor for a non-rail use if an assemblage factor is to be applied. As of yet, Offeror has not been made aware that any such market exists. Furthermore, Offeror's president has researched the local market, and to the best of his ability, he opines that no such market exists.²⁷ Accordingly, if Carrier does not offer convincing and credible evidence of such a market, no assemblage factor can be applied.

3) Land Value Should Be Attributed Only to That Property for Which Carrier Owns Marketable Title

The Board has established that when computing line NLV, it assigns land value only to the real property for which the carrier holds marketable title.²⁸ In the current proceeding, Offeror is aware that some, if not a substantial portion, of the Line property is held by Carrier as a railroad right-of-way rather than owned in fee simple.²⁹ Offeror has attempted, for at least the

²⁵ *Boston and Maine Corporation and Springfield Terminal Railway Company – Abandonment and Discontinuance Exemption – In Berkshire County, MA - In the Matter of a Request to Set Terms and Conditions*, Docket No. AB 32 (Sub No. 42-X), 1990 WL 300526 (I.C.C.).

²⁶ *Lake Geneva Line*, *supra* note 8 at 959 [emphasis supplied].

²⁷ Declaration of John W. Reed at ¶ 3 (Exhibit F).

²⁸ *Chicago and North Western Transportation Co. – Abandonment Between Ringwood, IL and Geneva, WI*, 363 I.C.C. 956, 959, 1981 WL 22668 at 3 (I.C.C.); *Norfolk Southern Railway Company – Abandonment Exemption – Between Red Bay and Haleyville, AL in Franklin, Marion and Winston Counties, AL - In the Matter of a Request to Set Terms and Conditions*, Docket No. AB-290 (Sub No. 123X), 1993 WL 405276 at 3 (I.C.C.); *Central Michigan Railway Company – Abandonment – East of Ionia to West of Owosso - In Michigan – In the Matter of a Request to Set Terms and Conditions*, Docket No. AB 308 (Sub No. 1), 1991 WL 195821 at 2 (I.C.C.); *Fillmore Western Railway Company. – Abandonment Exemption – In Fillmore County*, 2001 WL 1343110 at 6 (I.C.C.).

²⁹ See Letter from Ed Trommter of Town & Country Estates Realty, Inc. to John Reed of March 14, 2002 at ¶ 3 (Exhibit G); See also eMail from Fritz Kahn to Thomas F. McFarland [Previous Counsel for Offeror] of August 21,

last six months, to determine the amount of Line property owned by Carrier in fee.³⁰ In particular, Offeror has contacted the local title company concerning this issue but the title company representative has indicated that a precise determination of the allocation between the Line's railroad right-of-way easement and fee simple property cannot be made.³¹ As of yet, Offeror has received only limited information from Carrier concerning the allocation of the real property underlying the Line.

In fact, Carrier's counsel indicated to Offeror that Carrier itself did not have information as to the allocation between fee ownership and easement use of the Line property.³² The one Line appraisal that Carrier has provided to Offeror³³ unfortunately also did not address real estate issues. It does, however, curiously provide a value of Four Hundred Fifty Eight Thousand and No/100 Dollars (\$458,000.00) for "RIGHT OF WAY & IMPROVEMENTS" despite the fact that the Line improvements were separately valued elsewhere in the appraisal.³⁴ Offeror requested a breakdown of this valuation,³⁵ but no response to this request was provided by Carrier.

It remains unclear whether any of the Line's underlying property is held by Carrier in fee simple. It appears that whatever the nature of its title, Carrier only acquired unknown property rights from Mile Post 2 to Mile Post 15.11, and more importantly it clearly has only easement rights from Mile Post 15.11 to Mile Post 30.³⁶ The value of an easement is largely in the right to operate, a right which the Board controls. In any event, the nature of the surrounding real

2001 (Exhibit H); Easement Agreement between Trinidad Railway, Inc. and Kern Valley Railroad Company of November 1, 2000 (Exhibit B).

³⁰ See *supra* note 27 at ¶ 2 (Exhibit F).

³¹ *Id.* at ¶ 4.

³² See eMail from Fritz Kahn to Thomas F. McFarland [Previous Counsel for Offeror] of August 21, 2001 (Exhibit H).

³³ See Appraisal Report of Railroad Track Materials Located Between Mile Post 2.00 near Trinidad, Colorado and Mile Post 30.00 near Weston, Colorado (November 14, 2000) by A&K Railroad Materials, Inc. for Kern Valley Railroad Company (Exhibit I).

³⁴ See *id.*

³⁵ See Facsimile Transmittal from Thomas F. McFarland [Previous Counsel for Offeror] to Fritz Kahn of August 22, 2001 (Exhibit J).

³⁶ See Quitclaim Deed from Trinidad Railway, Inc. to Kern Valley Railroad Company of October 30, 2000 (Exhibit A); Easement Agreement between Trinidad Railway, Inc. and Kern Valley Railroad Company of November 1, 2000 (Exhibit B).

property (federal and state, rural and undeveloped) would indicate that any land to which Carrier is able to prove that has marketable title would nevertheless support only a low value.³⁷

Given the unique circumstance Offeror faces (not knowing and unable to discern the full nature of Carrier's title), Offeror hereby respectfully requests that the Board examine any Carrier real estate appraisal which might be filed with Carrier's reply to this Request, and to then determine the Line's land value based only upon that portion of the Line property to which Carrier can demonstrate it has marketable title.

4) Net Liquidation Value of "The Line"

In *Lake Geneva Line*, the Board established the now thoroughly accepted method of calculation of NLV as: i) the net value of the land for sale to adjoining property owners + ii) the gross value of the improvements to the land – iii) the removal costs of the improvements.³⁸ As noted in the discussion in 3), above, Offeror must defer to the judgment of the Board concerning the net value of the land.

Offeror is able, however, to submit appraisals received concerning the gross value of the improvements to the land, as well as the costs associated with removal. Offeror's appraisal by Mountain States Contracting ("Offeror's Appraisal") is attached hereto for examination by the Board.³⁹ The appraisal methodology used by the appraiser consists of evaluating the materials and amounts listed as existing on the Line by an appraiser hired by Carrier.⁴⁰ Carrier had transmitted this report to Offeror for Offeror's use. The valuation was completed by applying materials and labor values based upon Mountain States' own purchasing experience for like materials, FOB the Line.⁴¹ As can be seen, Offeror's Appraisal's grand total NLV (for

³⁷ See Letter from Ed Trommeter of Town & Country Estates Realty, Inc. to John Reed of March 14, 2002 (Exhibit G); See also Letter from James M. Morseberger of Trinidad Properties North, Inc. of March 14, 2002 (Exhibit K).

³⁸ See *Lake Geneva Line*, *supra* note 8 at 958.

³⁹ Appraisal by Mountain States Contracting for Rail Ventures, Inc. of February 24, 2002 (Exhibit L).

⁴⁰ See *supra* note 33.

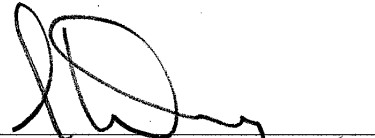
⁴¹ See *supra* note 39.

improvement value minus removal costs) is Two Million Two Hundred Fifty One Thousand and Twenty Two and No/00 Dollars (\$2,251,022.00).⁴²

Using a similar appraisal methodology, the president of Northwestern Railroad Construction, Inc. ("Northwestern") stated an appraisal value as of March 6, 2002, of between Two Million Two Hundred Thousand Dollars (\$2,200,000.00) and Two Million Five Hundred Thousand Dollars (\$2,500,000.00).⁴³ Again, using a similar appraisal methodology, the Director of Rail Services for David J. Joseph Company ("DJJ") also stated an appraisal value as of March 14, 2002, of Two Million Three Hundred Sixty Four Thousand Five Hundred and No/100 Dollars (\$2,364,500.00).⁴⁴ Unfortunately, because Offeror has not yet received Northwestern and DJJ's respective full appraisal reports with further supporting documentation, Offeror submits Mountain States' appraisal as its primary support for NLV calculation.

WHEREFORE, Offeror hereby respectfully requests that the Board set the NLV at Two Million Two Hundred Fifty One Thousand and Twenty Two and No/00 Dollars (\$2,251,022.00), in addition to the land value established by the Board.

Respectfully submitted,



Stephen L. Day
Taro Kusunose
Attorneys for
Rail Ventures, Inc. ("Offeror")
One Convention Place
701 Pike Street, Suite 1400
Seattle, WA 98101
(206) 292-9988 – Telephone
(206) 343-7053 – Fax

⁴² *Id.*

⁴³ See Letter from Northwestern Railroad Construction, Inc. to Rail Ventures, Inc. of March 6, 2002 (Exhibit M).

⁴⁴ See Letter from David J. Joseph Company to John Reed of March 14, 2002 (Exhibit N).

EXHIBIT A

WHEN RECORDED, MAIL TO:
Kern Valley Railroad Company
ATTN: George J. Ross
P.O. Box 26421
Salt Lake City, UT 84126

200000648698
Filed for Record in
LAS ANIMAS, CO
BERNARD J. GONZALES
On 11-06-2000 At 10:46 am.
DT CL DFED 15.00
Doc Fees .00
DR Book 1000 Page 180 - 182

Instrument Book Page
200000648698 DR 1000 180

QUITCLAIM DEED

THIS INDENTURE is made the 31st day of OCTOBER, 2000 by TRINIDAD RAILWAY INC. a corporation organized and existing under the laws of the State of Montana, with principal offices at 16 East Granite, Butte Montana 59701 ("Grantor") to KERN VALLEY RAILROAD COMPANY, P.O. Box 26421, Salt Lake City, Utah, 84126 ("Grantee").

WITNESSETH: Grantor, in consideration of the sum of Ten Dollars (\$10.00) paid by Grantee, the receipt of which is hereby acknowledged, does hereby remise, release, quitclaims and conveys to Grantee, and to their successors and assigns all of Grantor's right, title and interest in and to the land in Los Animas County, Colorado, which is more particularly described on attached "Exhibit A", including Grantor's interest in any and all improvements on the Land.

TO HAVE AND TO HOLD, to Grantee, their heirs and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this instrument the day and year above first written.

ATTEST

Bruce Addington

TRINIDAD RAILWAY INC.

By: A. L. Perry

Its: PRESIDENT

Instrument	Book	Page
200000648698	OR 1000	181

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

The foregoing Quitclaim Deed between Trinidad Railway Inc. and Kern Valley Railroad Company dated October 31, 2000 was subscribed, sworn to, and acknowledged before me this 31 day of October, 2000, by A. L. Perry and Bruce Anderson, who affirmed to me, under penalties of perjury, that they are respectively the Chairman and Secretary of Trinidad Railway Inc., a Montana Corporation.

signature Christina Bakavelau

Printed Christina Bukavelou

Residing in Vanderburgh County,
Indiana Notary Public

My Commission Expires:

September 4, 2008

Instrument Book Page
200000648698 OR 1000 182

EXHIBIT "A"

The real estate and improvements that constitute that portion of the Trinidad Railway, Inc. right of way lying in the County of Las Animas, State of Colorado, beginning at Milepost 2 and continuing in a generally Westerly direction to the East side of Bridge 15A at approximately Milepost 15.11.

EXHIBIT

B

200000648695
Filed for Record in
LAS ANIMAS, CO
BERNARD J. GONZALES
On 11-06-2000 At 10:46 am.
EASEMENT 15.00
Doc Fees .00

EASEMENT AGREEMENT Book 1000 Page 171 - 173

THIS AGREEMENT (the "Easement Agreement") is made this 1 day of November, 2000, by and between Trinidad Railway, Inc., a Montana Corporation, ("Grantor") and Kern Valley Railroad Company, a Nevada Corporation, or its Assign ("Grantee").

Instrument Book Page
200000648695 OR 1000 171

WHEREAS, Grantor has heretofore entered into an Agreement, Bill of Sale and Assignment with Grantee by which Grantor has assigned to Grantee its common carrier obligation and its operating authority over the real estate more particularly described on Exhibit "A" hereto (the "Trinidad Railway Real Estate"),

WHEREAS, Grantor has also heretofore conveyed, transferred and assigned to Grantee all rails and track, including all ties, tie plates, joint bars, ballast, switches and other track materials located on or over the Trinidad Railway Real Estate,

WHEREAS, Grantee has requested an easement to occupy and use the Trinidad Railway Real Estate for railway purposes and has requested another easement to enter Grantor's property to remove all rails and track, including all ties, tie plates, joint bars, ballast, switches and other track materials from Grantor's property, and

WHEREAS, Grantor is willing to grant these easements to Grantee for the purposes, and upon the conditions, set forth in this Easement Agreement.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant and convey to Grantee, its successor and assigns the following described easements:

The right of Grantee, its successors, assigns, agents and employees, to use the Trinidad Railway Real Estate for railroad purposes.

The right of Grantee, its agents and employees, with necessary equipment, to enter on and have access to the Trinidad Railway Real Estate owned by Grantor, to remove any rails and track, including all ties, tie plates, joint bars, ballast, switches and other track materials located on Grantor's Real Estate.

This Easement Agreement shall be binding in perpetuity upon and shall inure to the benefit of Grantor and Grantee and their respective successors and assigns. Notwithstanding the foregoing, Grantor shall have the right to terminate these easements upon prior written notice after one (1) year has elapsed from the date of the dismissal or withdrawal of the pending OFA proceeding.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Agreement effective the day and year first above written.

Instrument 200000648695 Book Page 1000 172

GRANTOR

TRINIDAD RAILWAY, INC.

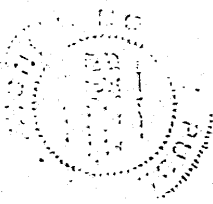
By: A. L. Perry

Its: PRESIDENT

STATE OF INDIANA)

COUNTY OF VANDERBURGH)

The foregoing instrument was acknowledged before me this 1st day of November, 2000, by A. L. PERRY, the PRESIDENT of Trinidad Railway, Inc.



Donna Helfrich Busan
Notary Public and Seal

Prepared by:

Michael J. Van Wagenen
A&K Railroad Materials, Inc.
P. O. Box 30076
Salt Lake City, Utah 84130
Telephone: (801) 977-6346

DONNA HELFRICH BUSAN
NOTARY PUBLIC STATE OF INDIANA
VANDERBURGH COUNTY
MY COMMISSION EXPIRES JULY 26, 2007

Instrument Book Page
200000648695 OR 1000 173

EXHIBIT "A"

The real estate and improvements that constitute that portion of the Trinidad Railway, Inc. right of way lying in the County of Las Animas, State of Colorado, beginning at Milepost 15.11 and continuing in a generally Westerly direction to the end of the line at approximately Milepost 32.0.

EXHIBIT

C

LAW OFFICES

REA, CROSS & AUCHINCLOSS

SUITE 570

1707 L STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE: (202) 659-4934

DONALD E. CROSS (1923-1986)

THOMAS M. AUCHINCLOSS, JR.
LEO C. FRANEY
JOHN D. HEFFNER
KEITH G. O'BRIEN
BRYCE REA, JR.
BRIAN L. TROIANO

FEE RECEIVED

ENTERED
Office of the Secretary

SEP 1 2000

Part of
Public Record

September 1, 2000

BY HAND

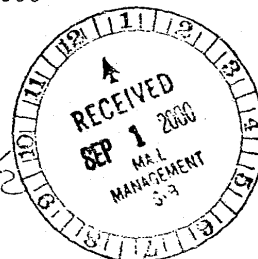
**SURFACE
TRANSPORTATION BOARD**

Honorable Vernon A. Williams
Surface Transportation Board
1225 K Street, N.W.
Washington, D.C. 20423-0001

RE: STB Docket AB-No. 573,
Trinidad Railway, Inc. - Abandonment Exemption

STB Docket No. AB-6 (Sub-No. 388X)
The Burlington Northern and Santa Fe Railway Company
Discontinuance of Trackage Rights Exemption

STB Docket No. AB-33 (Sub-No. 160X)
Union Pacific Railroad Company
Discontinuance of Trackage Rights Exemption



Dear Mr. Williams:

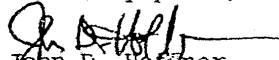
On behalf of the Trinidad Railway, Inc., I am filing an original and ten copies of a verified notice of exemption for abandonment of an out of service rail line and discontinuance of trackage rights over the subject rail line by The Burlington Northern and Santa Fe Railway Company and the Union Pacific Railroad Company. I am enclosing two checks totalling \$7,500 (one for \$5,000 from the Trinidad Railway, Inc., and one for \$2,500 from the Union Pacific Railroad Company) for the applicable filing fees. This notice is submitted pursuant to the Board's out of service abandonment and discontinuance of trackage rights class exemption provisions of 49 CFR 1152.50.

In addition, please be advised that the letter petition for waiver submitted on August 25, 2000, incorrectly indicated that the docket number for The Burlington Northern and Santa Fe Railway Company was AB-6 (Sub-No. 338X). It should be AB-6 (Sub-No. 388).

Please date stamp and return two copies of this filing and transmittal letter for our files.

Hon. Vernon A. Williams
September 1, 2000
Page Two

Sincerely yours,


John D. Herfner

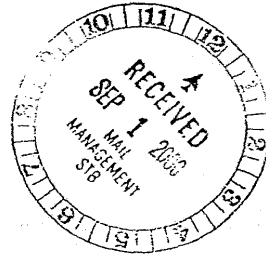
Enclosure

cc: Mr. Raymond E. Gotshall
James P. Gatlin, Esq.
Michael E. Roper, Esq.

FEE RECEIVED

SEP 01 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD



**SURFACE
TRANSPORTATION BOARD**

STB DOCKET NO. AB-573X
TRINIDAD RAILWAY, INC., ABANDONMENT EXEMPTION,
IN LAS ANIMAS COUNTY, CO

STB DOCKET NO. AB-6 (SUB-NO. 388X)
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION
IN LAS ANIMAS COUNTY, CO

STB DOCKET NO. AB-33 (SUB-NO. 160X)
UNION PACIFIC RAILROAD COMPANY
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION
IN LAS ANIMAS COUNTY, CO

NOTICE OF EXEMPTION
UNDER 49 CFR 1152.50

Respectfully submitted,

John D. Heffner
Rea, Cross & Auchincloss
1707 L Street, N.W.
Suite 570
Washington, D.C. 20036
(202) 785-3700
Attorney for
Trinidad Railway, Inc.

Michael E. Roper, Esq.
Senior General Attorney
Burlington Northern And
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

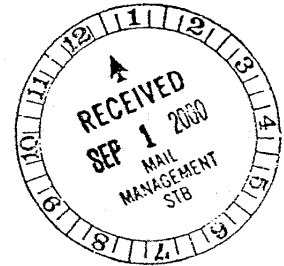
James P. Gatlin, Esq.
General Attorney
Union Pacific Railroad
Company
1416 Dodge Street,
Room 830
Omaha, NE
(402) 271-2158

Dated: September 1, 2000
Effective: September 3, 2000

ORIGINAL

ENVIRONMENTAL AND HISTORIC REPORT

Environmental Issues



The following information is provided in accordance
with 49 C.F.R. Section 1105.7:

(1) Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

The proposed abandonment of the Trinidad Railway, Inc. ("Trinidad" or "Applicant") (and discontinuance of trackage rights over it by The Burlington Northern And Santa Fe Railway Company ("BNSF") and the Union Pacific Railroad Company ("UP") between MP 2.0¹ at Jensen (just west of Trinidad) and the end of the line at the former New Elk Mine (MP 30.0), just east of Stonewall, a distance of up to 30.0 miles² of trackage in Las Animas County, CO., will eliminate a line that has not been operated in over four years. The only alternative to this action would be not to abandon the Line and to prevent its owner, A.P. Maxwell Development Co., LLC, from disposing of the assets.

¹ Trinidad is retaining the first two miles of railroad for operation by BNSF and UP.

² There is a discrepancy over the actual length of the railroad.

ORIGINAL

(2) Transportation System

- (i) Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (freight or passenger) that will be diverted to other transportation systems or modes as a result of the proposed action.

There should be no impact on regional or local transportation systems and patterns as the Line has not been used since March 1996. Nevertheless, on August 8, 2000, Applicant wrote the Colorado Department of Transportation and the State Clearinghouse for Colorado to advise them of the proposed action (Attachments 1 and 2). Applicant will provide the SEA with a copy of those agencies' responses once received.

(3) Land Use

- (i) Based upon consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

Applicant believes that its proposed action will not be inconsistent with local land use plans. On August 8, 2000, Trinidad's representative wrote the County Commissioner for Las Animas County seeking information as to the current land use plans for that jurisdiction. (See Attachment 3). Applicant will provide the SEA with a copy of its response.

- (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

Applicant contacted the State Conservationist, National Resource Conservation Service,³ on August 8, 2000, and is currently

³ Formerly the U S. Soil Conservation Service.

awaiting its response. See Attachment 4. Applicant will advise the SEA as soon as it receives a response.

- (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by section 1105.9.

According to the Board's "Environmental Contact List," the State of Colorado does not have a Coastal Zone Management Program.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

The right of way appears to be suitable for alternative public use. An attorney representing organizations which seek to convert abandoned rail lines to rail trails has contacted the railroad about its use as a trail. Trinidad is willing to open negotiations with qualified rail trail operators at the appropriate time. Trinidad also anticipates discussing alternative public uses for the Line with the Colorado Department of Transportation.

(4) Energy.

- (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than (A) 1,000 rail carloads a year; or (B) an average of 50 rail car loads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

4(i) & (ii). The effect of the proposed abandonment on the transportation of energy resources will be nonexistent as the Line has not been used for several years. There will be no effect on

the transportation of recyclables as no recyclables have ever moved over the Line.

1(iii). There will be no impact on energy efficiency as the Line has not handled any traffic in over four years.

4(iv). See (4)(iii), above.

(5) Air

Will the proposed action result in (A) a minimum increase in rail traffic of 100 percent (measured in gross tons annually) or eight trains per day on an affected rail line, (B) an increase in rail yard activity of 100 percent as measured in carload activity or (C) an increase in motor carrier traffic of either 50 vehicles per day or an increase in truck traffic exceeding 10 percent of the average daily traffic on a given highway segment? If any of the enumerated thresholds is exceeded, quantify the anticipated increase in air emissions. If a Class I or nonattainment area is affected, are increased emissions within parameters of the affected State Implementation Plan?

There will be no impact for the reasons stated above in section 4.

(6) Noise

If any of the thresholds identified in item (5) is surpassed, state whether the proposed action will cause an increase in noise levels exceeding either (i) a three decibel Ldn incremental increase or (ii) 65 decibels?

The above thresholds will not be exceeded for the reason stated above.

(7) Safety

(i) Describe any effects of the proposed action on public health or safety (including vehicle delay time at railroad grade crossings).

Applicant believes that the proposed action will result in improvement to public safety by the elimination of two public and several private railroad grade crossings.

- (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

No hazardous materials were handled over the Line during its period of operation. It served a now abandoned coal mine.

- (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There are no known hazardous waste sites on the Line, and Applicant is not aware of any hazardous materials spills that may have occurred along the subject right-of-way.

(8) Biological Resources

- (i) Based upon consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

On August 8, 2000, Trinidad's representative wrote The U.S. Fish and Wildlife Service about its proposed action (See Attachment 5). Applicant does not believe that the abandonment will affect any endangered or threatened species or critical habitats. Trinidad will provide the SEA with a copy of the Service's response.

- (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected and describe any effects.

Applicant does not anticipate that the abandonment will affect any wildlife sanctuaries or refuges, National or State

parks or forests. Nevertheless, Applicant has contacted the National Park Service to obtain its views. (See attachment 6). Applicant will furnish the SEA with the comments it receives.

(9) Water

- (i) Based upon consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State and/or local water quality standards and describe any inconsistencies.

No in-stream salvage operations will be required. No action known to be inconsistent with federal, state, and/or local water quality standards is contemplated. If any permits or applications are found to be necessary, they will be obtained and any conditions or procedures required by regulatory agencies will be complied with. Trinidad has contacted Colorado's Department of Natural Resources (Attachment 7) and will advise the SEA of its response.

- (.i) Based upon consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. 1344) are required and whether any designated wetlands or 100-year flood plains will be affected, and describe any effects. If so, have permits been sought or issued?

Applicant has contacted the U.S. Army Corps of Engineers. (See Attachment 8). While Trinidad does not anticipate that any permits under Sections 404 will be required or that any designated wetlands or 100-year flood plains will be affected, it will provide the SEA with the Corps of Engineers' response.

- (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

Applicant has contacted both the U.S. EPA and Colorado's Department of Natural Resources (Attachments 9 and 7) regarding

this question and will provide their comments once received.

Trinidad does not anticipate that any permits will be required.

(10) Historic

- (i) Are sites or structures listed in the National Register of Historic Places affected? If so, describe the effects.

No site or structures listed in the National Register of Historic Places will be affected.

- (ii) Will sites or structures 50 years old or older be affected? If so, and such sites or structures are not listed in the National Register of Historic Places, Applicant would submit, at the earliest possible juncture, a description of the line, including a map, as well as photographs and descriptions of such structures to the appropriate State Historic Preservation Office for review and include a copy of the cover letter in the Environmental Report.

Applicant has advised the Colorado Historical Society (hereafter identified as "SHPO"), with copies mailed to the Board's SEA, that there are 4 railroad-owned structures (3 steel bridges constructed in 1902 and one freight house/depot constructed in 1904) are over 50 years old on this line segment (See Attachment 10). Trinidad does not believe that these structures are historically significant.

- (iii) Will culturally significant locations, archaeological sites, or unique land forms be affected? If so, Applicant should consult with the involved State Historic Preservation Office.

No.

Historic Issues

- (1) Topographic Map:

A copy of a topographic map of The line will be attached to the final version of this report submitted to the Board's SEA (As Attachment 11).

(2) Description of the Line:

The Line runs from railroad MP 2.0 at Jansen, just west of the City of Trinidad, to the New Elk Mine at MP 30.0, just east of Stonewall, in Las Animas County, CO. For most of its distance, the Line parallels Colorado State Highway 12 from Jansen to Stonewall which the State regards as a "Scenic and Historic Byway." Much of the right of way also parallels the Purgatory River, a narrow non-navigable river, and goes along the Shore of Lake Trinidad, a campsite and recreational area. As the Line proceeds west, it encounters a gradual 1% grade for much of its distance. The Line generally has a 100 foot wide right-of-way, 50 feet on either side of the track center. However, there are areas where the right-of-way extends only 35 feet on either side of the track center due to topography.

(3) Photographs:

There are 4 railroad structures on the right-of-way of the Line that are presumed to be more than 50 years old including 3 steel railroad bridges and one freight house/depot. Copies of photographs of these structures are appended to this report as Attachment 12.

(4) Dates of construction of structures:

From 1902 to 1904.

(5) History of Carrier Operations:

Trinidad understands that the Line was originally constructed in the early 1900's as the Colorado & Wyoming Railroad, Southern Division, to haul coal from mines to the steel mill of its original owner, Colorado Fuel & Iron ("CF&I"). CF&I ceased making coal in the late 1980's. In 1992 Trinidad, then a newly formed subsidiary of Entech, Inc., (and in turn a subsidiary of Montana Power) purchased the Line from its former owner. Trinidad granted trackage rights to BNSF predecessor railroads (the Burlington Northern Railroad and the Atchison Topeka & Santa Fe Railway) and to UP predecessor (the Denver & Rio Grande Pacific Railway), to operate trains over the Line. A.P. Maxwell Development Co., LLC, purchased the stock of Trinidad in 1996 in anticipation of hauling coal over the Line. The coal mine owners have now determined that it is not economically feasible to open and operate a coal mine in this area.

(6) Documents in Carrier's Possession:

Trinidad has track charts of the railroad but has been unable to locate any other documents which, it believes, may have been destroyed by the previous owner.

(7) Eligibility for National Register; archeological resources:

Trinidad will advise the SEA of any relevant comments made by the SHPO.

(8) Description of ground disturbance or fill.

Applicant is unaware of any ground disturbances, fill, or environmental conditions that might affect the archeological recovery of resources in the surrounding terrain.

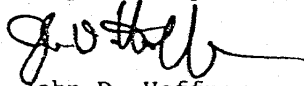
(9) Geodetic survey

By letter dated August 8, 2000, enclosed here as Attachment 13, Trinidad wrote the National Geodetic Survey, with regard to the impact on proposed NGS (National Geodetic Survey) activities and projects. A copy of its response identifying 10 geodetic station markers is enclosed as Attachment 14.

CERTIFICATION

In accordance with the requirement at 49 CFR 1105.7(c), Applicant certifies that it has sent a copy of the Environmental and Historic Report to all agencies listed at 1105.7(b) and to the State Historic Preservation Officer and that it has consulted with these agencies in preparing this report.

Respectfully submitted,

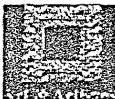


John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 570
1707 L Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for Applicant
Trinidad Railway, Inc.

Dated: September 1, 2000

NEWS Brought To You Exclusively By The TRINIDAD PLUS



PLUS NEWS:

Lorencito: No local impact from bankruptcy proceedings

by Catherine Arkley
Staff Writer, Trinidad Plus
March 5, 2002

The parent company for one of this area's newest mining companies is presently undergoing a debt restructuring exercise under Chapter 11 procedures of the U.S. Bankruptcy Code. However, officers of the company are making assurances that the exercise will not affect local operations.

AEI Resources Holding Inc. and its subsidiaries own, among 29 surface mines and 15 deep mines, "The Lorencito Coal Company LLC, owners Erik and Bruce Addington," to cite the full and proper name for the coal company operating some 16 miles west of Trinidad, known locally as simply "Lorencito."

Lorencito's parent company, AEI Resources, is this county's fourth-largest steam coal producer as measured by revenues and the second-largest steam coal producer in central Appalachia, operating mines and markets in Kentucky, West Virginia, Tennessee, Indiana, and Illinois, as well as in Las Animas County.

Lorencito began its operations in this region under a special use permit issued by the county last summer, just six months before its multi-million dollar parent company filed for debt restructuring under Chapter 11.

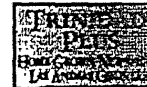
Although there had been some discussion here about unpaid subcontractors during the past months, and mention of debts to them running into the tens of thousands of dollars, Lorencito's local press relations director Tom Martinez Jr. said last week that those issues have already been settled.

"There was a debt, but it has been paid," said Martinez, newly hired by the company.

Martinez acknowledged that Lorencito had several local concerns to deal with, including issues of payments to contractors, but he said that the company was very willing to begin addressing those issues.

Got a news tip?
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Netscape 3.0 & above or
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Trinidad, Colorado: News - Lorencito: No local impact from bankruptcy proceedings

"In fact, we have just begun a good neighbor program which is aimed at finding out where the concerns are and helping to solve them," Martincz said.

In late January, several statements from AEI about the company's changing fortunes were reported in Hoover's, a mining industry publication.

Don Brown, the parent company's chairman and CEO, characterized the Chapter 11 proceedings as, "... a positive step in our efforts to create a more appropriate capital structure, to continue to strengthen AEI and to make the Company more competitive."

Brown added, "After considering a number of alternatives, we concluded that a consensual pre-packaged reorganization under Chapter 11 offers the best way to restructure our finances..."

Brown said that the Chapter 11 proceedings were not expected to have any impact on daily operations and, "Employees can expect to be paid as they always have."

In mid-February, many of those same upbeat statements were repeated in the coal industry's magazine, Coal Age.

AEI has just begun their Chapter 11 restructuring, the first step being to seek approval from its senior lenders and noteholders to proceed along this route. There is no word as yet as to how long the entire process is expected to take, however the company says that it has received a commitment for up to \$150 million in debtor-in-possession (DIP) financing to assist cash flows and to fund operations during the process.

That funding, along with exit financing, has come from a lender group led by Bankers Trust Co. and the Deutsche Bank.

Brown said that the company had been hurt by heavy recent debts and by the severe financial difficulties of another company, Frontier Insurance Co.

Frontier is a bonding firm which AEI had been using to bond their own guarantees of (land) reclamation, a requirement made by most governments prior to the start-up of new mining operations or the continuation of previous permits.

Because of Frontier's own financial difficulties, many states have recently refused to accept reclamation bonds issued by them. AEI has been trying to replace these bonds, but has suffered a cash shortfall in the process.

The Addington coal empire was started in the 1970s by four brothers: Larry, Robert, Bruce, and Stephen. By the mid-1980's, it was recording revenues of almost a billion dollars and a coal production of 3.56 million tons and was

Trinidad, Colorado: News - Lorencito: No local impact from bankruptcy proceedings

ranked by Financial World as one of the 500 fastest-growing publicly-held companies.

In 1995, the brothers re-bought the company, making it once again a private enterprise. Brother Larry, who reportedly owns 97 percent of the company, resigned from his position as CEO last June. Brother Stephen is now AEI's president.

Analysts' opinions vary as to whether the company will be able to pull through the current Chapter 11 proceedings and the track record of companies which have tried it vary just as much.

Local hopes, says Tom Martinez, are positive, and he has been visiting county residents along Highway 12 near Lorencito's operations during the past two weeks to reassure them of the company's good will and longevity.

"I'm getting a pretty good response, I think," Martinez said.

If AEI does fail, and if Lorencito's local coal operations fall with it, reclamation work at the mine site could be endangered, however.

Usually, the reclamation bond holder would pay the cost of cleanup if a company fails, but AEI has been operating without full reclamation bonding since its surface-mines bond-holder, Frontier, was overtaken by New York regulators last year.

Kentucky, AEI's home state, banned Frontier from operating in that state, affecting all of the reclamation bonding held by them, including bonding in most other states.

Lorencito's local property is on an 18,000-acre parcel located in the Raton Basin and serving, via rail links, domestic and export markets. The company is presently surface mining.

For more news from in and around Trinidad,
visit our News section.

About This Project | Webmaster

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108 North Maple Street • Trinidad, Colorado 81082
v: (719) 846-1789 e: summitgfx@bigfoot.com

The Pueblo Chieftain Online

Select file then print to print this article.

Publish Date Saturday March 9th, 2002

EXHIBIT E

Bankruptcy not hindering Lorencito mines

By MIKE GARRETT
The Pueblo Chieftain

TRINIDAD - The co-owner of Lorencito Coal Co. said Friday that Chapter 11 bankruptcy proceedings by its parent company won't adversely impact its Las Animas County operations.

Erik Addington said Friday the company produced 34,000 tons of coal in February and expects to produce 38,000 tons in March.

Addington said Lorencito expects to continue making its payroll, in response to recent reports about unpaid subcontractors and company debts running into the tens of thousands of dollars.

Those issues have been resolved and all company debt to its contractors has been paid, Lorencito spokesman Tom Martinez Jr. said earlier this week.

Lorencito is operating on an 18,000-acre parcel 16 miles west of Trinidad.

Lorencito's parent company, AEI Resources Holding Inc., and its subsidiaries, which own 29 surface mines and 15 deep mines in the Appalachia area, filed this month for debt restructuring under Chapter 11 of U.S. bankruptcy code. Erik Addington's father, co-owner Bruce Addington, remains actively involved in both mining company operations. AEI Resources is ranked as the nation's fourth largest steam coal producer.

Much of the high-grade, hotter-burning coal Lorencito has been mining in Las Animas County the past six months is being shipped by rail to various Tennessee markets, with some of the coal finding its way into Texas cement plants.

Addington said he still hopes to find Colorado markets for the high-grade coal despite the fact it burns too hot for most state power plants.

"We've been getting pretty good prices for our coal," he said.

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EXHIBIT F

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC. - -
ABANDONMENT EXEMPTION - - IN LAS ANIMAS COUNTY, CO

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC. - -
LEASE AND OPERATION EXEMPTION - - KERN VALLEY RAILROAD COMPANY

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

**DECLARATION OF JOHN W. REED
IN SUPPORT OF
REQUEST ON BEHALF OF RAIL VENTURES, INC.
TO ESTABLISH TERMS AND CONDITIONS OF SALE**

Stephen L. Day
Taro Kusunose
Attorneys for
Rail Ventures, Inc.
One Convention Place
701 Pike Street, Suite 1400
Seattle, WA 98101
(206) 292-9988 - Telephone
(206) 343-7053 - Fax

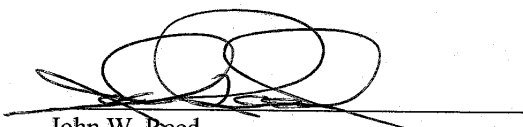
Dated: March 15, 2002

147866/031502 1517/66720001
DECLARATION OF JOHN W. REED
IN SUPPORT OF SET TERMS REQUEST

I, John W. Reed, am competent to testify to the matters set forth herein and make this declaration of my own personal knowledge and belief.

1. I am the president of Rail Ventures, Inc.
2. I have been trying to determine both the percentage and total acreage of the Line real property that is owned by Carrier in fee simple since August 21, 2001.
3. I have researched the local market to the best of my ability, and based upon this research, I believe that there currently exists no market for the Line property as a non-rail corridor.
4. I have contacted the one local title company in an effort to try to determine ownership of for the entire Line property, but was informed by the title company that they are unable to determine this information.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of March, 2002.



John W. Reed



EXHIBIT 6

March 14, 2002

Mr. John Reed
Eureka Financial Advisers
PO Box 128
Louisville, CO 80027

Dear Mr. Reed,

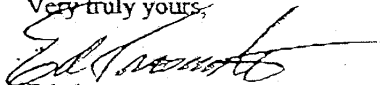
Concerning your inquiry about the land value of the land comprising the railroad right-of-way from mile marker 2, near Jansen to a point near Segundo, I submit the following:

Sales in the area South of Highway 12 adjoining the railway have been very limited in recent years. Based on my research I could only find record of one sale. This sale was an 1816 sq. ft. 3 bedroom, 2 bath, on 3.5 acres, which had some water rights. This property was a bed and breakfast and sold for \$258,750.00 in August of 2000. This sale does not provide any support for determining land values. In an interview with a local appraiser I was informed that he had did a recent appraisal for the City of Trinidad of 60 acres along the river, just West of Segundo, which included the rail road right-of-way. This land appraised at \$65,000.00 or \$1,083.00 per acre. This is the only information I could find to substantiate land values for this area.

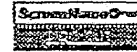
The distance of the right-of-way you are inquiring about is approximately 10 miles. The rail line from mile marker 2 to a point near mile marker 8 is through State or Federal lands. As this land would most likely revert to these entities, and would not likely be sold in the market place, it would have little or no value. The remaining 4 miles of rail line equals approximately 49 acres. Applying a value of \$1,083.00 per acre, the market value of the 49 acres would be \$53,067.00.

I hope this information meets your needs. Please call if I can be of further assistance.

Very truly yours,



Ed Trommeter



Headline News



1 of 15

Subj: Title to Trinidad-to-New elk Mine line
 Date: Tue, 21 Aug 2001 4:20:17 PM Eastern Daylight Time
 From: "Fritz Kahn" <xiccgc@worldnet.att.net>
 To: <mcfarland@aol.com>
 CC: <xiccgc@worldnet.att.net>

Tom:

As you may know, the line in question was that of the Colorado & Wyoming Railway Co. of Pueblo, CO, and perhaps it has the val maps that will indicate whether it acquired the line in fee or by easement. Unfortunately, KVR doesn't have that information. In any event, the \$4,141,214 appraisal of the line's net liquidation value which A&K Railroad Materials, Inc., undertook for KVR and provided the then counsel for Rail Ventures, Inc., Stanley J. Duran, Esq., on November 14, 2000, included no amount for the real estate.

For some reason, Trinidad wanted to retain the realty underlying the right-of-way between MP 15.11 and MP 30.00, and that is the explanation for the grant of easement for that portion. If Rail Ventures, Inc., wanted to buy the realty between MP 15.11 and MP 30.00, it would need to contact Trinidad. The end of the line at New Elk Mine, I understand, is MP 30.00; so there must be an equation somewhere along the line, for I, as you, understood some 30 miles had be authorized for abandonment, but the first two miles, between MP 0.00 and MP 2.00 were not the subject of the abandonment petition. KVR, however, acquired the entire railroad line, from MP 0.00 to MP 30.00.

Best regards.

Fritz

Include original text in Reply.



Reply



Reply All



Forward



Address Book

-----Headers-----

Return-Path: <xiccgc@worldnet.att.net>
 Received: from rly-ye02.mx.aol.com (rly-ye02.mail.aol.com [172.18.151.199]) by air-ye02.mail.aol.com (v80.17) with ESMTTP id MAILINYE24-0821162017; Tue, 21 Aug 2001 16:20:17 -0400
 Received: from mtiwmhc21.worldnet.att.net (mtiwmhc21.worldnet.att.net [204.127.131.46]) by rly-ye02.mx.aol.com (v80.17) with ESMTTP id MAILRELAYINYE21-0821161936; Tue, 21 Aug 2001 16:19:36 -0400
 Received: from kahn ([12.78.118.110]) by mtiwmhc21.worldnet.att.net (InterMail vm.4.01.03.16 201-229-121-116-20010115) with SMTP id <20010821201935.PJWN1680.mtiwmhc21.worldnet.att.net@kahn>; Tue, 21 Aug 2001 20:19:35 +0000
 Message-ID: <000801c12a79\$ebdca580\$6e764e0c@kahn>

<http://aolmail.aol.com/mail.dci?id=1&count=15&box=inbox&list=1-15&read.x=1>

8/22/01

EXHIBIT I

APPRAISAL REPORT OF
RAILROAD TRACK MATERIALS
Located between Mile Post 2.00 near Trinidad, Colorado
and Mile Post 30.00 near Weston, Colorado

APPRAISED FOR
Kern Valley Railroad Company
P.O. Box 26421
Salt Lake City, UT 84126

APPRAISAL DATE
November 14, 2000

APPRAISED BY
A&K RAILROAD MATERIALS, INC.
1505 South Redwood Road
Salt Lake City, Utah 84104

November 14, 2000

Mr. Michael J. Van Wagenen
Kern Valley Railroad Company
P.O. Box 26421
Salt Lake City, Utah 84126

RE: Appraisal Report of Railroad Track Materials
Located between Mile Post 2.00 near Trinidad, Colorado
and 30.00 near Weston, Colorado

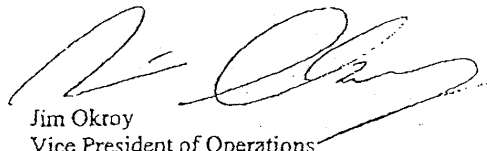
Dear Mr. Van Wagenen:

This appraisal has been prepared in a summary format. The Net Liquidated Value Approach was used to determine the value of the assets.

The Net Liquidated Value of the assets is concluded to be \$ 4,141,214.00.

Thank you for the opportunity to be of service.

Very Truly Yours,
A&K Railroad Materials, Inc.



Jim Okroy
Vice President of Operations
& Senior Appraiser

SECTION I
GENERAL DATA

A. **PURPOSE OF APPRAISAL**

The purpose of this appraisal is to estimate the net liquidated value of the assets in question as of the date of appraisal.

Net Liquidated Value, as used in this report is defined as: "The most probable price which the assets should bring, less salvage and reclamation costs, under all conditions, requisite to a fair sale, the buyer and seller, each acting prudently and knowledgeably and assuming the price is not affected by unique stimulus." Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby;

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and both acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

B. **SCOPE OF APPRAISAL**

The scope of the appraisal is to collect, confirm, and report a summary of the necessary details of the assets and applicable comparable sale and cost information necessary to complete the appraisal process in order to produce a meaningful appraisal and report for the subject property. The market area considered in this appraisal is the western United States.

C. **PROPERTY RIGHTS APPRAISED**

For the purposes of this appraisal, it is assumed that the owners own the assets without liens or encumbrances.

D. **DATE OF APPRAISAL**

The date of this appraisal is November 14, 2000, which was the last date of physical inspection of the subject assets. All data relied upon in this report are considered as adjusted to this point in time. This appraisal has been prepared during November 2000.

SECTION II
SUBJECT DATA

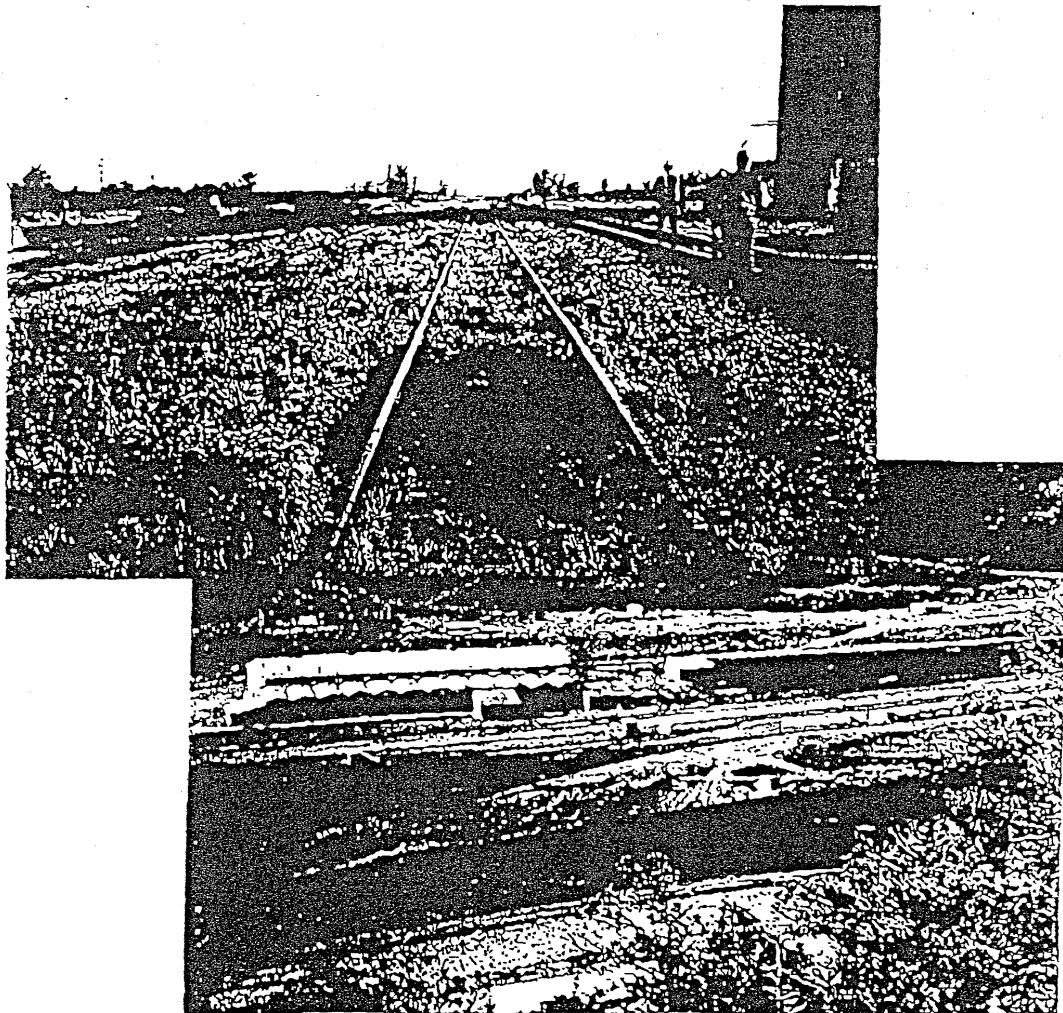
A. PURPOSE OF APPRAISAL

The assets are comprised of railroad track materials located on a railroad line. The line is situated in Las Animas County, Colorado, between the cities of Trinidad and Weston.

B. SCOPE OF APPRAISAL

The railroad track is specifically located between miles post 2.00 at Trinidad, Colorado, and mile post 30.00 near Weston, Colorado. The main line is 28 miles in length. There are 2.52 miles of sidings. The right-of-way is in generally good conditions.

C. SUBJECT PHOTOGRAPHS



SECTION III

RAILROAD MATERIAL INVENTORY

NET LIQUIDATED VALUE

NET LIQUIDATED VALUE

I. RAIL

.3 Miles

850 CF&I 1902

30' to 33' Lengths, Drilled 3x6"

Reroll- 28NT @ 95.00/NT =	\$	2660
---------------------------	----	------

Scrap- 14NT @ 65.00/NT =	\$	910
--------------------------	----	-----

29.38 Miles

115 RE CF&I 1950-54 1973 & 1977 (9miles)

39' Lengths, Drilled 3½x6"

Relay- 1/16-1/32" Top Wear, Single Flow, NF = 4596NT @ 470.00/NT =	\$	2,160,120
--	----	-----------

Relay- 1/16-1/32" Top Wear, Single Flow = 249NT @ 300.00/NT =	\$	74,700
---	----	--------

Reroll- 792NT @ 95.00/NT =	\$	75,240
----------------------------	----	--------

Scrap- 249NT @ 65.00/NT =	\$	16,185
---------------------------	----	--------

.17 Miles

115 RE CF&I 1989 H.S.

60' to 65' Lengths, CWR

Relay- 1/16" Top Wear, Single Flow = 35NT @ 470.00/NT =	\$	16,450
---	----	--------

.3 Miles

115 RE CF&I 1950-54 1973-77

39' Lengths, Drilled 3½X6X6" Closure Rails

Relay- 1/16-3/32" Top Wear, Single Flow = 59NT @ 470.00/NT =	\$	27,730
--	----	--------

.04 Miles

119 RE CF&I 1979

39' Lengths, Drilled 3½x6x6"

Relay- 1/16" Top Wear, Single Flow = 8.5NT @ 325.00/NT =	\$	2,762
--	----	-------

.33 Miles

132 RE CF&I 1982

78' Lengths, CWR

Relay- 1/8" Top Wear, Single Flow = 77NT @ 350.00/NT =	\$	26,950
--	----	--------

TOTAL RAIL VALUE	\$	2,403,707
------------------	----	-----------

II. JOINT BARS

115 RE

24" Toeless, 70#/Pair, Drilled 6x7x6"

Relay- 5700 Pair @ 20.00/Pair =

\$ 114,000

Scrap- 410 Pair = 14NT @ 65.00/NT =

\$ 910

850

26" Full Toe, 45#/Pair, Drilled 6x6x6"

Scrap- 100 Pair = 2NT @ 65.00/NT =

\$ 130

TOTAL BARS VALUE

\$ 115,040

III. TIE PLATES

DOUBLE SHOULDER TIE PLATES

a. 7 ¼ X 14, 6" base, 23 lbs. each = 2,050 relay
@ 4.40/Each =

\$ 9,020

b. 7 ¼ X 13, 5 ½" base, 19.5 lbs. each = 173,315 relay
@ 4.25/Each =

\$ 736,589

= 11,010 scrap

107 net tons @ 65.00/NT =

\$ 6,955

c. 7 ¼ X 14, 5 ½" base, 21 lbs. each = 690 relay
@ 4.40/Each =

\$ 3,036

SUBTOTAL

\$ 755,600

SINGLE SHOULDER TIE PLATES

a. 7 ½ X 8 ¾, 5 ¼" base, 7 lbs. each = 1,782 scrap
6 net tons @ 65.00/NT =

\$ 390

SUBTOTAL

\$ 390

TOTAL TIE PLATE VALUE

\$ 755,990

IV. ANCHORS

a.	Modified Improved Fair, channeloc, 5 1/2" base = 100,440 relay 100 net tons @ 80.00/NT =	\$	8,000
b.	132 RE, 6" base, 92/78' rail length = 4,140 relay 4 net tons @ 80.00/NT =	\$	320
	TOTAL ANCHOR VALUE	\$	8,320

V. TURNOUTS

	23-115# Turnouts @ 4,500/Turnout (Includes Frogs, Points, Ties, Switch Stands)	\$	103,500
	TOTAL TURNOUT VALUE	\$	103,500

VI. TIES

Relay	2,000 each @ 11.00/each	\$	22,000
RL	813 each @ 9.00/each	\$	7,317
#1	33,085 each @ 7.50/each	\$	248,137
#2	41,528 each @ 5.50/each	\$	228,404
Scrap	16,668		
	TOTAL TIE VALUE	\$	505,858

VII. SPIKES AND BOLTS

Scrap	207 NT@ 65.00/NT	\$	13,455
	TOTAL VALUE	\$	13,455

VIII. BALLAST

	10.5" wide x 9" deep (26.8 miles) 41,272 Cubic Yards @ 2.00/Cubic Yard	\$	82,544
	TOTAL BALLAST VALUE	\$	82,544

IX. RIGHT OF WAY & IMPROVEMENTS

		\$	458,000
--	--	----	---------

TRACK REMOVAL COSTS

TRACK REMOVAL		
30.52 Miles @ \$10,000/Mile	\$	305,200
TOTAL REMOVAL COSTS	\$	305,200
TOTAL ASSET VALUE	\$	4,446,414
TOTAL REMOVAL COSTS	\$	305,200
NET LIQUIDATED VALUE	\$	4,141,214

SECTION IV

CONTINGENT AND LIMITING CONDITIONS

A. CONTINGENT AND LIMITING CONDITIONS

The certification of the Appraiser appearing in this appraisal report is subject to the following conditions and to such other specific and limiting conditions as are set forth by the Appraiser in this report.

1. The Appraiser assumes no responsibility for matters of a legal nature affecting the property appraised or the title thereto, nor does the Appraiser render any opinion as to the title, which is assumed to be marketable. The property is appraised as though under responsible ownership.
2. Any sketch, photo, or map in this report may show approximate dimensions and is included to assist the reader in visualizing the property in question.
3. The Appraiser is not required to give testimony or appear in court because of having made this appraisal with reference to the property in question.
4. The Appraiser assumes that there are no hidden or inapparent conditions of the property which would render it more or less valuable. The Appraiser assumes no responsibility for such conditions or for engineering which might be required to discover such factors.
5. Information, estimates, and opinions furnished to the Appraiser and contained in this report were obtained from sources considered reliable and believed to be true and correct.
6. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The Appraiser is not responsible for unauthorized use of this report.
7. The Appraiser has the appropriate knowledge and experience to complete this assignment competently. The Appraiser has been an inspector/appraiser for the past 30 years and has served as a senior appraiser for A&K Railroad Materials, during the past 20 years.

B. CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
3. I have made a personal inspection of the property that is the subject of this report.


Jim Okroy, Senior Appraiser

November 2000

LAW OFFICE
THOMAS F. McFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695

EXHIBIT J

THOMAS F. McFARLAND

FAX TRANSMITTAL

DATE: August 22, 2001

2 Pages (Including this Cover Page)

* * *

TO: Fritz Kahn / 202-331-8330

* * *

FROM: THOMAS F. McFARLAND

FAX NO: (312) 201-9695 TELEPHONE NO: (312) 236-0204

* * *

RE: Your e-mail to me of 8-21-01

You say that the A&K appraisal included no amount for real estate. Isn't the \$458,000 for "right of way & improvements" under Item 1X a value that includes real estate? I hereby request a breakdown of that valuation.

You say that the val maps may indicate whether Colorado & Wyoming Ry. Co. acquired the line in fee or by easement. There are several problems with that. DRGW, not Colorado & Wyoming, was the original owner of the portion of the line that KVR acquired (see 1948 rail map transmitted). A val map will sometimes identify the conveyance documents for each parcel, but it will not describe what the documents provided. For example, a warranty deed sometimes warrants that the grantor has good title, but the document conveys a reversionary interest or an easement. The upshot is that the documents themselves must be reviewed in order to determine quality of title.

Of course, KVR cannot furnish the title documents if it does not have them. In the circumstances, I hereby request that you stipulate that in the absence of evidence of marketable fee simple title, the land in the portion of line acquired by KVR is not entitled to valuation in determining the net liquidation value of the line under 49 U.S.C. 10904.

Tom McFarland

Please advise.

File # 832

cc: John Reed, by fax to 303-926-0029

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law.

If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

Trinidad Properties North, Inc.
251 North Commercial Street
Trinidad, Colorado 81082
Phone (719) 846-9827

EXHIBIT K

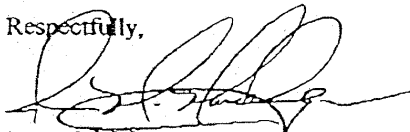
March 14, 2002

Re: Right of Way valuation

To whom it may concern,

Enclosed you will find a copy of a tax notice for a right of way that was previously used by the railroad, as per this notice the value assessed is \$5.69 per acre. Although this is not an accurate gauge as to the value of any property, using my experience in buying and selling property in this area, I would estimate the reasonable and equitable value of this property to be approximately \$225.00 per acre. This value was arrived at considering the accessibility and usability of the property for any thing other than its original intended purpose.

Respectfully,



James M. Morsberger

Fax (719) 845-0270

ANTHONY AREYTA
LAS ANIMAS COUNTY TREASURER
P O BOX 13
200 E. FIRST ST
TRINIDAD CO 81082
(719) 846-2981

PLEASE MAKE CHECKS PAYABLE TO THE ABOVE COUNTY TREASURER

(GCD)

TAX NOTICE FOR

2000

2791

***** ADDITIONAL INFORMATION *****				
TAXPAYER	TAX AREA	EXEMPT	REMARKS	
67			PAY BEFORE 07/31/01 ADVERTISED ON NOV. 12TH, 19TH, 26TH TAX SALE ON 12/03/01 IF PAID PRIOR TO 07/01/01, PLEASE DISREGARD THIS NOTICE. THANK YOU	
LAND VALUE	PERSONAL PROPERTY VALUE	TOTAL VALUE	TOTAL \$ THOUSAND	TOTAL TAX
72		72		

PROPERTY LOCATION

LEGAL DESCRIPTION

26-30-65 100FT R/W THRU NENW-
26-30-65 TRI R/W THRU SEMW
26-30-65 100FT R/W THRU SWNW-
26-30-65 IRREG R/W THRU NWSE-
ABOVE CONT-16.16 ACRES M/L

REMAINING TAX 4.8
INTEREST DUE .1
***** TOTAL \$ 4.9

PAID TO DATE: \$.00 INT & ADV COSTS MAY BE ADJUSTED TO PAYMENT DATE
SCHOOL DISTRICT GENERAL FUND IS DOLLARS PER THOUSAND, WITHOUT STATE AID IT WOULD HAVE BEEN
PLEASE RETAIN THE TOP PORTION AND RETURN THE APPROPRIATE STUB WITH YOUR PAYMENT TO TREASURER'S OFFICE.



**MOUNTAIN
STATES
CONTRACTING**

EXHIBIT L

6813 W. FRIER DRIVE
GLENDALE, ARIZONA 85303-1312
(623) 842-0743 FAX (623) 842-0944
(800) 827-0743

~~February 24, 2002~~

Mr. John Reed
RAIL VENTURES, INC.
Post Office Box 128
Louisville, CO 80027
Bus. (303) 926-1601
Fax (303) 926-0029

RE: ESTIMATED VALUE OF RAILROAD MATERIAL

Dear John:

Based on the "Railroad Material Inventory - Net Liquidated Value" that you had faxed us we have inserted values for the listed material. The Values that we have listed is based on our purchasing experience for like material, FOB the jobsite in Colorado.

I hope this information is helpful. If you have any questions or comments please feel free to contact our office.

Sincerely,

Vern Van de Loo
President

RAILROAD TRACKS ENGINEERED, BUILT AND REPAIRED



MOUNTAIN STATES CONTRACTING

6813 W. FRIER DRIVE
GLENDALE, ARIZONA 85303-1312
(623) 842-0743 FAX (623) 842-0944
(800) 827-0743

RAILROAD MATERIAL INVENTORY

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
.3 miles 850 cf&I 1902 30' to 33' p. 3"x 6"				
reroll	28.00	NT	\$ 75.00	\$ 2,100.00
scrap	14.00	NT	\$ 50.00	\$ 700.00
29.38 MI. 115re cf&I 1950-54 19'3-1997 (9 miles)				
39" punch 31/2" x 6"				
relay 1/16-1/32" top wear single flow nt	4,596.00	NT	\$ 375.00	\$ 1,723,500.00
relay 1/16-1/32" top wear single flow	249.00	NT	\$ 250.00	\$ 62,250.00
reroll	792.00	NT	\$ 75.00	\$ 59,400.00
scrap	249.00	NT	\$ 50.00	\$ 12,450.00
.17 miles 115re cf&I 1989 HS 60-65' lengths CWR				
relay 1/16" top wear, single flow	35.00	NT	\$ 375.00	\$ 13,125.00
.3 miles 115re cf&I 1950-54 1973-1977	59.00	NT	\$ 375.00	\$ 22,125.00
39" lengths punch 31/2" x 6"x 6"				
relay 1/16-1/32 top wear single flow				
.04miles 119 cf&I 1979 39" punch 31/2" x 6 x 6"	8.50	NT	\$ 300.00	\$ 2,550.00
relay 1/16" top wear, single flow				
.33 miles 132 re cf&I 1982 78' cwr	77.00	NT	\$ 300.00	\$ 23,100.00
relay 1/8 top wear single flow				
TOTAL RAIL VALUE:				\$ 1,921,300.00
115 joint bar 24" toeless punch 6" x 7 x 6"				
relay	5,700.00	PR	\$ 16.00	\$ 91,200.00
scrap 410 pair	14.00	NT	\$ 50.00	\$ 700.00
850 joint bar 26" full toe punch 6" x 6 x 6"				
relay				
scrap	2.00	NT	\$ 50.00	\$ 100.00
TOTAL BARS VALUE:				\$ 92,000.00
6" base tie plates 73/4 x 14" 23 lbs each				
relay	2,050.00	EA	\$ 3.00	\$ 6,150.00

RAILROAD TRACKS ENGINEERED, BUILT AND REPAIRED

5 1/2" base tie plates 73/4 x13" 19.5 lbs each

relay	173,315.00	EA	\$	3.00	\$	519,945.00
scrap	107.00	NT	\$	50.00	\$	5,350.00

5 1/2" base tie plate 21lbs each

relay	690.00	EA	\$	3.00	\$	2,070.00
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5 1/4 base single shoulder tie plate 7 lbs each

	6.00	NT	\$	50.00	\$	300.00
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TOTAL PLATES VALUE: \$ 533,815.00

5 1/2" base anchor improved fair 1000,440

relay	100.00	NT	\$	80.00	\$	8,000.00
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6" base anchors 92/78 rail length 4,140

	4.00	NT	\$	80.00	\$	320.00
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TOTAL PLATES VALUE: \$ 8,320.00

115# turnouts includes frog, points ties sw stand

	23.00	EA	\$	3,000.00	\$	69,000.00
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TOTAL TURNOUT VALUE: \$ 69,000.00

Ties

relay	2,000.00	EA	\$	8.00	\$	16,000.00
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RL	813.00	EA	\$	4.00	\$	3,252.00
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#1	33,085.00	EA	\$	3.00	\$	99,255.00
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#2	41,528.00	EA	\$	2.00	\$	83,056.00
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scrap	16,688.00	EA	\$	(2.00)	\$	(33,336.00)
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TOTAL TIE VALUE: \$ 168,227.00

Spikes and bolts

scrap	207.00	NT	\$	50.00	\$	10,350.00
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TOTAL VALUE: \$ 10,350.00

Ballast

10.5" wide x 9" deep (26.8 miles)

	50,000.00	NT	\$	0.10	\$	5,000.00
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TOTAL BALLAST VALUE: \$ 5,000.00

Track Removal

	30.52	MI	\$	18,250.00	\$	556,990.00
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TOTAL REMOVAL COSTS: \$ (556,990.00)

GRAND TOTAL: \$ 2,251,022.00

EXHIBIT

M



PO Box 360 - 215 Cheeseman
Erie, CO 80516
local line: (303) 828-0734
Denver line: (303) 665-3056
fax: (303) 828-4706

MARCH 6, 2002

Rail Ventures, LLC
Mr. John Reed
1400 Main Street
Louisville, CO. 80027
Pho. 303-926-1601 fax 303-926-0029

Letter No. 2/win/reed
Re: Trinidad Railway Materials

Dear Mr. Reed:

Our company has been in business for 14 years. We are in the business of construction and maintenance of railroads. After reviewing the information received from you, and doing our own research on current market values, it is our opinion that a fair net liquidated value is between 2.2 million and 2.5 million dollars.

If you have any questions, feel free to contact me at this office.

Sincerely,
NORTHWESTERN RAILROAD SERVICES, INC.

A handwritten signature in dark ink, appearing to read "Gabino Lara", written in a cursive style.

Gabino Lara
President

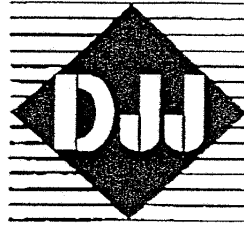


EXHIBIT N

March 14, 2002

Mr. John Reed
Eureka Financial
P.O. Box 128
Louisville, CO 80027

Dear Mr. Reed;

Pursuant to our conversations I have reviewed the materials you sent me concerning the Trinidad Railway, MP 2.00 to MP 30.00. We have developed the following net liquidated material value, which is true and accurate to the best of our knowledge, based upon third-party inspections as to quantities of materials involved in this line. Values are based upon current market pricing.

Total Rail Value:	\$1,600,000
Total Joint Bar Value:	\$ 92,000
Total Plate Value:	\$ 715,000
Total Anchor Value:	\$ 8,500
Total Turnout Value:	\$ 69,000
Total Tie Value:	\$ 165,000
Total Spikes & Bolts Value:	\$ 15,000
Total Ballast Value	\$ 5,000
Total Value	\$2,669,500

Total Removal Cost	\$ 305,000
Net Liquidated Material Value	\$2,364,500

Should you have any questions concerning this information, please do not hesitate to call me at (719) 282-9704.

Sincerely,

Kevin S. Smith
Director of Rail Services