



205857

Taro Kusunose
eMail: tkusunose@bpmlaw.com

July 15, 2002

VIA FEDERAL EXPRESS

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

ENTERED
Office of Proceedings
JUL 16 2002
Part of
Public Record



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~~

Dear Hon. 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 Petition for Clarification Submitted by Rail Ventures, Inc. (“Clarification Petition”) for filing;
- 2) A computer diskette with the Clarification Petition saved in the required Word Perfect format;
- 3) A certificate of service;
- 4) An additional copy of the face-sheet of the Clarification Petition; and
- 5) A stamped, self-addressed envelope.

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

March 16, 2002
Page 2

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 black ink, appearing to read "Taro Kusunose", with a long horizontal flourish extending to the right.

Taro Kusunose
Stephen L. Day

TK:ltg

Enclosures

cc: Hon. Linda J. Morgan (via overnight mail)
Hon. Wayne O. Burkes (via overnight mail)
Hon. David M. Konschnik (via overnight mail)
Ms. Ellen Hanson, Esq. (via overnight mail)
Mr. John Reed (via facsimile)
Mr. Fritz Kahn, Esq. (via facsimile and post)
Mr. John Heffner, Esq. (via facsimile and post)

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*

I certify that I have this day served copies of the attached PETITION FOR CLARIFICATION SUBMITTED BY RAIL VENTURES, INC. upon all parties of records in this proceeding, by first class mail, postage-prepaid, except for to Mr. Fritz Kahn, to whom a copy of the attached was served by overnight mail, postage-prepaid.

DATED this 15th day of July, 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



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

PETITION FOR CLARIFICATION SUBMITTED BY
RAIL VENTURES, INC.

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: July 15, 2002

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

**PETITION FOR CLARIFICATION SUBMITTED BY
RAIL VENTURES, INC.**

Summary

We hereby request clarification from the Surface Transportation Board (the "Board") regarding the scope of its order served April 17, 2002 in the above-referenced proceeding. A controversy has arisen regarding the assets included within the line sale. The dispute is over two essential buildings which our purchaser believed were included within the Board-ordered sale. Not surprisingly, our client is hesitant to complete the transaction ("OFA Sale") without clarification regarding whether these buildings along the subject rail line will be transferred.

In addition, because it is expected that such clarification will not be issued prior to the expiration of the Board-issued ninety-day deadline for completion of the OFA Sale, we also

hereby respectfully request that the Board temporarily stay the deadline pending resolution of this matter.

Background

The history of this proceeding is set out fully in the Board's decisions served January 15, 2002 and April 17, 2002. In the simplest of terms, we represent Rail Ventures, Inc., the buyer/offeror ("Buyer") in an Offer of Financial Assistance ("OFA") sale of a rail line. The seller/carrier ("Seller") is Kern Valley Railroad Company. The subject of the sale is a 28-mile segment of rail line in Las Animas County, Colorado (the "Line"). The OFA Sale was ordered by the Board in its decision served April 17, 2002.

As the final steps taken by the parties prior to the Board's issuance of its April 17 decision ordering the OFA Sale, both sides submitted their appraisals of the Line. As noted in its April 17 decision, the Board rejected the Buyer's appraisal, and accepted the Seller's net liquidation value ("NLV") appraisal as the proper OFA Sale price.

Issue/Discussion

Buyer and Seller are now at an impasse concerning whether two (2) buildings should be transferred pursuant to the OFA Sale. We contend that the buildings must be transferred, and we have contacted Seller's counsel regarding this issue (Exhibit "A"). Seller's counsel responded that his client would transfer neither building pursuant to the OFA Sale. Specifically, counsel responded that although Seller was willing to sell one of the buildings, it would do so only outside of the OFA Sale (Exhibit "B"). Additionally, counsel stated that Seller was altogether unwilling to let go of the second building (Id.).

Because Seller's NLV appraisal (which the Board adopted as the correct valuation of the Line) clearly included buildings, the buildings must be transferred in the OFA Sale. Seller submitted the Verified Statement of Kenneth E. Cotten, P.E. ("Cotten Appraisal") (Exhibit "C") as its NLV appraisal. A review of the Cotten Appraisal reveals Mr. Cotten's inclusion of the buildings in his appraisal.

From the outset, Mr. Cotten wrote:

(Estimation of Net Liquidation Value (NLV)) The NLV of track assets (excluding land and rolling stock) in the rail line between Milepost 2.0 (west of Jansen Yard (near Trinidad, Colorado)) and Milepost 30.0 (Picketwire (Stonewall), Colorado), is estimated to be \$3,830,696 as of February 27, 2002.

Cotten Appraisal at 3 (Exhibit "C") (Emphasis supplied).

The appraisal covers everything except for "land and rolling stock." Were Mr. Cotten's intent to exclude buildings as well, he would have stated so here. More telling, however, Mr. Cotten specifically discussed the inclusion of buildings:

(Fixed Asset Ownership) This valuation encompasses all of the Kern Valley Railroad between Milepost 2.00 (west of Jansen Yard (Trinidad, Colorado)) and Milepost 30.00 (Picketwire (Stonewall), Colorado). This includes the main track, double ended siding at Segundo, MP 14.9, coal tipple tracks at MP 28.25, and a shop facility at MP 29.25.

Id. at 5 (Emphasis supplied).

The fact that the shop facility at MP 29.25 was specifically referenced and included indicates that buildings were included in the Cotten Appraisal.

The Board adopted the Cotten Appraisal's final NLV figure as its own. This NLV figure was calculated by Mr. Cotten in the appraisal's spreadsheet, attached thereto as Appendix One. In this spreadsheet, no reference was made to any buildings, including the above-referenced "shop facility at MP 29.25." Mr. Cotten, however, explained the rationale for this omission in his discussion concerning liquidation expenses:

(Restoration Expense) As a condition of service termination and non-rail use of the real property, governments frequently require correction of existing conditions that might cause the public sector to incur future expense. Such regulations affect NLV determination in three principal asset categories: (1) bridges and culverts, (2) highway crossings, and (3) structures. . . .

. . . . I assumed that the cost to remove superstructures would approximate salvage proceeds, resulting in no impact on NLV.

Id. at 11-12 (Emphasis supplied).

Buildings and bridges, among other items, though included in the appraisal, were thus omitted from the final calculation sheet only because Mr. Cotten calculated that removal costs would offset any salvage value.

Accordingly, as Mr. Cotten noted, the final price set was for everything except for “land and rolling stock.” The appraisal specifically covers buildings, although they do not affect NLV one way or another. Possible removal costs for the buildings will be incurred by Buyer at such time that a government demands that Buyer remove them. By then, removal costs may in fact greatly outweigh any remaining salvage value. That however, will be the Buyer’s risk. Until that day comes, though, Buyer must be allowed to use all of the assets it paid for.

Seller should not be heard to argue that neither structure was ever intended to be part of the Line. The proximity of both structures to the track itself places them well within the rail right-of-way. Attached hereto collectively as Exhibit “D” are: 1) the Declaration of Karl Rethswisch, demonstrating his familiarity with the two subject buildings (a rail depot at approximately MP 14.4 (“Segundo Depot”), and an engine house at approximately MP 29-30 (“Engine House”)) and his findings concerning their dimensions and distances from the rail line; 2) Mr. Rethswisch’s map illustrating the dimensions and distances concerning the Segundo Depot; and 3) color-copies of recently taken digital still photographs of the Engine House.

As attested to in his Declaration, all of the measurements as well as the map, are based upon Mr. Rethswisch's recent personal inspections of the buildings and their surrounding land. During his recent inspections, Mr. Rethswisch found that the farthest point of the Segundo Depot building from the outside edge of the track is approximately only 36 feet. Similarly, Mr. Rethswisch found that the Engine House is located approximately only 25 feet from the center of the main track, and its width is approximately only an additional 75 feet. As such, both buildings lie within the established rail right-of-way. Therefore, both must be transferred to the Buyer.

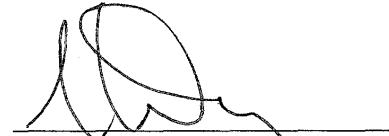
Conclusion

The buildings along the rail line must be transferred to Buyer in the OFA Sale of the Line. Nevertheless, as it stands today, Seller has no intent to relinquish either building. Because of this impasse between Buyer and Seller, we request that the Board provide further clarification on this issue for both parties, as soon as possible.

The Board established a ninety (90) day period starting April 17, 2002 for which the parties to complete the OFA Sale. The deadline is therefore July 16, 2002. Given the fact that Buyer is hesitant to close the transaction without clarification from the Board concerning the

buildings, and the fact that today is July 15, 2002, we respectfully also request that the Board extend the closing deadline to a reasonable date after the Board's clarification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephen L. Day', is written over a horizontal line.

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



EXHIBIT A

Taro Kusunose
tkusunose@bpmlaw.com

June 14, 2002

VIA FACSIMILE AND POST

Mr. Fritz R. Kahn, Esq.
Law Offices of Fritz R. Kahn, P.C.
1920 N Street NW, Eighth Floor
Washington, D.C. 20036-1601

Re: **STB AB-573X**

Dear Fritz:

Apologies for our tardiness in getting back to you concerning the proposed documents. We write to you today concerning an issue which although separate, is related to the documents.

Does KVR intend to transfer both the depot at approximately MP 15 (the "Depot"), and the engine house at approximately MP 29-30 (the "Engine House") to RVI in the upcoming transaction? It is RVI's belief and desire that both the Depot and the Engine House would be transferred.

The proposed quitclaim deed (covering between MP 2.0 and 15.11) refers to "all improvements," which would obviously include the Depot. But in its current form, the proposed bill of sale (covering MP 15.11 and 30) refers only to "rails, ties, tie plates, joint bars, switches and other track materials." Does KVR intend to transfer any of the non track-material improvements along MP 15.11-30, including the Engine House? Please confirm concerning the Depot as well. Thank you Fritz.

Very truly yours,

Taro Kusunose
Stephen L. Day

TK:ltg

cc: J. Reed

EXHIBIT

B

Taro Kusunose

From: Fritz Kahn [xiccgc@worldnet.att.net]
Sent: Monday, June 17, 2002 9:32 AM
To: Taro Kusunose
Cc: Michael VanWagenen; Fritz R. Kahn
Subject: STB AB-573X

Taro:

In response to your letter of June 14, 2002, for which I thank you, I regret that KVR is not in a position to convey the Engine House at or near MP 30.00, since it is part of the realty which was retained by TRI and, hence, was not sold to KVR.

With respect to the Depot at Segundo, on the other hand, KVR is perfectly amenable to selling the building to RVI. Since neither RVI nor KVR included the Depot among the properties which were appraised for purposes of arriving at the price to be paid for the railroad line under the OFA process, however, the parties necessarily will need to come to an agreement on the price to be paid by RVI for its purchase of the Depot from KVR. The sale of the Depot, of course, need not hold up the conveyance of the railroad line, now scheduled to occur this Thursday, June 20, 2002.

If you have any question concerning the foregoing or if I otherwise can be of assistance, please let me know.

Fritz

7/15/2002

EXHIBIT

C

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-573X

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

STB Finance Docket No. 33956

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

Verified Statement
Of
Kenneth Cotten, P.E.

My name is Kenneth Cotten. R.L. Banks & Associates, Inc., (RLBA) engaged me to provide an assessment of the physical condition and a net liquidation value of the Kern Valley Railroad property.

I am a consultant with fifty years of engineering experience in nearly all railroad industry components including transportation, track and structures design, construction, maintenance, inspection and evaluation. I received my Bachelor of Science degree in Civil Engineering from the University of Kentucky in 1957. I have had subsequent professional training in bridge inspection at the University of Wisconsin-Madison (1993, 1994, 1995, 1997 and 1998); railroad bridge

loading by the American Railway Engineering and Maintenance-of-Way Association in Kansas City, Missouri, in 1997; ultrasonic levels I and II and magnetic particle/liquid penetrant by Sperry Schools for Non-Destructive Testing in 1987; railway and highway bridges, and inspection rating and upgrading at George Washington University, in 1984; and modern industrial electronic weighing and data handling systems at the Center for Advanced Education in New Jersey in 1981. I am a Registered Professional Engineer in Florida (#41488) and Kentucky (#3768), and I am a member of the American Railway Engineering and Maintenance-of-Way Association, and of that organization's Timber Structures, and Light Density and Short Line Railways, committees.

I was employed by CSX Transportation, Inc., and its predecessor companies, Chessie System, C&O and B&O Railroads, from 1948 to 1950 and from 1953 to 1990, rising through positions of axeman/rodman, bridge designer, assistant engineer, assistant division engineer, work program engineer, chief track inspector, chief bridge inspector, and engineer bridge inspection. Following retirement from CSX, I established Engineering Services, Inc., to provide engineering expertise to Class I, regional and short line railroads. In summary, I was educated for, and my professional life has been devoted to, design, inspection, construction and maintenance of railroad bridges and track.

Estimation of Net Liquidation Value (NLV)

The NLV of track assets (excluding land and rolling stock) in the rail line between Milepost 2.0 (west of Jansen Yard (near Trinidad, Colorado)) and Milepost 30.00 (Picketwire (Stonewall), Colorado), is estimated to be \$3,830,696 as of February 27, 2002. The estimated NLV, which is summarized on Table 1 below, is arrived at in two principal steps: first, computation of gross liquidation value (GLV), the market value of salvageable assets (primary components with a value greater than related salvage expenses); and second, NLV, that value remaining after deductions of liquidation expense due to removal, administration/marketing, and restoration as necessary to render assets saleable, conduct of the sales process (self-brokered) by a purchaser and preparation of the corridor for non-rail use.

Table 1 NLV of Track Assets between Mileposts 2.00 and 29.85 (West of Jansen Yard to Picketwire, Colorado) (dollars in thousands)		
Gross Liquidation Value –In Situ Materials		4,694
Less Liquidation Expense:		
Track Removal	313	
Transportation	59	
Highway Crossing Restoration	23	
Administration and Marketing	469	
Total Liquidation Expense		863
Net Liquidation Values		3,827
Source: Appendix One.		

The primary NLV is that associated with the rail; however, ties may possess noteworthy value. Market prices utilized in the calculation of NLV were

appropriate to the condition of the ties and steel materials in place and were obtained from suppliers. The estimated NLV arrayed in Table 1 has not been adjusted for the time period that would be consumed in proceedings to obtain abandonment authority.

Methodology to Compute NLV

NLV is determined through application of a multiple step process, the building blocks of which are:

- (1) Gross Liquidation Value
 - (a) Fixed Asset Ownership
 - (b) Fixed Asset Inventory
 - (c) Inventory Adjustment for Wear and Recovery Reductions
 - (d) Application of Market Value Unit Prices
- (2) Liquidation Expense
 - (a) Removal Expense (including transportation)
 - (b) Restoration Expense (grade crossings only)
 - (c) Administration and Marketing Expense
- (3) Net Liquidation Value [(1) minus (2)]

Appendix One to this report provides detailed computational data, including inventory and unit costs by type of asset valued.

Gross Liquidation Value (GLV)

GLV in the context of this analysis was defined as current retail market value (with the exception of ties, as explained below) of all fixed assets as if they were available for immediate sale. Bridges, highway crossing devices and culverts, as will be explained later, often have no positive NLV value because of high removal costs.

Fixed Asset Ownership

This valuation encompasses all of the Kern Valley Railroad between Milepost 2.00 (west of Jansen Yard (Trinidad, Colorado)) and Milepost 30.00 (Picketwire (Stonewall), Colorado). This includes the main track, double ended siding at Segundo, MP 14.9, coal tipple tracks at MP 28.25, and a shop facility at MP 29.25.

Fixed Asset Inventory

To assess the physical condition and determine future maintenance requirements for track and bridges, I inspected this property by high rail and on foot on February 14-15, 2002. I was accompanied by Mr. Court Hammond, President of Colorado Central Railway Company (CCR), contract operator of the rail line, on February 14, and by Mr. Sam Lopez, Roadmaster of CCR, on February 15. Data related to track and structure conditions was observed during these two high rail trips. There are 19 structures (bridges) on this property, and as a part of a cursory inspection of those structures, the opportunity to walk and

inspect sections of the track at each location was presented. Rail, ties, ballast and drainage conditions were observed and noted. Mr. Lopez explained the proposed future track maintenance program and past practices prior to the discontinuance of operation in March 1996. Mr. Lopez has been an employee of this railroad for several years prior to the termination of service, and is very knowledgeable of past maintenance practices. His input is an important part of this NLV estimate.

Steel. The most significant marketable materials reflected in this appraisal were steel track components, assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition. Generally, rail in the Kern Valley Railroad main track can be reused ("fit") in other railroad applications, since it consists of 115 RE and short sections of 119 RE and 132 RE. (The rail designation "115 RE" indicates that this particular rail weighs 115 pounds per yard, and is of American Railway Engineering Association design.) All Kern Valley Railroad rail is either Class 1 or 2 relay, or scrap. Rail not suitable for reuse because of excessive side head wear, excessive metal flow, holes mid-rail, short length or attached asphalt or concrete is suitable only as scrap.

All main track rail is of 132, 119, and 115 pound per yard weight of American Railway Engineering Association sections. The 0.2 track miles of 132 pound per yard is continuous welded rail laid on both sides of the track. All 132 pound rail is assumed to be Class 1 or 2 relay rail. The 1.2 miles (one side of track only) of

119 pound per yard rail is laid on the "high rail" of several curves, and is all Class 1 or 2 relay rail. The 115 pound rail is laid on all of the remaining property (27.21 miles of track). 90% of this rail is Class 1 and 2 relay and the remaining 10% is scrap. There is a small amount of 85 pound per yard rail at the shop area. This rail, 0.05 miles, including one turnout, is all considered as scrap.

Rail Classification. Class 1 and 2 rail is generally used as relay for main line and heavy branch lines. Class 1 requirements are only slightly more stringent than Class 2. Both can have minor or very small engine burns and corrugations. Wear dimensions for 115 and 119 pound per yard Class 1 provides for 1/8 inch maximum top wear, and 1/4 inch maximum gage side wear. Class 2 provides for 1/4 inch maximum top wear, 3/8 inch gage side wear and 1/4 inch maximum flow on one side.

Class 3 rail is generally used for light branch lines. This rail can have medium engine burns and corrugations. Wear dimensions for 115 or 119 pound Class 3 provides for 3/8 inch maximum top wear, 5/8 inch maximum gage side wear and 1/4 maximum flow on one side.

Class 4 rail is generally used for yard and industrial siding rail. Occasionally, it is also used to reroll to another section. This rail can have heavy engine burns and corrugations that do not mash or fracture the rail. Wear dimensions for 115 or

119 pound rail provide for 1/2 inch maximum top wear, 7/8 inch maximum gage side wear and 5/8 inch maximum flow on one side.

Scrap Rail is any rail with wear dimensions greater than those described above and in many cases any rail less than 100 pounds per yard. Rail sections less than 100 pounds per yard are subject to failure with the heavier (286,000 pound) cars now being moved over the railroads. All scrap rail must be cut into 3 foot lengths for sale to a dealer.

All 11 main and yard track turnouts are 115 pound per yard. All 11 are in good condition with little switch point wear. All frogs are railbound manganese insert heavy duty and are in good condition. All material can be reused, except that the 85 pound turnout at the shop is scrap and is not to be reused.

Most of the tie plates corresponding to 115, 119 and 132 pound rail are reusable. Only 10% of the tie plates corresponding to 115 pound rail are considered scrap (mostly due to location—crossings and the coal tipple area). All other track material (OTM) such as nuts, bolts, washers and spikes are considered as scrap.

Ties. Because tie installation costs often exceed tie material costs, only the very best ties (Number 3 and 4) are suitable for reuse. The cost to sort, handle, transport and inventory ties is high, and in comparison with the wholesale prices they command, the yield is generally only a low net salvage value. According to

the Roadmaster, Mr. Lopez, the proposed tie replacement for the entire railroad including yards and sidings is 3,000 to 4,000 ties per year. This amounts to about 100 ties per mile of track. It is estimated that 75% of the ties are Number 3 and 4 and are reusable, 15% are reusable as yard or side track ties and the remaining Number 1 ties are scrap or landscape ties.

Ballast. No value net of the cost of sale was assumed for the ballast.

Other Track Assets. No net salvage value was assigned to signals and communications facilities, highway crossing signals, highway crossing panels, or culverts on the line. Highway crossing signals generally have little or no alternative use value. Use by even a short-line railroad to replace a damaged signal is unlikely; typically, no inventory is kept on-hand and new replacements are ordered from standard suppliers for immediate installation. Marketing costs to inform railroads for second-hand availability and handling costs would exceed amounts which could be recovered through sale. Signal materials scrap value would not exceed salvage costs. Likewise, there is no ready market in which to sell used highway crossing panels.

Application of Market Value Unit Prices

These GLV and NLV estimates are based on the application of actual unit market prices as supplied by specifically identified market participants, shown in Table 2 on the following page. It was assumed that a purchaser would use its own

personnel to remove, organize and sell released materials as opposed to a single bulk transaction to a rail or scrap broker at wholesale price. However, used crossties are assumed to be sold in bulk to a broker at a net wholesale price reflecting removal by the broker. Comments on a few key prices follow.

Table 2 Unit Market Prices February 27, 2002		
Track Asset	Unit Price	
	Per Component	Per Net Ton
Rail, 115 pounds per yard, Class 1 and 2		\$475
Rail, 119 pounds per yard, Class 1 and 2		400
Rail, 132 pounds per yard, Class 1 and 2		475
Rail, scrap		156
Fit Tie Plates Double Shoulder 7 ¼ x 13, 115#	4.00	
Fit Tie Plates Double Shoulder 7 ¼ x 14, 119#	4.00	
Fit Tie Plates Double Shoulder 7 ¼ x 14, 132#	4.25	
Fit Tie Plates Double Shoulder 7 ½ x 8 ¾, 85#, scrap		85
Fit Joint Bars 119/115 pounds per yard	30.00	
Scrap Joint Bars		85
Rail Anchors	0.40	
Other Track Material (nuts, bolts, washers, spikes)		100
Turnouts, fit	5,500	
Turnouts, scrap	200	
Ties, Relay, Number 3 and 4	12.00	
Ties, Relay, Number 2 (Yard)	8.00	
Ties, Landscape	1.00	

Sources: Progress Rail, L.B. Foster.

The bulk of the relay material is 115 pound per yard rail, which has a higher market value than the other popular sections of 132 and 136 pounds per yard. I have discussed the value of this rail with several rail dealers. The 115 pound per

yard section is marketable, and is in the most demand as relay rail available for short line and regional railroads, and for new side track construction on large railroads.

I also found that relay ties Number 3 and 4 currently retail for \$12.00. Number 2 yard ties retail at \$8.00, and landscape ties, \$1.00.

Liquidation Expense

Three fundamental assumptions are employed in development of expenses to be netted against gross liquidation values: (1) costs associated with removal, sorting and transporting railroad materials, reflecting a deliberate and efficient liquidation; (2) restoration expenses, assumed to be required for highway crossings; and (3) administration of liquidation and marketing activities, including coordination with local governments.

Removal Expense

The cost of taking up track, including disassembly, sorting, stacking, and loading of materials for shipment and disposing of ties, was estimated at \$10,000 per mile where rail can be reused.

Restoration Expense

As a condition of service termination and non-rail reuse of the real property, governments frequently require correction of existing conditions that might cause

the public sector to incur future expense. Such regulations affect NLV determination in three principal asset categories: (1) bridges and culverts, (2) highway crossings, and (3) structures. Since ballast is of no value it is assumed the tie contractor will smooth the ballast to fill the openings left by the tie removal. No cost has been added for this procedure.

Some states might require bridge superstructure removal along the subject right-of-way as a condition of termination of service and reuse of the real property. I assumed that the cost to remove superstructures would approximate salvage proceeds, resulting in no impact on NLV. While removal expense could exceed salvage proceeds, it is not unusual for bridges and culverts to be left in place in the event a line is converted to a trail. Supporting bridges and sub-structures are assumed to be allowed to remain in place, thereby generating neither proceeds nor expenses. There are several steel girder bridges that may have sale value to other railroads. No value has been assumed for this material in this NLV. The concrete bridges on this line are virtually indestructible. Their removal would be costly and there is no return on the material.

All tracks in roadway and crossing protection devices generally must be removed, and pavement restored as a condition of service termination. The removal of track materials from pavement and restoration of pavement is estimated at \$2,500 per public crossing. The nine paved crossings are located at

various locations along the line. Removal of the crossing protection devices is estimated to equate to salvage value.

Marketing and Administrative Expense

In addition to marketing and transportation administration, a liquidation staff would need to coordinate with various government agencies to arrange for highway grade crossing restoration and any other requirements which may present themselves. In addition, contracts might have to be awarded and administered for track take-up. The cost to administer liquidation and market steel assets so as to achieve retail prices is included in this NLV.

Net Liquidation Value

NLV is the remainder after liquidation expenses are deducted from GLV. This is a reasonable expectation of what a seller could receive if the line had been liquidated in February 2002. No deductions were made from market value for any materials that in quantity could exceed market demand and depress prices below those used in this report; however, as the released quantities were not consequential, it is not anticipated that the market value would be affected.

Qualifications to the Valuation

This valuation reflects my best professional judgement given the level of effort and specific appraisal methodology. I warrant that my conclusions are based upon objective assessments of the facts provided by Kern Valley Railroad

Company, CCR (the contract operator) or independently obtained by RLBA, or by me in the course of my inspection and analyses. However, any reliance by users upon the results of this analysis should be conditioned upon the recognition of limitations inherent in the valuation effort authorized.

RLBA's valuation pertains to approximate values as of February 27, 2002. Changes in the condition of the property and its environs and specific incidents and occurrences after that date may affect value in unanticipated ways.

Differences Between My Valuation and That of A&K

There are differences in the amount of rail, OTM, ties, etc., between the report prepared by A&K Railroad Materials, dated November 14, 2000, and that compiled as a result of my inspection, conducted on February 14-15, 2002. When A&K conducted its survey in November, 2000, the track structure was overgrown with vegetation. No vegetation removal was accomplished between March 1996 and just prior to the resumption of service by the railroad in October 2001. I had the advantage of a clean track structure to observe and evaluate.

On February 14-15, 2002, the entire railroad was inspected from a high rail vehicle, supplemented by numerous instances of walking. I saw the property from Milepost 2.00 west of Jansen Yard to Milepost 30.00 at the shop area at Picketwire Mine. At that time, the property was clean and free of vegetation. Colorado Central employees familiar with the railroad aided in locating rail

changes (132, 119, 115, and 85 pound rail) and tie counts. Actual locations were made to the nearest one-tenth of a mile using milepost locations and high rail vehicle odometer readings.

Since all calculations are based upon the actual track mileage, these measurements are as accurate as practical. The Kern Valley Railroad Track Profile sheets were important in that the siding at Segundo, tipple tracks at the Picketwire mine and the shop tracks are presented. In addition, I made sketches of these locations to ascertain the track lengths. All tracks removed prior to March 1996 are no longer on the profile.

The following are the major differences between the A&K and my valuations.

Track Length

There appear to be differences between my track length measurements and those of A&K. In its appraisal, A&K states that the main line between mile post 2.0 and mile post 30.00 is 28 miles in length, and that there are 2.52 miles of sidings. My measurements show 28.00 track miles of main line and 3.25 track miles of sidings, tipple tracks and shop tracks.

Rail Weight Changes

Similarly, my findings regarding lengths of the various weights of rail appear to differ from those of A&K.

Adjustments have been made in the length of 115 pound rail to reflect the 119 pound rail laid on one side only, and for the 132 pound laid on both sides. The lengths of frogs and switch points were not deducted from the totals. I walked and visually observed the 1.2 miles (one side of the track only) of 119 pound rail to determine the beginning and end of each string. The locations were related to the nearest mile post and the lengths to the nearest one-tenth of a mile on the odometer of the hi-rail vehicle.

There is a difference in the lengths of 85 pound rail; A&K uses 0.3 miles. My measurements of the M/W track and a short stub (30'), indicates only 0.05 miles. This includes an 85 pound turnout. All 85 pound materials are treated as scrap.

The amounts of all materials, rail, joint bars, ties plates, rail anchors and tie plates, are derived from the track mileage (lineal feet of rail, etc.) and I made every effort to determine these distances as closely as practical. My number of joint bars is based upon the length of main and side track. With regard to anchors, most of the track I observed was anchored every other tie (2 anchors every other tie). This apparently was the Colorado & Wyoming standard to

prevent rail from "running" down hill as a result of braking the loaded trains. The track grade, except for a short level stretch near mile post 9, is all down grade from the mine to Jansen Yard.

Between mile post 2.0 and the end of the line, there are twelve (12) 11-115 pound reusable turnouts and one (1) 85 pound scrap turnout. The A&K appraisal shows 23 115 pound turnouts; this appears to be an error. Perhaps A&K included Jansen Yard turnouts, which are east of mile post 2.0 and therefore should not be included in the valuation.

With regard to crossties, or ties, there is a very high number of reusable ties on this right of way.

Grading Philosophy

With all due respect to A&K and its survey, I do not wholly agree with A&Ks' rail grading philosophy in this case. I feel there is more Class 1 and 2 rail available than is indicated in the A&K appraisal. I have also looked at the "values" placed upon railroad materials by others, that is, Mountain States Contracting (February 24, 2002) and DJJ (March 14, 2002). It is not clear whether either Mountain States, DJJ, or Northwestern Railroad Construction, Inc., which stated its opinion in a March 6, 2002, letter that the net liquidated value is between 2.2 million and 2.5 million dollars, ever looked at the property and performed an

independent assessment. The Mountain States Contracting inventory appears to be the same as that of A&K, except in amount of ballast, which in any case I believe has no net liquidated value.

Also, the amount of reroll rail is questionable. When the cost for removal, loading, transportation and the rerolling process is added, in some cases the economics of the rerolling process is questionable. I have not included any potential for reroll in my valuation.

The evaluation of scrap rail is a judgmental call. Rail in crossings, yard and coal tipple tracks, is especially subject to corrosion that can damage the rail base and stem, making it useless except as scrap. I feel that the survey made on February 14-15, 2002 is fair and as accurate as practical and that it represents very closely the materials available.

The condition valuation difference between my NLV and that of A&K is purely judgmental. I based my judgment on several years' experience in evaluating rail, ties, turnout materials, etc. During my time with C&O and B&O railroads, I literally wrote the Master Inventory Book used by the entire railroad. This included a complete description of the materials. While engaged in this, I often visited the railroad's frog and switch shop, welded rail facility, tie treating plants, track material facilities of other railroads, and track material suppliers, in order to

become familiar with track materials. I also helped create ballast grading sizes and specifications for the railroad's ballast suppliers.

Market Values

The rates offered for usable (relay) rail, railroad scrap and other materials changes from day to day depending on market demand. Premium class 1 and 2 115, 119 and 132 pound rail generally sells for between \$350 and \$475 per ton. Class 1 and 2 115 pound rail is in great demand and brings a good price. I cannot account for the relatively low "unit price" values (especially those for rail and ties) given in the Mountain States Contracting and DJJ estimates. They are not in accord with my findings.

I based the value of second hand crossties on the statements of suppliers and of the chief engineers of two railroads. Good used number 3 and 4 ties to be used in main track sell for between \$10 and \$14 per tie depending upon location. I used \$12 and feel this is a fair price. The current price for number 2 yard ties is between \$5 and \$8 per tie. I used \$8. The current price for number 1 scrap or landscape ties is \$1 to \$2 per tie. I used \$1. I feel these are fair market prices.

Used ballast has little value if any. New ballast, AREMA number 4 and 4.5, granite, screened, washed and loaded in the car sells for \$6 per ton. This does not include freight since that varies depending upon destination. The cost for

picking up ballast, loading it on a truck, transporting it to a railroad loading site and shipping generally results in rates higher than new ballast. In addition, reclaimed ballast is usually contaminated with dirt, mud, vegetation and other debris. Only the first 8 miles of this railroad has ballast that could be reused. This ballast is granite and is a part of the Trinidad Dam relocation, and was placed in 1972. Over that period of time, it has become contaminated. All other ballast on this rail line is a mixture of blast furnace slag, some granite, and mine tailings (a mixture of sand-like material mixed with various pebble-sized stones). Most railroad removal parties usually give ballast to local, county and state agencies for use on unpaved roads, with those agencies responsible for the removal. My opinion is that there is no value in the Kern Valley Railroad ballast.

Liquidation Expenses

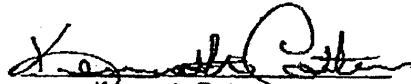
I determined a \$10,000 per mile track removal expense after questioning the chief engineers of two regional railroads and two track material dealers. The numbers given to me ranged from \$9,500 to \$11,000 per mile. I chose \$10,000 as a reasonable estimate.

VERIFICATION

I, Kenneth Cotten, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief.

I further declare that I am qualified and authorized to submit this verification on behalf of myself and Robert L. Banks and Associates, Inc. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Washington, DC, this ~~26~~ day of March 2002.


Kenneth Cotten

Appendix One
Detailed Computational Data

Main Track Rail - 115 pound RE CFI 1950 - 1989			
27.21 miles Class 1 and 2 relay at 90 percent	4,927.43	Net tons	\$ 475 \$ 2,340,529
27.21 miles scrap at 10 percent	547.49	Net tons	156 85,408
Main Track Rail - 119 pound RE CFI 1979			
1.2 miles Class 1 and 2 relay (one side of track only)	125.66	Net tons	400 50,264
Main Track Rail - 132 pound RE CFI 1982 CWR			
0.2 miles Class 1 and 2 relay	46.46	Net tons	475 22,069
Yard Track Rail			
3.20 miles - 115 pound CFI 1950-1954, Class 1 and 2 relay, 75% usable	485.76	Net tons	475 230,736
3.20 miles - 115 pound CFI 1950-1954, Class 1 and 2 relay, 25% scrap	161.92	Net tons	156 25,260
0.05 miles - 85 pound, scrap	7.48	Net tons	156 1,167
Stock Rail			
0.08 miles (11 pair)- 115#	16.19	Net tons	85 1,376
1 pair 85#, scrap	0.55	Net tons	156 86
Total Value of Rail			\$ 2,756,894
Joint Bars - Main Track 115 RE 24 inch toeless 70 pound drilled 6-7-8			
7,522 pair at 90 percent relay	6,769	Pair	30 203,070
7,522 pair at 10 percent scrap	26	Net tons	85 2,236

Appendix One Detailed Computational Data			
Other Track Material (spikes, bolts, nuts, washers)	250 Net tons	\$100.00	\$25,000
Ties			
2,900 ties mile x 31.25 miles x 75% #3 & #4	67,969 Each	\$ 12.00	\$ 815,628
2,900 ties mile x 31.25 miles x 15% #2 YARD	13,594 Each	8.00	108,752
2,900 ties mile x 31.25 miles x 10% scrap or landscape	9,063 Each	1.00	9,063
Total Ties			933,443
Ballast - No value			
<u>Gross Value In Place</u>			\$ 4,694,107
Liquidation Expense			
Track Removal of 31.25 miles at \$10,000 mile	31.25 Miles	\$ 10,000	312,500
Transportation to Jansen Yard			59,000
Highway crossing restoration	9 Crossings	\$ 2,500	22,500
Administration & Marketing @ 10 percent of gross value			469,411
<u>Total liquidation expense</u>			\$ 863,411
<u>Net liquidation value</u>			\$ 3,830,696

Sources: February 14-15, 2002, inspection of property; Progress Rail and L.B. Foster.

EXHIBIT D

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 KARL L. RETHSWISCH
IN SUPPORT OF
PETITION FOR CLARIFICATION
SUBMITTED BY
RAIL VENTURES, INC.

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: July 15, 2002

159836071502 1610/66720001
DECLARATION OF KARL L. RETHSWISCH
IN SUPPORT OF PETITION FOR CLARIFICATION

I, Karl L. Rethswisch, am competent to testify to the matters set forth herein and make this declaration of my own personal knowledge and belief.

1. I have made on-site inspections of the line of railroad currently held by Kern Valley Railroad Company, and which is, upon information and belief, the subject of the above-entitled proceeding.

2. Specifically, I made an on-site inspection of the "Valdez" or "Segundo" depot and surrounding land (collectively, the "Segundo Depot"), approximately three and a half weeks ago.

3. I drew the attached hand-drawn map of the Segundo Depot (which is not to scale, and which lists approximate dimensions and set-back distances) based upon my inspection approximately three and a half weeks ago.

4. The fences shown in the attached map of the Segundo Depot are, based upon my observation, approximately 150 feet apart. I have assumed that these fences were placed at the outer limits of the railroad right-of-way.

5. On July 14, 2002, I conducted an on-site inspection of the engine house at approximately MP 29-30 (the "Engine House") and the surrounding land.

6. All measurements of the Engine House and the surrounding land were made using a measuring tape.

7. The Engine House itself is basically rectangular in shape; its longer sides paralleling the track. Its approximate dimensions are 120 feet long by 72 feet wide. There is one 14 foot by 16 foot room extending out from the northwest corner of the Engine House.

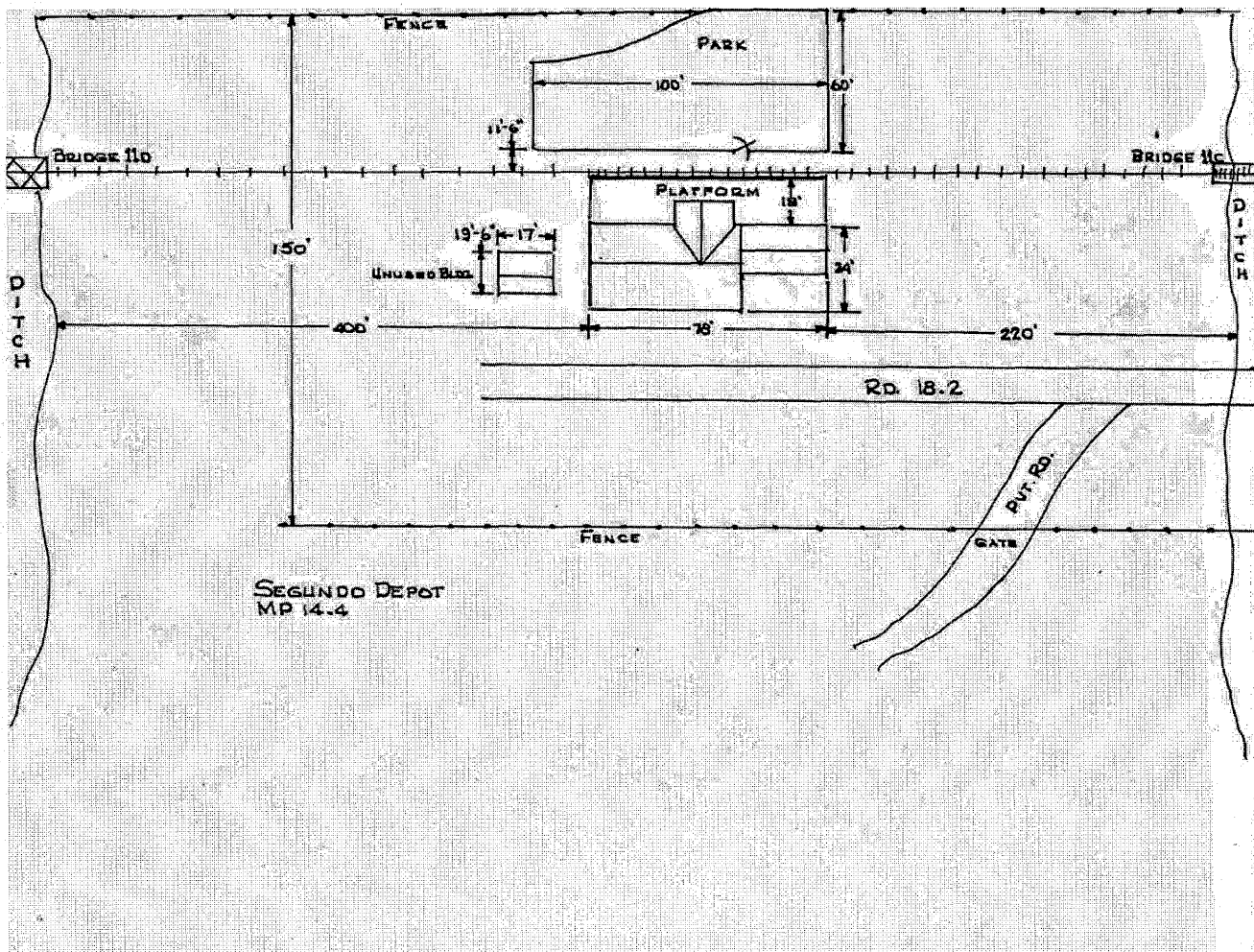
8. The Engine House wall closest to the track is located approximately 25 feet from the center of the track.

9. Rail access to the Engine House is provided by a switch connected to the main line track east of the Engine House, with an additional track running from that switch-point toward the Engine House. That single additional track then splits into four additional tracks, which then each run into one of the four Engine House doors.

10. Color copies of digital photographs of the Engine House and surrounding land (with some dimensions marked on the photographs) are attached hereto to give perspective to my observations.

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

 07-15-02
Karl L. Rethswisch



**MAP WILL BE SCANNED
AT A LATER DATE**

**MAP WILL BE SCANNED
AT A LATER DATE**

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