

February 17, 2004

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Mr. Vernon A Williams
Secretary
The Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: **STB Docket No. AB-444 (Sub-No. 1X)**
**Lamoille Valley Railroad Company and Vermont Agency of
Transportation - Abandonment and Discontinuance of Trackage
Rights Exemption - In Caledonia, Washington, Orleans, Lamoille and
Franklin Counties, VT.**

Dear Secretary Williams:

With this document, I am submitting for filing in the above referenced proceeding (an original and ten copies) a Motion To Strike in regard to the Lamoille Valley Railroad Company's "**Reply In Opposition To Timothy D. Phelps' Petition For Stay Of Abandonment Exemption,**" dated February 12, 2004.

Introduction

I am submitting to the Board this Motion To Strike in order to correct of a large number of incorrect statements and facts presented in arguments opposing my earlier petition for stay, which was filed in the above mentioned proceeding on February 5, 2004. I respectfully request that the incorrect facts, statements and implications, as noted herein, be stricken.

Background

The Lamoille Valley Railroad Company (LVRC), acting in cooperation with the State of Vermont Agency of Transportation (VTrans) has filed a Notice of Exemption under 49 CFR 1152 Subpart F (Exempt Abandonments and Discontinuance of Service and Trackage Rights), STB Docket No. AB-444 (Sub-No. 1X), for the 95.26 mile railroad line between St. Johnsbury, Vermont, and Swanton, Vermont, as well as various other short connecting tracks as noted in the Docket, totaling 96.78 miles overall, and collectively identified as the line.

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As noted above, on February 5, 2004, I had filed a petition for stay (hereafter Petition for Stay) with the Board. On February 12, 2004, the LVRC filed it's "Reply In Opposition To Timothy D. Phelps' Petition For Stay Of Abandonment Exemption." The above referenced LVRC reply contains some incorrect information which left uncorrected can affect the Board's understanding of the events that have contributed to the present lack of rail traffic on the Subject Line. The facts I have challenged can be verified by various documents in the public record, which I have included as attachments where necessary, as proof of my charges, and which are also further discussed below.

Motion to Strike

The following concerns facts, statements and implications which I believe, due to inaccuracies, should be stricken from the Lamoille Valley Railroad Company's "**Reply In Opposition To Timothy D. Phelps' Petition For Stay Of Abandonment Exemption**," dated February 12, 2004. My specific exceptions (that I believe should be stricken) follow, listed by item number from the appropriate section of LVRC's Reply to the Petition for Stay. Specific motions to strike are presented in bold text below; italics have been used to highlight supporting conclusions.

LVRC's Introduction, Item I

LVRC states that the arguments in my Petition for Stay "are based upon an apparent misunderstanding of the historical background of the instant abandonment and discontinuance proceeding." **I believe this statement is being used as an attempt to unjustly discredit my objections to this abandonment exemption, and I respectfully request this be stricken.** My objections are based on my understanding of the unique situation existing this rail line, specifically relating to the fact that VTrans as the owner has specifically decided not to operate this railroad, in spite of the knowledge (had for at least three years now) that there are shippers desiring rail service on the line. Additionally, I am aware that there has been absolutely no real intent to operate this rail line for approximately eight (8) years (in spite LVRC's claims otherwise, which are not true), such that there is no way any traffic could have flowed, in spite of the shipper's formal submittals through the State of Vermont indicating a desire to receive rail service. There has been absolutely no intent to actually operate this rail line for these eight (8) years, regardless of what LVRC says to the contrary. Other operators do want to operate the line, but LVRC does not. It is difficult to imagine VTrans itself allowing a similar type of denial of service situation to evolve on a private sector rail operation in Vermont without protesting, if this same kind of information had been brought to it's attention.

LVRC maintains that I have a misunderstanding of the instant abandonment. I understand that the underlying intent of the two year criteria for no local rail traffic, and the criteria that any overhead traffic can be rerouted over other lines, to exempt a proposed

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abandonment or discontinuance of service or trackage rights over a railroad line from the provisions of 49 U.S.C. 10903, as prescribed for in 49 CFR 1152 Subpart F (Exempt Abandonments and Discontinuance of Service and Trackage Rights), is intended to minimize the burden on carriers, by simplifying abandonment procedures on rail lines with absolutely no local rail traffic exists over the defined two year time period, and for which any overhead traffic also can bypass the line.

I also understand that the additional criteria that there must be no formal complaint pending or decided in favor of a user of rail service, or a state or local government entity acting in behalf of such user, regarding cessation of service over the line, with the Board or any U.S. District Court in the same two year period.

I am aware that fundamental for this set of "test" criteria to properly detect actual shipper demand and needs (and so properly exclude an application from the provisions of 59 CFR Subpart F) in the two year period used to validate an abandonment exemption is for any shipper that wants to ship rail freight to be able to do so, and furthermore, that if any unlawful or other improper constraint prevents a shipper from shipping by rail, that the shipper, or a state or local government entity acting in his behalf, is aware of the problem and able to file an appropriate complaint claiming cessation of service. In this case, on the Subject Line, the shippers are not able to ship freight by rail under any circumstances, as VTrans/LVRC are intentionally not providing any rail service (in spite of LVRC's claims to the contrary, which are totally incorrect). However, owing to the special circumstances relating to VTrans credibility as the owner of this rail line, and the fact that VTrans can not be expected to attempt to prove cessation of service against itself in behalf of a shipper, and since shippers have brought their desire service to VTrans attention, it is very unlikely that any attempt would have been made to prove an unlawful impediment to service. This is the unique situation that the Subject Line has found itself in.

This is precisely why I believe this unique situation that has developed on the Subject Line, as described above, and which has culminated in the present "railbank" only owner/leaseholder-operator relationship (with the present intention not to provide railroad operation at all), has effectively caused an unlawful impediment to the provision of rail service on this rail line, which has existed throughout the two year period for which LVRC has certified no rail traffic to have moved. *I believe I have an appropriate understanding of the instant abandonment and the specific issues regarding this rail line, and that the original LVRC statement should be stricken.*

LVRC's Argument, Item III A

LVRC has argued that the Petition for Stay, if accepted as a petition to reopen, does not meet the standard for such a filing, specifically alleging that it does not present new evidence. This is clearly an incorrect statement.

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I respectfully submit that in the Petition for Stay as filed, I *have* in fact introduced new evidence, specifically regarding Shippers Best Estimate forms indicating a desire for rail service, and letters of interest in continued rail service from these shippers and others, that were solicited as part of Rail Corridor "use" proposals for the Subject Line, as requested by the owner (Vtrans). This information concerning shipper desire for rail service, and the letters of shipper interest, are important because the information was formally submitted to the rail line owner (VTrans), and was specifically relevant to the operation of the rail line, just prior to and throughout the two (2) year period of time for which the abandonment exemption is being claimed. Unlike similar information created following a notice for an exempt abandonment, which would not be relevant to the prior operation, these Shippers Best Estimate forms, submitted and independently verified as part of a process carried on by the State of Vermont, represent a reliable indication of the traffic that actually should have flowed if the owner and leaseholder had been properly providing rail service during the time. In addition, I had included the relevant portions of the actual Lease Agreement between LVRC and VTrans, dated December 31, 1977, which are necessary to understand the failure of the owner/leaseholder-operator relationship to provide satisfactory service to shippers on the rail line. To the best of my knowledge, this specific evidence had not been submitted previously by any party, is in addition to the support documentation material I had previously provided the Board, and serves to substantiate the discussion in my earlier letter to the Board (filed in response to the earlier Notice of Intent to File in this proceeding), that in spite of documented interest by shippers for rail freight service in the timeframe for which the abandonment exemption is claimed, the owner and it's operator-leaseholder (LVRC) made no attempt to operate rail freight service on the line throughout the entire time two year period for which LVRC has certified that no traffic has moved. **Since the Petition for Stay clearly presents new evidence, I request that references to the contrary be stricken.**

LVRC's Argument, Item III B

LVRC's Argument, Item III, B (starting at page 3) alleges the Petition for Stay did not Provide A Sufficient Basis For Granting The Relief Sought, in part because LVRC argues, the Petition for Stay has not asserted that the LVRC Notice contains false or misleading information that should void the exemption. **LVRC's statement is incorrect. In fact I did assert in the Petition for Stay that the Notice contained an error in the description of the lines to be abandoned, which represented false information, and I request that the statement to the contrary be stricken.**

I have clearly described an error in the Notice, to which LVRC has agreed in it's Reply, where the 1.52 mile Hardwick and Woodbury (H&W) Connecting Track had been clearly been described as a "rail line to be abandoned," and is also called a "track" by name. LVRC in it's reply has agreed that the H&W Connecting Track has been "gone for many years," which agrees with the facts I had presented in the Petition for Stay.

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In spite of LVRC's changing of words used in it's Reply, which reference the original Notice, modifying the wording to abandoning "a certain railroad right-of -way," the original words in the Notice clearly indicated only "rail lines" for all of the listed lines. Since LVRC has now clearly admitted that the track on the H&W Connecting Track actually was removed many years ago, as I had stated in the Petition for Stay, such that this particular entity is actually a railroad right-of-way with no rails or track existing at the present time, *the notice was in error as to it's proper description of what is actually proposed to be abandoned.*

I continue to assert that the Notice contained false information in this regard.

LVRC's Argument, Item III B 1

Item III, B 1 (At page 4, first and second paragraphs) – LVRC maintains that Alleged Potential Interest In Rail Service Does Not Provide A Sufficient Basis To Reopen, incorrectly describing the VTrans solicited and formally submitted Shippers Best Estimate forms, and letters of interest, as "speculative claims" and "alleged potential interest." **This incorrectly describes the information on shipper demand for service that was secured, verified and audited by the State of Vermont as part of it's process to select a rail operator for the Subject Line. I request all such references to "speculative claims," "alleged interest in future rail service," "alleged potential interest" or "alleged expressions of interest in rail service," and any similar references, be stricken.**

It is incorrect to characterize the information on demands for service supplied VTrans by shippers, as part of the VTrans and the State of Vermont's formal process for selection of a new rail operator for the Subject Line as "speculative claims," "alleged potential interest," "alleged interest in future rail service," or "alleged expressions of interest in rail service." The information provided VTrans was a formal expression of shipper interest and demand, which was submitted formally as part of a rail use proposals solicited by VTrans, representing the State of Vermont. This information was also independently verified by consultants retained by the Vermont Legislature Joint Fiscal Office, and was included in internal audits of the proposed rail operation proposal done by the Vermont Legislature Joint Fiscal Office itself. The information regarding shipper desire for and estimated demand for rail service that VTrans had been provided, and which was projected for exactly the same two year time frame (2002-2003) that LVRC has used to certify no rail traffic has flowed, represented a formal and verified expression of shipper interest and demand for rail service during the same time frame the abandonment exemption has been claimed, which was a request for rail service of which the owner of the Subject Line was also fully aware for the entire time frame. It is totally inappropriate for LVRC to characterize this information, formally provided and verified through a process carried on by the State of Vermont, as being "replete with speculative claims."

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In addition, **the implication that the shipper information submitted to VTrans is invalid since it was submitted "over two (2) years ago" is incorrect, and I also request that this reference be stricken.** I believe this reference has not used as a mere statement of fact, but rather to imply the information is not valid, which is not true, since the actual freight traffic was projected in the same time period for which the abandonment exemption is claimed. It must be remembered that the abandonment exemption itself is based on no rail traffic having been handled for the past two years, and the near term projections made slightly more than two years ago represent exactly that time frame. In fact, this formal expression of shipper demand for rail service was received by VTrans just prior to the time frame (and it actually did project service to be provided in the same time frame, expected to start in late 2002) for which LVRC has certified there was no rail traffic on the Subject Line. I still can not understand why the owner did not feel it an obligation to insure that the leaseholder actually served the needs of these shippers during this time frame, since it's leaseholder, by contract (as is my understanding, per LVRC's discussion, Interim Agreement, at page 6), was assigned the responsibility as the common carrier operator of the rail line. This is important, because this traffic would have occurred in the two year time frame if the operator and leaseholder had provided the rail service that was desired.

In conclusion, the information regarding shipper demand for rail service, that VTrans had been made aware of through a formal process carried on by the State of Vermont, can not be characterized as alleged and potential interest. This information was formally submitted by the shippers as part of a process initiated by VTrans, carried on by and for the citizens of the State of Vermont, and has been independently verified and audited by and for the State of Vermont, and as such I continue to believe represents a significant basis to reopen the abandonment exemption.

Item III, B 1 (At page 4, second paragraph, bottom)

LVRC cites a precedent (and by extension a reference precedent) that it alleges to be similar to the situation on the Subject Line and/or the specific information concerning shipper demand for service as described in the Petition for Stay. **Based on the above discussion of the specific information provided VTrans in regard to shipper demand for rail service, the precedent references are totally dissimilar. For this reason I believe these precedent references these should be stricken.**

I believe that the precedent cited is not applicable to the situation found on the Lamoille Valley Railroad. The Red River Valley and Western decision involved a letter written by Governor William J. Janklow of South Dakota, and apparently reflected the Governor's opinion regarding the importance of the line to the regions economy based on discussions he had with several shippers, who had predicted what traffic might exist on the railway. This information apparently surfaced only *after* the notice for an abandonment exemption

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had been published, while the information on shipper demand for the Lamoille Valley railroad (the Subject Line) was available to the rail line owner *immediately before and throughout the entire two (2) year duration being used to claim the exempt abandonment*. This fact is a fundamental difference, and for this reason the circumstances are extremely dissimilar. In addition, as previously described, the nature of the specific shipper information known by VTrans was of a much different character than in the alleged precedent decision, and was known over the entire preceding two (2) year period, such that the two situations are not at all equivalent. The information provided VTrans regarding the desire for rail service on this line, and the specific estimates of shipper demand for service (which were independently verified, see Attachment 3, Petition for Stay), included the entire portion of the line that Vermont Rail Link proposed to reopen in it's first phase (Morrisville-Swanton). LVRC was quick to point out, also incorrectly, that "many" of these shippers had not shipped by rail before. In fact, the majority in the listing actually had (seven out of twelve, see Attachment 1, Petition for Stay) and according to the independent study made for the Vermont Joint Fiscal Office (see Attachment 3, Petition for Stay), LVRC itself had made no effort over it's entire tenure on the line at the time of the report to contact *any* of these shippers. The formal submittals and independent consultant studies submitted to VTrans regarding the specific shippers interested in freight service on the Lamoille Valley, and their estimated yearly traffic (beginning in the two year period of no traffic used to justify the abandonment exemption for the Subject Line) were formal documents, part of a formal public process carried on for the State of Vermont, are in the public record, and the estimated traffic levels, as verified in the independent SC&D report (see Attachment 3, Petition for Stay) had also been accepted by the Vermont Legislature Joint Fiscal Office in it's audit report of the Vermont Rail Link proposal to operate the rail line. **For this reason, because the underlying circumstances and specific information provided have been shown to be totally dissimilar, the alleged precedents should not apply, and I request they be stricken.**

Item III, B 1 (At page 4, second paragraph, third sentence)

LVRC states that there is no evidence in the record of any formal shipper complaints regarding lack of service on the Subject Line. This is incorrect. In fact, there was formal testimony at meetings regarding the Subject Line that was received by the Agency of Transportation of the State of Vermont (VTrans, also the owner of the line), which included shipper complaints, some of which was actually reported in the print media as well, so that this information was widely known.

It can be demonstrated that complaints and/or requests for rail service had been communicated to the owner in both public testimony dating back to at least 1997 (see Attachment 1, paragraph seventeen), and in specific rail use proposals submitted in March of 2001. Attachment 1 is a newspaper article from the Hardwick Gazette, entitled ***Rail or Trail: Opinions Diverge***, dated October 1, 1997, reporting on a Lamoille Valley

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Railroad public input meeting held in Hyde Park, VT, on September 30, 1997, one of several similar meetings held at that time. In the seventeenth paragraph of this article, it is reported that a shipper in Cambridge Junction had testified before VTrans that LVRC refused to provide rail service unless he shipped a greater number of cars. While this is one example of a shipper complaining about being refused rail service, other shippers also testified at these meetings. The fact that the State of Vermont's Agency of Transportation (VTrans) apparently did not respond to this public input, or the formally transmitted statements of interest in rail service (see Attachments 1, 2 and 3 of Petition for Stay), relates to the State's unique position as owner of the rail line, and it's corresponding relationship as overseer of the leaseholder-operator (that was clearly failing to provide the desired rail service, even before the floods of 1995).

These are important facts as to why shippers didn't complain beyond the State of Vermont, since they had taken their complaints to the Vermont Agency of Transportation (VTrans), and for this reason **I request that the incorrect statement by LVRC, that there were no formal shipper complaints, be stricken.**

LVRC's Argument, Item III, B 2

LVRC states (at page 5, second paragraph) that the present exercise whereby no rail service is intentionally being provided to the known shippers (no attempt made to operate the line), and where all efforts are being singularly applied to "railbank" the Subject Line (apparently as per the both the "Settlement Agreement" of February 19, 1998 and continued with the "Interim Agreement" of January 4, 2002, both between VTrans and LVRC) is in accordance with the "highest and best use study" of certain leased premises, and that this study found "notwithstanding the marketing and business development effort made by the LVRC, freight operations likely would continue to be unviable for the foreseeable future." LVRC then states that "the study also concluded that the Subject Line would be suitable for use as a recreational trail or multi-use corridor." **Based on the actual recommendations of the referenced report, which is the MIT Highest and Best Use Report of 1997 (see Attachment 5, Summary and Conclusion, Section 7, of the report entitled "Analysis of the Lamoille Valley Railroad and Determination of the Highest and Best Use of the Corridor," by Carl D. Martland of the Massachusetts Institute of Technology, hereafter known as "MIT Report"), this information is totally incorrect, and should be stricken.** The recommendations for the Short Run (one to five year) time frame, as made by the MIT report, have clearly not yet been implemented (since rail operation was to be resumed in this time frame, as described below), so it is assumed the initial (Short Run) time frame is where VTrans/LVRC must be start, and where in the implementation plan they must therefore still be at.

The Short Run (one to five year) recommended Best-Use for the Subject Line (Attachment 5, at page 32), in accordance with recommendations of the MIT Report, was:

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1. Repair the Washouts Swanton to Hardwick, in order to provide a minimal level of rail service. Operate railroad Swanton to Hardwick and St. Johnsbury to Joes Pond (West Danville). Embargo railroad Hardwick to Joes Pond (West Danville)
2. Promote freight traffic, emphasizing the ends and nearby points.
3. Demonstrate the potential of the line as a tourist railroad, including foliage and ski trains.
4. Use portions of line not used by rail operation for recreation. Portions no longer needed by rail, begin to convert line to trail.

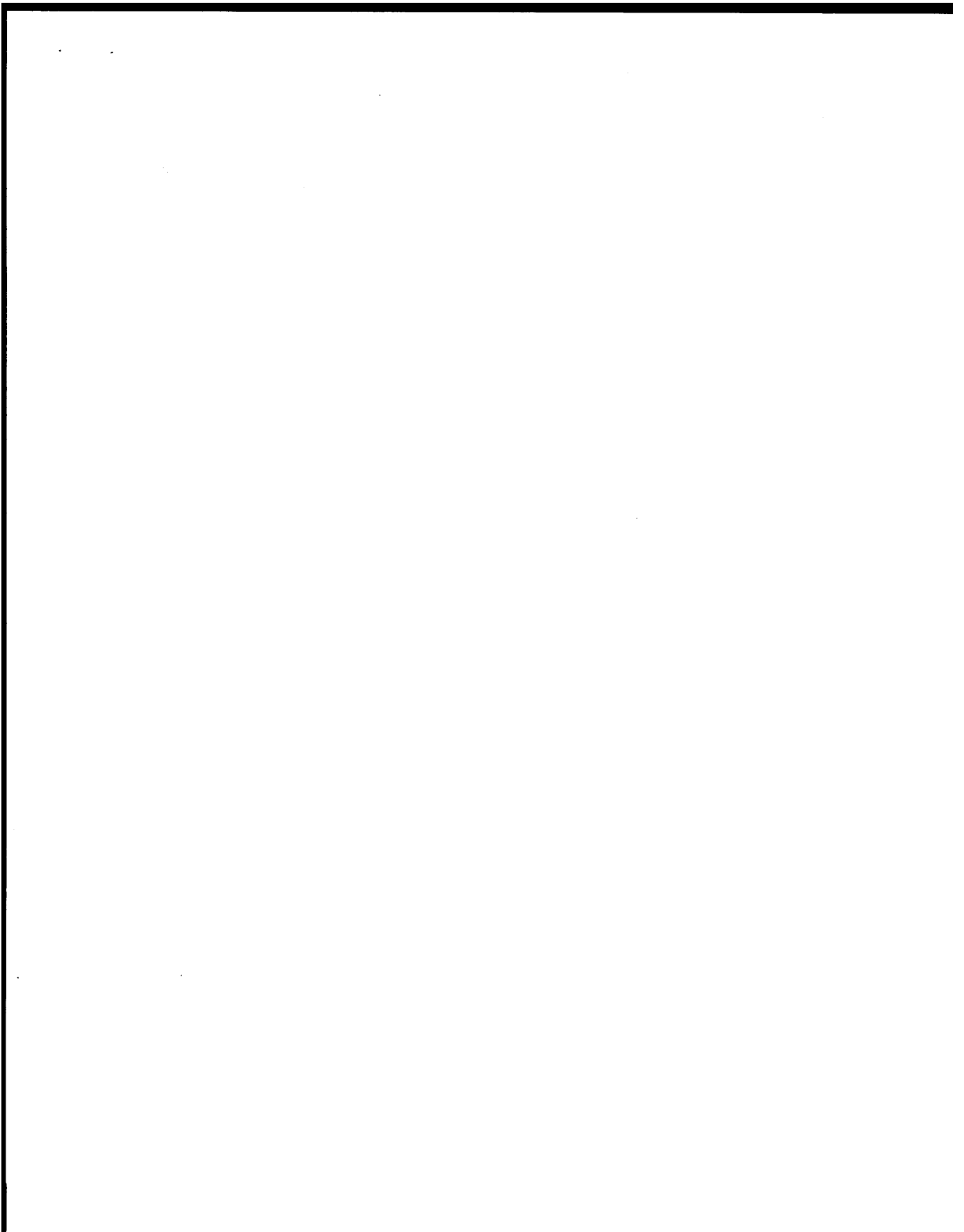
VTrans and LVRC clearly did not follow the recommendations made in this report. *Furthermore, it can be clearly seen that LVRC has incorrectly described the actual recommendations of the MIT report (Highest and Best Use Study).* This implementation plan has yet to be allowed to happen, largely due to the reasons outlined above, whereby it was decided by VTrans to just not operate the railroad. The MIT Report, as seen in Attachment 5, had recognized that there was a short term potential for immediate traffic, that could be developed by an innovative operator. In fact, this potential was later verified in the 2001 SC&D study report made for the Vermont Joint Fiscal Office (see Attachment 3, Petition for Stay). The MIT Report is also discussed in the newspaper article ***Railroad Report Recommends Giving Line One Last Try*** (designated Attachment 4, newspaper article from Caledonian Record, dated October 1, 1997), where it is also clear the report's recommendations are not as described by LVRC, and have not been followed by either VTrans or LVRC. *All references incorrectly describing the implementation of the specific recommendations of the MIT Report should be stricken.*

LVRC has stated (at page 6) that LVRC has been under contract as operator during the two year period for which it has certified that no rail traffic has moved (referencing the Interim Agreement, dated January 4, 2002 between VTrans and LVRC) and that therefore LVRC has common carrier responsibilities to provide freight service on the Subject Line. This is intended to refute my description of the present status of the rail line in the Petition for Stay, where I have described the line as being in a strange kind of limbo (at page 3, second paragraph) where there is no real operator. While I stand corrected regarding the existence of the Settlement Agreement of February 19, 1998 and the Interim Agreement of January 4, 2002 between VTrans and LVRC, LVRC's description of the present situation, as an operator ready, willing and able to provide freight service on the Subject Line is misleading and incorrect. While LVRC may be continuing to serve as the common carrier on the Subject Line, in accordance with the above Interim Agreement, there has still clearly been no real attempt to actually operate the rail line, and since LVRC did in fact pull out of Vermont prior to 2002, serving as common carrier is essentially an exercise on paper, simply an interim arrangement until the line is "railbanked." This is really the way it is, and LVRC has not indicated otherwise. **All statements that that LVRC is actually providing common carrier freight service on**

the Subject Line should be stricken, as they provide a totally incorrect description of what is really happening.

In reality, there still is no real operator on the line, and there has been no intent by VTrans or LVRC to actually operate any part of the line to serve the shippers for the entire two year period for which LVRC has certified no traffic was handled. There has been no effort to restore any of the highway grade crossings that had been paved over to allow rail traffic to resume, no effort to restore any track that was removed, no effort to repair any minor washouts, no effort to replace improperly removed bridges, and no effort of any type to maintain the property. This is further proven by the fact that absolutely no effort has been made to serve those shippers that VTrans is fully aware desire rail service, which has also been true for the entire two years for which rail traffic was certified not to move. This is apparently what VTrans intends to happen. Although claims are made by LVRC (at page 6, second paragraph) that it would be required to provide freight rail service upon reasonable request, apparently repairing the line in any way is beyond a reasonable request. The railroad apparently seeks no traffic because it has been rendered unable to handle any, and then uses this lack of traffic as the excuse not to restore the line (as LVRC has stated in its Reply regarding both the bridges and paved over grade crossings, both at page 8). It is my opinion that for eight years now this has been an unlawful impediment to the provision of rail service on this line. There are approximately 750 to 1000 carloads per year of traffic that have been verified as existing on this line. Even if one tenth of the predicted demand was real, there is absolutely no way that *at least 1 carload* would have moved in a two year period if a real attempt was being made to provide freight service. None did, and it is therefore certain no attempt was made.

With such a prolonged failure to provide rail service to shippers on this line, of approximately eight (8) years duration now, which has been publicly accepted largely because of the presumed legitimacy of State of Vermont's involvement, the public has accepted this situation as a long term condition, which therefore renders the much shorter two year test criteria for an abandonment exemption meaningless. Since it is obvious that rail service is intentionally not being provided at this time, and that it was not being provided through the entire two year period for which LVRC has certified that no local rail traffic has moved on the Subject Line, and this while VTrans is currently aware that there is a verified desire for rail service on the line (see discussion at page 4, second paragraph, of Petition for Stay), and since the intent of 49 CFR 1152 Subpart F is to deny an abandonment exemption should any rail traffic actually take place (which in this case is being intentionally prevented from happening) or if it is determined that rail service has been unlawfully restrained from occurring, and since the special conditions relating to VTrans intentional failure to serve the shippers on the line coupled with the public's acceptance of this situation are uniquely related to the State of Vermont's involvement, I continue to believe that the resulting lack of rail traffic should not be considered an acceptable justification for an exempt abandonment under 49 CFR 1152 Subpart F. This



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is consistent with the fact that if a private sector rail line in the state of Vermont had attempted to unlawfully restrain rail traffic in the same manner for two years, and then attempted to similarly use the resulting lack of rail traffic to justify an exempt abandonment, VTrans itself might be expected to claim an illegal cessation of service in behalf of affected Vermont shippers.

LVRC has stated (at Page 7) that the complete lack of traffic on the Subject Line over the last eight (8) years was not caused by VTrans and LVRC, and that this total decline occurred 15 years ago. This is incorrect on several counts. First, it is incorrect because it can be shown that freight traffic was handled on the line as late as 1995, immediately prior to the floods that caused many track washouts, as discussed in detail below (see discussion regarding LVRC Argument Item III B 3, Reason 2, and also Attachment 2, newspaper article from the Hardwick Gazette entitled *Local Quarry Owner Wants Rocks To Ride On Lamoille Valley Rails*). Secondly, it ignores the findings of the independent study made by the consulting firm of Stone Consulting & Design for the Vermont Legislature Joint Fiscal Office in 2001 (see Attachment 3 to Petition for Stay, which includes the entire Freight Operations section of the *Vermont Rail Link Proposal, Letter Report* by Stone Consulting & Design, Inc., as submitted to the Vermont Legislature's Joint Fiscal Office, dated October 2001), which clearly found that LVRC itself had made no effort over its entire tenure on the line at the time to contact *any* of the identified shippers, and also verified that there was a basic latent traffic on the rail line that would quickly climb to about 750 to 1000 carloads per year. **For this reason, all references attempting to show that the complete lack of traffic was caused historically (loss of bridge traffic, mill closings, and changes in agricultural traffic, for example) are unfounded, and should be stricken, or modified to indicate they are only historical information discussions. In addition, since it has been independently verified that traffic potential exists on the line, and also independently determined that LVRC had made no effort to solicit freight traffic on the line during its entire tenure, statements such as "the complete lack of rail traffic on the Subject Line was not caused by VTrans and LVRC" and "VTrans and the current owners of LVRC are not responsible for the lack of rail traffic on the Subject Line" (both at page 7) should also be stricken, as these statements have been found incorrect.**

It is clear that there was absolutely no effort to operate the Subject Line after 1995, in spite of there being other operators interested in doing so, and shippers that had made the owner aware through a formal process conducted by the State of Vermont of their desire for freight service, and since there was absolutely no effort to serve the public with rail freight service, there was no possibility that rail traffic could flow.

The present lack of rail service has been primarily caused by allowing an alternative abandonment process to "direct" VTrans to ignore its responsibilities to the shippers on this rail line, which it owns. For this reason, there is no serious intent to operate the rail line, in spite of a known demand for rail service by the owner. I believe this is essentially

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what has happened, such that this rail line has been allowed to be "pre-abandoned," resulting in a total loss of rail traffic, which is then used as the excuse and justification for an abandonment exemption. This would not seem to be a desirable situation.

LVRC's Argument, Item III, B 3

LVRC's Argument, Item III, B 3 (starting at page 7) disputes the assertion made in my Petition for Stay (See Petition for Stay at page 7 and 9) that the Removal Of Two Bridges On The Subject Line Are The Equivalent Of An Illegal Embargo. LVRC alleges my assertion to be misguided, and attempts to disprove my claim that the removal of these bridges was effectively an illegal embargo, citing the following reasons:

- 1) Washouts in the 1990s necessitated the removal of the bridges 13 and 27A for safety reasons (at page 8, first sentence of first full paragraph).
- 2) Revenue freight service effectively ended in April 1989 (at page 8, second sentence of first full paragraph).
- 3) The line had been severed by washouts prior to the removal of the bridges by the floods (at page 8, fifth sentence of second full paragraph), such that VTrans could not justify the repair of these bridges. Also noted is the fact that LVRC claims to have been unable to develop a significant traffic base, which fact was said to have affected VTrans decision (at page 8, first full paragraph).

All of these listed statements can be demonstrated to be incorrect, and therefore cannot be legitimately used as reasons to disprove my original assertion, and all of the actual wording that states or implies so should be stricken. For this reason, and as further discussed below, these stated reasons also do not support the LVRC's claim that my assertion provides insufficient basis to prove that the removal of two bridges on the Subject Line represent the equivalent of an illegal embargo. In fact, as a result of the need to prove the actual facts due to LVRC's erroneous information, specifically the proof that freight traffic was operated on the Subject Line until 1995, actually further supports my original allegation, that based on the removal of these bridges severing rail access to a shipper that had used rail service immediately prior to the flood damage to the line in 1995.

I will separately discuss each of the above cited reasons.

Reason 1 (as summarized above)

LVRC has alleged (Reason 1, above) that washouts in the 1990s necessitated the removal of the bridges for safety reasons (at 8, first sentence of first full paragraph). **This statement is entirely incorrect, as these specific bridges (13 and 27A) were definitely not damaged by floodwaters during the washouts of 1995. I request that these statements be stricken.** Several bridges that crossed rivers, their abutments, as well as other culverts and embankments were damaged at this time, generally in the section west

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of Hardwick along the Lamoille River, however both of these bridges cross roads, and were not damaged by the flooding streams that caused virtually all of the damage to the rail line. Bridge 27A which crossed Vermont Route 15 in Walden, Vermont, was removed first (this bridge was taken out the week of September 23, 1996, see attachment 7, Petition For Stay), and definitely had no flood related damage. This situation was fully described in the press at the time (and is also mentioned in Attachment 2), and all accounts clearly describe the highway safety reasons for which it was decided to remove this bridge. LVRC's statement that this bridge was flood damaged, and that this was the reason the bridge was removed (for safety reasons) is totally unfounded. LVRC also alleges that the removal of had to be done because they became hazardous to highway traffic. This is also incorrect, and should be stricken or appropriately reworded. The LVRC allegation implies that there was only one means (bridge removal) to correct the highway safety problem, and this is incorrect. While there is no denying the *highway* safety and clearance problems related to this older bridge structure (dating from approximately 1914), and specifically a slightly less than standard road width that had contributed to several highway accidents, it should also be noted that the removal of the railroad bridge was not the only possible solution to the highway safety problem. One alternative, which had been recommended, was signalized single lane operation for the highway, which is done for extended periods of time at many locations (usually supporting highway construction activities) throughout Vermont and in neighboring states. Although a main highway, Vermont Route 15 does not have such high traffic density east of Hardwick that this would have been a problem, this solution would have been inexpensive, and would also have avoided causing the rail line to be severed. **Since alternative solutions were possible, all references and allegations that state or imply Bridge 27A absolutely had to be removed for safety reasons, indicating there were no alternative solutions, should also be stricken or substantially modified to give the proper description that there were other options.**

Bridge 13 in St. Johnsbury, Vermont, was removed subsequent to the removal of Bridge 27A, and resulted in the total isolation of that part of the Subject Line between the two bridges. The resulting isolated portion of track, as noted in the Petition for Stay, included the Frye Quarry (discussed further in relation to Reason 2, below). Like Bridge 27A, this bridge was not damaged by floodwaters during the washouts of 1995. The manager of VTrans St. Johnsbury Maintenance District (Mr. Sid Achillies) had explained the actual situation shortly after the bridge was removed. He reported that a water line leak was thought to be located behind the bridge abutment, and since at the moment the railroad was seen as unused, the bridge and abutment were removed to access the presumed location of the leak. In the end, as might have been expected for such an old railroad and bridge, it was reported that the water pipe was not actually found to be located behind the abutment, but predictably was located under the road pavement (as it passed under the bridge), after all. As with Bridge 27A, LVRC's statement that this bridge was flood damaged, and that this was the reason the bridge was removed (for safety reasons), is totally unfounded. I question if VTrans would have removed any other railroad bridge in

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Vermont for a mistaken location of a water pipe? **Since alternative solutions were also possible for Bridge 13, all references and allegations that state or imply the bridge had to be removed, as though indicating there was no alternative approaches to correct or bypass the mistakenly located water pipe leak, should also be stricken, or substantially modified to give the proper description that there were other options. There were no highway safety issues identified in the removal of Bridge 13, and I request that all such references also be stricken.**

LVRC's claim that Bridges were required to be removed due to washouts in the 1990s is incorrect, and this reason can not be used to disprove my assertion that Removal Of Two Bridges On The Subject Line Are The Equivalent Of An Illegal Embargo. Bridge 13 was definitely not removed because of any safety reason. Bridge 27A was removed in response to a highway safety issue, for which other solutions were also available to inexpensively correct the safety problem, but these solutions were not selected. See discussion of Reason 3, below, for additional detail concerning VTrans commitment to replace bridge 27A if freight service was to be resumed.

LVRC's claims that these bridges had to be removed for safety reasons, with the implication that there were no alternatives solutions, is also clearly incorrect. These bridges were removed as a result of decisions made by VTrans, and for these structures, Bridges 13 and 27A, there were other viable options that could also have solved the respective problems (water pipe leak and highway safety concern, respectively) without removing the bridges and thereby severing and finally isolating a portion of the Subject Line, which should definitely have been a part of the decision process since both VTrans and LVRC were certainly aware that the Frye Quarry, which had shipped over the rail line in 1995 (see Attachment 2) was located in the affected segment, at a time when the rail line was expected to still be in service and/or when a new rail operator was being sought for the line.

As discussed, all of the references to these bridges being removed due to flood damage are incorrect, misleading, and should be stricken, and references that state or imply there were no alternative solutions to total removal should also be stricken or modified.

Reason 2 (as summarized above)

LVRC has alleged (Reason 2, above) that revenue freight service effectively ended in April 1989 (at page 8, second sentence of first full paragraph), implying the entire railroad but specifically regarding the portion of the line isolated by the removal of Bridges 13 and 27A. *This statement is incorrect, as freight was actually shipped from the Frye Quarry (this name was inadvertently misspelled as "Frey" in the Petition fro Stay) located in Danville, Vermont, as late as 1995, which is the same year that flooding caused washouts on portions of the line (see newspaper article from the Hardwick Gazette entitled **Local Quarry Owner Wants Rocks To Ride On Lamoille Valley Rails,***

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designated Attachment 2). As is described in this newspaper interview with quarry owner Bert Frye, I have personally heard Mr. Frye describe shipping by rail in 1995, and to express his continued desire to ship by rail, in testimony before VTrans, yet in spite of this the owner and leaseholder allowed this shipper to be isolated by the removal of the aforementioned bridges. *LVRC's allegation that the last freight traffic to move was in 1989 is incorrect*, and can therefore not be used to disprove my assertion that Removal of bridges 13 and 27A on the Subject Line are the equivalent of an illegal embargo. **All references in the Reply to revenue freight service ending in 1989 are incorrect, and should be stricken.**

In addition, use of the word "effectively" in connection with revenue freight service should also be stricken, as this is misleading. Any freight traffic however insignificant to LVRC, and regardless of the meaning of "effectively," would have denied the exempt abandonment. For this reason I request eliminating this use of the word "effectively," and striking it.

Reason 3 (as summarized above)

LVRC has stated (Reason 3 above, as summarized) that the line had been severed by washouts prior to the *removal of the bridges by the floods*, such that VTrans could not justify the repair of these bridges. These bridges were not removed by the floods. This statement has been repeated by LVRC here, and the discussion is the same as Reason 1, discussed above. *As noted previously, all incorrect references regarding these bridges in the actual words of the LVRC Reply should be stricken.*

Also noted in conjunction with this reason was the fact that LVRC claims to have been unable to develop a significant traffic base over the entire length of line, which fact was said to have affected VTrans decision to replace the bridges because of cost. **This information regarding the inability of the state to replace the bridges is incorrect, and for this reason should be stricken.** VTrans in fact was aware that it had to replace the bridges (at least it publicly said so for Bridge 27A, as discussed in detail below) so there was no cost issue, and the state had said it would replace the bridge to handle any freight traffic, regardless of density. The reference to LVRC being unable to develop freight traffic is also incorrect, based on independent studies made for the State of Vermont which had determined that LVRC made no effort to develop traffic. *For this reason, all references in the Reply which state or imply LVRC had made any effort to develop freight traffic should be stricken, because they are incorrect, as determined by independent studies including shipper interviews made for the State of Vermont.*

VTrans was aware, at least in the case of Bridge 27A, that the bridge would have to be replaced (indicating that VTrans was also aware that it was an illegal removal), and that it was prepared to do so. As reported in the attached newspaper article (see Attachment 4, article from Caledonian Record, ***Railroad Report Recommends Giving Line One Last***

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Try, dated October 1, 1997), in response to a question I had asked concerning the previous removal of Bridge 27A, Karen Songhurst, who was VTrans Railways Programs Administrator, responded that if freight traffic developed on the line, by law the bridge would have to be reconstructed (ninth paragraph of article). This stands in conflict with LVRC's statement, as this bridge replacement was promised not to be a matter of cost (presumably this was a highway improvement, and should have been funded as such), and the state (VTrans) had recognized that it would be required by law to put the bridge back so that rail traffic could resume, strictly as a matter of law. *Therefore, justification of costs should not have been a determining factor in the replacement the bridge, and the references to this should be stricken.*

LVRC further notes in its discussion relating to this stated reason that costs to replace these bridges could not be justified, once it became clear LVRC would be unable to develop a traffic base on the Subject Line. Studies made for the State of Vermont, however (see Attachment 3, Petition for Stay, excerpts of report to Vermont Joint Fiscal Office), have determined LVRC had made no effort over its entire tenure on the line (at the time of the report, 2001) to contact any of the shippers that desired rail service. **It would appear, based upon the independent studies made for the Vermont Joint Fiscal Office, that LVRC has misrepresented its actual efforts to develop a traffic base, for which the studies found LVRC's efforts to be totally non-existent. For this reason, all references to LVRC attempting to develop traffic on the Subject Line should be stricken, as independent investigation using shipper interviews have found this to be untrue.**

LVRC in this section cites the length of the line (nearly a hundred miles) as being an issue in establishing the overall traffic that would justify operating and maintaining the entire railroad, applying this in reference to specifically justifying replacement of these bridges. **Since the MIT Report had recommended serving this end of the line only from the east (St. Johnsbury), this is misleading, and any reference to bridge requirements based on traffic over the entire line should be stricken.** The LVRC discussion ignores the fact that the MIT Report (best-use report), that LVRC indicates have driven the Interim Agreement (see LVRC's Argument, Item III, B 2, at page 5) had also accepted a severed line scenario where the portion of the Subject Line included in the isolated section between these two bridges was served from St. Johnsbury. As reference for this, see Attachment 5 (Summary and Conclusion section of the report entitled "Analysis of the Lamoille Valley Railroad and Determination of the Highest and Best Use of the Corridor," by Carl D. Martland of the Massachusetts Institute of Technology, also known as the MIT Report). In the spirit of the recommendations in the MIT report, this section of line should be considered not just as a part of the entire Subject Line, but since a possible operation from the St. Johnsbury end was proposed, such that LVRC's reference to the traffic requirements over the entire length of the Subject Line as a requirement to justify continued service are not applicable to this immediate section of the line.

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The reference to removed Bridge 14 in the Reply (at page 8) may be an error, as the removal of this structure had not been mentioned previously. **If the mention of Bridge 14 is an error, reference to this bridge should be stricken and corrected with the proper discussion.** If Bridge 14 actually has been removed, it is noted that LVRC's statement about flood damaged bridges being removed may be correct in the case of Bridge 14 only, which LVRC makes mention of having had an unstable eastern abutment. I have only discussed herein, as I had in the Petition to File, Bridges 13 and 27A. If Bridge 14 has also been removed, as LVRC has indicated, it should also have been noted in the Historic Review section of the Environmental Assessment. As far as I can determine, only Bridges 13 and 27A were said to be removed in the Environmental Assessment document.

Paved Over Crossings (from Footnote 3, at page 8)

LVRC also acknowledges (at Footnote 3, Page 8), that at certain locations on the Subject Line VTrans has paved over grade crossings because, according to LVRC, the cost of maintaining, repairing and renewing such grade crossings could not be justified in the light of lack of traffic. It has been my experience, that at the present time virtually every crossing of this rail line with a paved roadway has already been paved over and/or had track totally removed, and that this practice had been started even as new proposals for rail "use" of the corridor were being solicited by VTrans in the late 1990s and through 2001, and shippers were being contacted relative to again shipping by rail. As I have discussed before in the Petition for Stay, this practice of slowly rendering the railroad un-useable has been going in for a long time now, and had sent a clear message to shippers and citizens alike that the owner and leaseholder had no intention of ever providing rail service on the line again. It goes without saying, that to be paving over grade crossings even as rail shippers are being solicited sends a mixed message to the public. LVRC's Footnote 3 is apparently in response to the crossings I had noted were paved over with track removed in the Danville, Vermont area (Petition for Stay at page 10, second paragraph), and it can be shown that LVRC's assertion that these crossings were paved over for safety reasons is actually incorrect. In the summer of 2000, VTrans retained the consulting firm of Edwards and Kelcey (E&K) to perform a survey of the overall condition of the Lamoille Valley railroad, which also included a inspection of all of the grade crossing conditions. The two crossings I had referred to in Danville were inspected on August 1, 2000 (see Attachment 3, Selected Crossing Inspection Reports, Danville, Vermont, from the E&K Lamoille Valley Railroad Corridor Study, submitted to VTrans in October 2000). The crossing of Route 2 at MP 13.09 was rated as to surface as a 4 (on a scale of 1 to 5 with 1 the worst and 5 the best condition, similar to track class ratings), and had a rubber crossing. This evaluation can be described as very good, and as can be seen, there is no note in the inspection report to indicate any safety concerns. The second crossing of Route 2 at MP 14.69 was rated as to surface as a 3, which can be considered in "good" condition, also with no notes to indicate any safety concerns. Both of these

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crossings had track removed and were paved over within a few months of the E&K inspection, in late fall 2000, just before winter set in. *It can be seen then, that at least in the case of these grade crossings, there were no safety concerns, yet track was removed making it impossible to handle rail traffic.* It should also be noted that these specific crossings, which had been inspected on August 1, 2000 and found to be in good and very good condition, were removed just prior to the February 23, 2001 "Request for Proposals" (RFP) issued by VTrans for the rail and non-rail use of the Lamoille Valley Railroad Corridor from St. Johnsbury to Swanton, Vermont. Why was the rail infrastructure being destroyed, when in fact there were actually no safety reasons for doing so, since VTrans was still seeking new rail operator, and the proposed rail operators were seeking shippers? **The reference to safety reasons for over paving and removal of these, and probably most, crossings is incorrect, as shown by the E&K report, and I request that all statements and/or implications to this effect should be stricken.**

LVRC's Argument, Item III, B 4

LVRC disputes my assertion that an arbitrary alternative abandonment process, conducted at the state and local level, should not be allowed to replace a proper proceeding under the provisions of 49 U.S.C. 10903, and further alleges that in the alternative process VTrans received significant public input.

LVRC seems unaware of the process, and unaware of the Public Meetings held in 1996 and 1997. Public input, based on testimony before VTrans at these meetings, was approximately two to one in favor of rail service over trail conversion. The final decision was turned over to an appointed citizens committee, designated the Mountain Valley Corridor Committee (MVCC), which did not have a member representing the shippers at all, did not hold public meetings, and which never has published a report documenting its decision process or the public input received. The committee's major output was a three and one half page letter recommending trail conversion, which did not acknowledge any shipper interest, although the SC&D report (see Attachment 3, Petition for Stay) verified the previously documented shipper interest and determined that rail operation could be marginally profitable within three years operating over the State of Vermont owned infrastructure, Swanton to Morrisville. Actually, the oversight Planning Commission for the MVCC group, if asked, supplies the MIT Report (Attachment 5) and the SC&D report (see Attachment 3, Petition for Stay) as support documentation for the MVCC decision letter, yet the MVCC did not follow the recommendations of the MIT Report or accept the findings of the SC&D study, which recommended rail operation in the short term and predicted it could be done without an operating subsidy. When the process is looked at, it is clear that known public input to VTrans had been in favor of keeping rail service, and the reports made for the State of Vermont had recommended providing rail service, yet the MVCC which conducted no public meetings somehow ignored all of this and selected trail use.

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It is incorrect to present this alternative abandonment process as having extensive public input when the shippers interests were specifically ignored, and they were not represented other than by the input they provided for the rail use proposals, which clearly was ignored by MVCC in it's decision, and based on LVRC's Reply is still being ignored (as it had been for the past three years) by LVRC and VTrans. **For this reason, I request all references to this alternative abandonment process being based on significant public input to be stricken.** And regardless of public input, desire for a trail does not justify intentionally denying service to shippers that desire rail service, as has been the result of this process.

Conclusions

In accordance with above Motion to Strike , it can be seen that I have requested striking a large number of statements, many of which directly relate to the actual performance of LVRC as an operator on the Subject Line, the facts regarding removal of bridges that served to isolate a section of the railroad, the facts behind the removal of track and/or paving over highway grade crossings, and the facts behind the present lack of operation on the rail line which has surely been instrumental in the current lack of rail freight traffic on the Subject Line. It is extremely discouraging to find so many incorrect statements and facts, such as can be challenged with information available in the public record, used in a proceeding such as this, where it is also clear that the information available to the rail line owner does not seem be consistent with anticipated service provided by the leaseholder-operator to the shippers on the rail line. Furthermore, based on independent studies done for the State of Vermont, it is fairly certain that the leaseholder did not attempt to develop the rail freight traffic, in spite of LVRC's claims, even before the present intentionally non-operating (railbank only) state of this rail line had evolved.

This is precisely why I continue to believe the unique combination of events that has been described above has led to the present situation on the Lamoille Valley railroad, where the present "railbank" only owner/leaseholder-operator relationship (with the present intention actually being not to operate the railroad at all) has effectively caused an unlawful impediment to the provision of rail service on this rail line, and for this reason, the inactivity of the line has in fact been caused by the actions of VTrans and LVRC. For the several reasons discussed above, I continue to believe that, in the true spirit of the law, the resulting lack of rail traffic should not be considered an acceptable justification for an exempt abandonment under 49 CFR 1152 Subpart F.



Timothy D. Phelps, P.E.
East Hardwick, Vermont

Timothy D. Phelps
P. O. Box 67
East Hardwick, Vermont 05836
February 17, 2004

The Surface Transportation Board
Office of the Secretary,
1925 K Street, N.W., Washington, DC 20423-0001

Re: LVRC and VTrans

Motion to Strike in response to LVRC's reply to T. D. Phelps' Petition for Stay of
Abandonment Exemption
STB Docket No. AB-444 (Sub-No. 1X)

Motion to Strike - LVRC

This will certify that one copy of this Motion to Strike in response to the LVRC's reply to my Petition for Stay, and all attachments, have been served on the LVRC through the applicant's representative, sent to the address included in the published NOTICE for the Abandonment Exemption, STB Docket No. AB-444, Sub-No. 1X, which address is as follows:

Edward J. Fishman,
Kirkpatrick & Lockhart, LLP,
1800 Massachusetts Avenue, Second Floor,
Washington, DC 20036
Re: Lamoille Valley Railroad Company

Signed:

Date:



02/017/04

Timothy D. Phelps

Rail Or Trail: Opinions Diverge

by Nikki Parker

HYDE PARK — Rail and trail supporters clashed with disagreements of opinion at last night's public meeting in Hyde Park. The meeting was the fourth held about the Lamoille Valley Railroad corridor.

Greg Maguire, director of the Agency of Transportation Rail, Air and Public Transit, told participants any decisions on the railroad may not be made until next year.

Until the end of the year, the railroad is still leased by CSF Acquisitions of Trenton, Fla., which is owned by Clyde Forbes. Forbes declined to renew his lease in July,

returning the railroad to the state. The Washington County Railroad, a railroad corridor between Montpelier and Barre, is still leased by Forbes.

Maguire said Forbes, who was not at last night's meeting, has issued the threat of a lawsuit pertaining to the railroad. Maguire said Forbes said they "did not want to get thrown off the railroad." In the meantime, any potential lawsuit would not hinder the state as it looks for other potential uses for the rail corridor, Maguire said.

The first meeting was held last December in Danville. Other meet-

ings have been held in towns along the LVRR corridor, from Hyde Park to St. Albans. Meeting participants have generally aligned themselves with either keeping the corridor for rail or taking up the rails for a multi-purpose trail.

Karen Songhurst, RAPT transportation rail program administrator, said AOT had not made a decision on whether it would only ask for proposals for the railroad that fall under "best use," according to the study released this month by the Massachusetts Institute of Technology.

See RAILROAD, Page Two

Railroad

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"We want to decide what is in the best interest in the state," she said. AOT and several regional planning commissions asked for the study to determine the "highest and best use" of the railroad corridor. A draft of the study was released in June, with the final version released two weeks ago. Several written comments were submitted to Northeastern Vermont Development Association.

Pete Snyder of Still River, Mass., said he is still pursuing his proposal for an excursion rail line between Hardwick and Walden. Richard Dabiri, senior transportation planner for NVDA, said anyone planning to use the corridor for rail would have to run a railroad on their own.

"I want to take it off life support," Snyder said of the railroad. He said he believed he could put his own knowledge and money into an excursion train that would work.

Bryant Watson, executive director of the Vermont Association of Snowmobile Travellers, said he agreed with the study's suggestion of allowing railroad to try its hand in the next five years, but wanted a trail as a more viable future. The study alluded to keeping motorized vehicle trails, such as snowmobile

trails, away from residential areas.

"The Department of Natural Resources would have input to implement a speed limit on a trail," Watson said.

In reference to noise, Watson said snowmobiles made less noise than trucks, cars and motorcycles going by residences at a higher frequency. Watson also said a trail would have the benefit of being patrolled by local law enforcement, whereas a railroad corridor would not.

Walter Dodge, who introduced himself a "snowmobiler and a Vermonter," said snowmobilers needed the railroad corridor to access areas of St. Johnsbury currently cut off due to the amount of private land being posted.

"We want to make use of it when it's under 5 feet of snow," he said. "Snowmobiles don't make any more noise than a train pulling out of St. Johnsbury or Walden."

Barry Cahoon, a Danville resident, said he did not appreciate the amount of snowmobiles going by his land and did not want the corridor to be used for such vehicles. Cahoon said he was concerned all-terrain vehicles would start using the corridor, which would not be able to be patrolled by local police. One participant declared Cahoon "just didn't like snowmobilers."

Although the audience of more than 80 people were polite to each others' opinions, a number of people countered each others' arguments for keeping the railroad or creating a trail.

One Cambridge businessman said he wanted to use the railroad to ship his products, but had been told by Forbes that the need for shippers was not great enough. In order to ship anyone's goods, hundreds of cars would be needed, he said Forbes told him. Another Cambridge resident spoke in favor of a bike path, adding that rail has not been a feasible use for the corridor while a trail would prove to be an economic benefit.

In a telephone interview prior to last night's meeting, Ben Coes, a primary investor of Iron Rail Ways, said the company is interested in acquiring trackage rights to the portion of the LVRR from St. Johnsbury to Joe's Pond in Danville. Coes said the company's primary interest has been in shipping rock from a Danville quarry and possibly shipping logs from logging operations. Coes said the company would be interested in possible excursion rail for the 15-20 mile corridor as well.

"We have expressed our interest to Karen Songhurst, Glenn Gershaneck," he said. "Hopefully, this will take place."

Coes said the company does not see many business possibilities along the corridor beyond Danville.

"We don't see much business beyond that," he said. "We'd run further, but we just don't see much business. We would love to be running on that front (farther down the line)."

Shortly after Forbes' decision to let the lease expire, Agency of Transportation officials stated they would put the lease out to bid as soon as this year. During the meeting, Maguire said there would be guidelines released to give potential bidders an idea on what AOT is looking for in a lessor. Maguire said the state would pursue short-term leases, as opposed to the 10-year renewable lease formerly held by Forbes.

Carl Martland, an MIT professor who led the study, said the corridor has limited potential for rail freight, but "innovative operations" may be able to use the corridor for
See RAILROAD Page Twelve

Local Quarry Owner Wants Rocks To Ride On Lamoille Valley Rails

by Nikki Parker

DANVILLE — Bert Frye has a snapshot on a bulletin board in his office of freight cars waiting to be loaded with crushed rock from his quarry. The stone was shipped for six weeks last year to New Hampshire and, although the tracks have been quiet since, Frye is hoping the picture will come to life again.

Pointing out a recent newspaper column that proclaimed the Lamoille Valley Railroad is "awaiting its funeral," Frye said he was

upset by that way of thinking. "They aren't telling it exactly the way it is," he said. "There are more people who have connections to the railroad. I'm trying to get a meeting with people who are interested in getting into the rail."

Frye said Sen. Julius Canns, R-Caledonia, has offered his support for the railroad. In a previous article in another newspaper, Canns said he believed the state should be studying the feasibility of railroad freight on the LVRR. The state owns the

railroad, but leases it to Clyde Forbes, of CSF Acquisitions in Trenton, Fla., who operates locally as the Lamoille Valley Railroad Company.

Forbes requested permission to abandon the railroad and received approval from the state Legislature in 1995 and the federal Surface Transportation Board this summer. He withdrew the request in October, a week before it was to go into effect.

"There are some real good things to happen to the railroad," said Frye.

A businessman, Frye said his

interest lies in providing crushed rock. When the trains rolled by his quarry last year, he knew the railroad could provide commerce for the area. Frye said his client knew he could get the rock by train cheaper than by truck. Excursion trains are another possibility and interest for the railroad, Frye said.

Forbes has not given the state any idea of the direction he would like to go with the line since he withdrew the abandonment request. Forbes and Glenn Gershaneck, sec-

retary of transportation, met this month about the abandonment and agreed to call a public meeting about the railroad, possibly to be held next month.

An acquaintance of Forbes', Frye said Forbes does not want to let go of the rails from St. Johnsbury to Danville because of the possibility of hauling the aggregate from the quarry.

Pete Snyder of Still River, Mass., is also interested in the railroad, but See **QUARRY, Page Five**

QUARRY

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for a different purpose. Snyder has proposed an excursion railroad to the Agency of Transportation, which would operate in the Morrisville to Greensboro area.

The railroad is now also split, literally. A gap of missing track is in Walden where the railroad overpass and abutments were removed. Residents have applauded the change due to the danger the low overpass and narrow road created, but Frye thinks the state was hasty in the removal.

"(Betty) Hatch worked hard, but there were other ways," he said. "The underpass was not maintained better. One abutment could have been changed... there was 15 to 16 inches of old pavement there. There could have been an extra foot of clearance."

The washouts caused by the 1995 flood would have to be filled in and the bridge replaced to make a rail-trail. The same could be done to revitalize the railroad, which would be more profitable than a trail, Frye said.

"All those washouts could be

fixed by rail," he said. "It's not a big job."

A study of the rails and railbed by the state Air, Rail and Public Transportation department indicated they were in good condition, according to Richard Bowen, railroad planner for the department. Bowen said the track is in Class 1 shape, which is the next to lowest weight class for railroads, able to carry freight trains at 10 mph.

Three regional planning commissions will look at a survey to determine the uses of the railroad, but are still in the planning stages of how the survey will be done and funded. The Northeastern Vermont Development Association in St. Johnsbury is also planning to survey the economic possibilities of the railroad for various uses.

This is the time for railroad, Frye said. Trucks are crowding the roads, and are expensive with high registration and fuel costs. Transportation funds go into paving and repaving highways, he said.

"Our roads are not good," he said. "Bridges are falling apart. AOT needs to do a favor for transportation."

Supporters of a rail-trail say

the revenue will come from people using the trail for year-round purposes. Sen. Robert Ide, R-Caledonia, said he will seek a bill to convert the railroad into a multi-purpose trail.

Some abutting landowners to railroad tracks do not want snowmobiles and bikers nearby, however. In Jefferson, N.H., property owners are reported to be petitioning against a rail-trail on the former New Hampshire and Vermont Railroad (also owned by Forbes until he abandoned it) from Jefferson to Gorham, N.H. During a visit to Newport, Gov. Howard Dean was picketed by disgruntled residents who did not want a rail-trail along the former Beebe subdivision that runs through their backyards.

Frye is certain that both Forbes and Snyder can come together and look at the proposals to get the railroad back on track. Optimistically, he would like to see freight rolling again as soon as next fall. Such a feat requires support from all towns along the line, he said.

"Forbes needed community and state support for a long time," he said. "The state doesn't have a bad investment; people are trying to make it look like a bad investment."

ATTACHMENT 2

Motion to Strike Re: LVRC Reply in Opposition to T. D. Phelps Petition for Stay
STB Docket No. AB-444 (Sub-No. 1X) T. D. Phelps to STB, 17FEB04

ATTACHMENT 3

Motion to Strike

**Re: LVRC Reply in Opposition to T.D.Phelps Petition for Stay,
STB Docket No. AB-444 (Sub-No. 1X)**

T. D. Phelps to STB, 04FEB04

(Cover and 2 Crossing Inspection Forms)

GRADE CROSSING INSPECTION FORMS

From

Edwards & Kelcey
Lamoille Valley Railroad Corridor Study

Prepared For

Vermont Agency of Transportation

Originally Submitted
October , 2000

CROSSING INSPECTION REPORT

TOWN: Denville DATE: 8/1/00 TIME: 3:00 PM

NAME OF ROAD: U.S. Route 2 MILEPOST: 13.09 AAR DOT:

WIDTH OF ROAD: 51' LENGTH OF CROSSING: 78' FLASHERS

OF TRACKS: 1 GATES: NA N/E:

BELLS: NA LENGTH OF GATE: NA N/W: 14' & 8'

PED. XING: NA HEIGHT OF GATE: NA SW: NA

ROAD MARKINGS: Centerline, travel way S/E: 14' & 8'

CONDITION OF SIGNAGE: 4

TYPE OF CROSSING SURFACE: Rubber

CONDITION OF CROSSING SURFACE: 4

COMMENTS:

1. Crossing structures in very good condition

CROSSING INSPECTION REPORT

TOWN: Danville DATE: 8/1/00 TIME: 4:15 PM
NAME OF ROAD: Route 2 MILEPOST: 14.69 AAR DOT: _____

WIDTH OF ROAD: <u>51'</u>	LENGTH OF CROSSING: <u>111'</u>	FLASHERS
# OF TRACKS: <u>1</u>	GATES: <u>NA</u>	N/E: <u> </u>
BELLS: <u>NA</u>	LENGTH OF GATE: <u>NA</u>	N/W: <u>2@14'</u>
PED. XING: <u>NA</u>	HEIGHT OF GATE: <u>NA</u>	S/W: <u> </u>
ROAD MARKINGS: <u>Center Line, Travel Way</u>		S/E: <u>2@14'</u>
CONDITION OF SIGNAGE: <u>2</u>		
TYPE OF CROSSING SURFACE: <u>Bituminous Concrete</u>		
CONDITION OF CROSSING SURFACE: <u>3</u>		

COMMENTS:

1. Flasher structures are oxidized and need some rehabilitation.
2. Signage is good.
3. Road modifications will be required to clear debris between rail and guide rail.

THE CALEDONIAN-RECORD • Wednesday, October 1, 1997**Hyde Park****Railroad Report
Recommends Giving
Line One Last Try**

By SYLVIA DODGE

According to Carl Martland, a Massachusetts Institute of Technology researcher, the Lamoille Valley Railroad, which runs from St. Johnsbury to Swanton, is a "prime candidate for abandonment."

But in line with most of the testimony given by citizens last night at a meeting held to discuss the future of the rail corridor, the report prepared by Martland also recommends deferring abandonment of the railroad for anywhere from 5 to 30 years, to "allow interested parties another shot at reviving the line."

Martland said in a cover letter to Northeastern Vermont Development Association planning specialist Richard Dabiri, "I cannot ignore the reality that the line has had no significant traffic in 15 years, despite rather large state efforts to maintain the line." It is estimated that \$20 million has been spent.

The MIT researcher also reported that an investment of \$15 million would be needed to bring the former St. Johnsbury and Lamoille County Railroad up to operational form for freight and passenger service. Martland was asked to study the rail corridor by the Vermont Agency of Transportation.

In an attempt to devise new uses for the line, transportation agency officials will soon be taking proposals from people interested in putting the railroad to use.

Those proposals are likely to run the gamut from use of the line for excursion trains, to full use of the line as a snowmobile trail, to creation of a cross-state bicycle path, or even to use the railroad right of way as a utility corridor.

Greg Maguire, director of the

state's division of Rail, Air and Public Transportation said, "We're going to give everybody the opportunity to submit their ideas."

Using portions of the line for passenger excursions - especially near Swanton, Morrisville, and St. Johnsbury - is one idea that is being studied. It is also hoped some freight traffic could be developed at the ends of the line, an idea which Tim Phelps of East Hardwick thinks is shortsighted.

He thinks an "aggressive local operator" should be found for the railroad who will develop business customers on the entire line. He also is concerned about the removal of a railroad underpass in Walden in recent years, which in essence has severed the line.

Karen Songhurst, the state's Railways Programs administrator, assured him that if new freight traffic is ever developed on the line, by law the underpass will have to be reconstructed.

For the next five years, the MIT report first and foremost recommends seeking federal funding to repair flood damage to the rail line between Hardwick and Swanton.

In the long run, the report indicates that the "highest and best use" of the corridor may well be to develop it into a multi-use transportation/utility corridor.

Whether it should become a non-motorized pedestrian/bicycle path, a motorized snowmobile trail, or some combination of both should be decided on a regional basis, according to Martland.

Over time, the report recommends that the rail corridor could retain

► Continued on Page 12A
See **Railroad**

Railroad

► Continued from Page 1

some rail operation in some locations, and at the same time be developed into a transportation path.

The economic benefits of such a path were not lost on the researchers. The report cited studies from around the country which show that recreation paths can be beneficial to local economies.

According to the report, for which the state paid \$12,000, "Converting the right of way to a multiple-use transportation corridor would ... provide a boost to the local economies and, through the taxes on meals and lodging, provide some return to the state for its investment in the corridor."

Last night's public meeting was the last of four held to take input from Vermonters about the future of the Lamoille Valley Railroad corridor.

ATTACHMENT 5

Motion to Strike

**Re: LVRC Reply in Opposition to T.D.Phelps Petition for Stay,
STB Docket No. AB-444 (Sub-No. 1X)**

T. D. Phelps to STB, 04FEB04

(Entire Summary & Conclusions Section, pages 30 through 33)

**Summary & Conclusions Section
(Section 7)**

Excerpted From

**ANALYSIS OF THE LAMOILLE VALLEY RAILROAD
AND DETERMINATION OF THE HIGHEST AND
BEST USE OF THE RAIL CORRIDOR**

By

Carl D. Martland
Jimmy Tsz Kwan Wong

Center for Transportation Studies
Massachusetts Institute of Technology

Originally Submitted
June 3, 1997

Prepared For

Northern Vermont Development Association

Within the last few years, a world-wide slump in the forest products industry has hurt producers in New England and nearby Canada, which has affected all of the transportation carriers serving these industries. More serious from the perspective of the rail industry is the shift from rail to truck. Many moves that historically went by rail now go by truck, largely because heavy trucks operating over the interstate highway system are much faster, more reliable, and often cheaper than the competing rail service.

There is an on-going debate concerning the uses of this forest. Among the issues being debated are:

- Preservation of more wilderness area

- Restricting logging to allow more recreational use of the land

- Reduction in the use of clearcutting techniques

- Maintaining the integrity of the forest (i.e. limiting development)

- Maintaining employment in logging industry

- Maintaining a role for the small woodlot

- Modernizing the paper mills in the region

- Limiting the number of large trucks on the rural road network (to avoid damage to the roads, limit congestion in towns, and to reduce the number of heavy, slow log trucks on the roadways)

It is conceivable that the railroad could be a factor in part of a larger strategy to promote the forest products industry in northern New England that is related to the highway, clear-cutting, small woodlot issues. For example, a "sweeper" service could be run by the railroads to pick up logs or pulpwood on a regular schedule. Independent loggers and cooperatives could concentrate on moving logs and pulpwood to the nearest pickup location; reducing their time and the usage of highways for moving these products to the mills. The added benefits to the community in terms of road maintenance, congestion, and average speed on the rural roads might justify some support for the rail service.

7 Summary and Conclusions

This study reviewed some of the history of the Lamoille Valley Railroad along with its prospects for growth. The study considered the location of the line within the broader rail network and its potential importance as part of a through route between major population, industrial, or natural resource centers. The study also reviewed information concerning

industrial activity along the corridor in order to assess the potential demand for rail transportation to and from points served by the railroad.

A fundamental conclusion is that there is very limited potential for continued freight use of this corridor. It is conceivable that some innovative operations could generate traffic, but this would require a new approach to light density rail operations.

For rail freight, in general, the overriding factor is that trucks are more efficient for short haul, general merchandise traffic, while railroads are more efficient only for the long haul, bulk traffic. That is why the rail network has been shrinking for so long. The problems with the LVRC as a freight railroad are three-fold:

- a) No local traffic: the railroad has had no local traffic in recent years. The asbestos and talc industries that once contributed significantly to the line's traffic base are now gone and unlikely to recover.
- b) Low development potential: there is little potential for development along the route, as there are more attractive development sites at either end of the corridor that are closer to the interstate highway system and to the major US and Canadian rail networks.
- c) Not a viable bridge route: the railroad's potential as a bridge route is very limited, because of its position in the international rail network.

The line also has very low potential for intercity passenger or commuter service. The route does not serve any major metropolitan centers, nor is it on the shortest rail path between any major metropolitan centers. None of the towns served by the line are large enough to support commuter rail operations.

There are better possibilities for excursion operations and tourist rail services. However, it is unclear whether these services would be profitable enough to support any substantial portion of the line. For excursion services, typical distances are on the order of 5-25 miles, and network linkages are less essential than in intercity passenger or freight. The key for excursion services is to have stations in activity centers that attract tourists and to have attractive scenery to view. Morrisville, with its station close to the highest mountains in the state, is an obvious point for excursions, although excursions could also be run out of either end of the line. Linkages to Amtrak in Swanton or to the excursion roads in Northern New Hampshire (in St. Johnsbury) might also be possibilities.

Although there is a need for some immediate repairs, the line is for the most part in reasonable shape for low density operations. It is our understanding that federal funds are available to repair recent flood damage to the line, so that there is not an immediate concern about spending significant amounts of state money to restore the line to operating condition. What is needed for continued rail operations is a consistent financial basis for maintaining the line. Successful excursion operations will be able to support routine maintenance of short (10- to 20-mile) stretches of the line, but certainly not of the entire line.

According to traditional methods of analysis, the line is a solid candidate for abandonment. The normal procedure would be to break the line in the middle, and abandon segments toward either end. The rail and other track material could be salvaged as scrap metal for something on the order of \$15,000 per mile (higher if the rail could be re-used elsewhere).

For the near future, it may be premature to abandon the line. While it is clear that the potential for freight traffic has been declining and will very likely continue to decline, the potential for passenger excursion operations is high for some portions of the route, especially near Swanton, Morrisville, and St. Johnsbury. Also, the state already owns the line, and the planning commissions for the three regions served by the line have expressed strong support for the continuance of rail service. Under these conditions, deferring abandonment for a few years to allow additional time to develop innovative rail services makes sense.

The highest & best use for the LVRC would appear to be as follows:

Short run (1-5 years, or until such time as major line rehabilitation is needed):

- a. Seek federal funding to repair the recent flood damage that occurred between Hardwick and Swanton. In general, ensure that the necessary minor maintenance is done to enable a minimal level of service over this portion of the line.
- b. A serious effort should be undertaken by the current operator to demonstrate the potential of the line as a tourist railroad, including the possibility for regularly scheduled tourist runs, foliage and other special excursions, and ski trains.
- c. Efforts to promote freight traffic should be focussed on the ends of the line and a limited number of nearby points, as it is not credible to promote interior points along the line as attractive locations for customers dependent upon rail service.

- d. Between Swanton and Hardwick and between St. Johnsbury and Joe's Pond, the rail should be left in place to allow for the possibility that innovative freight and passenger services could be developed over the next few years. Between Hardwick and Joe's Pond, the line is already broken and taking up some portions of the rail may be justifiable. For example, it may be necessary or desirable to take up some of the rail in some special locations (e.g. on or near bridges or grade crossings) as part of the process of creating a safe bicycle path along this part of the right-of-way.
- e. Portions of the line that are not used for rail service should be embargoed for freight. These portions of the route should be made available for hiking, skiing, and (where appropriate) snowmobiling.
- f. Within urban areas where there is no longer any rail service, begin to convert the right-of-way into a transportation path, either with a paved, gravel, or natural surface depending upon the desired uses.

Medium term (5-30 years, or until such time as it is clear that there is no future need for rail service)

- a. Continue to provide passenger and freight rail service, but so long as the operator is able to secure a consistent source of adequate funding (from revenues or from public agencies) to cover operating costs and to maintain the property.
- b. Abandon any significant portions of the line that are not utilized for freight or passenger service. Salvage the rail and other track material unless a clear case can be made to demonstrate the benefits of leaving the rail in place.
- c. Expand and improve the transportation paths and provide better linkages to area services and attractions.

Long term (30+ years)

- a. Preserve the rail line only if funding can be secured to cover the steady state maintenance costs as well as the operating costs; otherwise, abandon the railroad and salvage the rail and other track material.
- b. Expand and improve the transportation path and provide better linkages to area services and attractions.
- c. Preserve the right-of-way in order to provide transportation and right-of-way options for future generations