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April 13, 2006

VIA FEDERAL EXPRESS

216248

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



Re: **Finance Docket No. 34865**
Arkansas Midland Railroad Company, Inc. -- Petition for
Declaratory Order -- Caddo Valley Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Declaratory Order of Arkansas Midland Railroad Company, Inc.**, dated April 13, 2006. A check in the amount of \$1,400, representing the appropriate fee for this filing, also is enclosed.

An extra copy of the Petition and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Arkansas Midland
Railroad Company, Inc.

ENTERED
Office of Proceedings

FEE RECEIVED

Part of
Public Record

APR 14 2006

TJL:tl

Enclosures

**SURFACE
TRANSPORTATION BOARD**

cc: Parties on Certificate of Service

FILED

APR 14 2006

**OFFICE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- PETITION FOR DECLARATORY ORDER --
CADD O VALLEY RAILROAD COMPANY



**PETITION FOR DECLARATORY ORDER OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.**

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: April 13, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- PETITION FOR DECLARATORY ORDER --
CADDO VALLEY RAILROAD COMPANY



**PETITION FOR DECLARATORY ORDER OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.**

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, Arkansas Midland Railroad Company, Inc. ("AKMD") hereby seeks issuance of a declaratory order regarding the rail line (the "Norman Branch") that AKMD was forced to sell under the Feeder Line Development Program in Finance Docket No. 32479, Caddo Antoine and Little Missouri Railroad Company -- Feeder Line Acquisition -- Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR. The feeder line applicants in Finance Docket No. 32479 now apparently intend -- and are preparing -- to transfer the Norman Branch to another party without providing AKMD with its statutory right of first refusal under 49 U.S.C. § 10907(h). The Board should order that no such transaction can proceed until the Norman Branch is offered to AKMD on the terms specified in Section 10907(h).

In Caddo Antoine et al. -- Feeder Line Acq. -- Arkansas Midland RR, 4 S.T.B. 326 (1999) ("Caddo I"), 4 S.T.B. 610 (2000) ("Caddo II"), aff'd sub nom. GS Roofing Products Co. v. STB, 262 F.3d 767 (8th Cir. 2001) ("GS Roofing"), the Board granted the feeder line application of five shippers -- GS Roofing Products Company, Inc., Beazer West, Inc. d/b/a Gifford-Hill & Company, Bean Lumber Company, Curt Bean Lumber Company and Barksdale Lumber Company ("the Shippers") -- to acquire AKMD's Norman Branch between Gurdon and

Birds Mill, Arkansas. Some (but apparently not all) of the shippers formed Caddo Valley Railroad Company, Inc. ("CVR") to effectuate the transaction, and the sale was completed on September 1, 2000.

In recent months, AKMD has become aware of a potential sale of the Norman Branch by CVR, with Pioneer Railcorp as a possible buyer. AKMD suspected that the feeder line applicants in Finance Docket No. 32479 might seek to avoid the statutory right of first refusal provided to AKMD by 49 U.S.C. § 10907(h) through the artifice of selling their stock in CVR -- rather than the Norman Branch itself -- to Pioneer. On September 25, 2005, AKMD wrote to CVR, inquiring "whether a sale of CVRR or its rail line is contemplated" and indicating that AKMD expected an opportunity to exercise its right of first refusal under Section 10907(h). See Exhibit 1 attached hereto.

In an undated letter faxed on October 4, 2005, CVR's general manager indicated that "the contemplated sale of CVRR . . . is being handled by CVRR's general counsel." See Exhibit 2 attached hereto. In a letter dated the following day, Corey Thomason of CVR provided a more substantive response. See Exhibit 3 attached hereto. In carefully crafted language, that letter indicated:

Please be advised that CVRR is not proposing to sell or abandon all or any portion of the Norman Branch line. Hence, the provisions of 49 U.S.C. § 10907 have not been triggered. Should CVRR propose to sell or abandon all or any portion of the Norman Branch line, it will comply with the provisions of 49 U.S.C. § 10907(h).

Exhibit 3 at 1. Any further inquiries were directed to CVR's counsel.

Since the October 5, 2005 letter, AKMD has had no further communication from CVR regarding a possible sale.

While not talking to AKMD, CVR's owners have been talking to the media. This past Sunday's edition of the *Arkansas Democrat Gazette*, Little Rock's principal newspaper, contained a major, front-page story on CVR. See Exhibit 4 attached hereto (the "Article"). While revealing and enlightening in any number of ways, the article makes clear that a sale of the Norman Branch is pending and specifically identifies Pioneer Railcorp as the potential buyer. According to the article, Curt Bean, who is apparently CVR's principal owner,¹

was not anxious to discuss his railroad while a sale was pending.

"The train is supposed to be sold, but no papers have been signed or anything," Bean said before leaving for a business meeting.

....

Now it [the railroad] is for sale. Bean wants to sell because he doesn't have the expertise or the equipment to run a railroad the way a real railroad company could, Morrison said.

Article at 10A, 11A.

In a remarkable passage, CVR's counsel, Richard Streeter, explained that the pending sale of the Norman Branch would be structured specifically to defeat AKMD's right of first refusal under the feeder line statute:

[T]hat difference of opinion [as to how much CVR may have invested in the line since 2000] won't matter, Streeter said, because Arkansas Midland is never going to get a chance to buy back the Norman Branch.

¹ The *Democrat Gazette* article and other available information would seem to indicate that the Bean interests -- Curt Bean, Bean Lumber Company and/or Curt Bean Lumber Company -- were ultimately the only feeder line applicants to actually hold interests in CVR and take part in the acquisition of the Norman Branch. The article indicates that CertainTeed Corp. (formerly GS Roofing Products Company) declined to take part in the transaction, and that Hanson Aggregates (believed to be the former Beazer West, Inc.) is no longer in business. Barksdale Lumber Company, the fifth feeder line applicant, is identified as no longer receiving rail service. To AKMD's knowledge, the feeder line applicants have never provided any information to the Board regarding the actual nature of the entities that acquired the Norman Branch.

The pending sale is structured so that only Caddo Valley's stock will change hands, the lawyer said. Thus, he said, the Norman Branch will continue to be owned by Caddo Valley Railroad, and the transaction will not trigger the first-refusal requirement. Caddo Valley has not discussed the technicality with anyone at Arkansas Midland, and does not intend to.

"Forget Arkansas Midland. We're not talking to them," Streeter said. "We don't want to talk to them because they cut us off about nine years ago."

Article at 10A. Mr. Streeter's words could not be plainer, and confirm that, in the absence of Board action here, the feeder line applicants in Finance Docket No. 32479 intend to dispose of their interests in the Norman Branch with no further consideration of the statutory requirements of 49 U.S.C. § 10907(h).

There is no rational legal or regulatory support for the scheme which the owners of the Norman Branch have announced they will pursue. CVR was formed solely as a mechanism to acquire the Norman Branch on behalf of the feeder line applicants. It holds no other assets and performs no other function. It is like many other feeder line cases, where a new entity is formed by the actual feeder line interests (particularly if they are shipper related) to complete the transaction. E.g., Cheney R. Co. -- Feeder Line Acq., 5 I.C.C.2d 250, 258 (1989), aff'd sub nom. Cheney R. Co. v. ICC, 902 F.2d 66 (D.C. Cir. 1990), cert. denied, 498 U.S. 985 (1990); Cheney Railroad Company, Inc. -- Feeder Line Acquisition -- CSX Transportation, Inc. Line Between Greens and Ivalee, AL, Finance Docket No. 31012 (ICC served March 11, 1994) ("Cheney II") at 2 & n.3; Sandusky County, et al. -- Feeder Line Appl. -- Conrail, 6 I.C.C.2d 568, n.1 (1990); Forty Plus Foundation/Manhattan Central Railway Systems, LLC -- Feeder Line Acquisition -- The Manhattan Highline, Finance Docket No. 34606 (STB served January 25, 2005) at 1, n.1. Such a structural artifice should not and cannot be permitted to subvert the feeder line statute and deprive former owners of the right of first refusal they were plainly

intended to have.² Allowing the Norman Branch's owners to proceed as they intend here would provide a roadmap to future feeder line applicants to essentially write Section 10907(h) out of existence.

Indeed, CVR is a complete stranger to the Board; to AKMD's knowledge, it has never appeared in any STB decision and never been referenced (until now) in any pleading at the agency. It was the Shippers who were the feeder line applicants here. See Finance Docket No. 32479, Decision served June 26, 2000 at 2 ("[T]he Board approved an application to purchase AMR's Norman Branch line under the feeder line provisions of 49 U.S.C. 10907 by the shippers located on the northern portion of the line." [listing the five Shippers])). After they were substituted for the original feeder line applicant in Finance Docket No. 32479, it was the Shippers who were required to demonstrate financial responsibility in accordance with the statute. Caddo I, 4 S.T.B. at 331, 343-345.³ The related appeal in GS Roofing involved only the Shippers, and did not mention CVR. 262 F.3d 767. And it is the Shippers who are now proceeding to dispose of their interests in the Norman Branch acquired as the feeder line

² Those first refusal rights were effectively the Congressional quid pro quo for the extraordinary condemnation powers that the Board is granted under Section 10907.

³ The Board's decisions are thus replete with references to the fact that, while the Shippers intended to form a new entity as their vehicle to acquire the Norman Branch, it was the Shippers themselves who were the real parties in interest as feeder line applicants. 4 S.T.B. at 331 ("The Shippers stated that if their acquisition of the line is approved, the new corporation would hold title to it even though the Shippers would provide financial backing and exercise control over the new entity."); 4 S.T.B. at 331 ("We also invited additional evidence on the Shippers' financial responsibility"); 4 S.T.B. at 343 ("The Shippers reconfirm their intent and willingness to acquire the Norman Branch, stating that they would acquire the Norman Branch through a newly formed corporation that will be jointly owned by GS Roofing, Bean and Gifford-Hill. . . . The Shippers also submitted confidential financial data under seal showing that GS Roofing and Bean have the financial resources necessary to acquire the line."); 4 S.T.B. at 345 (in response to AKMD's argument that the identity and financial responsibility of the actual operator were not clear, Board finds that "the Shippers submitted extensive evidence under seal showing the financial condition of the prospective purchasers of the line.").

applicants in Finance Docket No. 34649. That transfer is plainly subject to the provisions of 49 U.S.C. § 10907(h).

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Board may issue a declaratory order to remove uncertainty or terminate a controversy. Issues regarding the statutory right of first refusal under Section 10907(h) have not been frequently raised in the past. Union Pacific Railroad Company -- Petition for Declaratory Order -- Feeder Line Acquisition By Wyoming & Colorado Railroad, Inc., Finance Docket No. 32293 (ICC served June 15, 1993 and April 13, 1994) ("UP/WYCO") (settled before disposition); Cheney Railroad Company, Inc. -- Feeder Line Acquisition -- CSX Transportation, Inc. Line Between Greens and Ivalee, AL, Finance Docket No. 31012 (ICC served March 11, 1994) (addressing whether repurchase by original carrier under what is now Section 10907(h) requires separate agency approval). There is plainly a controversy between AKMD and the owners of the Norman Branch which should be addressed before rather than after the owners undertake an impermissible sale with uncertain implications.⁴

In similar circumstances, the Board instituted a declaratory order proceeding in UP/WYCO, supra, and should do so here as well.⁵ AKMD believes that the Board would be justified in issuing a declaratory order against the Shippers' proposed sale of CVR on the basis of the legal issues involved and without further proceedings. As noted above, however, there are certain ambiguities regarding how the Shippers implemented their feeder line authority in

⁴ It is unclear, for example, whether the Shippers believe that AKMD's right of first refusal would survive a sale of CVR's stock to Pioneer. Particularly if Pioneer pays more for CVR than the first refusal price contemplated by Section 10907(h), that could complicate financing arrangements by restricting the ability to pledge, abandon or dispose of the Norman Branch assets at a current valuation.

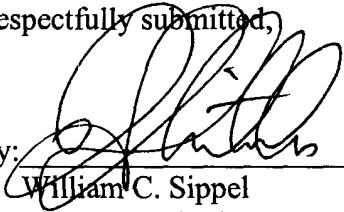
⁵ UP/WYCO was before the ICC on judicial referral, but the case's nature and issues were apparently comparable to those here. As noted above, UP/WYCO was dismissed before any decision on the merits was reached.

Finance Docket No. 32479 and what precisely they are intending to do now. If the Board believes that further information or argument is needed on these issues, it should quickly institute a declaratory order proceeding and provide for additional filings by the parties.

Finally, any filing that Pioneer Railcorp (or any other entity) make may to acquire the Norman Branch or CVR⁶ must be stayed pending resolution of these matters. The Board should be prepared to issue a stay on its own motion, but in any event AKMD will immediately file a petition to stay in any such proceeding.

WHEREFORE, AKMD respectfully requests that the Board grant this petition and enter a declaratory order as provided herein.

Respectfully submitted,

By: 

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: April 13, 2006

⁶ In Pioneer's case, this would presumably be a notice of exemption under 49 C.F.R. § 1180.2(d)(2) to control a non-connecting carrier.



ARKANSAS MIDLAND RAILROAD CO., INC.

A Pinsky Railroad Company

314 Reynolds Road, Building 41, Malvern, AR 72104
Telephone 501-844-4444 • FAX 501-844-4710 • E-mail: claggan@arkmidrr.com

September 29, 2005

VIA FACSIMILE AND MAIL

Mr. Bill Thompson
General Manager
Caddo Valley Railroad Company, Inc.
P.O. Box 2118
Glenwood, Arkansas 71943

Re: **Possible Sale of Caddo Valley Railroad**

Dear Bill:

We have heard from various sources that CVRR or its owners may be contemplating a sale of CVRR or some or all of its Gurdon-Birds Mill rail line to Pioneer Railcorp or other potential buyer.

As I am sure you are aware, the Gurdon-Birds Mill line was formerly owned and operated by the Arkansas Midland Railroad and was acquired by CVRR under the feeder line procedures of the Surface Transportation Board in 2000 over the objection of AKMD and after considerable litigation before the STB and the courts.

Our counsel has advised us that under the feeder line statute, 49 U.S.C. § 10907(h), if the carrier purchasing a line under the feeder line procedures proposes to sell or abandon all or any portion of the purchased railroad line, such carrier must offer the right of first refusal with respect to such line to the rail carrier from which it was purchased. The statute specifies that such offer shall be made at a price equal to the sum of the price paid by the purchasing carrier to the former owner and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

Please advise whether a sale of CVRR or its rail line is contemplated and, if so, how CVRR intends to provide AKMD with the opportunity to exercise its first refusal rights in accordance with the requirements of the statute.

Very truly yours,

Charles Laggan
Vice President and General Manager

Cc: Mr. Curt Bean
P.O. Box 590
Glenwood, AR 71943



CADDO VALLEY RAILROAD CO., INC.

P.O. BOX 2118 GLENWOOD, ARKANSAS 71943

TELEPHONE (870) 358-4800 FAX (870) 350-3625

Dear Charles,

Thanks for letter dated: September 29, 2005.

Concerning the contemplated sale of CVRR. This matter is being handled by CVRR's general counsel.

Your regard,

Bill Thompson



CADD O VALLEY RAILROAD CO., INC.

P.O. BOX 2118

GLENWOOD, ARKANSAS 71943

TELEPHONE (870) 356-4600

FAX (870) 356-2625

October 5, 2005

Mr. Charles Laggan
 Vice President and General Manager
 Arkansas Midland Railroad Co., Inc.
 314 Reynolds Road
 Building 41
 Malvern, AR 72104

RE: Possible Sale of Caddo Valley Railroad

Dear Mr. Laggan:

This letter responds to your letter addressed to Bill Thompson, General Manager of the Caddo Valley Railroad, dated September 29, 2005 in which you have asked him to "advise whether a sale of CVRR or its rail line is contemplated." Please be advised that CVRR is not proposing to sell or abandon all or any portion of the Norman Branch line. Hence, the provisions of 49 U.S.C. § 10907 have not been triggered. Should CVRR propose to sell or abandon all or any portion of the Norman Branch line, it will comply with the provisions of 49 U.S.C. § 10907(h).

If you have any further questions, please contact our attorney, Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17th Street, N.W., Washington, D.C. 20006.

Yours truly,

A handwritten signature in cursive script that reads "Corey Thomason".

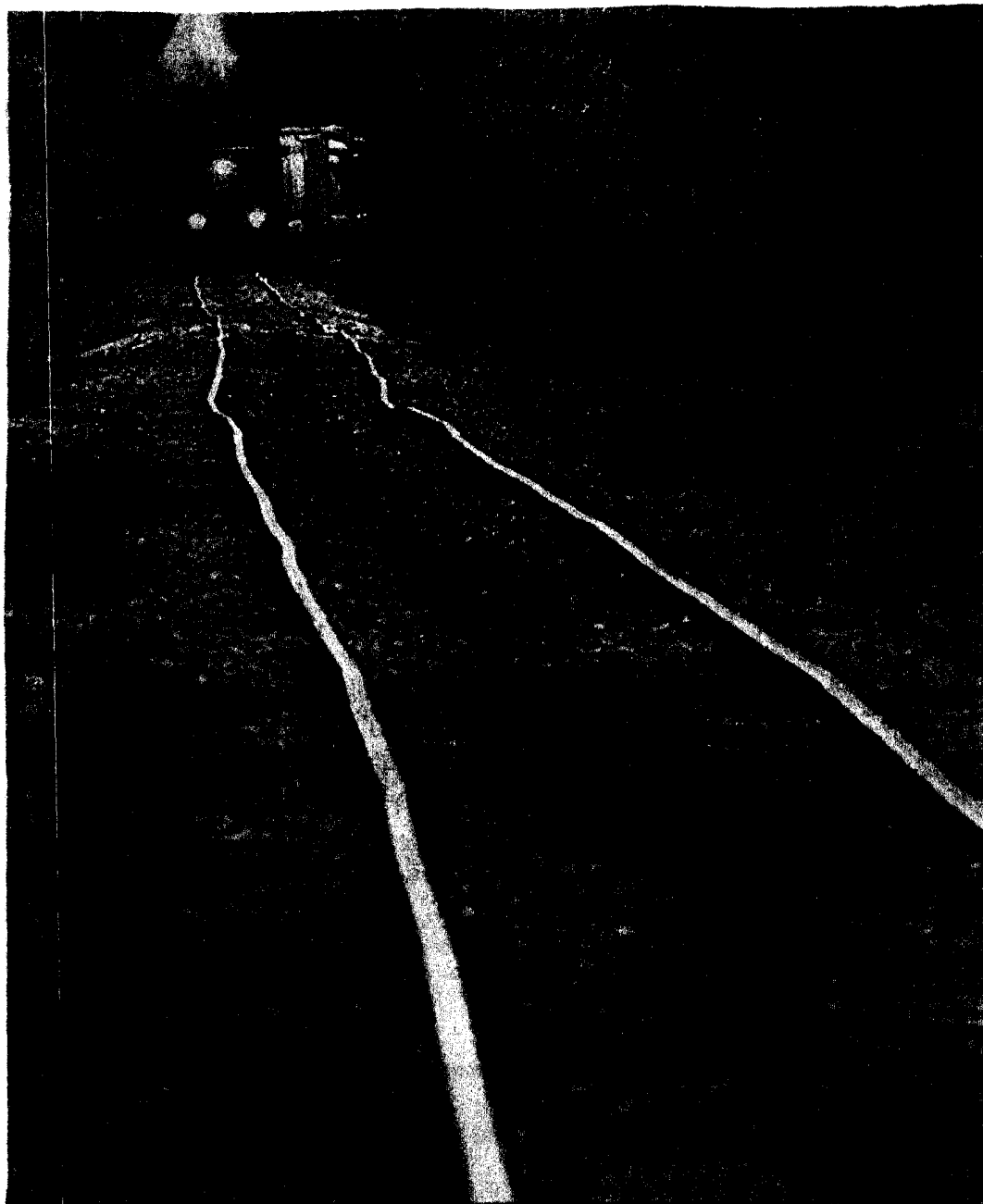
Corey Thomason

CT:ct

cc: Richard H. Streeter

FAXED

ARKANSAS DEMOCRAT GAZETTE, Sunday, April 9, 2006



Arkansas Democrat-Gazette/STEPHEN B. THORNTON

Caddo Valley Railroad Engine 1611 huffs and puffs over ramshackle tracks just north of Okolona.

Short line, long ride

Rickety rail route called economic lifeline

BY MARK MINTON

ARKANSAS DEMOCRAT-GAZETTE

OKOLONA — Rounding a bend, Engine 1611 rolls into view with three lights blazing and conductor Tony Coccarelli ready to blow the whistle for the highway crossing a quarter-mile ahead.

The engine chuffs. Puffs of smoke rise. But the train seems suspended in place.

"Four miles an hour," Coccarelli calls down from the cab when the engine and its 19 empty cars finally arrive at the crossing. He could have walked there as fast. But on the Caddo Valley Railroad, the tracks are so decrepit that all the trains are restricted to a walking pace over the entire 52-mile route — a journey that lasts 12 hours and requires an overnight stop and a change of crews under the best of circumstances. Under the worst, the train derails like

dozens before it.

The plodding pace allows plenty of time to admire the wildlife, says Jason McDaniel, the engineer on the two-man crew. At 4 mph, he says, he can even make out the snakes.

The Caddo Valley Railroad, which runs north from Gurdon through the woods west of Hot Springs, is probably best known for the mysterious "Gurdon lights" that draw the curious up the tracks at night. The strange flashes could be swamp gases or reflections from a nearby highway — or even, as Coccarelli relates the legend, glints from the swinging lantern of a decapitated man wandering the woods in search of his head. But the Gurdon lights aren't the only intrigue surrounding the Caddo Valley Railroad these days.

The rickety, money-losing short line was the unlikely

See **RAILROAD**, Page 10A



Arkansas Democrat-Gazette/
STEPHEN B. THORNTON

Dogs approach the Main Street crossing sign in Okolona.

largest independently owned Southern pinewood mills in the United States.

In downtown Glenwood are the railroad's administrative offices. Caddo Valley is likely the only railroad in America with its own goal posts. It operates on the grounds of the old Glenwood High School, which was closed and sold — football field and all — after a consolidation combined students from Glenwood and Amity into Centerpoint School District. Two lumber companies also operate on the grounds, but the railroad's general manager occupies the principal's office.

Trundling out of town, Caddo Valley's locomotives plod through Amity. Although they roll right past Barksdale Lumber and Holmes Timber, both yards just watch them go by, and ship by truck. Lois Barksdale said her yard used the rail years ago but the business scaled back. "We had a sawmill at that time. Now we just have a treating plant," she said.

From Amity, the tracks run through the hills and into Antoine, a tiny town on the Antoine River where the railroad has a siding to park cars overnight. Along the riverbank, the track passes through the shadow of the Antoine Hardwoods mill, but general manager Johnny Ledbetter said the mill has never in his memory used the trains. A spur runs west from Antoine toward Delight, ending at a 407-acre Hanson Aggregates quarry. The quarry has been closed for five years. Sunken into dunes of gravel, the spur's last crossties stick up like bones.

Following the main track of the Norman Branch, the trains proceed into Okolona, population 160, where they blow two quick blasts before crossing Main Street near Hezy Barton's house.

"It's got no certain time," Barton, 65, said from his front porch. Most days, he said, the trains roll by twice, one heading north and 14 one south. He guessed he's seen

Railroad

• Continued from Page 1A

object of a power struggle that threatens to re-emerge now that the Caddo Valley Railroad is about to be sold. The battle for control of the line pitted the railroad that owned it against four of its customers in a legal tussle that lasted seven years before it ended with an unprecedented decision: For the first time, a railroad's customers wrested away a track from a railroad that had every intention of keeping it.

The former owners, Arkansas Midland Railroad Co. in Malvern, are still smarting from the 2000 ruling that forced them to sell the line — known as the Norman Branch — over their protests that it was not for sale. But the four mill owners who organized Caddo Valley Railroad Co. to take over the Norman Branch said they had every right to it: An interstate-commerce law allows shippers to force the sale of track that a railroad plans to abandon.

But Arkansas Midland had proposed to abandon only the trouble-plagued 49 miles on the northern end of the Norman Branch, a section ravaged by floods and landslides and with a bridge every mile to maintain. The railroad planned to keep the plum three-mile stretch on the southern end where it had its biggest customer, International Paper Co.'s sprawling Gurdon Wood Products mill. Not only did the International Paper mill



Bean

supply most of the freight, but it was a relatively easy jaunt to the short line's connection with the Union Pacific.

Curt Bean Lumber Co. and the other mills on the north end could have acquired the 49 miles set for abandonment with no contest. But they did not want to get stuck with just the money-losing section and fought for the entire 52 miles instead. In the end, they prevailed, forcing a court-ordered sale that gave them not only the entire Nor-

man Branch but also the lowest possible price, the salvage value of the line.

Five years later, it seems that the track runs both ways: The current owners are now trying to unload the Norman Branch themselves, and Arkansas Midland is the one hoping to dictate a sale — back to itself and at the same rock-bottom price.

A SLOW TREK

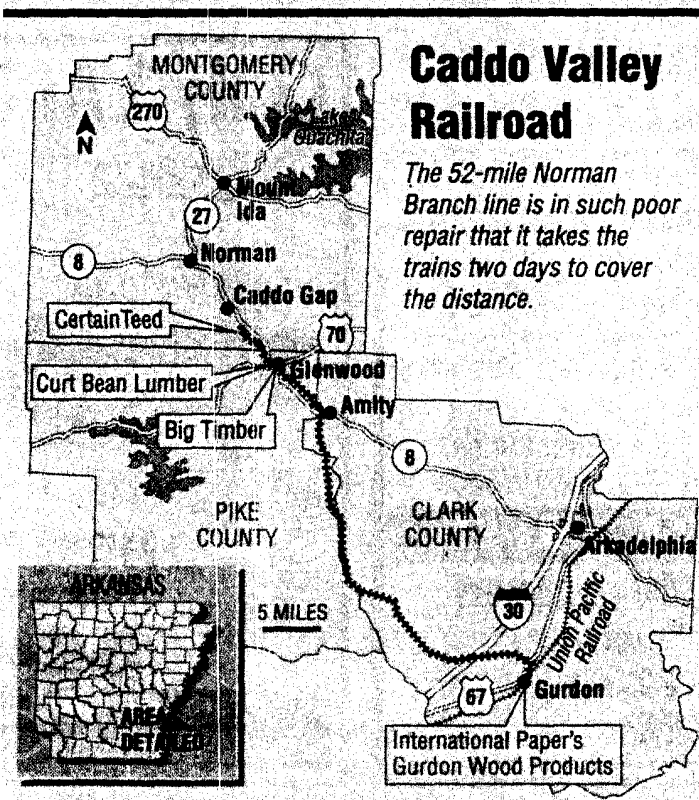
The Norman Branch, so named because it once ran north all the way to Norman in Montgomery County, now ends 6½ miles short — at the base of a cedar tree on the fringes of the Ouachita National Forest. A few steps off Arkansas 8 near its intersection with Arkansas 240, the last crosstie is directly behind a road sign that says "Wright Way Canoe Rentals." An arrow points the right way down the rail.

A quarter-mile down is the entrance to a CertainTeed Corp. mill that manufactures the granules that make roofing shingles rough. Six miles farther south, the track comes to the edge of Glenwood, where it passes Curt Bean's lumber mill, one of the



Arkansas Democrat-Gazette/STEPHEN B. THORNTON

Conductor Tony Cozzarelli drives his train slowly enough to "feel" the rails — to keep from sliding off the track.



Caddo Valley Railroad

The 52-mile Norman Branch line is in such poor repair that it takes the trains two days to cover the distance.

the engines pulling as many as 20 cars.

"I believe I hear it coming," Barton said on a recent morning, cocking his head toward the tracks.

His cousin Johnny Hale also thought he heard a distant rumble. "It's going to be a while before it gets here, though," Hale said with a chuckle.

The trains crawl through Okolona, cross under Interstate 30 and run on to International Paper's mill at Gurdon, where logs are stacked along the rails in giant bunches.

The mill's saws and kilns convert the logs into 150 million board feet of lumber and 340 million feet of plywood sheets a year, said mill manager Dave Manley. The short line usually hauls two rail cars full of International Paper lumber and five cars full of plywood a day, carrying the loads the last three miles down the Caddo Valley rail to Union Pacific's sleek, fast main line.

NO PAPERS SIGNED

As of Friday, the Norman Branch was still owned by the family of Bean, the Glenwood lumberman and patriarch of a family whose businesses include the Caddo Valley Railroad; three lumber mills that together churn

out more than 150 million board feet of pine lumber and 120 million feet of treated lumber every year; a cattle sales barn with an adjacent convenience store; the Stone Links golf course in North Little Rock; and C. Bean Transport, a Fort Smith-based truck line with 300 trucks bearing the blue logos of "The Bean Team."

Bean, who grew up in Amity, started in the lumber business in 1959, when he graduated from high school, bought a portable mill and started making railroad ties. He is now the No. 1 employer in Pike County and is known for saving hundreds of jobs when he stepped in and bought the local lumber mill that Georgia-Pacific was closing in the mid-1980s.

Bean figured he could succeed where Georgia-Pacific could not, because he could run the mill more efficiently and because he knew the local loggers and could get better prices for logs. He not only kept the mill running but has enlarged it. One major expansion that added 50 jobs memorialized Jan. 5, 1990, as "Curt Bean Day" in Glenwood.

Bean, 66, whose office at the mill now known as Bean Lumber Co. is decorated with a model of a log wagon, a framed dagger and a fanciful portrait of a Burl-

Arkansas Democrat-Gazette

ington Northern Sante Fe engine pulling a train of Bean Team cars through an idyllic valley, was not anxious to discuss his railroad while a sale was pending.

"The train is supposed to be sold, but no papers have been signed or anything," Bean said before leaving for a business meeting.

J. Michael Carr, president of Pioneer Railcorp, the Illinois-based holding company whose 2006 train calendar already adorns the former principal's office at Glenwood High, did not return calls about Pioneer's intentions for the Caddo Valley Railroad.

But rumblings of the negotiations have reached the ears of Charles Laggan, vice president and general manager of Arkansas Midland. He said he is still waiting for the first-refusal option he says his railroad is due.

Laggan maintains that before Caddo Valley can sell the Norman Branch, the railroad must offer it to Arkansas Midland for the same price Arkansas Midland was obliged to accept five years ago — \$961,000 — plus the value of any improvements since. After driving out to look over the Norman Branch and talking with people knowledgeable about the line, Laggan said he is confident that any improvements amount to "not much."

Richard Streeter, the Washington-based attorney for Caddo Valley Railroad, countered that the owners have invested "millions."

But that difference of opinion won't matter, Streeter said, because Arkansas Midland is never going to get a chance to buy back the Norman Branch.

The pending sale is structured so that only Caddo Valley's stock will change hands, the lawyer said. Thus, he said, the Norman Branch will continue to be owned by Caddo Valley Railroad, and the transaction will not trigger the first-refusal requirement. Caddo Valley has not discussed the technicality with anyone at Arkansas Midland, and does not intend to.

"Forget Arkansas Midland. We're not talking to them," Streeter said. "We don't want to talk to them because they cut us off about nine years ago."

The trouble actually started well before that.

FORCING THE SALE

On Dec. 3, 1993, floods and landslides washed out the Norman Branch at two northern mileposts. Calling the track unsafe, Arkansas Midland imposed

Continued on next page



Arkansas Democrat-Gazette/STEPHEN B. THORNTON

Trucks roll in with a fresh supply of raw lumber for International Paper Co.'s sprawling mill at Gurdon, the Caddo Valley Railroad's best customer.

• Continued from preceding page
an embargo that stopped service to all customers except the International Paper mill at Gurdon.

Convinced that the storm damage was exaggerated and the embargo was a ploy to drop service, Bean and the other northern shippers rejected Arkansas Midland's plan to raise money to reopen the northern track by slapping a surcharge on shipments.

And when Arkansas Midland moved to abandon the 49 miles, Bean and the other shippers were ready to pounce. They established their own railroad company as a vehicle to acquire the Norman Branch and petitioned the Interstate Commerce Commission to force the sale not only of the 49 miles slated for abandonment but also the three miles that were not.

"On the day I filed it," recalled Streeter, "I asked the guy sitting at the desk, 'How soon can you get this out of here?'"

"He said, 'Don't hold your breath. There are some of us here who feel you shouldn't have the right to take someone else's property.'"

As predicted, the commission awarded the mills only the northern section. But the 8th U.S. Circuit Court of Appeals in St. Louis overruled the commission, saying the Norman Branch could not be split in two.

In November 2000, the shippers took ownership of the entire 52 miles.

Curt Bean, who never wanted to run a railroad, ended up with it.

ECONOMIC LIFELINE

Bean had believed all along that the roofing mill up the road, CertainTeed, would actually take ownership and run the railroad. If the shippers ever won it in court, said Terry Morrison, Bean Lumber's corporate controller. But CertainTeed demurred at the last minute, leaving Bean to take it.

"We didn't buy the railroad because we wanted to buy the railroad," Morrison said. "We're not railroad people."

But with a rail car able to haul heavy freight like Bean's much cheaper than a truck, the Norman Branch was an economic lifeline that the company could not stand to lose, Morrison said.

Others in west-central Arkansas also view the rickety railroad track as a vital asset — so much so that they rallied to save the railroad after Bean was forced to shut the northern end down last summer. Federal railroad inspectors in July flagged three bridges as dangerous. As a result, said Federal Railroad Administration spokesman Warren Flatau, Caddo Valley Railroad voluntarily shut down the northern 47 miles

of the Norman Branch.

"This railroad's been here since I can remember, when I was a child," said Glenwood Mayor Ron Martin, whose father once worked as a fireman on the Norman Branch and would take him on runs from Glenwood to the old Norman turnaround and back. Though it has few customers, the Norman Branch still has potential to attract industry all along its corridor, the mayor said. One day, he said, it might even carry passengers, giving tourists the chance to see the century-old railroad.

He was one of a gaggle of state, local and federal officials who crowded into the conference room of a Glenwood hotel last August to mobilize a public campaign to raise money to fix the bridges and get the railroad running again.

U.S. Rep. Mike Ross, a Democrat from Prescott, dispatched a representative, as did the state's two U.S. senators, the state Highway and Transportation Department and the state Department of Economic Development.

"Save the Railroad" petitions were drawn up, and a sample "Dear Senator" letter was drafted calling for emergency support to spare the railroad a possibly permanent shutdown.

"Because the line is in extremely poor condition, a decision must be made in the near future whether to rehabilitate the line or else abandon it," said the letter, obtained from the Economic Development Department. "If the Caddo Valley Railroad were to be abandoned because the owners cannot afford to rehabilitate the line, it would have a devastating impact on the businesses and residents of the several communities that are located along the line."

In an interview, Streeter swept away any notion that financial distress forced Bean to seek public aid for a \$200,000 repair job, however. Asked why the railroad sought public money, he replied: "Why not?" Grant money was available, he said, adding that other private railroads get far more assistance.

The August meeting paid off with a quick \$200,000 state grant for the bridge repairs.

With the bridges fixed, the Caddo Valley Railroad started running again late last year.

Now it is for sale. Bean wants to sell because he doesn't have the expertise or the equipment to run a railroad the way a real railroad company could, Morrison said.

For instance, every time a train slips off the Norman Branch's rickety rails — a Highway Department report tallied more than 80 derailments over 18 months — Bean has to hire an outside contractor to fix the wreck, a cost that a true railroad company would take care

of in-house.

The Norman Branch's rail — swervy, gapped and too light for comfort — would fetch a much higher salvage price today than five years ago, because of China's voracious appetite for scrap steel.

But Morrison said the ongoing sales negotiations include discussion of a key provision: a clause to ensure that the owner of the Norman Branch won't once again try to abandon it.



Arkansas Democrat-Gazette/
STEPHEN B. THORNTON

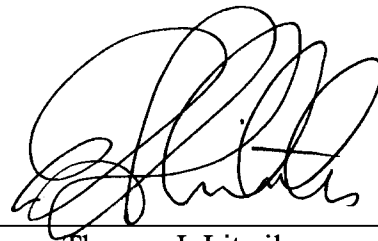
The curvy tracks of the Caddo Valley Railroad line in Okolona are overgrown with weeds.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2006, a copy of the foregoing
Petition for Declaratory Order of Arkansas Midland Railroad Company, Inc. was served by
overnight delivery upon:

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A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler