

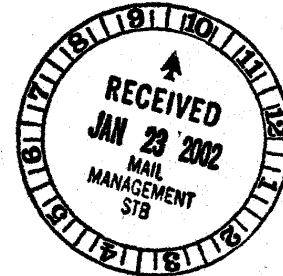
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THOMAS F. MCFARLAND

January 22, 2002



By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of the Secretary

JAN 23 2002

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Public Record

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

and

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

204563

Dear Mr. Williams:

Pursuant to 49 C.F.R. § 1117.1, Rail Ventures, Inc. (RVI) hereby requests the Board to enforce Ordering Paragraph No. 4 of its decision served December 12, 2001, forthwith.

Ordering Paragraph No. 4 requires Kern Valley Railroad Company (KVR), within 10 days of the effective date of the decision (i.e., by January 21, 2002), to disclose to RVI the purchase price that it paid for the subject rail line, and to grant RVI access to inspect the line.

KVR filed a petition for reconsideration of the decision served December 12, 2001, to which RVI replied. A decision on that petition is pending.

KVR also filed a petition to stay the disclosure and access order (Ordering Paragraph No. 4) of the decision served December 12, 2001.

In a decision by the Board through Chairman Morgan, served January 15, 2002, the stay requested by KVR was denied. A protective order was entered in regard to the purchase price required to be disclosed. Ordering Paragraph No. 4 of that decision provided that "(o)n or before January 21, 2002, Kern Valley (KVR) shall afford Rail Ventures (RVI) access to the rail line and shall provide to Rail Ventures a written document revealing the purchase price" (at page 5). The decision served January 15, 2002 was effective on the date of its service.

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On January 21, 2002, not having received a written document revealing the purchase price, RVI, through undersigned counsel, telephoned counsel for KVR, and requested the issuance of such document.

Counsel for KVR refused that request. Counsel stated that the decision served January 15, 2002 is an initial decision of Chairman Morgan that is appealable to the full Board as of right under 49 C.F.R. § 1115.2(a). Counsel stated that he intended to file such an appeal, and that the filing of such an appeal would automatically stay the effectiveness of the decision, *id.*, subparagraph (f).

Undersigned counsel expressed strong disagreement with that position. The matter is being presented to the Board at this time, with a request for accelerated disposition in light of the clear lack of merit in KVR's position and the inordinate continuing delay in the OFA process caused by KVR's intransigence.^{1/}

First, a decision by the Chairman on a stay petition is effectively a Board decision in light of 49 C.F.R. § 1011.5(d), which provides as follows:

The Chairman shall notify all Board Members that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a) (2) or (3) of this section. The Chairman shall also inform all Board Members of the decision on that petition before service of such decision. At the request of a Board Member, made at any time before the Chairman's decision is served, the petition will be referred to the Board for decision.

Thus, Vice Chairman Burkes has been notified of the filing of the petition for stay and of the decision on the petition. Vice Chairman Burkes could have requested that the petition for stay be referred to the Board for decision, but he did not do so. Therefore, the Chairman's decision on the petition for stay is the functional equivalent of a Board decision on the petition.

Secondly, both the decision served December 12, 2001, the decision served January 15, 2002, have become effective, and the compliance date specified in those decisions has arrived without a stay having been entered. An appeal cannot stay an effective date and compliance date that have come and gone before the appeal is filed. Moreover, it is the height of speciousness to contend that a party can obtain an automatic stay by appealing a decision that specifically denied a stay. KVR's position is in direct disregard of 49 C.F.R. § 1119.1, which provides in pertinent part as follows:

^{1/} There have been three full Board decisions, two decisions by the Chairman denying stays, and a decision by the Director of the Office of Proceedings, encompassing a period of over one year.

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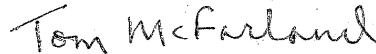
Compliance. A defendant or respondent directed by the Board to do or desist from doing a particular thing must notify the Board on or before the compliance date specified in the decision of the manner of compliance. Notification should be by verified affidavit showing simultaneous service upon all parties to the proceeding . . .

There can be no doubt that KVR's tactic here is to continue to stonewall and to stall in the hope of exhausting RVI's resolve. That tactic will not succeed.

KVR should be required forthwith to comply with the Board's order. Sanctions against KVR would be appropriate if there are any. At the least, KVR's continuing intransigence warrants a rebuke from the Board.

Ten copies accompany the original of this request. All parties are being served.

Very truly yours,



Thomas F. McFarland
Attorney for Rail Ventures, Inc.

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cc: All parties, by UPS overnight mail
Mr. John Reed