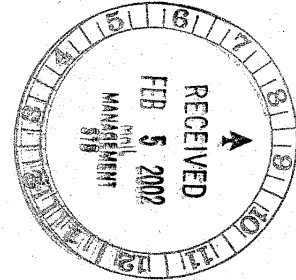


LAW OFFICE
THOMAS F. McFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. McFARLAND

February 4, 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

FEB 06 2002

Part of
Public Record

Re: STB Docket No. AB-573X, *Trinidad Railway, Inc. -- Abandonment Exemption --*
in Las Animas County, CO 204695
and

STB Finance Docket No. 34087, *Trinidad Railway, Inc. -- Lease and Operation*
Exemption -- Kern Valley Railroad Company 204696

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To Appeal Of
Chairman's Decision, Served January 15, 2002, for filing with the Board in the above referenced
matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and
return in the self-addressed stamped envelope.

Very truly yours,

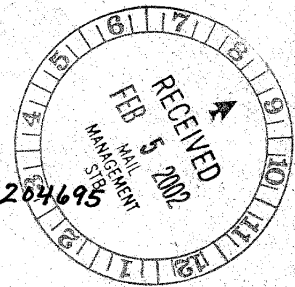
Tom McFarland

Thomas F. McFarland

TMcf:kl:enc:d:\wp8.0\832\lstrsb7

204695
204696
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

TRINIDAD RAILWAY, INC. -- LEASE)
AND OPERATION EXEMPTION --) FINANCE DOCKET NO. 34087
KERN VALLEY RAILROAD COMPANY)

204696

**REPLY IN OPPOSITION TO APPEAL
OF CHAIRMAN'S DECISION,
SERVED JANUARY 15, 2002**

ENTERED
Office of the Secretary

FEB 06 2002

Part of
Public Record

RAIL VENTURES, INC.
1400 Main Street, Suite 201-B
P.O. Box 128
Louisville, CO 80027

Replicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Replicant

DATE FILED: February 5, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

TRINIDAD RAILWAY, INC. --	)	
ABANDONMENT EXEMPTION -- IN	)	DOCKET NO. AB-573X
LAS ANIMAS COUNTY, CO	)	
	)	
TRINIDAD RAILWAY, INC. -- LEASE	)	
AND OPERATION EXEMPTION --	)	FINANCE DOCKET NO. 34087
KERN VALLEY RAILROAD COMPANY	)	

**REPLY IN OPPOSITION TO APPEAL
OF CHAIRMAN'S DECISION,
SERVED JANUARY 15, 2002**

Pursuant to 49 C.F.R. § 1104.13(a), RAIL VENTURES, INC. (RVI) hereby replies in opposition to an Appeal of Chairman Morgan's decision served January 15, 2002, filed by Kern Valley Railroad Company (KVR) on January 22, 2002.

BACKGROUND

Chairman Morgan's decision denied KVR's petition to stay the Board's decision served December 12, 2001 that required KVR, by January 21, 2002, to disclose to RVI the purchase price that KVR paid for the subject rail line, and to grant RVI access to the line to inspect it for the purpose of valuation. The basis for KVR's stay request was that the purchase price constitutes commercially sensitive information, publication of which would harm KVR. The Chairman imposed a protective order prohibiting RVI from revealing the purchase price to anyone except the Board. In light of that protective order, the Chairman found that disclosing the purchase price would not subject KVR to irreparable injury. The requested stay was denied on that basis. The Chairman found it unnecessary to address the remaining criteria for a stay.

On January 23, 2002, RVI filed a petition to enforce compliance with ordering paragraph No. 4 of the Board's decision served December 12, 2001, and with ordering paragraph No. 4 of the Chairman's decision served January 15, 2002. The bases for that petition are (1) that there is no appeal as of right of a decision of the Chairman denying a petition for stay inasmuch as such a decision is the functional equivalent of a full Board decision by virtue of 49 C.F.R. § 1011.5(d); (2) that an appeal of a decision denying a stay does not lie when it is filed after the effective date of the decision and after the compliance date; and (3) that the filing of an appeal of a decision denying a stay cannot have the effect of automatically staying a compliance date in a decision on the merits; otherwise the mere filing of an appeal of a decision denying a stay would nullify denial of the stay.

ARGUMENT

KVR's appeal is the latest in a lengthy string of pleadings designed to delay the day when it will have to convey the subject rail line pursuant to provisions of law governing offers-of-financial-assistance (OFAs). The strategy is to discourage RVI from following through on a purchase, and to either keep the line for itself or to sell it to someone else in a transaction in which no agency can require a reasonable price. KVR's actions are designed to undermine the OFA process in every possible way. It is time for the Board to put a halt to KVR's attempts to frustrate the OFA statute that the Board has been directed to enforce.

The appeal consists of 20 numbered paragraphs in which KVR (1) extensively reargues issues on the merits that have been resolved against it in decisions other than the Chairman's decision served January 15, 2002; and (2) attempts to posture for a high purchase price in the upcoming proceeding on establishing OFA compensation. Neither of those arguments is

appropriate in the present context. The first argument is too late; the second is too early. Neither bears on the issue at hand.

The appeal does not say word-one about the Chairman's finding that in light of the protective order, denial of a stay would not irreparably harm KVR. Nor does the appeal attempt to implicate any other criterion for issuing or denying stays.

For the reasons explained in RVI's petition to enforce compliance with the Board's orders in this matter, an appeal of the Chairman's denial of a stay as to such compliance does not lie. However, if such an appeal were found to be properly filed, it should be denied summarily in the case at hand. That is so because the appeal does not challenge the finding of an absence of irreparable injury if a stay were to be denied. The presence or absence of irreparable injury is a controlling factor in determining whether or not an order of an administrative agency should be stayed pending appeal. See *Baggett Transp. Co. of Hughes Transp., Inc.*, 393 F.2d 710 (8th Cir. 1968), *cert. den.* 393 U.S. 936 (1969).

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the appeal should be rejected or denied.

Respectfully submitted,

RAIL VENTURES, INC.
1400 Main Street, Suite 201-B
P.O. Box 128
Louisville, CO 80027

Replicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Replicant

DATE FILED: February 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2002, I served the foregoing document, Reply In
Opposition To Appeal Of Chairman's Decision, Served January 15, 2002, by UPS overnight mail,
on the following:

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, N.W., 8th fl.,
Washington, DC 20036-1601

John D. Heffner
555 12th Street, N.W.
Suite 950-North
Washington, DC 20004

Thomas F. McFarland

Thomas F. McFarland