



205935



Taro Kusunose
eMail: tkusunose@bpmlaw.com

July 23, 2002

VIA FEDERAL EXPRESS

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

ENTERED
Office of Proceedings

JUL 25 2002

Part of
Public Record

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

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

Dear Hon. Williams:

On behalf of our client, Rail Ventures, Inc. we ask that you please find enclosed, the following items:

- 1) The original and ten copies of RVI's Response to Issues Raised in the Heffner Letter Dated July 19, 2002 (the "RVI Response") for filing;
- 2) A computer diskette with the RVI Response saved in the required Word Perfect format;
- 3) A certificate of service;
- 4) An additional copy of the face-sheet of the Clarification Petition; and
- 5) A stamped, self-addressed envelope.

If you would be so kind as to direct someone in your office to send us the additional face-sheet copy with a "received" stamp, or some other stamp of similar designation, affixed, in the

March 16, 2002

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enclosed envelope, it would be greatly appreciated. Please call us with any questions or concerns ((206) 268-8646).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Taro Kusunose", with a long horizontal flourish extending to the right.

Taro Kusunose
Stephen L. Day

TK:ltg

Enclosures

cc: Mr. John Reed (via facsimile)
Mr. Fritz Kahn, Esq. (via facsimile and overnight mail)
Mr. John Heffner, Esq. (via facsimile and post)

Certificate of Service



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

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

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I certify that I have this day served copies of the attached RVI'S RESPONSE TO ISSUES RAISED IN THE HEFFNER LETTER DATED JULY 19, 2002 upon all parties of records in this proceeding, by fax, except for to Mr. Fritz Kahn, to whom a copy of the attached was served by overnight mail, postage-prepaid, as well as by fax.

DATED this 23rd day of July, 2002.


Print Name: TARO KUSUNOSE

(49 C.F.R. § 1104.12; 49 U.S.C. 10321; 5 U.S.C. 553)

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-573X

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

~~STB Finance Docket No. 34087~~

~~TRINIDAD RAILWAY, INC. --~~
~~LEASE AND OPERATION EXEMPTION -- KERN VALLEY RAILROAD COMPANY~~

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

RVI'S RESPONSE
TO ISSUES RAISED IN THE
HEFFNER LETTER DATED JULY 19, 2002

ENTERED
Office of Proceedings

JUL 25 2002

Part of
Public Record

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Taro Kusunose
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(206) 292-9988 - Telephone
(206) 343-7053 - Fax

Dated: July 23, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-573X

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

STB Finance Docket No. 34087

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

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

**RVI'S RESPONSE
TO ISSUES RAISED IN THE
HEFFNER LETTER DATED JULY 19, 2002**

We hereby respond on behalf of our client, Rail Ventures, Inc. ("RVI"), to the letter dated July 19, 2002, filed in these proceedings by Mr. John D. Heffner, Esq. on behalf of his client, Trinidad Railway, Inc. ("TRI"). We acknowledge that the Surface Transportation Board ("Board") rule at 49 C.F.R. 1104.13(c) prohibits "replies to replies." Because the Heffner letter ("Heffner Letter") raises new issues significantly broader than those discussed in our Petition, we believe that this response is appropriate.¹

¹ In this filing, we respond only to the new issue recently raised by TRI counsel. We do not re-address the issue of whether certain property was or was not included in the NLV appraisal adopted by the Board as the OFA sale price.

The most important of the new issues raised in the Heffner Letter is the allegation that the Board lacks "regulatory jurisdiction" over property "retained" by TRI. In fact, the Board does have regulatory jurisdiction over such property, and we request that the Board order TRI to transfer any retained property to RVI.

As the Board may recall, in the very beginning, TRI abandoned a 28-mile rail line in Colorado. Then, in the midst of the ongoing abandonment proceeding, TRI sold the rail line to an outside party, Kern Valley Railroad Company ("KVR"). Although it took a lengthy proceeding for the effects of these events to be untangled, ultimately, the Board ordered KVR to sell the 28-mile rail line to RVI pursuant to its OFA provisions.

Throughout the proceeding, the Board assumed that KVR had acquired all of the 28-mile line from TRI, and therefore, logically, could be forced to sell it to RVI:

...[O]n October 31, 2000, after having received notice of Rail Venture's forthcoming OFA, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority in this proceeding) to Kern Valley Railroad Company (Kern Valley), which subsequently invoked the class exemption procedures at 49 CFR 1150.31 to obtain authorization for the purchase. *Kern Valley Railroad Company-Acquisition and Operation Exemption-Trinidad Railway, Inc.*, STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000).

Trinidad Railway, Inc.-Abandonment Exemption-In Las Animas County, CO, STB Docket No. AB-573-X (notice served and published July 16, 2002) [Emphasis supplied].

Apparently, neither TRI nor KVR disclosed to the Board, the existence of any "holdback" or "carve-out" property that TRI retained when it sold the rail line property to KVR.

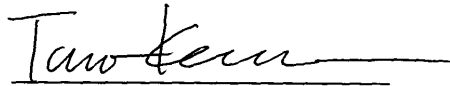
As a result, when the Board ordered KVR to sell the 28-mile line to RVI, most likely the Board assumed that everything would be sold. Therefore, the Board likely also assumed that it need only order KVR to sell, and that there was no need for the Board to order TRI to do so as well.

The above discussion is moot, however. In an OFA "forced" sale, the property to be sold is all of that property which was being abandoned. TRI abandoned the entire 28 mile-line. Whatever TRI subsequently attempted to do by apparently selling only parts of the line to KVR, does nothing to change the fact that the entire abandoned line should be sold to RVI.

If, as TRI argues in the Heffner Letter, the Board has no regulatory jurisdiction over that rail line property which was retained by TRI, then the issue presently before the Board concerns more than two buildings. At issue would be all of that property within the rail right-of-way along the 28-mile rail line, which was abandoned and appraised, but which TRI is now claiming will not be transferred.

The property retained by TRI is not outside the "regulatory jurisdiction" of the Board. TRI is attempting to *take it* outside of the Board's jurisdiction by its actions after abandonment. We hereby respectfully request that the Board order the appropriate action to effectuate its intent that all of the abandoned property be transferred to RVI.

Respectfully submitted,



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