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BY THE NATIONAL BOARD OF TRIAL ADVOCACY

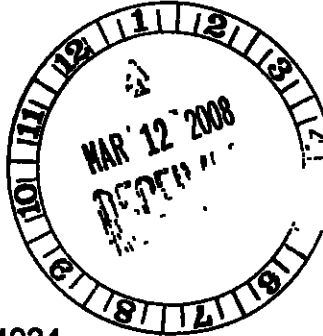
HELPING INJURED PEOPLE AND THEIR FAMILIES

DENNYCE L KORB
CERTIFIED PARALEGAL
BROOKE E JACOBSON
PARALEGAL
JERRY A THOVSON
PARALEGAL / INVESTIGATOR
J A PROFESSIONAL CORPORATION

March 5, 2008

Hon Vernon Williams, Secretary
Attention Vivian Hardy
Surface Transportation Board
395 E Street, S W
Washington, D C 20423-0001

re Black Hills Transportation, Inc
STB Finance Docket No FD 34924



221841

Dear Ms Hardy

I am enclosing a certified copy of The Honorable Randall L. Macy's Court's Default Judgment and Court's Judgment on Stipulated Facts as well as a certified copy of the Stipulated Facts, relative to the above-entitled matter

Please consider this in your review of the case. Again, I would like to thank you and your staff for your prompt and professional attention to this matter

Sincerely yours,

Aaron D Eiesland

ADE dab
Enclosure

cc Charles W Brown
Attorney Roger Tellinghuisen and Eric Strawn
Attorney Charles Montague

ENTERED
Office of Proceedings
MAR 19 2008
Part of
Public Record

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

JAMES A. SWABY; FRED K ENING JR;
WILLIAM W. MILLER and LAUREL D.
MILLER Co-Trustees Under the William W.
Miller Revocable Trust 50% interest and Laurel
D. Miller and William W. Miller Co-Trustees of
the Laurel D. Miller Revocable Trust 50%
interest; BARBARA J. SPECTOR as Trustee
of the Spector Living Trust and MURIEL A.
HANNA as Trustee under Declaration of Trust;
CROOK MT. ANGUS RANCH, INC.; ALBERT
R. and LORI A. TETREAULT; BRIAN and
HEIDE JANZ; JOHN and PATRICIA DVORAK;
BOBBY A. and CINDY L. LADNER; RANDY G.
and LORI A. FRYER; WILLIAM R. and TERESA
FOX; DAVID J. FANDRICK; DESPERADO
INVESTMENTS, LLC; TRACY L. and KELLY J.
MCDANIELS; and GERALD and EDITH MILES,

Plaintiffs,

vs

NORTHERN HILLS REGIONAL RAILROAD
AUTHORITY; SOUTH DAKOTA DEPARTMENT
OF TRANSPORTATION; SOUTH DAKOTA
DEPARTMENT OF GAME, FISH and PARKS;
LAWRENCE COUNTY, a political subdivision of the
State of South Dakota, DAKOTA, MINNESOTA
AND EASTERN RAILROAD COMPANY
("DM&E"); and the HEIRS, DEVISEES,
LEGATEES, EXECUTORS, ADMINISTRATORS,
OR CREDITORS OF THE FOLLOWING
DECEASED INDIVIDUALS: STEPHEN W.
MORGAN and FRANE E. MORGAN, husband and
wife, CHRISTIAN G. GRALAPP and
CHRISTIANA GRALAPP, husband and wife,
LYMAN D. PETTIT and HANNA M. PETTIT,
husband and wife, THOMAS S. NEWMAN;
ANDREW NORINE; GOTTFRIED BURGER;
RICHARD GRENFELL and GRACE GRENFELL,
and JOHN LEWIS and MARGARET LEWIS,
husband and wife, and ALL PERSONS
UNKNOWN WHO HAVE OR CLAIM TO
HAVE ANY INTEREST OR ESTATE IN OR
LIEN OR ENCUMBRANCE UPON THE
PREMISES DESCRIBED IN THE
AMENDED COMPLAINT,

Defendants

CIV NO 05-217

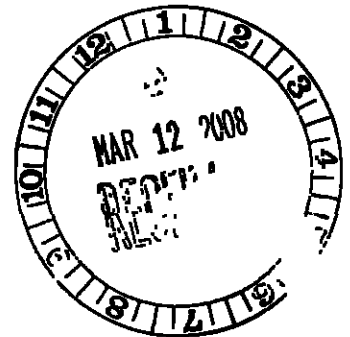
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APR 05 2007

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

STIPULATION OF FACTS



COME NOW, Roger A Tellinghuisen, counsel of record for the Plaintiffs above-named and Thomas E. Brady, counsel of record for Defendants Northern Hills Regional Railroad Authority ("NIIRRA"), South Dakota Department of Transportation ("DOT") and South Dakota Department of Game, Fish & Parks ("GFP") and hereby stipulate and agree: That the following facts are undisputed in this action, that the Court may take judicial notice of all instruments filed of record in the Office of the Lawrence County, South Dakota Register of Deeds and in the Office of the South Dakota Secretary of State and other the documents offered by the parties as exhibits in this action and copies of which have been admitted into evidence by the Court, and, that the Court may enter its Order establishing the following facts as undisputed facts in this action and taking judicial notice of said instruments, to wit

STATEMENT OF UNDISPUTED FACTS

1 The railroad right-of-way located on the property shown on Plaintiffs' Exhibit "S", were established pursuant to the General Railroad Right-Of-Way Act of March 3, 1875, as codified at 43 USC §§934-939 ("The Act of 1875")

2 The railroad right-of way located on the property shown on Plaintiffs' Exhibits "R" and "T" was not established pursuant to the Act of 1875.

3. All real property at issue in this action is situated in R4E, B.H M , Lawrence County, South Dakota

4 By the following described deeds executed and recorded in the year 1890, the Grantors named in said deeds granted and conveyed to the Fremont, Elkhorn and Missouri Valley Railroad Company ("FEMV"), as Grantee, fee simple title to the strips of land described in said deeds

- (A) Stephen W Morgan and Frane E. Morgan, husband and wife (Plaintiffs' Exhibit "D-1").
- (B) Lyman D Pettit and Hannah M. Pettit, husband and wife (Plaintiffs' Exhibit "D-2").
- (C) Andrew Norine (Plaintiffs' Exhibit "D-3")
- (D) Gottfried Burger (Plaintiffs' Exhibit "D-4")
- (E) Richard Grenfell and Grace Grenfell, husband and wife (Plaintiffs' Exhibit "D-5")

(F) Thomas S Newman (Plaintiffs' Exhibit "D-6")

4A The following-described deeds were executed and recorded in the year 1890. Plaintiffs claim the Grantors named in said deeds granted and conveyed to FEMV, as Grantee, fee simple title to the strips of land described in said deeds NHRRA, DOT and GFP concur that these deeds are in the title history.

(A) Christian G Gralapp and Christiana Gralapp, husband and wife,
(Plaintiffs' Exhibit D-7).

Said strip of land is 1875 Act right-of-way (Plaintiffs' Exhibits B and S)

(B) John Lewis and Margaret Lewis, husband and wife, (Plaintiffs' Exhibit D-8).

Said strip of land is 1875 Act right-of-way (Plaintiffs' Exhibits B and S) NHRRA, DOT and GFP assert that John Lewis and Margaret Lewis did not hold title to said land at any time, the Patent to said land having been issued to Thomas J Lewis (NHRRA, DOT and GFP Exhibit 3)

5 Each of the deeds described in the foregoing Paragraph 4 included a provision in substantially the following language:

Provided that if said Railroad [FEMV] shall not be located and graded within ten years [two years in the Burger, Grenfell and Newman deeds] from the date hereof or if at any time after said railroad shall have been constructed, the said party of the second part [FEMV] its successors or assigns shall abandon said road or the route thereof shall be changed so as not to be continued over said premises the land hereby conveyed in and to the same shall revert to the said party of the first part [the Grantors] their heirs and assigns

6. The Railroad was located and graded upon the strips of land granted and conveyed to FEMV by the deeds described in Paragraph 4, above, within two years of the date of said deeds and the route has not been changed so as not to be continued over said premises

7. Regarding the S1/2SW1/4 and SW1/4SE1/4 Section 28, T6N, R4E, B H M , Lawrence County, South Dakota, the title history shows the following

- (A) On the 11th of January, 1887 a mortgage was executed by Lyman D Pettit and Hannah M Pettit, his wife, "Mortgagors" to Hiram D Upton, Mortgagee
- (B) By warranty deed dated August 11, 1890 and recorded August 27, 1890 in Book 78 Page 167, Lyman D. Pettit and Hannah M. Pettit, his wife, conveyed their interest in the above-described real property to the FEMV railway company. Said deed contained reversionary language
- (C) By quitclaim deed dated August 20, 1890 and recorded November 25, 1890 in Book 76, Page 181, Hiram D Upton and Annie E Upton, husband and wife, granted and conveyed, without reversionary language, all their right title and interest in and to the right-of-way in the SW1/4SE1/4 and the SE1/4SW1/4 of Section 28, T6N, to FEMV. (NHRRA, DOT and GFP Exhibit "1").
- (D) By Sheriff's Deed dated January 2, 1894 and recorded August 25, 1895 in Book 105, Page 333, the Sheriff of Lawrence County, South Dakota, conveyed the S1/2SW1/4 and the SW1/4SE1/4 (and other property not subject to this action) of Section 28, T6N to Hiram D Upton pursuant to foreclosure of a mortgage given by Lyman D Pettit, Mortgagor, to Hiram D. Upton, Mortgagee, and described in said Sheriff's Deed (NHRRA, DOT and GFP, Exhibit "12")

8 On May 27, 1890, the FEMV filed a plat and profile of its Whitewood to Deadwood, South Dakota road in the United States Land Office in Rapid City, South Dakota. The Secretary of the Interior approved the plat and profile on June 28, 1890 (NHRRA, DOT and GFP Exhibit "35")

9. By deed dated June 2, 1890 and recorded October 30, 1890 in Book 76, Page 149, Rudolph Kroll granted and quitclaimed all his right, title and interest in and to the right-of-way described in said deed over and across the N1/2NE1/4 of Section 6, T5N, to FEMV and its successors and assigns (NHRRA, DOT and GFP Exhibit "10").

10 By deed dated July 24, 1890 and recorded October 30, 1890, in Book 76, Page 150, Allie C Clark granted and quitclaimed all her right title and interest in and to

the right-of-way described in said deed over and across the N1/2NE1/4 of Section 6, T5N to FEMV and its successors and assigns (NHRRA, DOT and GFP Exhibit "11").

11 By deed dated November 18, 1897 and recorded November 20, 1897 in Book 121, Page 167, Richard Grenfell and Grace Grenfell, husband and wife, granted and conveyed to REMV fee simple absolute title by warranty deed to a parcel of land described in said deed in the N1/2NW1/4 (now designated Government Lot 3 and Government Lot 4) of Section 5, T5N (the "Grenfell Parcel") (NHRRA, DOT and GFP Exhibit "2") This rectangular parcel lies adjacent to the south side of the ROW

12 Except for and excluding the parcel of land granted and conveyed to FEMV in the deeds described in Paragraph 11, above, (the Grenfell Parcel) and except for and excluding the strips of land granted and conveyed to FEMV in the deeds described in Paragraphs 4, 7(C), 9 and 10, above, and the rights and interests in and to the Act of 1875 right-of-way (described in Paragraph 1, above, and in Plaintiffs' Exhibit "S") (all of which strips of land and right-of-way are hereinafter referred to as the "Right-of-Way"), NHRRA, DOT and GFP do not deny Plaintiffs' claims that Plaintiffs are the respective owners of the remaining portions of the following described real property:

(a) Crook Mountain Angus Ranch, Inc.

NE1/4SE1/4 Section 28, T6N

SE1/4SE1/4, less right-of-way, Section 28, T6N

(NHRRA, DOT and GFP Exhibit "13")

(b) William W. Miller and Laurel D. Miller, Co-trustees

That portion of the SW1/4SE1/4 of Section 28, T6N

That portion of the SE1/4SW1/4 of Section 28, T6N lying North of the Railroad right of way

(NHRRA, DOT and GFP Exhibit "14")

That portion of the NE1/4NW1/4 of Section 33, T6N "lying North of the Railroad right of way."

(NHRRA, DOT and GFP Exhibit "14")

- (c) **Maurice Truman** (formerly the Tracy L and Kelly J McDaniels property)

Lot 3 of Centennial Estates Subdivision located in the SW1/4SE1/4 and SE1/4SW1/4 of S 28, T6N and the W1/2NE1/4 and E1/2NW1/4 of S.33, T6N, as shown on Plat Doc No 87-4776 (Plaintiffs' "Exhibit C", NHRRA, DOT and GFP Exhibits "15" and "16")

- (d) **Bobby A. Ladner and Cindy L. Ladner**

Lot 4 of Centennial Estates Subdivision in the SW1/4SE1/4 and the SE1/4SW1/4 of S. 28, T6N and the W1/2NE1/4 and E1/2NW1/4 of S. 33, T6N, as shown on Plat Doc. No 87-4776 (Plaintiffs' "Exhibit C"; NHRRA, DOT and GFP Exhibits "16" and "17")

- (e) **Randy G. Fryer and Lori A. Fryer**

Lot 5 of Centennial Estate Subdivision in the SW1/4SE1/4 and the SE1/4SW1/4 of S.28, T6N and the W1/2NE1/4 and E1/2NW1/4 of S 33, T6N, as shown on Plat Doc No 87-4776 (Plaintiffs' Exhibit C", NHRRA, DOT and GFP Exhibits "16" and "18")

- (f) **William R. Fox and Tercsa Fox**

Lot 6 of Centennial Estates Subdivision located in the SW1/4 SE1/4 and the SE1/4SW1/4 of S 28, T6N and in the W1/2NE1/4 and E1/2NW1/4 of S 33, T6N as shown on Plat Doc No. 87-4776 (Plaintiffs' "Exhibit C"; NHRRA, DOT and GFP Exhibits "16" and "19")

(g) David J. Fandrick

Lot 7 of Centennial Estates Subdivision located in the SW1/4SE1/4 and the SE1/4 and SW1/4 of S 28, T6N and in the W1/2NE1/4 and the E1/2NW1/4 of S. 33, T6N as shown on Plat Doc. No 87-4776

(Plaintiffs' Exhibit C", NHRRA, DOT and GFP Exhibits "16" and "20")

(h) Fred K. Ening

That portion of the SE1/4NE1/4 S 32, T6N lying North of the Railroad right of way, except lot JV-1 of the said SE1/4 NE1/4.

(NHRRA, DOT and GFP Exhibit "21")

That portion of the NE1/4SE1/4 of S 32, T6N. lying above and Northerly of the Wagon Road to Whitewood

(NHRRA, DOT and GFP Exhibit "22")

(i) Albert Tetreault and Lori A. Tetreault

Lot 3 of Centennial Acres located in the NE1/4SE1/4 of S. 32, T6N.

(NHRRA, DOT and GFP Exhibits "23" and "24")

(j) Brian D. Janz and Heidi L. Janz

Lots 1 and 2 of Centennial Acres located in the NE1/4SE1/4 of S 32, T6N

(NHRRA, DOT and GFP Exhibits "23", "25" and "26")

(k) James A. Swaby

Tract S and Lot 1 of Tract A of Crook Meadows Addition located in the SW1/4SE1/4 and the NW1/4SE1/4 of S 32, T6N

(NHRRA, DOT and GFP Exhibits "27", "28" and "29")

- (l) **John E. Dvorak and Patricia A. Dvorak**
 Lots 3 and 4 of Tract A of Crook Meadows Addition of the SW1/4 SE1/4 and the NW1/4SE1/4 of S. 32, T6N
 (NHRRA, DOT and GFP Exhibits "2" and "30")
- (m) **Barbara J. Spector, Trustee and Muriel A. Hanna, Trustee, as tenants in common**
 SE1/4SW1/4, excepting Tract "A", S 32, T6N
 (NHRRA, DOT and GFP Exhibits "31" and "32")
 Government Lot 3 (NE1/4NW1/4), except Lot A', and
 S1/2 of Government Lot 4 (NW1/4NW1/4), S 5, T5N, except the Grenfell Parcel.
 (NHRRA, DOT and GFP Exhibits "2", "31" and "32" and paragraph 11, above)
 SE1/4NE1/4, S 6, T5N "subject to right-of-way of the Fremont, Elkhorn and Missouri Valley Railway Company."
 (NHRRA, DOT and GFP Exhibit "3")
 S1/2 of Government Lot 2 (NW1/4NE1/4), and
 S1/2 of Government Lot 1 (NE1/4NE1/4) of S 6, T5N,
 EXCEPT "the Right of Way one hundred (100) feet wide for the Fremont Elkhorn and Missouri Valley Railroad being fifty (50) feet in width on each side of the center line of said Railroad through over and across the North half of the North East quarter (N1/2NE1/4) of Section six (6) in Township five (5) North of Range four (4) East of the B.H.M. as said line of Railroad is located over said tract of land "
 (NHRRA, DOT and GFP Exhibits "10" and "11")
- (n) **Desperado Investments, LLC**
 SW1/4NE1/4 S 6, EXCEPT that portion lying north of the center line of the existing Railroad right of way deeded in Document No 85-608 "

(NHRRA, DOT and GFP Exhibits "3" and "33")

(o) Gerald Miles and Edith Miles

That area lying north of the centerline of the existing railroad right-of-way in the SW1/4NE1/4 of S 6, T5N.

(NHRRA, DOT and GFP Exhibits "3" and "34")

13 Except for and excluding the Grenfell Parcel and the Right-of-Way excepted from the property conveyed to Plaintiffs, as described in Paragraph 12 (a), (b), (h), (m) and (n), above, NHRRA, DOT and GFP do not deny Plaintiffs' claims that they are the respective successors in interest to the Grantors named in the Morgan, Norine, Burger, Grenfell and Newman deeds described in Paragraph 4, above, and to Thomas J Lewis and to Christian Gralapp and Christiana Gralapp, husband and wife, under Patents granted by the United States (NHRRA, DOT and GFP Exhibit 3 and Plaintiffs' Exhibit B) subject, however, to all rights and interests arising under and in connection with the right-of-way grant by the United States under the Act of 1875 (See Plaintiffs' Exhibit "S" and Paragraph 1, above).

14. The Whitewood to Deadwood Right-Of-Way of the FEMV described in paragraph 8, above, was transferred and conveyed to the Chicago and Northwestern Railway Company (hereinafter the "CNW") by an Indenture dated the 28th day of February 1903, filed in the office of the South Dakota Secretary of State on March 12, 1903, in Volume 3 on page 229, Record of Railroad Deeds and Mortgages and recorded on the 28th day of June, 1957, in Book 341 Page 11, in the Office of the Lawrence County, South Dakota Register of Deeds (NHRRA, DOT and GFP Exhibit "36")

15 In 1970, CNW filed an "Application for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of a Line of Railroad between Whitewood and Deadwood, Lawrence County, South Dakota " (Plaintiffs' Exhibit "E", page 21) A "Certificate and Order" was issued by the Interstate Commerce Commission ("ICC") of May 13, 1970, and the abandonment was confirmed. (Plaintiffs' Exhibit "E", NHRRA, DOT and GFP Exhibits "37" and "38")

16 In December 1970, CNW and the State of South Dakota entered into an agreement wherein CNW agreed to sell to the State of South Dakota and the State of

South Dakota agreed to purchase from CNW certain property, including the portion of CNW's Whitewood to Deadwood right-of-way lying within or adjacent to the Plaintiffs' real property. (NHRRA, DOT and GFP Exhibit "43")

17 CNW conveyed and quit claimed all its interest in and to certain parts of its Whitewood to Deadwood right-of-way, including the Right-Of-Way lying within or adjacent to the Plaintiffs' real property, to the State of South Dakota by a deed dated May 30, 1972, recorded June 14, 1972 (NHRRA, DOT and GFP Exhibit "39").

18 The South Dakota Transportation Commission approved Resolution Nos. 14217, 14218 and 14219 on September 27, 1984 and Resolution No 15796 on February 23, 1995 (Plaintiffs' "Exhibits "H" and "I")

19. The State of South Dakota, through the DOT, conveyed and quit claimed a portion of the right-of-way, including that portion material to this litigation situated in S1/2 of Government Lot 2, S 6, T5N, to the GFP by deed dated May 15, 1985, recorded May 17, 1985. (NHRRA, DOT and GFP Exhibit "40")

19. Effective October 1, 1995, CNW was merged into Union Pacific Railroad Company (NHRRA, DOT and GFP "Exhibit 41")

20 By Quit Claim Deed dated March 25, 2004, recorded March 26, 2004, the DOT conveyed and quit claimed to NHRRA all the right, title and interest of the DOT in and to the former CNW right-of-way described in said deed, including the Right-of-Way lying within or adjacent to the Plaintiffs' real property.

21. By Quit Claim Deed dated June 16, 2006, recorded July 10, 2006, Union Pacific Railroad Company conveyed all its the right, title and interest in and to the former CNW right-of-way described in said deed, including the Right-of-Way lying within or adjacent to the Plaintiffs' real property to NHRRA (NHRRA, DOT and GFP Exhibit "44").

22. By Quit Claim Decd dated October 17, 2006, recorded October 18, 2006, Dakota, Minnesota & Eastern Railroad Corporation conveyed all its the right, title and interest in and to the former CNW right-of-way described in said deed, including the Right-of-Way lying within or adjacent to the Plaintiffs' real property to NHRRA. (NHRRA, DOT and GFP Exhibit "45")

23. NHRRA has not re-transferred or re-conveyed its ownership or interests in the Right-of-Way acquired from the DOT, from Union Pacific Railroad Company or from Dakota, Minnesota & Eastern Railroad Corporation

DATED this 9 day of April, 2007

TELLINGHUISEN & GORDON, P.C.


Roger A. Tellinghuisen
132 E. Illinois
Spearfish, SD 57783
Telephone: (605) 642-8080
Attorney for Plaintiffs

DATED this 4th day of April, 2007

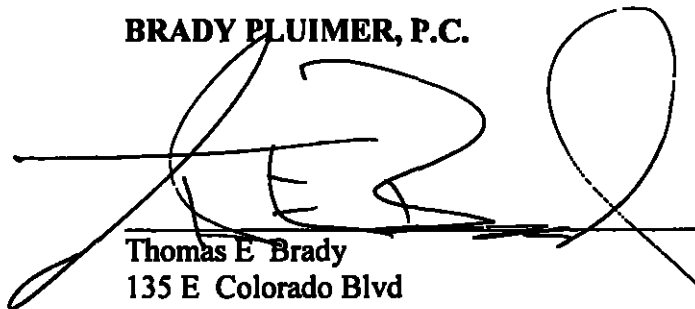
FILED

APR 05 2007

SOUTH DAKOTA JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By: _____

BRADY PLUIMER, P.C.


Thomas E. Brady
135 E Colorado Blvd
Spearfish, SD 57783
Telephone (605) 722-9000
Attorney for Defendants, NHRRA, DOT
and GFP

STATE OF SOUTH DAKOTA
Fourth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:

MAR 04 2008

Alice Bruce
Lawrence County Clerk of Courts

By: Kristi Gibbons

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF LAWRENCE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

CIV. NO 05-217

JAMES A. SWABY; FRED K. ENING JR;
WILLIAM W. MILLER and LAUREL D.
MILLER Co-Trustees Under the William W.
Miller Revocable Trust 50% interest and Laurel
D. Miller and William W. Miller Co-Trustees of
the Laurel D. Miller Revocable Trust 50%
interest; ELWYN J. COLE;
CROOK MT. ANGUS RANCH, INC.; ALBERT
R. and LORI A. TETREAULT; BRIAN and
HEIDE JANZ; JOHN and PATRICIA
DVORAK; BOBBY A. and CINDY L.
LADNER; RANDY G. and LORI A. FRYER;
WILLIAM R. and TERESA FOX; DAVID J.
FANDRICK; DESPERADO INVESTMENTS,
LLC; MAURICE TRUMAN;
and GERALD and EDITH MILES,
Plaintiffs,

vs.

NORTHERN HILLS REGIONAL RAILROAD
AUTHORITY; SOUTH DAKOTA DEPARTMENT
OF TRANSPORTATION; SOUTH DAKOTA
DEPARTMENT OF GAME, FISH and PARKS;
LAWRENCE COUNTY, a political subdivision of the
State of South Dakota; DAKOTA, MINNESOTA
AND EASTERN RAILROAD COMPANY
("DM&E"); and the HEIRS, DEVISEES,
LEGATEES, EXECUTORS, ADMINISTRATORS,
OR CREDITORS OF THE FOLLOWING
DECEASED INDIVIDUALS: STEPHEN W.
MORGAN and FRANE E. MORGAN, husband and
wife; CHRISTIAN G. GRALAPP and
CHRISTIANA GRALAPP, husband and wife,
LYMAN D. PETTIT and HANNA M. PETTIT,
husband and wife; THOMAS S. NEWMAN;
ANDREW NORINE; GOTTFRIED BURGER;
RICHARD GRENFELL and GRACE GRENFELL,
and JOHN LEWIS and MARGARET LEWIS,
husband and wife, and ALL PERSONS
UNKNOWN WHO HAVE OR CLAIM TO
HAVE ANY INTEREST OR ESTATE IN OR
LIEN OR ENCUMBRANCE UPON THE
PREMISES DESCRIBED IN THE
AMENDED COMPLAINT,

Defendants.

COURT'S DEFAULT JUDGMENT
AND COURT'S JUDGMENT ON
STIPULATED FACTS

FILED

JAN 15 2008

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

1105

The above entitled matter came before the Court for decision on Stipulated Facts and Default Judgment filed by Plaintiffs and by Defendants, Northern Hills Regional Railroad Authority ("NHRRA"), South Dakota Department of Transportation ("DOT") and South Dakota Department of Game, Fish & Parks ("GFP"). Plaintiffs appeared through their counsel of record, Roger A. Tellinghuisen and Eric J. Strawn. Defendants NHRRA, DOT and GFP appeared through their counsel of record, Thomas E Brady. All right, title and interest of Defendant, Dakota, Minnesota and Eastern Railroad Company ("DM&E") in and to the railroad right-of-way that is the subject of this action was conveyed to NHRRA during the course of this action and is now held by NHRRA. The Court has received, accepted and reviewed the Stipulation of Facts entered into between Plaintiffs and NHRRA, DOT and GFP. The Court has reviewed all of the exhibits submitted by said parties and has considered the arguments of counsel. The Court issued its Memorandum Decision dated June 25, 2007 granting judgment to Plaintiffs quieting title in certain railroad right-of-way that is the subject of this action as to the above-named Defendants. Based upon the foregoing and good cause appearing, therefore, it is hereby:

1. **ORDERED, ADJUDGED AND DECREED** this Court takes judicial notice of the Supreme Court ruling in Brown v. Northern Hills Regional Railroad Authority, 2007 SD 49; and it is further,

2. **ORDERED, ADJUDGED AND DECREED** that this Court's Memorandum Decision dated June 25, 2007 is incorporated herein; it is further,

3. **ORDERED, ADJUDGED AND DECREED** that default judgment is hereby entered in favor of Plaintiffs and against those Defendants named below, their heirs, successors and assigns who failed to answer the Amended Complaint, to wit

STEPHEN W MORGAN and FRANE E. MORGAN
CHRISTIAN G. GRALAPP and CHRISTIANA GRALAPP
LYMAN D PETTIT and HANNA M. PETTIT
THOMAS S. NEWMAN
ANDREW NORINE
GOTTFRIED BURGER
RICHARD GRENFELL and GRACE GRENFELL
JOHN LEWIS and MARGARET LEWIS

4. **ORDERED, ADJUDGED AND DECREED** that the railroad right-of-way that is the subject of this lawsuit was abandoned by clear and convincing evidence as set forth in the Stipulated Facts, Court's Exhibit 6, and the Court's Memorandum Decision; and it is further

5. **ORDERED, ADJUDGED AND DECREED** that title to the railroad right-of-way that traverses the following described real property is hereby quieted in favor of the following named Plaintiffs as to the Defendants.

Name	Land Description
James Swaby	Tract S located in the SW1/4SE1/4, NW1/4SE1/4 Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #2003-6292
James Swaby	Lot 1 of Tract A, Crook Meadows Addition located in SW1/4SE1/4 and NW1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #2004-4994
John E and Patricia A. Dvorak as Joint Tenants w/ROS	Lot 3 of Tract A, Crook Meadows Addition located in SW1/4SE1/4 and NW1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #2004-4994
John E. and Patricia A. Dvorak as Joint Tenants w/ROS	Lot 4 of Tract A, Crook Meadows Addition located in SW1/4SE1/4 and NW1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #2004-4994
Brian & Heidi Janz as Joint Tenants w/ROS	Lot 1 of Centennial Acres located in the NE1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #97-3882
Brian & Heidi Janz as Joint Tenants w/ROS	Lot 2 of Centennial Acres located in the NE1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #97-3882
Albert R & Lori A. Tetreault as Joint Tenants w/ROS	Lot 3 of Centennial Acres located in the NE1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #97-3882
Maurice Truman	Lot 3 of Centennial Estates located in the SW1/4SE1/4 and SE1/4SW1/4, Section 28 and W1/2NE1/4 and E1/2NW1/4 of Section 33, T6N, R4E, BHM, Lawrence County, South Dakota, according to Plat Document #87-4776
Elwyn J. Cole	SE1/4SW1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, except Tract A of the SE1/4SW1/4, Section 32, T6N, R4E, according to plat book 6, page 35

Elwyn J. Cole	S1/2 of Government Lot 4 (S1/2NW1/4NW1/4), Section 5, T5N, R4E, BHM, Lawrence County, South Dakota, described in that certain deed filed for record on the 20th day of November, 1897, in Book 121, Page 167, in the Office of the Lawrence County, South Dakota Register of Deeds, EXCEPT a portion of the North half of the North West quarter of Section five (5) in Township No five (5) North of Range four (4) east of the B H M. described as follows to-wit: All of that portion of said tract lying South of the Right of way of the railroad of the party of the first party beginning at a point on the South line of said right of way due south of a point on the center line of said Railroad which is Seventy Seven (77) feet easterly from the fence at the farm road crossing where there is a cattle guard (being Station 186+25 of the survey of said railroad) measured on said center line, thence due south to the South line of said first mentioned tract of land, thence east on said line 586 feet, thence North to the said South line of said right of way, thence Westerly 586 feet more or less along said Right of way line, to the place of beginning. The parties of the first part to have a wagon crossing over said tract at such place as may be convenient to said party of the second part.
Elwyn J. Cole	Government Lot 3 (NE1/4NW1/4), Section 5, T5N, R4E, BHM, Lawrence County, South Dakota, described in that certain deed filed for record on the 20th day of November, 1897, in Book 121, Page 167, in the Office of the Lawrence County, South Dakota Register of Deeds, except Tract A, a subdivision of Lot 3, Section 5, T5N, R4E, BHM, Lawrence County, according to plat book 6 page 35, and EXCEPT a portion of the North half of the North West quarter of Section five (5) in Township No. five (5) North of Range four (4) east of the B.H.M. described as follows to-wit: All of that portion of said tract lying South of the Right of way of the railroad of the party of the first party beginning at a point on the South line of said right of way due south of a point on the center line of said Railroad which is Seventy Seven (77) feet easterly from the fence at the farm road crossing where there is a cattle guard (being Station 186+25 of the survey of said railroad) measured on said center line; thence due south to the South line of said first mentioned tract of land, thence east on said line 586 feet, thence North to the said South line of said right of way, thence Westerly 586 feet more or less along said

	Right of way line, to the place of beginning. The parties of the first part to have a wagon crossing over said tract at such place as may be convenient to said party of the second part.
Elwyn J. Cole	S1/2 of Government Lot 1 (S1/2NE1/4NE1/4) and S1/2 of Government Lot 2 (S1/2NW1/4NE1/4) Section 6, T5N, R4E, BHM, Lawrence County, South Dakota
Elwyn J. Cole	SE1/4NE1/4, Section 6, T5N, R4E, BHM, Lawrence County, South Dakota
Gerald & Edith Miles as Joint Tenants w/ROS	That portion of SW1/4NE1/4, Section 6, T5N, R4E, BHM, Lawrence County, South Dakota, lying North of the center line of the existing railroad right-of-way
Fred Ening Jr.	That portion of the NE1/4SE1/4, Section 32, T6N, R4E, BHM, Lawrence County, South Dakota, lying above and northerly of the wagon road to Whitewood
Crook Mountain Angus Ranch	NE1/4SE1/4, Section 28, T6N, R4E, BHM, Lawrence County, South Dakota
Bobby A. & Cindy L. Ladner as Joint Tenants w/ROS	Lot 4 of Centennial Estates located in the SW1/4SE1/4 and SE1/4SW1/4, Section 28 and W1/2NE1/4 and E1/2NW1/4 of Section 33, T6N, R4E, BHM, Lawrence County, South Dakota
Randy G. & Lori A. Fryer as Joint Tenants w/ROS	Lot 5 of Centennial Estates located in the SW1/4SE1/4 and SE1/4SW1/4, Section 28 and W1/2NE1/4 and E1/2NW1/4 of Section 33, T6N, R4E, BHM, Lawrence County, South Dakota, according to plat document #87-4776
William R. & Teresa Fox as Joint Tenants w/ROS	Lot 6 of Centennial Estates located in the SW1/4SE1/4 and SE1/4SW1/4, Section 28 and W1/2NE1/4 and E1/2NW1/4 of Section 33, T6N, R4E, BHM, Lawrence County, South Dakota
David J. and Sherlynn S. Fandrick as Joint Tenants w/ROS	Lot 7 of Centennial Estates located in the SW1/4SE1/4 and SE1/4SW1/4, Section 28 and W1/2NE1/4 and E1/2NW1/4 of Section 33, T6N, R4E, BHM, Lawrence County, South Dakota, according to plat document #87-4776

and it is further,

6. ORDERED, ADJUDGED AND DECREED that title to the railroad right-of-way which adjoins the following described property is hereby quieted in favor of the following named Plaintiffs as to the Defendants:

Name	Land Description
Crook Mountain Angus Ranch, Inc	SE1/4SE1/4, less right-of-way, Section 28, T6N, R4E, BHM, Lawrence County, South Dakota
William W Miller in a Revocable Trust at 50% interest and Laurel D. Miller and William W. Miller as Co-trustees of Laurel D Miller Revocable Trust at 50% as Tenants in Common	SE1/4SW1/4 and SW1/4SE1/4 lying North of the railroad right-of-way, Section 28, T6N, R4E, BHM, Lawrence County, South Dakota
William W Miller in a Revocable Trust at 50% interest and Laurel D. Miller and William W. Miller as Co-trustees of Laurel D Miller Revocable Trust at 50% as Tenants in Common	NE1/4NW1/4, lying North of the railroad right-of-way, Section 33, T6N, R4E, BHM, Lawrence County, South Dakota
Fred Ening Jr.	That portion of the SE1/4NE1/4, Section 32, lying North of the railroad right-of-way EXCEPT Lot JV-1 of the SE1/4NE1/4 all in T6N, R4E, BHM, Lawrence County, South Dakota
Desperado Investments, LLC	SW1/4NE1/4, Section 6, T5N, R4E, BHM, Lawrence County, South Dakota, EXCEPT a strip of 100 feet wide deeded to the railroad in Book 75, Page 534, and EXCEPT that portion lying north of the center line of the existing railroad right of way deeded in Document No 85-608, subject to easements, covenants, restrictions and reservations of record

and it is further,

7. **ORDERED, ADJUDGED AND DECREED** that, pursuant to Stipulation of the parties, title to the following described real property, described in Resolution No 14217 as Parcel 8, and more particularly described as follows, is quieted in favor of NHRRA as to the Plaintiffs and as to the Cross Defendants named in the Cross-Claims of NHRRA, DOT and GFP:

A portion of the N1/2NW1/4, (now designated as Government Lots 3 and 4) of Section 5, T5N, R4E, BHM, Lawrence County, South Dakota, described in that certain deed filed for record on the 20th day of November, 1897, in Book 121, Page 167, in the Office of the Lawrence County, South Dakota Register of Deeds, described as follows, to-wit:

all of that portion of said tract lying south of the right-of-way of the railroad beginning at a point on the south line of said right-of-way and south of a point on the centerline of said railroad which

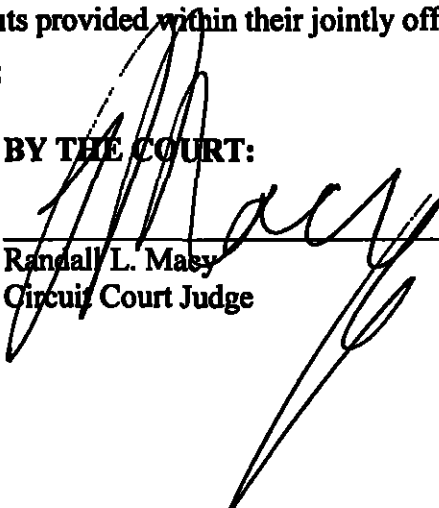
is seventy-seven feet (77') easterly from the fence at the farm road crossing where there is a cattle guard (being Station 186+25 of the survey of said railroad) measured on said centerline; thence due south to the south line of said first mentioned tract of land, thence east on said line five hundred eighty-six feet (586'), thence north to the said south line of said right-of-way, thence westerly five hundred eighty-six feet (586') more or less along said right-of-way line to the place of beginning, and the railroad right-of-way adjoining said property lying south of the centerline of said railroad right-of-way,

and it is further,

8. **ORDERED, ADJUDGED AND DECREED** the Clerk of Courts, Fourth Judicial Circuit, Lawrence County, South Dakota, shall separately index both Plaintiffs' and Defendants NHRRA, DOT and GFP's exhibits provided within their jointly offered exhibit book.

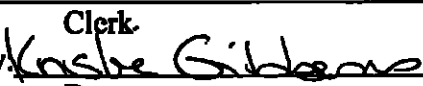
Dated this 15th day of January, 2008

BY THE COURT:


Randall L. Masy
Circuit Court Judge

ATTEST

Alice J. Bruce

Clerk.
By: 
Deputy

STATE OF SOUTH DAKOTA
Fourth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date

MAR 04 2008

Alice Bruce
Lawrence County Clerk of Courts

By: 

FILED

JAN 15 2008

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT