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ENTERED  
Office of Proceedings  
April 30, 2020  
Part of  
Public Record

William A. Mullins

Direct Dial: (202) 663-7823  
E-Mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

April 30, 2020

## **VIA E-FILING**

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: Clarkdale Arizona Central Railroad, L.C. – Trackage Rights  
Exemption – Drake Cement, LLC, FD 35742 (Sub-No. 1)

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1180.2(d)(7), attached for filing in the above-captioned proceeding is a verified notice of exemption ("Notice") for Clarkdale Arizona Central Railroad, L.C. ("CACR") to acquire trackage rights over a line owned by Drake Cement, LLC ("Drake"). In accordance with 49 C.F.R. § 1002.2(f)(40)(iv), a filing fee in the amount of \$1,300.00 has been paid. .

Also enclosed for filing in the above-captioned proceeding is a Motion for Protective Order ("Motion"). This Motion seeks to protect the terms of the trackage rights agreement relating to CACR's payments for operating over Drake's rail line. The unredacted trackage rights agreement for which protection is sought is being submitted separately as a confidential document. A redacted public version of the agreement is included with the Notice of Exemption.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

FEE RECEIVED

April 30, 2020

SURFACE TRANSPORTATION BOARD

FILED

April 30, 2020

SURFACE TRANSPORTATION BOARD

Sincerely,

/s/ William A. Mullins

William A. Mullins

Attorney for Clarkdale Arizona Central Railroad, L.C.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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**NOTICE OF EXEMPTION**

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**William A. Mullins  
BAKER & MILLER PLLC  
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Suite 300  
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Tel: (202) 663-7820  
Fax: (202) 663-7849**

**Attorney for Clarkdale Arizona Central  
Railroad, L.C.**

**April 30, 2020**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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**NOTICE OF EXEMPTION**

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Clarkdale Arizona Central Railroad, L.C. ("CACRR"), a Class III rail carrier, submits this Notice of Exemption ("Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to renew and modify the existing trackage rights agreement between CACRR and Drake Cement, LLC ("Drake"), a Class III carrier.<sup>1</sup> By virtue of the existing trackage rights agreement, CACRR has the right to operate over a portion of Drake's tracks, specifically Track Nos. 3924, 3907, 3921, and 3904 as set forth in Exhibit 1 attached hereto. The existing trackage rights agreement expired on December 31, 2015, although CACRR has continued to operate via its trackage rights. CACRR and Drake have agreed to a new trackage rights agreement that is intended to renew CACRR's trackage rights and modify and replace the expired trackage rights agreement.

**SECTION 1180.2(d)(7)  
GROUND S FOR EXEMPTION**

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is

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<sup>1</sup> CACRR first acquired these trackage rights in Clarkdale Arizona Central Railroad, L.C.—Trackage Rights Exemption—Drake Cement, LLC, FD 35742 (STB served Aug. 2, 2013).

exempt if the rights are: (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights at issue in this proceeding are based upon a written agreement, a redacted public version of which is attached hereto as Exhibit 2,<sup>2</sup> and are not being sought in a responsive application in a rail consolidation proceeding. Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicate the level of labor protection to be imposed.<sup>3</sup>

**SECTION 1180.6 (a)(1)(i)**  
**SUMMARY OF PROPOSED TRANSACTION**

Pursuant to a written Agreement by CACRR and Drake (attached hereto as Exhibit 2), CACRR seeks to renew and modify its existing trackage rights on Drake's Track Nos. 3924, 3907, 3921, and 3904 located between milepost 0 + 15 feet and milepost 0 + 3000 feet, in Drake, Ariz., a distance of approximately 2,985 feet in length. The primary purpose of the trackage rights is to allow CACRR to continue to conduct common carrier operations in interchange with BNSF Railway. The Agreement also grants CACRR the right to operate over Drake's Track Nos. 3922 and 3923 (the "Switching Tracks") to provide switching operations for Drake. Both Drake and CACR are Class III rail carriers.

Name, business address, and telephone number of Applicant:

Clarkdale Arizona Central Railroad  
P.O. Box 1544  
Ogden, UT 84402-1444

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<sup>2</sup> A confidential version is being filed under seal, along with a corresponding request for issuance of a protective order.

<sup>3</sup> See 49 C.F.R. § 1180.4(g).

(928) 634-4393

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW, Suite 300  
Washington, DC 20037  
Tel: (202) 663-7820  
Fax: (202) 663-7849

**SECTION 1180.6 (a)(1)(ii)**  
**PROPOSED TIME SCHEDULE FOR CONSUMMATION**

CACRR intends to consummate this transaction on or after May 30, 2020, the effective date of the exemption (30 days after the exemption was filed).

**SECTION 1180.6 (a)(1)(iii)**  
**PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION**

The primary purpose to be accomplished by the transaction is for CACRR to renew and modify its existing trackage rights on Drake's Track Nos. 3924, 3907, 3921, and 3904 so as to continue to conduct common carrier operations in interchange with BNSF Railway.

**SECTION 1180.6 (a)(5)**  
**STATES IN WHICH PROPERTY OF THE APPLICANT IS SITUATED**

The involved trackage rights are located in the State of Arizona.

**SECTION 1180.6 (a)(6)**  
**MAP**

A map of the line subject to this transaction is attached hereto as Exhibit 1.

**SECTION 1180.6 (a)(7)(ii)**  
**AGREEMENT**

A redacted version of the Agreement is attached as Exhibit 2, with confidential material redacted. An unredacted version of the Agreement has been submitted to the Board under seal, along with a request for issuance of an appropriate protective order.

**SECTION 1180.4(g)(1)(i)**  
**LABOR PROTECTIONS**

Although under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees, Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. This transaction only involves two Class III rail carriers. Accordingly, the Board may not impose labor protective conditions on this transaction. Nonetheless, as the transaction is for the renewal of existing trackage rights operations, CACRR does not anticipate any adverse labor impacts as a result of this transaction.

**SECTION 1180.4(g)(2)(i)**  
**CAPTION SUMMARY**

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto as Exhibit 3.

**SECTION 1180.4(g)(3)**  
**ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS**

Under 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3), the proposed acquisition of trackage rights is exempt from environmental reporting requirements, and historic preservation reporting requirements.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW, Suite 300  
Washington, DC 20037  
Tel: (202) 663-7820  
Fax: (202) 663-7849

April 30, 2020

Attorney for Clarkdale Arizona Central  
Railroad, L.C.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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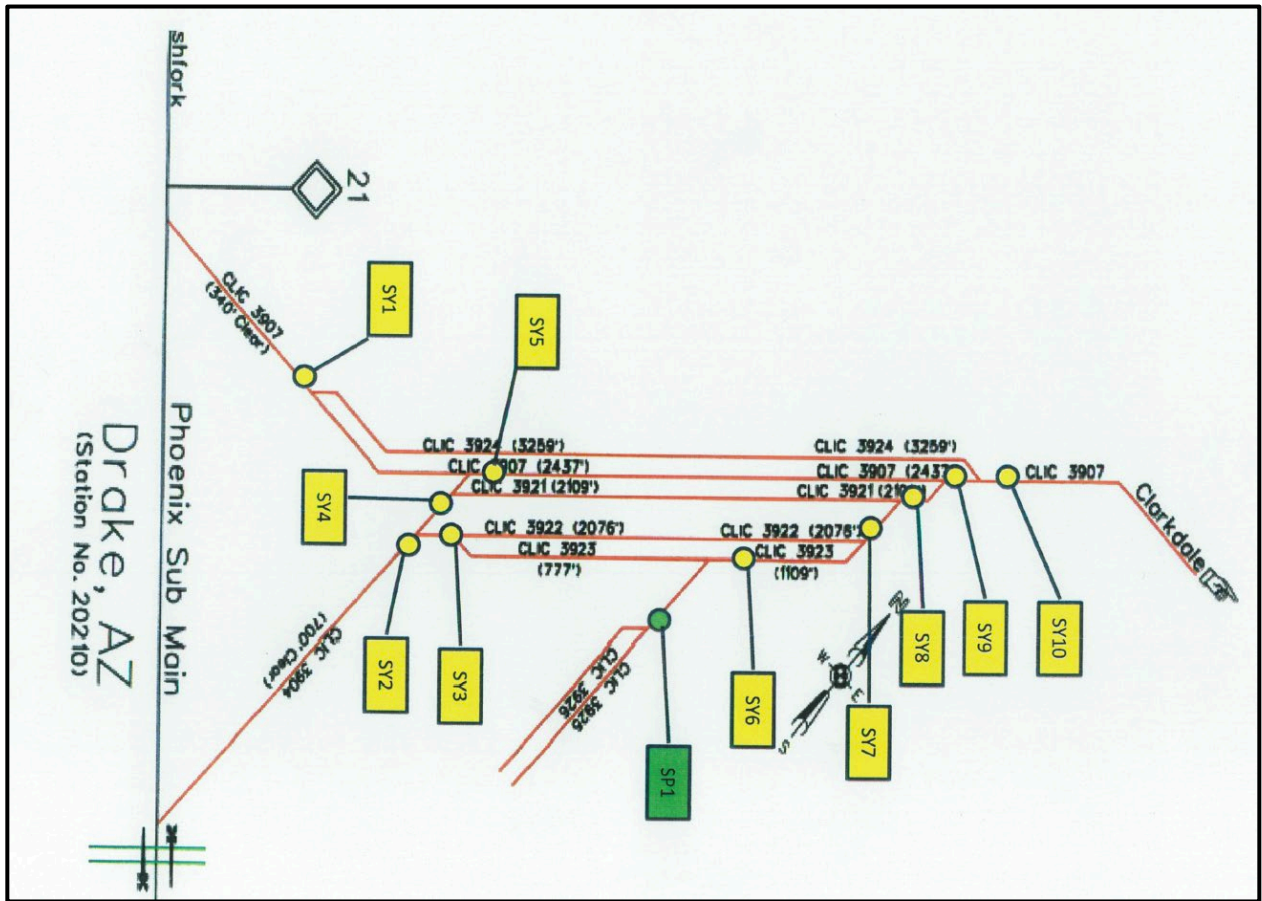
**NOTICE OF EXEMPTION**

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**EXHIBIT 1**

**MAP**

APPENDIX 1



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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**NOTICE OF EXEMPTION**

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**EXHIBIT 2  
AGREEMENT (REDACTED)**

**TRACKAGE RIGHTS AND STORAGE AGREEMENT**

THIS TRACKAGE RIGHTS AND STORAGE AGREEMENT ("Agreement") made effective as of January 1, 2020, and is entered into by and between **DRAKE SWITCHING, LLC**, an Arizona limited liability company ("Owner"), and **CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.**, a Utah limited liability corporation ("User").

**WHEREAS**, Owner owns approximately 4.12 miles of railroad trackage in and near Drake, AZ, as illustrated in Appendix 1 attached to this Agreement; and

**WHEREAS**, by virtue of an easement retained by BNSF Railway Company ("BNSF") and conveyed to User, User has the right to operate over a portion of Owner's Track Nos. 3924, 3907, 3921, and 3904 (the "BNSF Easement Tracks"), as illustrated in Appendix 1 attached to this Agreement; and

**WHEREAS**, User desires to operate over a portion of Owner's Track Nos. 3924, 3907, 3904 and 3921 (the "Operating Tracks"), as illustrated in Appendix 1 attached to this Agreement, in order to interchange traffic directly with BNSF; and

**WHEREAS**, Owner may request User to switch Owner's traffic to or from Owner's Track Nos. 3922 and 3923 (the "Switching Tracks"), as illustrated in Appendix 1 attached to this Agreement; and

**WHEREAS**, Owner is willing to grant User trackage rights over the Operating Tracks in order to interchange with BNSF, but only in accordance with the terms and conditions contained in this Agreement; and

**WHEREAS**, User is willing to agree to such a grant of trackage rights in accordance with the terms and conditions of this Agreement;

**WHEREAS**, Owner and User are willing to agree to certain charges and terms and conditions for storage cars in accordance with the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. User's Rights:

- a. Subject to the terms and conditions contained herein, Owner hereby grants to User nonexclusive trackage rights over the Operating Tracks for the purpose of interchanging traffic solely with BNSF and grants User the nonexclusive right to use the Switching Tracks to switch cars for Owner or storage of such cars. The parties understand and agree that User shall not have the right to: (i) switch industries or conduct transload operations on the Operating Tracks and Switching Tracks, other than switching Owner's cars; (ii) except with Owner's consent, serve any industry, team or house track, transload, intermodal or auto facility now existing or hereafter located along the Operating Tracks or Switching Tracks; or (iii) permit or admit any third party to use all or any portion of the Operating Tracks or Switching Tracks.
- b. User accepts the Operating Tracks in "AS IS, WHERE IS" CONDITION AND WITHOUT WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY. User hereby acknowledges that Owner has made no representations to User concerning the condition of the Operating Tracks or the Switching Tracks.
- c. User agrees to perform its operations in a safe manner, in compliance with all applicable laws, and handle its equipment and the trains in a manner that will not unreasonably interfere with or impair the use of the Operating Tracks and the Switching Tracks by other parties.
- d. User may not enter into any industry track agreements along the Operating Track or the Switching Track except with Owner for Owner's traffic.
- e. During the term of this Agreement, User shall comply with all applicable laws and regulations governing rail freight operations on the Operating Tracks and the Switching Tracks, including any required certification of User personnel over the Operating Tracks and the Switching Tracks.
- f. User shall not deliberately dispose of any wastes of any kind, whether hazardous

or not, on the Operating Tracks or the Switching Tracks.

- g. User will utilize Track Nos. 3907, 3924, 3921, and 3904 only for interchanging traffic with BNSF Railway and Track Nos. 3922 and 3923 only for switching Owner's traffic.
- h. Except as expressly agreed to between the parties in this Agreement, User is not otherwise permitted to store cars on the Operating Tracks or the Switching Tracks; however, consistent with the terms of this Agreement, cars that are destined for interchange to or from BNSF may be placed on the Operating Tracks. Owner shall promptly notify User that such cars have been placed for interchange by BNSF. Any cars remaining on the Operating Tracks or the Switching Tracks for a period exceeding ■ hours after placement for interchange shall be treated as storage cars and subject to charges as per Paragraph 3.

2. Maintenance:

During the term of this Agreement, Owner shall be responsible at its own cost and expense for performing routine maintenance and making such repairs to the Operating Tracks and the Switching Tracks as necessary to permit safe operations over the Operating Tracks and the Switching Tracks to continue at Federal Railroad Administration ("FRA") Class 1 standard and to comply with all applicable FRA regulations relating to the operation, maintenance, and repair of the Operating Tracks and the Switching Tracks. Owner's maintenance and repair obligations under this Agreement shall include, but not be limited to rail, ties, signal protection devices, culverts and other structures, and sub-roadbed on the Operating Tracks and the Switching Tracks. Owner shall pay all fines or penalties imposed by the FRA for violations of any applicable regulatory standards solely to the extent arising out of Owner's maintenance, repair, and operation of the Operating Tracks and the Switching Tracks.

3. Compensation:

a. Track Rights Fee

- (i) User shall pay Owner a trackage rights fee of \$■ per car, loaded or empty, or moving in either direction effective as of the date of this

Agreement.

- (ii) Unless otherwise agreed to by the parties, Owner will not be liable to User under this Agreement for any charges assessed by User for car-hire or switching. These items will be addressed in separate agreements between the parties.
- (iii) Other Costs and Expenses: Except for any fines or penalties assessed under Paragraph 2, Owner and User shall be individually and separately responsible for the payment of any fines or penalties arising from its own acts or omissions while operating on or over the Operating Tracks or the Switching Tracks.

b. Car Storage Fee

- (i) For each chargeable day, owner shall assess storage fees of \$ [REDACTED] per car.
- (ii) A “Chargeable Day” shall be defined as a twenty-four (24) hour period, or fraction thereof. “Non-Chargeable Days” shall include Holidays as listed on Appendix 2. A “Chargeable Day” shall begin immediately after the expiration of the [REDACTED] hour period set forth in Paragraph 1(h).

4. Representations and Warranties:

- a. User represents and warrants to Owner that:
  - (i) User is a corporation duly organized, validly existing, and in good standing in the State of Utah.
  - (ii) User has all the requisite corporate authority to enter into this Agreement, to conduct rail freight transportation business on the Operating Tracks and the Switching Tracks, and to perform all of User's obligations under this Agreement.
  - (iii) User will obtain all legal authority that is necessary to conduct trackage rights and switching operations over the Operating Tracks and the Switching Tracks and Owner agrees to cooperate and support User in obtaining such legal authority.

- (iv) User will enter tracks of the Owner only with FRA qualified Conductors and Engineers.
- (v) User will be responsible for its own equipment, which includes both cars and locomotives.
- (vi) User and any owner and affiliate of User have not filed a petition for bankruptcy, reorganization or arrangement pursuant to the Bankruptcy Reform Act or any similar proceeding, nor has there been any involuntary bankruptcy, receivership or arrangement proceeding been filed involving User or any owner or affiliate of User. User further represents and warrants that it is solvent.
- (vii) No representation or warranty by User in this Agreement contains any untrue statement of material fact or omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

b. Owner represents and warrants to User that:

- (i) Owner is an Arizona limited liability company.
- (ii) Owner is the owner of the Operating Tracks and the Switching Tracks and has the power and authority to enter into this Agreement and carry out its obligations under this Agreement.

5. Liability and Insurance:

- a. User assumes the risk of loss of and agrees to indemnify, defend, and hold Owner harmless against and from any claims, costs, liabilities, expenses (including without limitation court costs and reasonable attorneys' fees) or demands of whatsoever nature or source arising from (i) any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, on the Operating Tracks and the Switching Tracks; (ii) any personal injury or death of persons whomsoever (including without limitation, employees, agents or contractors of Owner); or (iii) any property damage or destruction of whatsoever nature (including without limitation, property of Owner or User or property in its or their care, custody or control and third-party property), in each case, where such contamination, Environmental Problems, injury, death or damage arise out of acts

or omissions of User occurring in connection with User's operations over the Operating Tracks and the Switching Tracks.

- b. Owner assumes the risk of loss of and agrees to indemnify, defend, and hold User harmless against and from any claims, costs, liabilities, expenses (including without limitation court costs and reasonable attorneys' fees) or demands of whatsoever nature or source arising from (i) any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, on the Operating Tracks and the Switching Tracks; (ii) any personal injury or death of persons whomsoever (including without limitation, employees, agents or contractors of Owner); or (iii) any property damage or destruction of whatsoever nature (including without limitation, property of Owner or User or property in its or their care, custody or control and third-party property), in each case, where such contamination, Environmental Problems, injury, death or damage arise out of acts or omissions of Owner occurring in connection with Owner's operations over the Operating Tracks and the Switching Tracks.
- c. "Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended), the Resource and Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Act, 33 U.S.C. § 1201 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq. and any other federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural-resources or the environment and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatsoever nature which arise from any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum or any fraction of petroleum or of any other chemical, substance or material listed or identified in or regulated by any environmental law.
- d. During the term of this Agreement, User and Owner shall each maintain insurance coverage regarding general public liability insurance as provided in this subparagraph. The policy shall provide bodily injury, including death, personal injury, and property damage coverage with a combined single limit of [REDACTED]

\_\_\_\_\_ per occurrence or claim and an aggregate limit of not less than \_\_\_\_\_. All such insurance shall name each other as additional insures.

- e. User and Owner shall furnish to each other certificate(s) of insurance evidencing the required coverage and endorsements prior to commencement of operations over the Operating Tracks and Switching Tracks and, upon request, a certified duplicate original of any policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Owner in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.
- f. If either User or Owner fails to procure and maintain insurance as required, the other may elect to do so at the cost of the other.

6. Term:

Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement shall have retroactive effect to January 1, 2020 and shall continue in effect until December 31, 2023.

## 7.Termination:

This Agreement may be terminated by User as follows: (i) upon 30-days written notice to Owner, in the event all freight traffic ceases to move on the contiguous rail line owned by User; or (ii) upon 6-months written notice to Owner if for any reason User no longer desires to utilize the Operating Tracks to interchange with BNSF. This Agreement may be terminated by Owner or User as follows: (i) upon 30-days written notice to the other in the event the other party is in material breach of its obligations under this Agreement and the breaching party fails to rectify the breach within 30 days of notice from the non-breaching party. Termination of this Agreement shall not relieve or release any party from any obligation assumed or from any liability which may have arisen or been incurred by any party under the terms of this Agreement prior to the termination.

8. Assignment:

- a. User shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder to any person, firm, entity, or corporation without obtaining the prior written consent of Owner, which consent shall not be unreasonably withheld.
- b. Owner shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder to any person, firm, entity or corporation without obtaining the prior written consent of User, which consent shall not be unreasonably withheld.

9 Notices:

All notices to be given by any party to another shall be in writing and addressed as follows:

To Owner:

Matt Jennings  
DRAKE SWITCHING, LLC  
21803 North Scottsdale Rd  
Suite 220  
Scottsdale, AZ 85255

To: User:

Ed Pajor  
Clarkdale Arizona Central Railroad  
P.O. Box 1544  
Ogden, UT 84402-1444

10 Arbitration:

- a. Except for any claims for which either party seeks injunctive or equity relief, which claims may be brought in an appropriate court of jurisdiction, if at any time a question or controversy shall arise between the parties hereto in connection with

the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single arbitrator agreed upon by the parties within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person with at least five years of exposure to the concepts of administration, interpretation, and application of railroad contracts or agreements.

- b. If the parties cannot agree on a single arbitrator, the party demanding such arbitration ("Demanding Party") shall notify the other party (the "Noticed Party") in writing of such demand, stating the question or questions to be submitted for arbitration, and nominating one qualified arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall nominate a qualified arbitrator and notify the Demanding Party of its nominee. Should the Noticed Party within twenty (20) days after receipt of such notice fail to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select an arbitrator for the Noticed Party, and if the Noticed Party does not agree to the arbitrator so selected, said arbitrator may be appointed, pursuant to 9 U.S.C. § 5, by a District Court Judge in the United States District Court for the District in which the Operating Tracks are located upon application by either party after ten (10) days' written notice to the other parties. The arbitrators so chosen shall select one similarly qualified additional arbitrator; to form a three-arbitrator board and the dispute shall be heard by a three-person arbitrator. If the two nominated arbitrators fail to agree upon an additional third arbitrator, the third arbitrator shall, upon application of either party, be appointed by said judge in the manner heretofore stated.
- c. Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others.
- d. If any arbitrator declines or fails to act, the party (or parties in the case of a single

arbitrator) by whom he was chosen or said judge shall appoint another to act in his place.

- e. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly, in no more than thirty (30) days after the completion of hearing all evidence, testimony, and arguments, state such decision or award in writing, which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The parties agree that such arbitration award may be confirmed by any state or federal court of competent jurisdiction.
- f. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.
- g. Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by the parties to the arbitration.
- h. The books and papers of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

#### 11. Governmental Approval

- a. User shall, at its own cost and expense, initiate by appropriate application, petition for exemption, or notice of exemption any necessary government approvals for this Agreement and thereafter diligently prosecute said proceeding for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application, Petition or Notice and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or

appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

- b. Upon the procurement of all consents, approvals, permits and authority, User shall maintain throughout the term of this Agreement all such consents, approvals, permits and authority which are necessary an appropriate for the operations of the User on the Operating Tracks and the Switching Tracks.
- c. Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Operating Tracks or the Switching Tracks by giving 30 days' prior written notice to User of its intention so to do. The Agreement shall terminate as to the section of the Operating Tracks or the Switching Tracks so abandoned upon the effective date of such approval by governmental authority.

12. Paragraph Headings:

All paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

13. Governing Law:

Except for the parts of this Agreement and any claims that may be governed by applicable federal laws, rules, or regulations, this Agreement and all claims in connection with the Agreement, shall be governed by and interpreted under the laws of the State of Arizona, without regard to the principles of conflicts of law.

14. Entire Agreement:

This Agreement, including the below Settlement Agreement, which is incorporated by reference herein, constitutes the entire agreement among the parties and shall supersede all prior agreements and understandings, oral or written, between the parties hereto concerning the subject matter of this Agreement.

15. Operations:

- a. To the extent Owner's operating rules and procedures do not discriminate against User, User shall comply with all operating procedures listed in Owners published operating timetable, general orders and special instructions. Owner will supply User with a copy of all current operating timetable and/or operating instructions prior to User beginning operations under this agreement.
- b. Subject to Paragraph 1(h), User agrees to pick up interchange cars within [REDACTED] hours after placement for interchange, and any such cars not picked up within [REDACTED] hours will be treated as storage cars and subject to the charges set forth in Paragraph 3 and other provisions of this Agreement that apply to storage cars. User also agrees to notify BNSF of delivery of cars for interchange back to BNSF so cars outbound will not accumulate unnecessarily.
- c. Should User change service or operations, User agrees to make every effort to notify Owner [REDACTED] hours prior to any changes that affect the use of the specified tracks.
- d. Should an accident, injury or derailment occur on Owner's tracks caused by User, User agrees to take prompt action to return Owner's tracks to their customary operation. For any derailments that may occur on Owner's Track, User agrees to use all reasonable efforts to pick up such derailment within [REDACTED] hours of occurrence.
- e. Except as otherwise set forth in this Agreement or any separate switching agreements, User shall use operate over the Operating Tracks and Switching Tracks in such a manner to not unreasonably interfere with Owner's own operations.

16. Force Majeure:

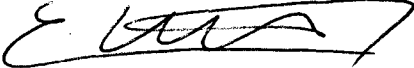
Force Majeure occurs if either party is unable to meet its obligations under this Agreement as a result of Acts of God, war, insurrection, strike, lockout, embargoes, derailments, acts of government or government agency, or any other similar cause beyond its reasonable control. Once Force Majeure occurs, the obligations of the parties (other than payment for services endured) shall be suspended for the duration of the Force Majeure;

provided, however, that the parties shall make all commercially reasonable efforts to continue to meet their obligations during the duration of the Force Majeure condition. For the Force Majeure to be effective, the party declaring Force Majeure shall promptly, at least within 48 hours, notify the other party by telephone and confirmed in writing as to the nature of the Force Majeure when it began and its projected duration. Such party shall also promptly notify the other party by telephone and confirmed in writing of the cessation of the Force Majeure. The suspension of any obligation as a result of Force Majeure shall neither cause the term of this Agreement to be extended nor affect any rights accrued under this Agreement prior to or following the occurrence of the Force Majeure.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the day and year first above written.

OWNER

DRAKE SWITCHING, LLC

By: 

Name: ENRIQUE C. ROZAS.

Title: PRESIDENT & CEO

USER

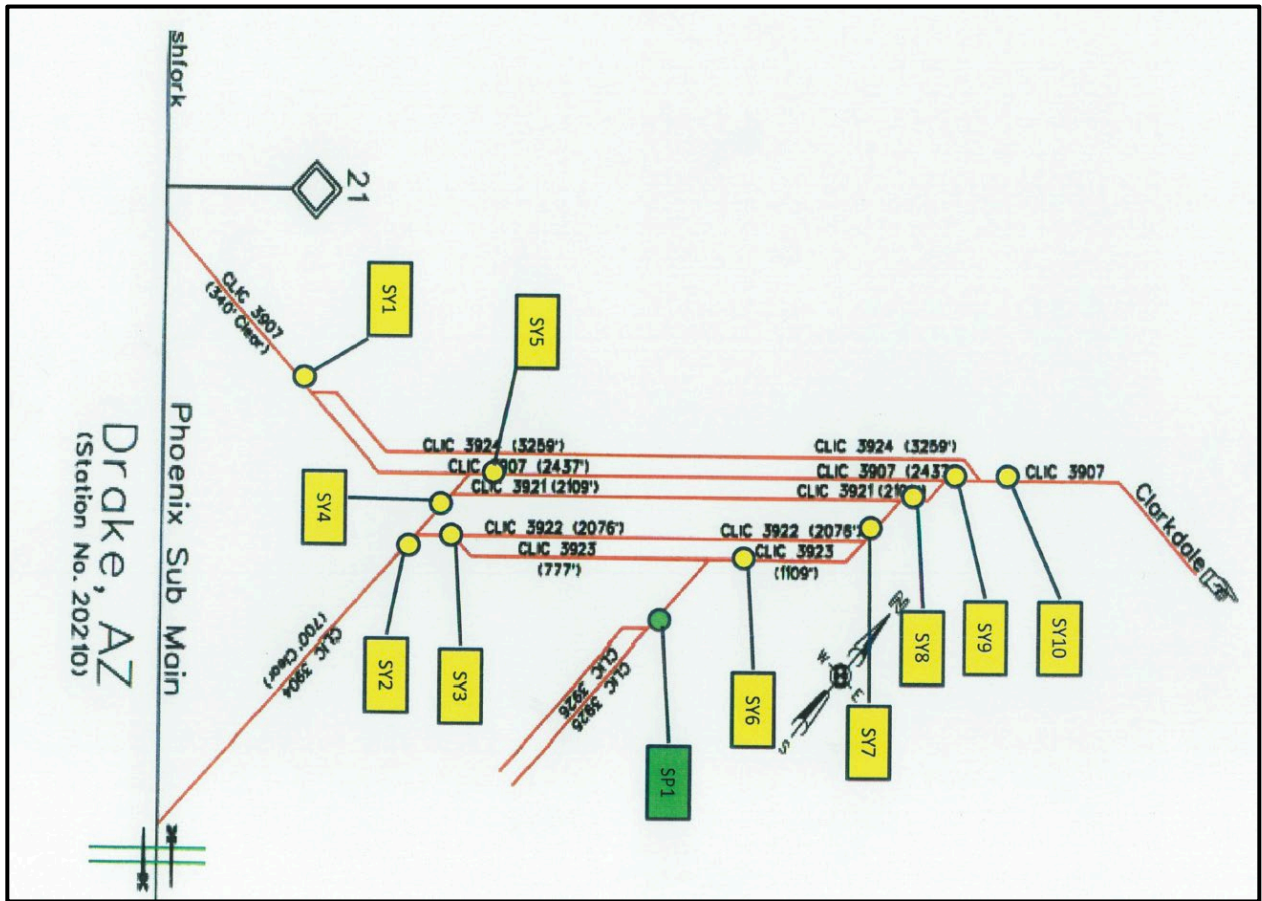
CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.

By: 

Name: Bruce Carswell

Title: Senior Vice President

APPENDIX 1



APPENDIX 2

Non Chargeable Days

New Year's Day January 1  
Memorial Day Last Monday of May  
Independence Day July 4th  
Labor Day First Monday of September  
Thanksgiving Day Fourth Thursday in November  
The Day after Thanksgiving Fourth Friday in November  
Christmas Eve December 24th  
Christmas Day December 25th

**Settlement Agreement**

**March 3, 2020**

Both parties have settled a dispute regarding past storage charges. Upon execution of this Agreement, User will pay Owner the amount of [REDACTED] for all storage fees that were unpaid as of the effective date of this Agreement. In consideration for the settlement payment, Owner will not take legal action against User for past storage charges.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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**NOTICE OF EXEMPTION**

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**EXHIBIT 3**

**DRAFT CAPTION SUMMARY  
FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 35742 (Sub-No. 1)

CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC

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Clarkdale Arizona Central Railroad, L.C. ("CACRR"), a Class III rail carrier, has submitted a Notice of Exemption ("Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to renew and modify the existing trackage rights agreement between CACRR and Drake Cement, LLC ("Drake"), a Class III carrier.<sup>1</sup> By virtue of the existing trackage rights agreement, CACRR has the right to operate over a portion of Drake's tracks, specifically Track Nos. 3924, 3907, 3921, and 3904. The existing trackage rights agreement expired on December 31, 2015, although CACRR has continued to operate via its trackage rights. CACRR and Drake have agreed to a new trackage rights agreement that is intended to renew CACRR's trackage rights and modify and replace the expired trackage rights agreement.

The trackage rights will be consummated on or after May 30, 2020.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by May 23, 2020 (at least 7 days before the exemption becomes effective).

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<sup>1</sup> CACRR first acquired these trackage rights in Clarkdale Arizona Central Railroad, L.C.—Trackage Rights Exemption—Drake Cement, LLC, FD 35742 (STB served Aug. 2, 2013).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

All pleadings referring to Docket No. FD 35742 (Sub-No. 1) must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on CACRR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

According to CACRR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c), and from historic reporting under 49 C.F.R. § 1105.8(b)(3).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: May \_\_\_, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35742 (SUB-NO. 1)**

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**CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.  
-- TRACKAGE RIGHTS EXEMPTION --  
DRAKE CEMENT, LLC**

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**NOTICE OF EXEMPTION**

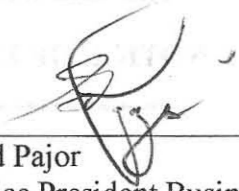
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**VERIFICATION**

### VERIFICATION

I, Ed Pajor, Vice President Business Development for Clarkdale Arizona Central Railroad, L.C. ("CACRR"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of CACRR in connection with this proceeding before the Surface Transportation Board.

Executed this 30 day of April, 2020.



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Ed Pajor  
Vice President Business Development