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January 6, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Docket No. FD 36466
San Joaquin Valley Railroad Co.
-Lease and Operation Exemption
Including Interchange Commitment-
Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of San Joaquin Valley Railroad Co. ("SJVR") is a Notice of Exemption being filed under 49 USC 10902 and 49 CFR 1150.41. This Notice of Exemption includes an interchange commitment and as such, also enclosed is a confidential appendix governed by 1104.14(a). In addition, SJVR is submitting a request for waiver of the labor notice requirements of 49 C.F.R. §1150.42(e).

The filing fee of \$2,200 was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,



FILED
January 6, 2021
SURFACE
TRANSPORTATION BOARD

Justin J. Marks
Counsel for San Joaquin Valley Railroad Co.

Enclosures

FEE RECEIVED
January 6, 2021
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36466

SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for San Joaquin Valley Railroad
Co.*

Dated: January 6, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36466

SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

San Joaquin Valley Railroad Co. (“SJVR”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation SJVR’s entry into a lease agreement (“Lease”) with the Union Pacific Railroad Company (“UPRR”) to replace a 1994 lease (the “Original Lease”) between UPRR’s predecessor company, Southern Pacific Transportation Company, and SJVR, as an assignee of Port Railroads, Inc. The Lease covers the following 101.5 miles of rail line (“Rail Lines”): (1) the Westside Branch (Lower Los Banos) from Oxalis, CA MP 159.9 to MP 181.9, at or near Ingle, CA; (2) the Westside Branch (Lower Los Banos) from Ingle, CA MP 181.9 to Fresno, CA, at MP 207.0 and including the Riverdale Branch from Ingle, CA, MP 181.8 to the end of the track at or near MP 206.2 at Burrell, CA; (3) the Buttonwillow Branch from Kern Jct., CA, MP 316.3 to Gosford, CA, MP 322.6; (4) the Buttonwillow Branch from Gosford, CA, MP 322.6 to the end of the track at or near Buttonwillow, CA, MP 346.3.

SJVR and UPRR entered into the Lease to further extend the term of the Original Lease and to make other commercial revisions.

Notice

In accordance with 49 C.F.R. §1150.43, SJVR hereby provides the following

information:

- (a) The full name and address of Applicant: San Joaquin Valley Railroad Co., 221 North F Street, P.O. Box 937, Exeter, CA 93221.

- (b) Applicant's Representatives:

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Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
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Suite 1300 South
Washington, DC 20004
(202) 772-0916

- (c) SJVR is currently the operator of the Rail Lines under the Original Lease as assignee of Port Railroads, Inc. *See Port Railroads, Inc. – Lease and Operation Exemption – Southern Pacific Transportation Company*, ICC Finance Docket No. 32457 (served Mar. 14, 1994); *San Joaquin Valley Railroad Co. – Corporate Family Transaction Exemption – Port Railroads, Inc.* STB Finance Docket No. 32906 (served May 3, 1996); SJVR and UPRR have now entered into the Lease for the Rail Lines dated as of December 28, 2020.
- (d) The current operator of the Rail Lines is SJVR, and SJVR will continue to be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: SJVR is currently operating the Rail Lines under the Original Lease. This proposed transaction extends the lease term and

revises other commercial terms, which will allow SJVR to continue operating the Rail Lines for an additional 4 years.

- i. The name and address of the company leasing the Rail Lines is Union Pacific Railroad Company, 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179.
 - ii. The Lease will be effective upon the effective date of this Notice of Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver). SJVR is currently operating the Rail Lines under the terms of the Original Lease and will continue to do so until the Lease becomes effective.
 - iii. The mileposts of the Rail Lines are: (1) the Westside Branch (Lower Los Banos) from Oxalis, CA MP 159.9 to MP 181.9, at or near Ingle, CA; (2) the Westside Branch (Lower Los Banos) from Ingle, CA MP 181.9 to Fresno, CA, at MP 207.0 and including the Riverdale Branch from Ingle, CA, MP 181.8 to the end of the track at or near MP 206.2 at Burrell, CA; (3) the Buttonwillow Branch from Kern Jct., CA, MP 316.3 to Gosford, CA, MP 322.6; (4) the Buttonwillow Branch from Gosford, CA, MP 322.6 to the end of the track at or near Buttonwillow, CA, MP 346.3.¹
 - iv. The total mileage to be acquired and operated is approximately 101.5 miles.
- (f) Attached as Exhibit A to this Notice of Exemption are maps of the Rail Lines.
 - (g) SJVR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.

¹ The mileposts are slightly different from the Original Lease reflecting the updated mileposts on the Rail Lines.

- (h) SJVR certifies that the Lease contains an interchange commitment. The following additional information is provided by SJVR with respect to the interchange commitment:
- i. The Lease (like the Original Lease) contains an interchange commitment that affects interchange with carriers other than UPRR at the interchange point shown on the maps attached as Exhibit A.
 - ii. A confidential complete version of the Lease is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).
 - iii. A list of the shippers who currently use or who have used the Rail Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
 - iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.
 - v. SJVR hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.
 - vi. UPRR and BNSF Railway Company could physically interchange with the Rail Line.
 - vii. SJVR does not have the information to estimate the difference between the rent

with and without the interchange agreement. Accordingly, SJVR requested an estimate of the difference from UPRR as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. A copy of the UPRR response is included in the Confidential Appendix.

- viii. The caption of this proceeding reflects the existence of the interchange commitment.
- (i) In addition to the information set forth above, SJVR certifies that its revenues currently exceed \$5,000,000. However, since SJVR will continue to be the operator of the Rail Lines both before and after the transaction, SJVR is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

SJVR is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since SJVR is already the operator of the Rail Lines, there will be no employees adversely affected by the lease arrangements.

Environmental and Historic Reports

This is an extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for SJVR to discontinue (or for UPRR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R.

§1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, SJVR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), SJVR would be required to give sixty days' notice to employees working on the Rail Lines (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of Proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, SJVR should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Lines. SJVR already leases the rail facilities, and it or its predecessor have been the sole common carrier operator of the Rail Lines since at least 1994. The Lease extends the term of the Original Lease and SJVR will continue to be the sole common carrier operator of the Rail Lines. No employees of the transferring carrier, UPRR, have worked on the Rail Lines since at least 1994,

and there are no employees of UPRR who will be affected or have to make any career choices as a result of the sale. Posting notices on the Rail Lines would not provide notice to any UPRR employees since none work on the Rail Lines. Further, there will be no operational changes, and no employees of SJVR will be affected.² Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting SJVR a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

SJVR asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, SJVR requests that the Board issue a notice allowing the Lease to become effective 30 days from the filing of this Notice of Exemption.

² Notwithstanding that there will be no effect on employees of SJVR, SJVR is providing notice of the Lease to the national office of the union that represents employees working on the Rail Lines by serving it with a copy of this Notice of Exemption.

Respectfully submitted,



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Clark Hill PLC
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Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Attorneys for San Joaquin Valley Railroad Co.

Dated: January 6, 2021

VERIFICATION

I, J. Brad Ovitt, President of San Joaquin Valley Railroad Co., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on January __, 2021



J. Brad Ovitt

EXHIBIT A

MAPS

Butterwillow Branch







San Joaquin Valley Railroad Co.
 221 North F Street
 P.O. Box 937
 Exeter, California 93221
 559-592-1857

Genesee & Wyoming Railroads

- **SJVR** Youngstown & Austintown Railroad, Inc.
 - **CFNR** California Northern Railroad Company
- Dashed line indicates Trackage Rights.

EXHIBIT B

LIST OF SHIPPERS

TOMATEK
KERMAN AG RESOURCES
HELENA INDUSTRIES
SIMPLOT GROWER SOLUTIONS
BRENNTAG PACIFIC
NUTRIEN AG SOLUTIONS INC
EMPIRE MINING
N.F. DAVIS
JR SIMPLOT CO.
WILBUR ELLIS
TRUE ORGANICS
MIDSTREAM ENERGY PARTNERS USA LLC
SOS CRANE AND TRUCKING (Out of business 2Q20)
SA RECYCLING
J.G. BOSWELL TOMATO CO.
BUTTONWILLOW WAREHOUSE CO.
FRITO LAY
TUBULAR TRANSPORT & LOGISTICS
HONDO CHEMICAL
HARVEL PLASTICS INC.
CALIFORNIA WHOLESALE MATERIALS
UNITED STATES COLD STORAGE
84 LUMBER
FIBERSPAR
HOOVER TREATED WOOD PRODUCTS
WA THOMPSON (Now High Desert)
BANDUCCI FARMS

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36466

**SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

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Comments must be filed with the Board and served on SJVR’s representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

The Notice is filed under 49 C.F.R. §1150.41. 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 transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2021.

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

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following national representative of SJVR employees working on the lines:

International Association of Machinists representing our Engineering employees:

J. Michael Perry- President Directing General Chairman
6905 Martin Mill Pike
Knoxville, TN 37920
Office- (865) 577-0719
Mike.perry@districtlodge19.com

International Association of Sheet Metal, Air, Rail and Transportation Workers representing our Transportation employees:

Gary Crest- SMART General Chairperson
500 Menlo Drive
Suite 120
Rocklin, CA 95765
Office- (916) 824-1167
go887smart-td@utugc887.com

and on the shippers shown on the attached list.



Justin J. Marks

Dated: January 6, 2021

TOMATEK
PO Box 30
Vancouver WA 98666
Attn: Barry Moore

KERMAN AG RESOURCES
PO Box 308
Kerman CA 93630

HELENA INDUSTRIES
14600 West Commerce Way
Kerman CA 93630

SIMPLOT GROWER SOLUTIONS
PO Box 60011
Fresno CA 93794

BRENNTAG PACIFIC
175 N Hughes Ave
Fresno CA 93706

NUTRIEN AG SOLUTIONS INC
12325 N Dos Palos Ave
Firebaugh CA 93622

EMPIRE MINING
P.O. Box 157
Gerlach, Nevada 89412

N.F. DAVIS
PO Box 425
Firebaugh CA 93622

JR SIMPLOT CO.
PO Box 128
Helm CA 93627

WILBUR ELLIS
PO Box 125
Helm CA 93627

WILBUR ELLIS
22312 Railroad Ave
San Joaquin CA 93660

MIDSTREAM ENERGY PARTNERS USA LLC
9224 Tupman Rd
Tupman CA 93276

SOS CRANE AND TRUCKING
(Out of business 2Q20)

SA RECYCLING
2000 E Brundage Lane
Bakersfield CA 93387

J.G. BOSWELL TOMATO CO.
710 Bainum Ave
Corcoran CA 93212
Attn: John Heck

BUTTONWILLOW WAREHOUSE CO.
3430 Unicorn Rd
Bakersfield CA 93308

FRITO LAY
22801 Highway 58
Bakersfield CA 93314

TUBULAR TRANSPORT & LOGISTICS
508 Enos Lane
Bakersfield CA 93314

HONDO CHEMICAL
20807 Stockdale Highway
Bakersfield CA 93312

HARVEL PLASTICS INC.
7001 Schirra Court
Bakersfield CA 93313

CALIFORNIA WHOLESALE MATERIALS
5601 Aldrin Ct
Bakersfield CA 93313

UNITED STATES COLD STORAGE
PO Box 41000
Bakersfield CA 93384

84 LUMBER
1019 Route 519
Eighty Four PA 15330

FIBERSPAR
12239 FM 529
Houston TX 77041

HOOVER TREATED WOOD PRODUCTS
5601 District Blvd
Bakersfield CA 93313

WA THOMPSON (Now High Desert)
5101 District Blvd
Bakersfield CA 93313

BANDUCCI FARMS
PO Box 81506
Bakersfield CA 93380