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January 5, 2022  
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Public Record

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CSXT/PAR-50

**VIA E-FILING**

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

**Re: STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company**

Dear Ms. Brown:

CSX<sup>1</sup> is pleased to report to the Board that CSX has reached the enclosed settlement agreement with MWRA regarding potential issues between CSX and MWRA arising out of CSX's application in the above-referenced proceeding.

Pursuant to paragraph 2 of the settlement agreement, CSX hereby requests that the Board impose the terms of the enclosed settlement agreement as a condition of the Board's approval of the Application. Paragraph 2 of the settlement agreement also provides that MWRA will withdraw its notice of intent to participate in the public hearing regarding the transactions and its prior requests for conditions to the Board's approval of the transactions.

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<sup>1</sup> The acronyms and defined terms used in this letter are the same as those used in the Revised Application filed in the above-captioned proceeding.

Cynthia T. Brown  
January 5, 2022  
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Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca  
Peter W. Denton  
Sally Mordi  
*Attorneys for CSX Corporation and  
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer  
All parties of record

December 31, 2021

Mr. Frederick A. Laskey  
Executive Director  
Massachusetts Water Resources Authority  
100 First Avenue - Charlestown Navy Yard  
Boston, MA 02129

Re: Letter agreement regarding resolution of issues between CSX Transportation, Inc. ("CSXT") and the Massachusetts Water Resources Authority ("MWRA") in consideration for not opposing the acquisition by CSXT of Pan Am Railways, Inc. ("Pan Am"), the application for which is currently before the Surface Transportation Board ("STB")

Dear Mr. Laskey:

The purpose of this letter agreement ("Letter Agreement") is to set forth various issues on which MWRA and CSXT have come to agreement, in light of the proposed acquisition of control of Pan Am Railways, Inc. and its various rail carrier subsidiaries (collectively, "Pan Am") by CSX Corporation and CSXT (collectively, the "CSX Parties"). MWRA and CSXT are sometimes referred to individually herein as a "Party", and collectively as the "Parties".

The CSX Parties have filed with the Surface Transportation Board ("STB") an application (the "Application") seeking approval for the CSX Parties' acquisition of control of Pan Am and merger of Pan Am into CSXT, among other related implementing transactions related to the control and merger element of the proposed transaction (collectively, the "Transaction"; and the effectuation of the Transaction as defined in this sentence will be referred to herein as the "Consummation of the Transaction"). MWRA has expressed concern about the Transaction, but have thus far refrained from registering its opposition to the Transaction or urging denial of the Application. CSXT and the MWRA hereby acknowledge the importance of the Wachusett Reservoir Watershed to the health, safety and well-being of millions of residents of the Commonwealth, and that the MWRA must ensure the protection of those interests.

NOW THEREFORE, in consideration of the foregoing and their respective undertakings herein contained, and intending to be legally bound hereby, the Parties covenant and agree as follows:

1. CSXT hereby commits that, upon the Consummation of the Transaction, it will undertake the following actions as listed below:
  - a. **Track Upgrade.** CSXT shall provide all labor, materials, design and other services, and all else necessary to upgrade, and shall upgrade, the Worcester Main Line tracks and track structures located within the Wachusett Reservoir Watershed from Milepost 6 to Milepost 13.58 (the "Reservoir Segment") so that track conditions satisfy or exceed the minimum requirements to permit the Reservoir

Segment to be classified at all times as Federal Railroad Administration Class 3 (“FRA Class 3”) track. Such upgrade work shall also include, without limitation: (i) furnishing and installing new continuous welded rail of 115lb or greater section weight, sufficiently ballasted and anchored to prevent buckling; (ii) replacing necessary ties and roadbed resurfacing; (iii) furnishing and installing dragging equipment and hot bearing detectors (collectively, “defect detectors”) at locations on the Worcester Main Line at or proximate to either end of the Reservoir Segment sufficient to detect irregularities and allow a train to safely stop; and (iv) furnishing and installing new guard rails at the locations within the Reservoir Segment where guard rails are currently installed. (All requirements under this Paragraph 1(a) shall collectively be referred to as the “Upgrade Work”.) The Upgrade Work shall be performed in a good and workmanlike manner, in accordance with all applicable laws and regulations and industry standards, and at CSXT’s sole cost and expense. Upon Consummation of the Transaction and CSXT’s final inspection of the Worcester Main Line track, the latter of which will be completed no more than two months after such Consummation of the Transaction, CSXT shall provide the Parties with a detailed schedule for the Upgrade Work. The Upgrade Work shall begin within six (6) months of Consummation of the Transaction, and CSXT intends to complete such work within one (1) year after commencement.

- b. **Maintenance & Inspections.** CSXT shall, in compliance with federal requirements, maintain the tracks, track structures and all other components of the Reservoir Segment following timely completion of the Upgrade Work to a not less than FRA Class 3-qualifying condition, and in accordance with all Federal Railroad Administration (FRA) requirements applicable to Class 3 track. Maintenance shall include, but shall not be limited to, all necessary inspections, repairs and replacement work. All maintenance work shall be performed in a good and workmanlike manner, in accordance with all applicable laws and regulations and industry standards and at CSXT’s sole cost and expense. CSXT shall, promptly upon request (but no more frequently than once per quarter), provide MWRA, as well as the Massachusetts Department of Transportation (MassDOT) and the Massachusetts Bay Transportation Authority (MBTA), with all relevant information and documentation necessary to confirm the condition and maintenance of the tracks, track structures and all other components of the Reservoir Segment.

Further, CSXT shall, upon thirty (30) days advance notice and at a mutually agreeable time (but no more frequently than once per quarter), allow a qualified track inspector(s) representing MWRA and its agents to inspect the tracks, track structures and all other components of the Reservoir Segment. As used herein “qualified track inspector(s)” shall mean an individual(s) that meets the FRA qualification requirements for track inspections. Provided, however, that in the event of a derailment, spill or release, or weather event, emergency or exigent circumstance which, in MWRA’s sole opinion, may result in increased risk to the Reservoir Segment and/or reservoir, CSXT shall allow MWRA and its agents to conduct inspections of the Reservoir Segment immediately upon request. In all

cases such inspector(s) will be accompanied by CSXT personnel. MWRA shall not have any obligation to perform any inspections. Any inspection by MWRA, or any election by MWRA not to inspect, shall not relieve CSXT of its obligations and responsibilities hereunder, and MWRA shall not have any liability for any such inspection or elections not to inspect. CSXT shall remain liable for its acts, errors and omissions, and those of its agents, employees and contractors and anyone else for whom CSXT is responsible.

- c. **Speed.** Subsequent to completion of the Upgrade Work, CSXT agrees that all trains, locomotives, self-propelled, on-track repair or construction equipment, and hi-rail vehicles shall operate at speeds at or below 25 miles per hour within the Reservoir Segment. CSXT shall ensure compliance with this requirement by all trains, locomotives and hi-rail vehicles operating over the Reservoir Segment.
- d. **Idling.** CSXT agrees that at no time shall any trains or locomotives park or otherwise idle within the Reservoir Segment, except only in the event of emergency or in such instance where continued operation would result in a risk of derailment, reasonable safety concern, or violation of law. CSXT will limit, to the extent practicable, parking or idling of self-propelled, on-track repair or construction equipment, and hi-rail vehicles within the Reservoir Segment. As used herein “reasonable safety concern” shall mean a situation where CSXT safety protocols would require CSXT to stop and hold a train or equipment movement immediately to, for example, avoid risk of accident, derailment, and/or cargo loss. CSXT shall ensure compliance with these requirements by all trains, locomotives, self-propelled, on-track repair or construction equipment, and hi-rail vehicles operating over the Reservoir Segment of the Worcester Main Line. In addition, CSXT shall schedule all train movements in such a manner that crews will not reach the maximum hours of service allowable for operation while within the Reservoir Segment.
- e. **Transport of Hazardous Materials.**
  - (i) **Monthly Report.** On the 15<sup>th</sup> day of each month, beginning 90 days after the Consummation of the Transaction, CSXT shall provide via email a Monthly Report to MWRA disclosing and describing the type and quantity of all items, materials and commodities, including but not limited to pollutants and hazardous materials, that were transported through the Reservoir Segment during the prior month. As used herein “pollutants” and “hazardous materials” (collectively “Hazardous Cargo”) shall include, without limitation, those materials designated as hazardous materials pursuant to 49 U.S.C. § 5103, as amended. The term Hazardous Cargo shall also include hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials and all other materials designated as hazardous in the Hazardous Materials Table at 49 CFR §172.101, as amended, and materials that meet the definition or criteria for hazard classes and divisions in 49 CFR §173, as amended. Such Monthly Report shall include all of the information set forth in the sample report included as Attachment 1 to this Letter Agreement. Such Monthly

Report shall also include any other information provided to CSXT by the shipper regarding the items, materials, commodities and Hazardous Cargo that may assist in emergency planning and preparedness. In the event that CSXT, either by federal regulation, business need or otherwise, collects additional information concerning Hazardous Cargo, items, materials and commodities being shipped through the Reservoir Segment that may assist in emergency planning and preparedness, the Monthly Report will be updated to include such information and that information shall be promptly furnished to MWRA. CSXT shall work cooperatively with MWRA to make reasonably requested enhancements and improvements to the Monthly Reports.

ii.) **Annual Meeting.** CSXT shall designate a hazardous material manager to serve as MWRA's point of contact for inquiries and requests for information pertinent to this Agreement. Such manager shall meet at least annually with MWRA for further updates and to provide any additional information as MWRA reasonably may request as to the items, materials and commodities transported through the Reservoir Segment.

iii.) **Security Sensitive.** The information and reports provided under this Paragraph 1(e) shall be considered security-sensitive, relating to security measures and emergency preparedness. Provided, however, that MWRA may share the information and reports with the Department of Conservation and Recreation's Division of Water Supply Protection and its Office of Watershed Management, and any other third parties for emergency preparedness and planning purposes, including without limitation emergency responders and public agencies and entities.

- f. **Notice of Derailment.** CSXT shall notify MWRA via a phone call to a 24-hour manned number of any derailment, spill or release within the Reservoir Segment. Such notice shall be provided as soon as possible, and no later than 2 hours after such derailment, spill or release has been identified. CSXT shall also promptly furnish to MWRA the information provided in the Monthly Reports as required in Paragraph 1(e) above, as applicable to the train or trains so derailed, and the commodity spilled or released. CSXT shall cooperate with, and provide any further requested information and documentation to MWRA following such derailment, spill or release.
- g. **Emergency Planning.** CSXT shall work with MWRA, MassDOT and MBTA and emergency response agencies as necessary to develop appropriate response plans to ensure compliance with all applicable railroad transportation and hazardous materials handling safety and environmental laws and regulations, and to conduct training specific to the potential risk associated with railroad operations within, and hazardous commodities transported over, the Reservoir Segment.
- h. **Other Responsibilities.** CSXT shall be solely responsible for all costs and expenses arising out of its requirements and obligations set forth in this Section 1. CSXT shall indemnify and hold harmless MWRA and its officers, agents,

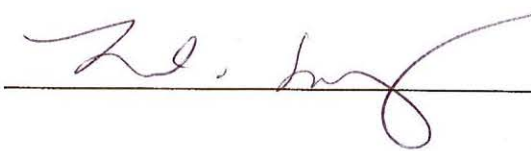
employees and directors, from and against any and all suits, claims and liabilities arising out of: (i) the Upgrade Work; (ii) CSXT's operation and maintenance of the tracks, track structures and all other components within the Reservoir Segment; and/or (iii) any acts, errors or omissions of CSXT, its agents, employees, contractors, invitees, and anyone else for whom CSXT is responsible.

2. The Parties agree that it is their intention that this Letter Agreement shall be filed with the STB and will be incorporated by the STB as conditions to any approval of the Application, and that enforcement of this Letter Agreement, or any dispute arising under its terms shall be presented to, and resolved by, the STB. Provided however, and notwithstanding anything contained herein to the contrary, any claims or disputes arising out of or under Paragraph 1.h above may be filed in any federal or state court of competent jurisdiction within the Commonwealth of Massachusetts, and the Parties hereby waive any claims or defenses of improper or inconvenient forum or venue. Further, any claims or disputes arising out of or under Paragraph 1.h above shall be governed by Massachusetts law. Following the submission of this Letter Agreement to the STB pursuant to this paragraph, and in consideration of the commitments of CSXT set forth herein, MWRA agrees to withdraw (i) its Notice of Intent to participate in the public hearing regarding the Transaction; and (ii) its prior requests for conditions to STB's approval of the Transaction.
3. Each individual signing this Letter Agreement warrants and represents that he/she has the full authority and is duly authorized and empowered to execute this Letter Agreement on behalf of the Party for which he/she signs.
4. If any provision of this Letter Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. This Letter Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against any Party.
5. This Letter Agreement shall be binding on the Parties, their successors in interest, and present and future subsidiaries, assignees or acquirers, including any acquirer of substantially all of the assets of a Party.
6. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Letter Agreement.

[Signatures on following page]

Acknowledged and Agreed to All Terms:

**MASSACHUSETTS WATER RESOURCES AUTHORITY**

By: 

**CSX TRANSPORTATION, INC.**

By: 



Attachment 1  
Sample Report

TOTAL_QUANTITY	NET_TONS_Q	LOAD_EMPTY_GROUP_C	PLANNING_CAR_TYPE_X	STCC_I	STCC_X/Proper Shipping Name	HAZARD_CLASS_C	Technical Name	HAZMAT_UNNA_C	HAZMAT_PACKING_GROUP_C
2	122	L	TANK CARS	4905421	PROPANE	2.1	PROPANE GAS, LIQUEFIED	UN1075	
1	0	E	TANK CARS	4940129	ENVIRONMENTALLY HAZARDOUS	9	CRANKCASE DRAININGS, SUITABLE ONLY FOR RE-REFINING	UN3082	III
1	97	L	TANK CARS	4935240	SODIUM HYDROXIDE SOLUTION	8	SODIUM (SODA), CAUSTIC (SODIUM HYDROXIDE), LIQUID LESS THAN OR EQUAL TO 55% CONCENTRATION	UN1824	III

## **CERTIFICATE OF SERVICE**

I hereby certify that I have caused this Letter in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi  
*Attorney for CSX Corporation and  
CSX Transportation, Inc.*

January 5, 2022