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June 16, 2022
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June 16, 2022

VIA E-FILING

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

Re: Wolf Creek Railroad LLC – Abandonment Exemption –
in Gibson County, TN
Surface Transportation Board Docket No. AB 1322X

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a petition for exempt abandonment being filed on behalf of Wolf Creek Railroad LLC. The filing fee has been paid via pay.gov.

If you have any questions related to this filing, please let me know.

Sincerely,



Justin J. Marks
Counsel to Wolf Creek Railroad LLC

Enclosure

FILED
June 16, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 16, 2022
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1322X

WOLF CREEK RAILROAD LLC
- ABANDONMENT EXEMPTION –
IN GIBSON COUNTY, TN

PETITION FOR EXEMPTION

(color copies included)

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Counsel for Wolf Creek Railroad LLC

Dated: June 16, 2022

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1322X

WOLF CREEK RAILROAD LLC
- ABANDONMENT EXEMPTION –
IN GIBSON COUNTY, TN

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and 49 C.F.R. parts 1121 and 1152, Wolf Creek Railroad LLC (“WCR” or “Applicant”), a Class III railroad common carrier, files this petition seeking an exemption from the provisions of 49 U.S.C. §10903 to abandon the approximately 10-mile line of railroad (the “Subject Line”) located within the Milan Army Ammunition Plant (the “Plant”) in Gibson County, TN. The Subject Line does not have any mileposts. A map of the Subject Line is attached hereto as Exhibit A. In support of its request for exemption, WCR represents as follows:

Background of Proposed Abandonment

The Subject Line is approximately 10 miles long in a single county in Tennessee. WCR leased the Subject Line from the U.S. Army Joint Munitions Command (“JMC”) through its representative American Ordnance LLC (“AO”), under a long-term agreement.¹ Based on the terms of the lease, WCR proceeded to obtain authority from the Board to operate as a common carrier.

¹ The lease also included a number of other tracks that were operated by WCR as yard and industrial tracks for which no Board authority was required or sought.

Applicant obtained Board authority effective November 22, 2018, to acquire and operate the Subject Line on a portion of the Plant that JMC no longer needed and repurposed as a business park. WCR leased the Subject Line to provide common carrier rail service to transload customers and other rail customers that are or would be located in the business park. *Wolf Creek Railroad LLC – Lease and Operation Exemption – American Ordnance LLC, Owner’s Representative for U.S. Joint Munitions Command*, STB Finance Docket No. 36236 (served Nov. 18, 2018). The last freight customer on the Subject Line was a plastics transload customer that stopped shipping to the Subject Line in October 2021. WCR also provided private rail car storage and switching services.

However, only three and one-half years into the lease, on March 31, 2021, JMC gave notice that it was terminating the lease as of December 31, 2021, and that WCR was required to cease its rail operations and vacate the Plant. As a result, WCR must now seek abandonment authority from the Board.

The termination of the lease forced WCR to work with its customers to move over 3000 stored rail cars out of the Plant. In addition, as a result of the termination, the last freight customer stopped shipping to the Subject Line in October 2021. WCR was able to negotiate an extension of the deadline for the termination of operations and vacating the Plant until March 31, 2022, to provide additional time for WCR to move the rail cars that were in storage.

The tracks of the Subject Line are owned by JMC and will not be salvaged by WCR. WCR does not have any knowledge of what JMC or any future owners might do with the track which remains connected to the interstate rail network.

The Subject Line traverses through United States Postal Service ZIP Code 38358. Based on information in the possession of WCR, the Subject Line is located on federally owned right-of-

way. Any documentation related to title in WCR's possession will be made available to those requesting it. Additional documentation related to title may be in the possession of JMC.

Abandonment of Service Over the Subject Line Should Be Exempted

WCR's abandonment of the Subject Line would require authorization pursuant to 49 U.S.C. §10903 unless the exemption requested herein is granted. The Board is directed by 49 U.S.C. §10502 to grant an exemption if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. A grant of this petition is warranted because JMC, as the owner of the Plant, has indicated by the termination notice sent to WCR, that there will be no future need or requests for common carrier service to or from the Plant. The proposed abandonment here is not eligible for the two year out of service class exemption since WCR has been providing service to the Plant; however, since it is clear that there will be no future requests for service, the Board should treat the proposed abandonment in a similar manner. WCR should not be required to hold the Subject Line for two years after JMC has terminated the lease and eliminated the need for service and the ability of WCR to provide any service in order to receive an exemption for the proposed abandonment.

Under 49 U.S.C. §10502 and 49 C.F.R. §1152.60, there is no requirement for a carrier to submit all of the detailed financial data that would be required if abandonment authority were being sought under 49 U.S.C. §10903 and the full application regulations relating thereto. Indeed, there is no specific requirement that any financial data be submitted.²

² Requirements to the contrary would run counter to the principal goals of an exemption proceeding. As the Interstate Commerce Commission found with respect to the two year out-of-service class exemption under 49 C.F.R. §1152.50: "The exemption process now relieves carriers from the need to prepare the costing and valuation studies that are required for Section 10903 abandonment applications. This saves the carriers considerable time and money and allows for

This proposed abandonment of a line located within a single Plant and in a single county of Tennessee does not require detailed scrutiny to carry out the rail policies of 49 U.S.C. §10101, and is in keeping with the Board's overall policy of removing unnecessary regulatory barriers from carriers. This is especially true where, as here, JMC as the owner of the Plant has terminated the railroad's lease and required it to vacate the Subject Line and property. WCR will not be salvaging the Subject Line and it will continue to be available as private track if the JMC or subsequent owner want to use it. Further, there has been no freight service to or from the Subject Line since October 2021 as of result of JMC's announced termination of WCR's lease.

Approval of the requested exemption under 49 U.S.C. §10502 would enable WCR to abandon service over the Subject Line without the extensive costs and delays that would otherwise occur if an application were required to be filed under Section 10903. Further, granting the exemption is in keeping with the following rail policies described in 49 U.S.C. §10101:

* * *

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues...

* * *

(5) to foster sound economic conditions in transportation...

* * *

(7) to reduce regulatory barriers to entry into and exit from the industry...

* * *

(9) to encourage honest and efficient management of railroads;

expeditious regulatory relief.” *Exemption of Rail Line Abandonments or Discontinuance – Offers of Financial Assistance*, 4 ICC 2d 164 (1987).

* * *

(15) to provide for the expeditious handling and resolution of all proceedings.

Moreover, the grant of the exemption will not be inconsistent with any of the 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

The scope of the exemption requested is limited and is based on the JMC's decision as the owner of the Subject Line that common carrier rail service is no longer required.

Since the proposed transaction is of limited scope, it is not necessary for the Board to consider whether shippers need to be protected from abuse of market power. In this case, there are no current freight shippers, the last shipper having stopping service in October 2021 because of the impending termination of WCR's lease. As such, since there are no current shippers, regulation is not needed to protect shippers from abuse of market power.

No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such a user, regarding this abandonment either is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years.

Additional Information

Although not required under the Board's regulations for abandonment petitions for exemption, WCR hereby provides the following additional information that would be required under 49 C.F.R. 1152.50(d)(2) and 1152.22 if the abandonment exemption were being sought pursuant to the Board's class exemption:

(a)(1) The exact name of the Applicant is Wolf Creek Railroad LLC.

(a)(2) WCR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. WCR has been a common carrier since 2018.³

(a)(3) WCR seeks to abandon the Subject Line comprising approximately ten miles of track located within the Milan Army Ammunition Plant in Gibson County, TN. There is one station (Milan, TN – FSAC 00019) on the Subject Line which will be closed as a result of the abandonment.

(a)(4) A Map of the Subject Line is attached hereto as Exhibit A.

(a)(7) The representative of WCR to whom correspondence should be sent is: Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523; or Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; (202) 772-0916.

(a)(8) The Subject Line traverses through United States Postal Service ZIP Code 38358.

(e)(4) WCR does not believe that the right of way is suitable for use as a trail or other public purposes given its location on a formerly active JMC army ammunition plant.

WCR proposes to consummate the abandonment at the earliest possible date permitted by the Board.

Employee Protection

The Board's labor protection conditions should not apply because the Subject Line represents WCR's entire system. The Board does not typically impose labor protection conditions as set forth in *Oregon Short Line Railroad Co.- Abandonment -- Goshen*, 360 I.C.C. 91 (1979) for a railroad that is abandoning its entire system. See *A&R Line, Inc.-Abandonment Exemption-in*

³ *Wolf Creek Railroad LLC – Lease and Operation Exemption – American Ordnance LLC, Owner's Representative for U.S. Joint Munitions Command*, STB Finance Docket No. 36236 (served Nov. 18, 2018).

Cass & Pulaski Counties., Indiana STB Docket No. AB-855 (Sub-No. 1X) *et al.*, slip op. at 1-2 (served Aug. 20, 2003) *citing Northampton and Bath R. Co.-Abandonment*, 354 I.C.C. 784 (1978).

Environmental and Historic Reports

WCR filed an Environmental / Historic Report (“EHR”) with the Board on May 6, 2022, more than twenty days prior to this filing and has transmitted a copy of the report to the agencies identified in 49 C.F.R. §1105.7(b).

Notice

Pursuant to the provisions of 49 C.F.R. §1152.60(c), WCR has attached as Exhibit B, a draft Federal Register notice of its Petition to be published by the Board within 20 days of the Petition’s filing with the Board.

A copy of the notice dated May 19, 2022, that was sent to the required governmental agencies under 49 C.F.R. §1152.50(d)(1) is attached hereto as Exhibit C, and a copy of this Petition is being served on those agencies as required by 49 C.F.R. §1152.60(d). A copy of the Petition is also being served on JMC as the owner of the Subject Line and the property served by the Subject Line.

The notice as required by 49 C.F.R. §1105.12 was published in *The Mirror Exchange* on May 3, 2022. Copies of the forms of notice and the proofs of publication were included in the EHR.

Conclusion

For the foregoing reasons, WCR requests that the Board, under 49 U.S.C. §10502, exempt its abandonment over the Subject Line from regulation under 49 U.S.C. §10903.

Respectfully submitted,



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jmarks@clarkhill.com

Counsel for Wolf Creek Railroad LLC

Dated: June 16, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2022, I served a copy of the foregoing

Petition for Exemption on the persons listed below by first class mail, postage prepaid:

Sheldon Hightower, State Conservationist USDA Natural Resources Conservation Service 801 Broadway 675 U.S. Courthouse Nashville, TN 37203 Sheldon.hightower@usda.gov	John Blevins, Acting Regional Administrator Office of the Regional Administrator US EPA Region 4 Atlanta Federal Center 61 Forsyth Street SW Atlanta, GA 30303-8960 Blevins.John@epa.gov
United States Department of Agriculture Natural Resources Conservation Service Office of the Chief 1400 Independence Ave., SW Room 5105-A Washington, DC 20250	U.S. Army Corp of Engineers Memphis District Regulatory Field Office 167 N. Main St. Room B-202 Memphis, TN 38103-1894 MemphisPAO@usace.army.mill
National Park Service 1849 C Street, NW Washington, DC 20240	Stan Austin, Regional Director Region 2 South Atlantic-Gulf National Park Service 100 Alabama Street, SW 1924 Building Atlanta, GA 30303
Mr. Leopoldo Miranda United States Fish & Wildlife Service Southeast Region 4 1875 Century Boulevard Suite 400 Atlanta, GA 30345	National Geodetic Survey ngs.infocenter@noaa.gov
Tennessee Wildlife Resource Agency 5107 Edmondson Pike Ellington Agricultural Center Nashville, TN 37211 Kathy.Johnston@tn.gov	Tennessee Department of Transportation Amy Kosanovic Planning Supervisor Freight and Logistics Division James K. Pol Building Nashville, TN 37243 Amy.kosanovic@tn.gov

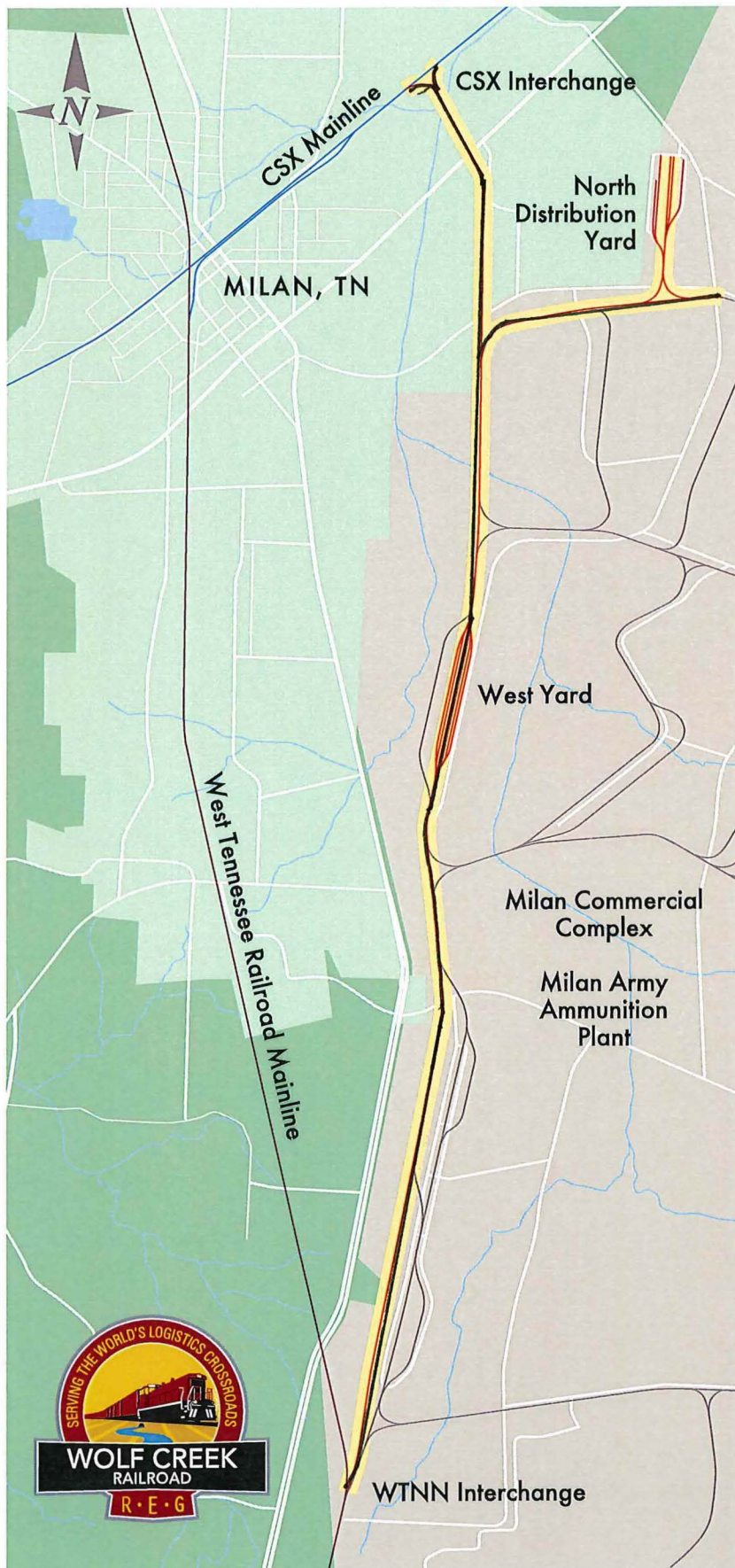
The Honorable Tom Witherspoon Gibson County Mayor's Office 1 Courtsquare Suite 200 Trenton, TN 38382	Tennessee Department of Environment & Conservation Dr. Ronne Adkins Ronne.Adkins@tn.gov
United States Department of the Army Military Surface Deployment and Distribution Command Transportation Engineering Agency ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225	U.S. Department of the Interior - National Park Service RTCA Program 1849 C Street, NW Washington, DC 20240
Office of Chief of Forest Service U.S. Department of Agriculture 1400 Independence Ave., SW Washington, DC 20250-1111	Tennessee Historical Commission Section 106 Review Section.106@tn.gov
US Army Joint Munitions Command c/o F.W. Larsen frederick.w.larsen2.civ@army.mil	

Justin J. Marks

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202.772.0916
jmarks@clarkhill.com

EXHIBIT A

MAP



Line

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-1322X

Notice of Petition for Exemption to Abandon Rail Service

On June 16, 2022, Wolf Creek Railroad LLC (“WCR”) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of 10-miles of railroad line (the “Subject Line”) located within the Milan Army Ammunition Plant (the “Plant”) in Gibson County, TN which traverses through United States Postal Service ZIP Code 38258. There is one station on the line.

The Subject Line and the property it serves are owned by the U.S. Army Joint Munitions Command (“JMC”). As such, the Subject Line is located on federally owned right-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The Board’s labor protection conditions should not apply because the Subject Line represents WCR’s entire system.

WCR does not own and will not be salvaging the Subject Line. All interested persons should be aware that following abandonment of rail service, and salvage of the line by JMC if it elects to do so, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register. Any such requests will require the consent of the JMC as the owner of the Subject Line and the Plant.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

EXHIBIT C

NOTICE TO AGENCIES UNDER 49 C.F.R. 1152.50(D)(1)



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May 19, 2022

VIA EMAIL AND/OR FIRST-CLASS MAIL

ALL AGENCIES ON THE
ATTACHED SERVICE LIST

Re: Wolf Creek Railroad LLC – Abandonment Exemption –
in Gibson County, TN
Surface Transportation Board Docket No. AB 1322X

To Whom it May Concern:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. §1152.50(d), to advise you that Wolf Creek Railroad LLC ("WCR") intends to file a petition for exemption for WCR to abandon rail service over the line of railroad described below, by filing a petition with the Surface Transportation Board ("STB") for an exemption under 49 USC §10502 from the provisions of 49 USC §10903 to enable WCR to abandon the subject line, on or after May 30, 2022 in STB Docket No. AB 1322X.

WCR will invoke the STB's exemption procedures to abandon service of 10 - miles of track located within the Milan Army Ammunition Plant in Gibson County, TN. The subject line does not have any mileposts; it traverses through United States Postal Service ZIP Code 38358. A map of the subject line is enclosed.

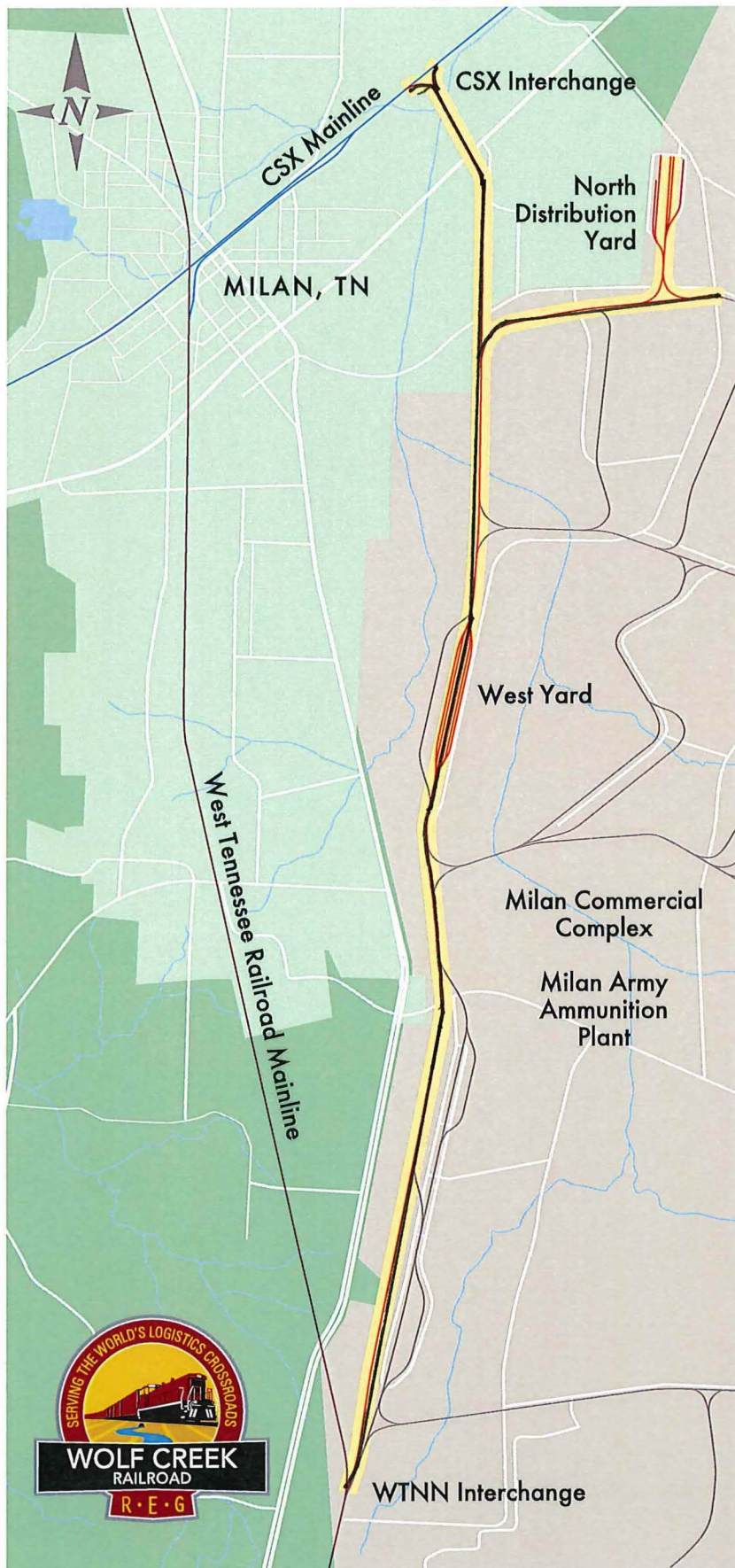
Based upon information in WCR's possession, the Subject Line is located on federally-owned property. Any documentation in WCR's possession related to the abandonment of the subject line will be made available to those requesting it.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Wolf Creek Railroad LLC

Enclosure



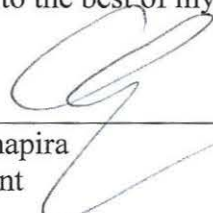
Line

Advance Notice List under 1152.50

United States Department of the Army Military Surface Deployment and Distribution Command Transportation Engineering Agency ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225	U.S. Department of the Interior - National Park Service RTCA Program 1849 C Street, NW Washington, DC 20240
Office of Chief of Forest Service U.S. Department of Agriculture 1400 Independence Ave., SW Washington, DC 20250-1111	Tennessee Department of Transportation Amy Kosanovic Planning Supervisor Freight and Logistics Division James K. Polk Building Nashville, TN 37243 Amy.kosanovic@tn.gov

VERIFICATION

I, Eyal Shapira, verify under penalty of perjury that I am authorized to make this verification on behalf of Wolf Creek Railroad LLC, and that the information included in the foregoing Petition for Exemption is true and correct to the best of my knowledge and belief.



Eyal Shapira
President

Dated: June ¹¹7, 2022