

PUBLIC VERSION

305843

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
December 20, 2022
Part of
Public Record

DOCKET NO. FD 36656

COLORADO PACIFIC RIO GRANDE RAILROAD, LLC - ACQUISITION AND
OPERATION EXEMPTION — SAN LUIS & RIO GRANDE RAILROAD, INC

VERIFIED NOTICE OF EXEMPTION

(Involving an Interchange Commitment)

The Colorado Pacific Rio Grande Railroad, LLC, (“CP Rio Grande”), a non-carrier, hereby files this Notice of Exemption pursuant to 49 U.S.C. §10901, 49 C.F.R. §1180.20(a)(1), and 49 C.F.R. Part 1150, Subpart D (§§1150.31 – 1150.36) to permit CP Rio Grande to acquire in bankruptcy and provide common carrier operations over the following railroad track and other assets of the San Luis & Rio Grande Railroad, Inc. (“SLRG”), which SLRG originally acquired from the Union Pacific Railroad Company (“UP”) in 2003:¹ (1) from milepost 299.30 near

¹ See Finance Docket No. 34350, *San Luis and Rio Grande Railroad Company – Acquisition and Operation Exemption – Union Pacific Railroad Company*, Verified Notice of Exemption, Filed June 20, 2003. Notwithstanding the caption, the correct corporate name of the acquiring entity was actually “San Luis & Rio Grande Railroad, Inc.” The stock of the SLRG was acquired by Rail America in 2005. In 2006, Permian Basin Railways, Inc. erroneously stated in Docket FD 34799 that it had acquired the “San Luis & Rio Grande Railroad Company, Inc.” from Rail America. Later filings involving the railroad in Dockets No. FD 35380 and No. FD 35721 erroneously referred to SLRG as the “San Luis & Rio Grande Railroad.” However, the correct corporate name of SLRG has always been “San Luis & Rio Grande Railroad, Inc.”

Derrick, CO, to milepost 180.00 near Walsenburg, CO, comprising SLRG's Alamosa Subdivision, and (2) between milepost 251.7 at Alamosa, CO, and milepost 281.78 at Antonito, CO (the Antonito Subdivision), a total distance of approximately 149.38 miles (the "Acquired Line"). CP Rio Grande is also acquiring incidental trackage rights conveyed to SLRG by UP in the vicinity of Walsenburg between milepost 180.00 and milepost 175.00 (the "Trackage Rights Line"). The Acquired Line and the Trackage Rights Line are jointly referred to as the "Lines."

As explained in more detail below, this Notice is being filed because CP Rio Grande is acquiring substantially all of the railroad assets and associated rights of SLRG as the assignee of KCVN, LLC, a non-carrier that was awarded the right to purchase the assets of SLRG by the United States Bankruptcy Court of the State of Colorado.

In support of this Notice of Exemption, STR submits the following information as required by 49 C.F.R. § 1150.33:

1) Full Name and Address of Applicant

Colorado Pacific Rio Grande Railroad, LLC
515 Congress, Suite 2450
Austin, TX 78701

2) Applicant's Representative

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K Street, NW
Suite 300
Washington, D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

3) Statement of Agreements

This transaction is the culmination of involuntary Chapter 11 bankruptcy proceedings

before the United States Bankruptcy Court for the District of Colorado which were commenced on October 16, 2019, under bankruptcy case No. 19-18905. On November 17, 2022, KCVN LLC was the successful bidder at auction for substantially all the assets of the SLRG, and an Asset Purchase Agreement was executed between SLRG and KCVN “or its permitted assignee.” The Bankruptcy Court entered its order pursuant to 11 U.S.C. § 363 approving the sale to KCVN or its permitted assignee pursuant to the Asset Purchase Agreement on November 29, 2022. On December 19, 2022, KCVN assigned all its rights in the Asset Purchase Agreement to CP Rio Grande.²

4) **Operator of the Property**

Upon this exemption becoming effective CP Rio Grande will become a Class III short line railroad operator of the property.

5) **Summary of Proposed Transaction**

Additional information as required by 49 C.F.R. § 1150.33(e) is as follows:

- The name and address of the railroad transferring the subject property is:

San Luis & Rio Grande Railroad, Inc.
601 State Street
Alamosa, CO 81101

- The closing and consummation of the Asset Purchase Agreement is scheduled to coincide with the effective date of this Notice (30 days after filing, assuming no stay).
- The mileposts on the subject property are (1) from milepost 299.30 near Derrick, CO, to milepost 180.00 near Walsenburg, CO, and (2) between milepost 251.7 at

² KCVN is the parent company of Colorado Pacific Railroad, LLC (“CRX”), a Class III carrier that owns and operates the so-called Towner Line in Central Colorado. CP Rio Grande is an independent entity that is not owned or controlled by KCVN. The intention is for CP Rio Grande to continue the operations of the SLRG separate and apart from KCVN and CRX.

Alamosa, CO, and milepost 281.78 at Antonito, CO a total distance of approximately 149.38 miles (the “Acquired Line”). CP Rio Grande is also acquiring incidental trackage rights between milepost 180.00 and milepost 175.00 that were conveyed to SLRG by UP as part of the transaction described in the original Notice of Exemption (the “Trackage Rights Line”).

- Total route miles are approximately 154.38

6) **Map of the Subject Lines** - Attached as Exhibit A.

7) **Certification Concerning Projected Revenues**

CP Rio Grande hereby certifies that its projected revenues from this transaction will not exceed \$5 million and will also not result in CP Rio Grande becoming a Class II or Class I rail carrier.

8) **A caption summary as required by 49 C.F.R. § 1150.34** - Attached as Exhibit B.

9) **Interchange commitment.**

CP Rio Grande certifies that the Asset Purchase Agreement between it and SLRG does not create an “interchange commitment” as that term is defined by 49 C.F.R. §1150.33(h). However, CP Rio Grande also certifies that the transaction nevertheless involves an interchange commitment because the incidental trackage rights being acquired by CP Rio Grande are subject to an existing interchange commitment between SLRG and UP that was created when UP conveyed the Lines to SLRG. The existence of this interchange commitment was not disclosed in the original Notice of Exemption, and the regulations at 49 C.F.R. §1150.33(h) requiring such disclosure were not yet in effect. Pursuant to 49 C.F.R. §1150.33(h), CP Rio Grande submits the following additional information:

- a. **§1150.33(h)(i)** - The agreements between UP and SLRG surrounding the conveyance

of the Acquired Line included the aforementioned grant of incidental trackage rights to SLRG between milepost 180.00 and milepost 175.00. The terms of the trackage rights grant restrict the rights of SLRG to interchange traffic with railroads other than UP in the Walsenburg Yard.

- b. **§1150.33(h)(ii)** – A confidential, complete version of the agreement containing the interchange commitment is attached as Exhibit C.
- c. **§1150.33(h)(iii)** – A list of the shippers that currently use or have used the tracks subject to the interchange commitment within the past two years is attached as Exhibit D.
- d. **§1150.33(h)(iv)** – The aggregate carloads terminated or originated by existing shippers on the subject line in the past two years is approximately 4,945.
- e. **§1150.33(h)(v)** - This notice provision is inapplicable because the existence and effect of the interchange commitment imposed by UP in 2003 over the Trackage Rights Line has been well known to the existing shippers on the subject line since its creation and so additional notice to them from CP Rio Grande of it is not necessary.
- f. **§1150.33(h)(vi)** - The other railroad that could potentially interchange with SLRG in the absence of the interchange commitment is BNSF Railway Company (“BNSF”), which has yard tracks and facilities in the Walsenburg Yard and a physical connection to it through a track owned by UP.
- g. **§1150.33(h)(vii)** – CP Rio Grande believes that the existence of the interchange commitment lessened the value of the Acquired Line and Trackage Rights Line to SLRG and hampered its ability to grow its traffic and revenues. Indeed, the inability of SLRG to pursue additional and potentially competitive traffic from BNSF may

have contributed to its declaring bankruptcy. Because this acquisition is the result of that bankruptcy proceeding, it is very difficult to estimate the difference between the sale price of the SLRG's assets with and without the interchange commitment. This being said, CP Rio Grande believes that removal of the interchange commitment from the Trackage Rights Line would enhance its ability to grow the traffic on the Acquired Line, and it therefore is considering its alternatives to pursue that objective.

ENVIRONMENTAL REVIEW

CP Rio Grande's operations will involve no diversion of traffic to motor carriage. Moreover, this transaction will not result in an increase in rail traffic of eight or more trains a day on any segment of the line. CP Rio Grande's operations will not affect a Class I or nonattainment area under the Clean Air Act. Finally, the transportation of ozone depleting materials is not contemplated. Accordingly, an Environmental Assessment is not required pursuant to under 49 C.F.R. §§ 1105.6(c)(1)(i), 1105.7(e)(4), (5).

HISTORIC REPORTING

CP Rio Grande will utilize the subject rail lines for continued rail operations. Board approval will be required for CP Rio Grande to discontinue any service over the Acquired Lines and the Trackage Rights Line, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Accordingly, no historic report is required pursuant to 49 C.F.R. § 1105.8(b)(1).

[Signature on next page]

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas W. Wilcox". The signature is written in a cursive, flowing style.

Thomas W. Wilcox

Law Office of Thomas W. Wilcox, LLC

1629 K. Street NW, Suite 300

Washington, D.C. 20006

202-508-1065

tom@twilcoxlaw.com

*Attorney for Colorado Pacific Rio Grande
Railroad, LLC*

December 20, 2022

EXHIBIT A
MAP

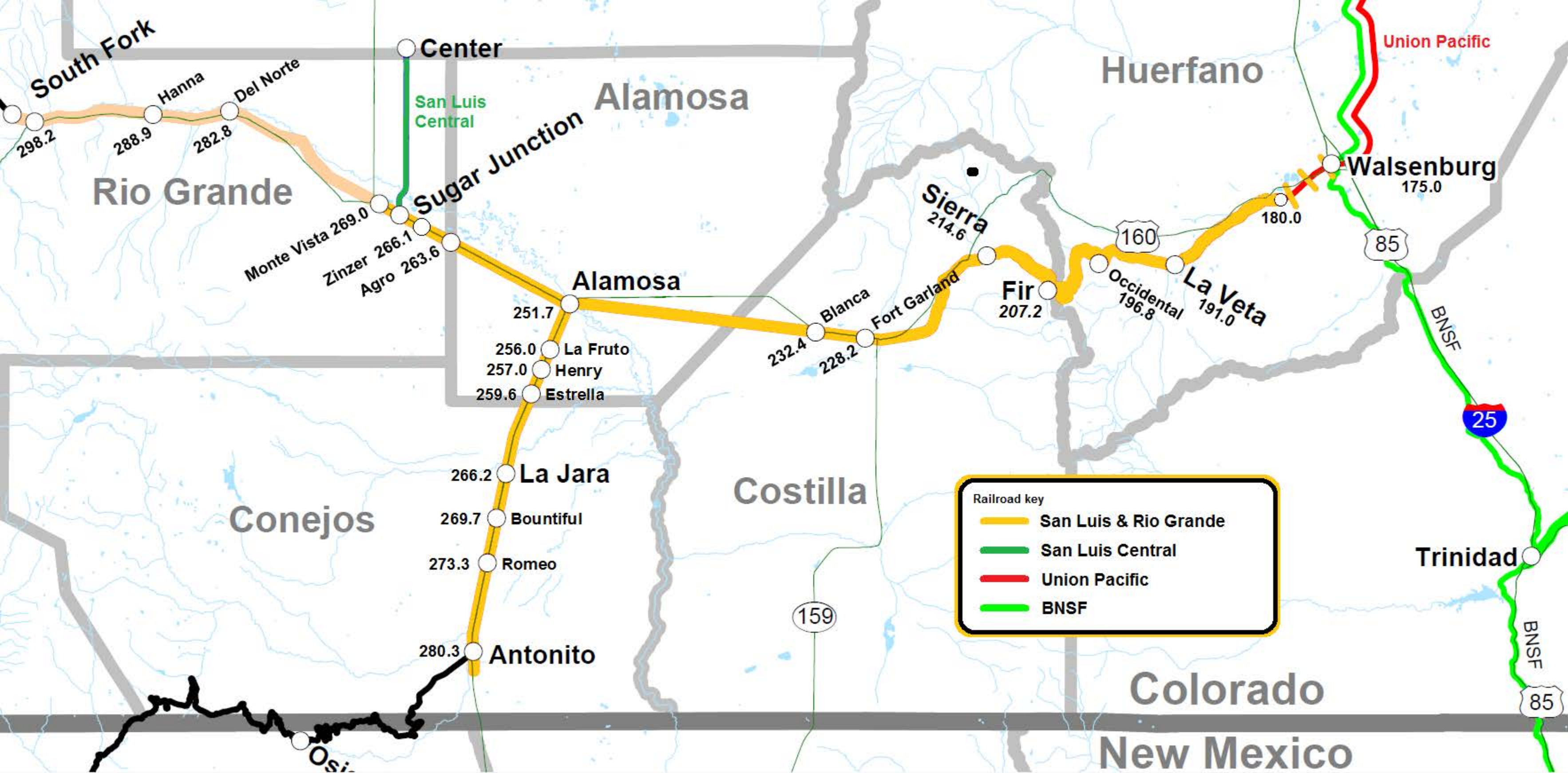


EXHIBIT B – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36656

VERIFIED NOTICE OF EXEMPTION

(Involving an Interchange Commitment)

**COLORADO PACIFIC RIO GRANDE RAILROAD, LLC - ACQUISITION AND
OPERATION EXEMPTION — SAN LUIS & RIO GRANDE RAILROAD, INC**

Colorado Pacific Rio Grande Railroad, LLC (“CP Rio Grande”) has filed a notice of exemption to acquire in bankruptcy and operate the following lines of railroad owned by the San Luis & Rio Grande Railroad, Inc. (“SLRG”): (1) from milepost 299.30 near Derrick, CO, to milepost 180.00 near Walsenburg, CO, comprising SLRG’s Alamosa Subdivision, and (2) between milepost 251.7 at Alamosa, CO, and milepost 281.78 at Antonito, CO (the Antonito Subdivision), a total distance of approximately 149.38 miles (the “Acquired Line”). CP Rio Grande is also acquiring incidental trackage rights conveyed to SLRG by Union Pacific Railroad Company in the vicinity of Walsenburg between milepost 180.00 and milepost 175.00 (the “Trackage Rights Line”). This Notice is being filed due to the acquisition by CP Rio Grande of the assets and rights of SLRG as the authorized assignee of KCVN, LLC, a non-carrier that was awarded the right to purchase substantially all of the assets of SLRG by the United States Bankruptcy Court of the State of Colorado in bankruptcy case No. 19-18905.

Comments must be filed with the Board and served on SLRG's representative:

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K Street, NW
Suite 300
Washington, D.C. 20006
202-508-1065
tom@twilcoxlaw.com

This notice is filed under § 1150.31. 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) maybe filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

EXHIBIT C
AGREEMENT CONTAINING INTERCHANGE COMMITMENT

REDACTED

EXHIBIT D

LIST OF SHIPPERS OVER PAST TWO YEARS

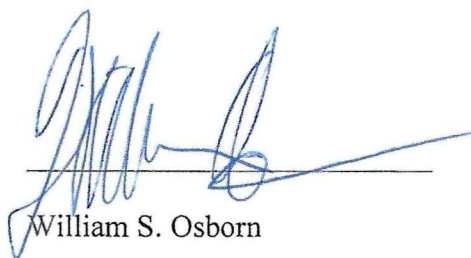
ABERDEEN CAROLINA & WESTERN RAILWAY
CANON CITY & ROYAL GORGE RAILROAD
CRMS RAIL
DICAPERL MINERALS
IMERYS PERLITE
MOLSON COORS
MONTE VISTA COOP
MOUNTAIN KING POTATOES
NRG POWER MARKETING
OAK CLIFF METALS
OWENS CORNING SALES
POOLE CHEMICAL
READING BLUE MOUNTAIN & NORTHERN RAILROAD
RED HILL LAVA PRODUCTS
SAN LUIS CENTRAL RAILROAD
SMBC RAIL SERVICES
TOP RAIL SOLUTIONS
WILBUR ELLIS
WOOD SOURCE FUELS

VERIFICATION

I, William S. Osborn, an attorney for Colorado Pacific Rio Grande Railroad, LLC, state, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to execute this Verified Statement.

Executed: December ~~21~~, 2022

20



William S. Osborn