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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 14, 2023
Part of
Public Record

FD 36717

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV

**VERIFIED NOTICE OF EXEMPTION OF
OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

FEE RECEIVED
August 14, 2023
SURFACE
TRANSPORTATION BOARD

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEY FOR OMNITRAX SBVR, LLC
d/b/a SOUTH BRANCH VALLEY RAILROAD**

FILED
August 14, 2023
SURFACE
TRANSPORTATION BOARD

Dated: August 14, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36717

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV

**VERIFIED NOTICE OF EXEMPTION OF
OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”), a non-carrier controlled by short line holding company OmniTRAX Holdings Combined, Inc. (“OmniTRAX”),¹ hereby files this notice of exemption under 49 C.F.R. part 1150, subpart D to assume common carrier operations over a railroad line (the “Line”) located in Hampshire, Hardy, and Grant Counties, West Virginia that is currently owned and operated by the West Virginia State Rail Authority² (the “Rail Authority” – formerly known as the West Virginia Railroad Maintenance Authority – also doing business since 1978 as the South Branch Valley Rail Road).

¹ Concurrent with the subject exemption filing, OmniTRAX and HGS Railway Holdings, Inc. (“HGS”) have invoked the Board’s class exemption procedures at 49 C.F.R. 1180.2(d)(2) to continue in control of OSL, along with all of the existing railroad common carriers currently controlled in common by OmniTRAX and HGS, once OSL becomes a railroad common carrier. *See OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. – Continuance in Control Exemption – OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad*, FD 36716.

² West Virginia State Rail Authority
120 Water Plant Drive
Moorefield, WV 26836

In accordance with the requirements of 49 C.F.R. § 1150.33, OSL submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant herein is as follows:

OmniTRAX SBVR, LLC
d/b/a South Branch Valley Railroad
252 Clayton Street
Denver, CO 80206

Applicant's Representative: 49 C.F.R. § 1150.33(b)

OSL's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1504
rwimbish@fletcher-sippel.com

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

OSL and the Rail Authority have reached terms under which OSL will replace the Rail Authority as the common carrier service provider on the Line. Under the that agreement, the Rail Authority will retain ownership of the Line and the Rail Authority would be relieved of its common carrier obligations over the Line, upon consummation of the subject transaction. OSL will become the exclusive provider of common carrier service on the Line. Also, in keeping with the terms of its agreement with the Rail Authority, OSL seeks Board authorization to initiate railroad common carrier operations over the Line in place of the Rail Authority on or after the effective date of this notice.

Operation of the Property: 49 C.F.R. § 1150.33(d)

OSL will offer common carrier service over the Line in place of the Rail Authority on or after the effective date of this exemption.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

The Line is a former branch of the Baltimore & Ohio Railroad Co. (“B&O”) extending from milepost 0.0 at Green Spring, West Virginia (the current point of interchange with CSX Transportation, Inc. – “CSXT”), to milepost 52.4 at Petersburg, West Virginia, a total of approximately 52.4 route miles. In 1978, the Rail Authority obtained Interstate Commerce Commission (“ICC”) authority to acquire the Line from B&O, which had secured authorization to abandon the Line. *See West Virginia Railroad Maintenance Authority d/b/a South Branch Valley Rail Road*, FD 28778, 43 *Fed. Reg.* 30642 (July 17, 1978) (which also discusses B&O’s abandonment authorization for the Line pursuant to ICC docket number AB-19 (Sub-No. 32)).

The Rail Authority, a subdivision of the State of West Virginia, will retain ownership of the Line, but it will cease to function as a common carrier upon the commencement of OSL operations. On or after the effective date of the subject class exemption, OSL intends to commence common carrier service over the Line in place of the Rail Authority.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and indicating the area served is attached as Exhibit A.

Certification: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

OSL is not contractually limited in its ability to interchange of traffic with any

third-party connecting carrier. See Exhibit B. As matters currently stand, OSL's only interline connection is CSXT.

Shipper Notice: 49 C.F.R. § 1150.32(b)

OSL hereby certifies through the undersigned counsel that it has also provided a copy of this Verified Notice of Exemption to all customers on the Line in accordance with the above-referenced Board's change of operator rules.

Advance Notice: 49 C.F.R. § 1150.32(e)

OSL's projected annual revenue is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), the proposed operation of the Line is exempt from environmental reporting requirements. OSL's proposed common carrier operations will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), OSL's proposed operation of the Line also is exempt from historic preservation reporting requirements, as the proposed change of operators is not expected to impact historic structures along the Line that are 50 years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit C.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEY FOR OMNITRAX SBVR, LLC d/b/a
SOUTH BRANCH VALLEY RAILROAD**

Dated: August 14, 2023

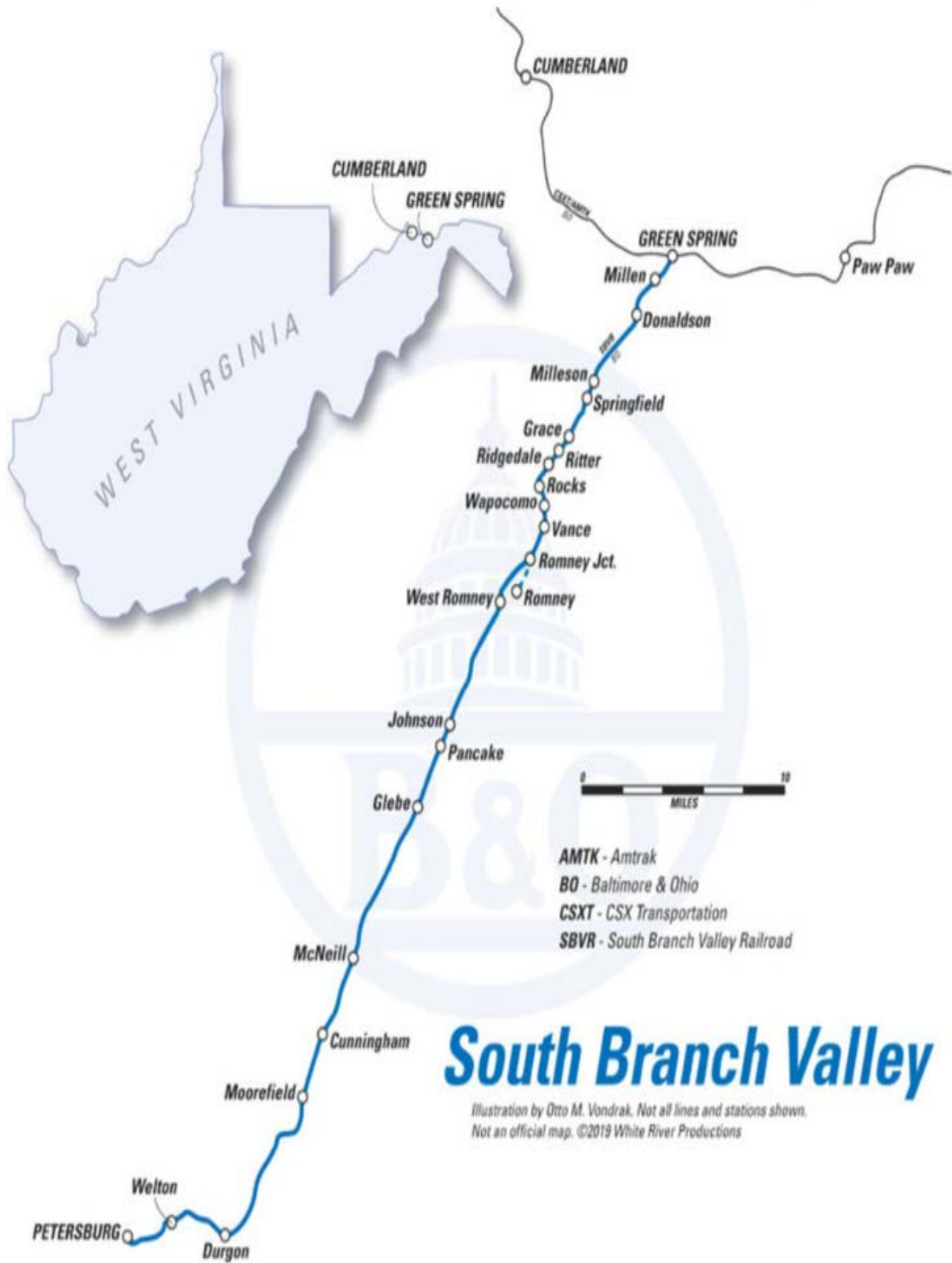
**BEFORE THE
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**OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36717

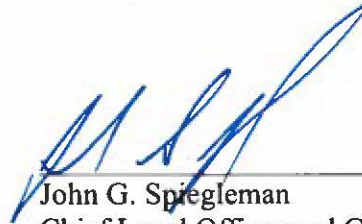
**OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT B

CERTIFICATION

CERTIFICATION

I, John G. Spiegleman, hereby certify that the annual rail revenue of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad ("OSL") is not projected to exceed \$5 million, and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1). I further certify that OSL is not contractually limited in its ability to interchange of traffic with any third-party connecting carrier.



John G. Spiegleman
Chief Legal Officer and General Counsel of
OmniTRAX Holdings Combined on behalf of
OmniTRAX SBVR, LLC d/b/a South Branch
Valley Railroad

Dated: August 14, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT C

FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36717

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WVOMNI RIVER

OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”), a non-carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, et seq., to initiate common carrier operations over a roughly 52.4-mile line of railroad (the “Line”) owned by the West Virginia State Rail Authority and located in Hampshire, Hardy, and Grant Counties, West Virginia, extending from milepost 0.0 at Green Spring, West Virginia (the current point of interchange with CSX Transportation, Inc. – “CSXT”), to milepost 52.4 at Petersburg, West Virginia. Upon consummation of the subject transaction, OSL will replace the West Virginia State Road Authority as the exclusive common carrier service provider on the Line.

OSL expects to commence common carrier operations over the Track on or after the effective date of this exemption.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this 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.

Dated: August __, 2023

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

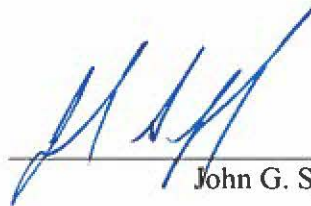
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— CHANGE OF OPERATOR EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

VERIFICATION

VERIFICATION

I, John G. Spiegleman, hereby verify under penalty of perjury that – (a) I am the Chief Legal Officer and General Counsel of OmniTRAX Holdings Combined, parent company of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”); (b) I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information, and belief; and (c) I am authorized to make this verification on behalf of OSL.



John G. Spiegleman

Dated: August 14, 2023