

May 10, 2024

SUBMITTED VIA E-FILING PROCEDURES

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-00001

Re: *Grupo México, S.A.B. de C.V.—Acquisition of Control Exemption—Copper Basin
Railway, Inc.*, STB Docket No. FD 36767

Dear Ms. Brown:

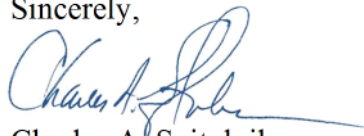
Attached please find Grupo México, S.A.B. de C.V.'s Verified Notice of Exemption and associated Exhibits for filing in STB Docket No. FD 36767.

Please note that this filing comprises a Public Version and a Confidential Version. We will provide a copy of the Confidential Version to any party that confirms that they have signed the Confidential undertaking pending the Board's approval of the Motion for Protective Order filed on May 10, 2024, in this proceeding.

The filing fee of \$1,600 has been submitted via pay.gov. See 49 C.F.R. § 1002.2(f), Part IV, item 39(iv).

Please do not hesitate to contact me with any questions or if you require additional information.

Sincerely,



Charles A. Spitulnik

Enclosure

FILED
May 10, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 10, 2024
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. FD 36767

**GRUPO MÉXICO, S.A.B. DE C.V. – ACQUISITION OF CONTROL EXEMPTION –
COPPER BASIN RAILWAY, INC.**

**VERIFIED NOTICE OF EXEMPTION
(PUBLIC VERSION)**

Communications with respect to this document should
be addressed to:

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Counsel for Grupo México, S.A.B. de C.V.

Date: May 10, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. FD 36767

**GRUPO MÉXICO, S.A.B. DE C.V. – ACQUISITION OF CONTROL EXEMPTION –
COPPER BASIN RAILWAY, INC.**

**VERIFIED NOTICE OF EXEMPTION
(PUBLIC VERSION)**

I. INTRODUCTION

Grupo México, S.A.B. de C.V. (“GM”), a Mexican *sociedad anónima bursátil de capital variable* and a non-carrier holding company, hereby submits this Verified Notice of Exempt Acquisition pursuant to 49 U.S.C. § 10502, 49 C.F.R. Part 1121, and 49 C.F.R. §§ 1180.2(d)(2) for an exemption from the prior review and approval requirements of 49 U.S.C. § 11323 to authorize, after-the-fact, its acquisition of control of the Copper Basin Railway, Inc. (“CBRY”) through GM’s indirect subsidiary, ASARCO LLC (“ASARCO”). Through a different GM subsidiary, GMéxico Transportes, S.A.B. de C.V. (“GMXT”), GM controls, and controlled at the time it acquired CBRY, Texas Pacifico Transportation, Ltd., d/b/a/ Texas Pacifico Railroad (“Pacifico”). GM also controls Florida East Coast Railway, L.L.C., d/b/a Florida East Coast Railway (“FECR”) through GMXT, but it acquired control after its acquisition of control of CBRY.

CBRY was and remains a Class III carrier that owned a 54-mile railroad between Magma, Arizona and Winkelman, Arizona, with a 7-mile branch line from Ray Junction to Ray, Arizona (the “Railroad”). A map of the Railroad is attached as **Exhibit A**. Under both CBRY and

ASARCO's ownership, the Railroad served a copper mine and smelter. Prior to 2006, ASARCO held a 45% interest in CBRY, with the remaining 55% held by Rail Partners II, LLC, a now-defunct Florida limited liability corporation.¹ That year, ASARCO acquired the remaining 55% interest in CBRY (the "Transaction"). Because ASARCO is a wholly owned subsidiary of Americas Mining Corporation, which is itself a wholly owned subsidiary of GM, GM acquired control of CBRY through the Transaction.

At the time of the Transaction, GM also had control of Pacifico through GMXT, GM's subsidiary. Pacifico operates common carrier service over lines owned by the State of Texas and Union Pacific. Its operations extend over approximately 381.9 miles of track between the International Bridge near Presidio, Texas and San Angelo Junction, Texas. Accordingly, the Transaction was subject to prior approval of the Board pursuant to 49 U.S.C. § 11323(a)(5). GM is now seeking Board approval of this acquisition of control by filing this Notice of Exemption.

On April 7, 2017, GMXT filed a Verified Notice of Exemption to continue in control of FECR following a merger of a GMXT subsidiary and FECR's holding company. FECR is a Class II rail carrier that owns and operates approximately 351 route miles of mainline track along the east coast of Florida between Jacksonville and Miami. In addition, FECR owns and operates approximately 268 miles of branch, switching, and other secondary track, and 167 miles of yard track. The Board issued the exemption for the continuance in control of FECR, noting in a footnote that GM had not filed a separate notice, petition, or application to obtain "Board authority to have common control of more than one rail carrier when it acquired Copper Basin." *Grupo México*,

¹ *Detail by Entity Name*, FLA. DEP'T OF STATE, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults?InquiryType=EntityName&InquiryDirectionType=PreviousRecord&SearchTerm=RAILROAD%20DEPOT%20LLC&SearchNameOrder=RAILPARTS%20L070000443990&ListNameOrder=RAILPARKPROPERTIES%20L150000351310&Detail=FL.DOS.Corporations.Shared.Contracts.FilingRecord> (last visited Apr. 17, 2024).

S.A.B. de C.V. — Control Exemption — Fla. E. Coast Hldgs., FD 36109, slip op. at 1 n.2 (STB served May 9, 2017). The Board noted it “expects Grupo México to promptly submit an appropriate filing for authorization of that common control.” *Id.*

On January 5, 2024, GMXT filed a Verified Petition for Exemption seeking an exemption from the formal requirements of 49 U.S.C. §§ 11323–11324 for GMXT’s acquisition of an indirect controlling ownership in CG Railway, LLC, a Class III Railroad. In its decision rejecting the petition, the Board stated that a future filing should “clarify the status of Copper Basin,” noting that GM had never requested authorization to acquire or operate it. *GMéxico Transportes, S.A.B. de C.V. — Acquisition of Control Exemption — CG Ry.*, FD 36701, slip op. at 3 (STB served April 4, 2024).

II. THE TRANSACTION QUALIFIES FOR AN EXEMPTION FROM PRIOR BOARD APPROVAL UNDER 49 C.F.R. § 1180.2(d)(2)

The acquisition of control of a rail carrier by a person that is not a rail carrier but controls one or more other carriers is subject to prior approval by the Board pursuant to 49 U.S.C. § 11323(a)(5). Because GM’s acquisition of control of CBRY did not involve two or more Class I railroads, the Board must approve the transaction unless: 1) the transaction is likely to result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and 2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

Participants in transactions covered by 49 U.S.C. § 11323 are exempt from compliance with the full panoply of the Board’s otherwise-applicable acquisition regulations and procedures if they fall into one of nine enumerated categories. 49 C.F.R. § 1180.2(d). As relevant here, an acquisition or continuance in control of a rail carrier by a company that owns one or more rail

carriers is exempt where (1) the acquired carrier does not connect to any lines of the acquiror or any railroads in the acquiror's corporate family, (2) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect any railroads within the acquiror's corporate family, and (3) the transaction does not involve a Class I carrier. *Id.* § 1180.2(d)(2).

GM's acquisition of control of CBRY and continuance in control of CBRY, Pacifico, and FECR qualifies for an exemption. CBRY, Pacifico, and FECR operate entirely within the states of Arizona, Texas, and Florida, respectively, and do not connect. Accordingly, none of the railroads in the GM corporate family connects with another or connected with another at any point since the Transaction. Nor are any further transactions planned that would create a connection between any GM railroads. Finally, no GM-controlled railroad is a Class I railroad: CBRY and Pacifico are Class III railroads, and FECR is a Class II railroad. For the same reasons, GM's acquisition of control of CBRY qualified for an exemption at the time of the Transaction and has qualified for an exemption at every point in time since then.

The belated nature of this filing does not change this result. "The Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was without malice and by mistake." *Van Pool Transp. LLC—Acquisition of Control—NRT Bus, Inc.*, MCF 21095, slip op. at 2 n.4 (STB served Aug. 6, 2021) (collecting cases). Such is the case here. GM, whose railroad holdings are mostly in Mexico and outside the STB's jurisdiction, failed to comply with the Board's filing requirements at the time of the Transaction. GM appreciates that it was given notice of the filing requirements during the FECR transaction and recognizes that it erred. By this filing, GM is correcting its failure to timely file this notice.

III. INFORMATION REQUIRED BY REGULATION

Under 49 C.F.R. § 1180.4(g), a notice of exemption must include the following information:

1. Certification required by 49 C.F.R. § 1180.4(g)(3)(i): GM and its subsidiaries have not entered into any agreement with respect to the Transaction that includes any provision that may limit future interchange with a third-party connecting carrier.

2. Brief Summary, Name, and Address as required by 49 C.F.R. § 1180.6(a)(1)(i): Through the Transaction, ASARCO, an indirect, wholly owned subsidiary of GM, acquired CBRY. ASARCO continued operating common carrier service over the Railroad. GM controls FECR and Pacifico currently and controlled Pacifico at the time it acquired control of CBRY. The exact name of the applicant is Grupo Mexico, S.A.B. de C.V. Its business address is Javier Barros Sierra 540 Torre 1, Piso 9, Lomas de Santa Fe, Alcaldía Alvaro Obregón, Mexico City, Mexico 01219. Its telephone number is +52 55 1103 5000. Questions should be directed to:

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com

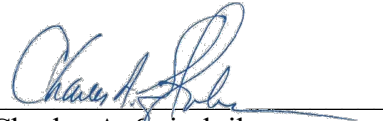
3. Consummation Date as required by 49 C.F.R. § 1180.6(a)(1)(ii): The Transaction was consummated on September 26, 2006.

4. Purpose to be Accomplished by the Transaction as required by 49 C.F.R. § 1180.6(a)(1)(iii): ASARCO sought to acquire CBRY in order to more efficiently ship copper from mines it owns and operates. ASARCO planned to, and did, maintain the level of service and quality of the Railroad. It has worked closely with the State of Arizona, local communities, and the connecting carriers, to accomplish that result.

5. States Involved as required by 49 C.F.R. § 1180.6(a)(5): CBRY is situated entirely in Arizona. Pacifico is situated entirely in Texas. FECR is situated entirely in Florida.

6. Map as required by 49 C.F.R. § 1180.6(a)(6): A detailed map of the Line and the surrounding area is attached hereto as **Exhibit A**.
7. Copy of Purchase Agreement as required by 49 C.F.R. § 1180.6(a)(7)(ii): A redacted copy of the agreement between ASARCO and CBR Y is attached hereto as **Exhibit B**. Unredacted copies of the agreement are being submitted to the Board under seal in anticipation of a favorable ruling on the accompanying Motion for Protective Order.
8. The level of labor protection imposed as required by 49 C.F.R. § 1180.4(g)(1)(i): FECR is a Class II rail carrier, while Pacifico and CBR Y are both Class III rail carriers. Accordingly, labor protective conditions set forth at 49 U.S.C. § 11326(b) apply to the Transaction, notwithstanding that, had this notice been timely filed, no labor protective conditions would have applied to the Transaction pursuant to 49 U.S.C. § 11326(c).
9. Statement regarding environmental and historical reports related to 49 C.F.R. § 1180.4(g)(2): Pursuant to 49 C.F.R. § 1105.6(c), GM's acquisition of an indirect controlling interest in CBR Y does not require an environmental report. The Transaction has not resulted and 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), the proposed acquisition by GM is also exempt from historic preservation reporting requirements. GM has no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older and has not done so since the Transaction.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik

Ayelet Hirschhorn

Grant M. Glovin

Kaplan, Kirsch & Rockwell, LLP

1634 I (Eye) Street NW

Suite 300

Washington, DC 20006

(202) 955-5600

cspitulnik@kaplankirsch.com

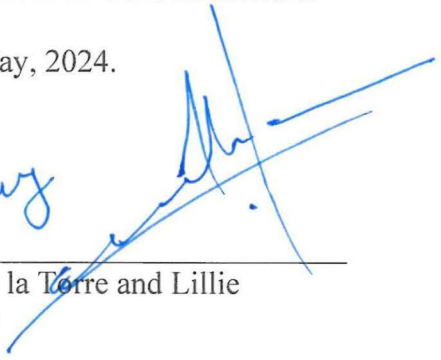
ahirschhorn@kaplankirsch.com

gglovin@kaplankirsch.com

Dated: May 10, 2024

VERIFICATION

Marlene Finny de la Torre and Lillie Hernández Minor, verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct to the best of our knowledge, information, and belief. Further, We certify that we are qualified and authorized to file this Verified Notice of Exemption. Executed on this 8th day of May, 2024.



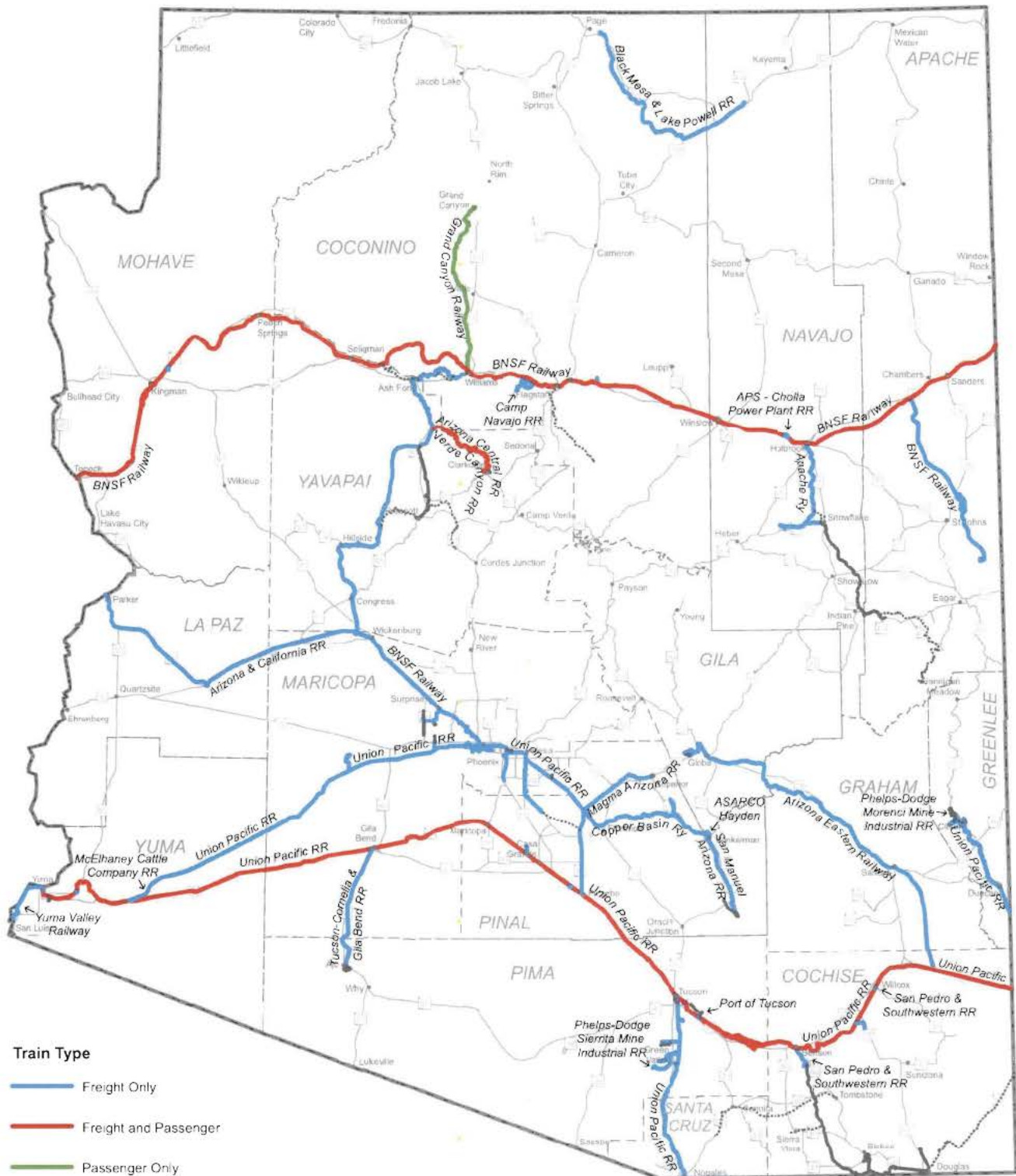
Marlene Finny de la Torre and Lillie
Hernández Minor
Attorneys-in-fact
Grupo Mexico, S.A.B. de C.V.

EXHIBIT A

MAP OF THE LINE

[attached hereto]

Arizona Train Service Type



Train Type

- Freight Only
- Freight and Passenger
- Passenger Only

Cities and Towns

— Abandoned (1980 - 2007)

— State Highway System

..... Abandoned (1950 - 1979)

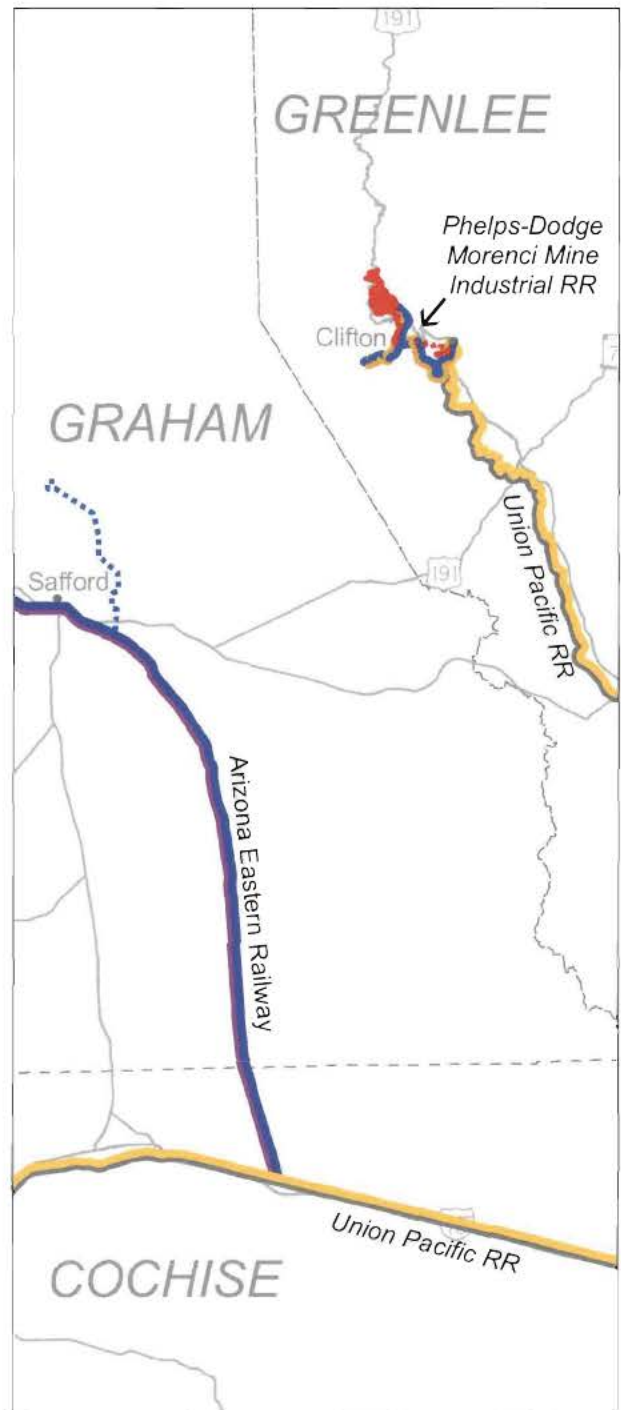
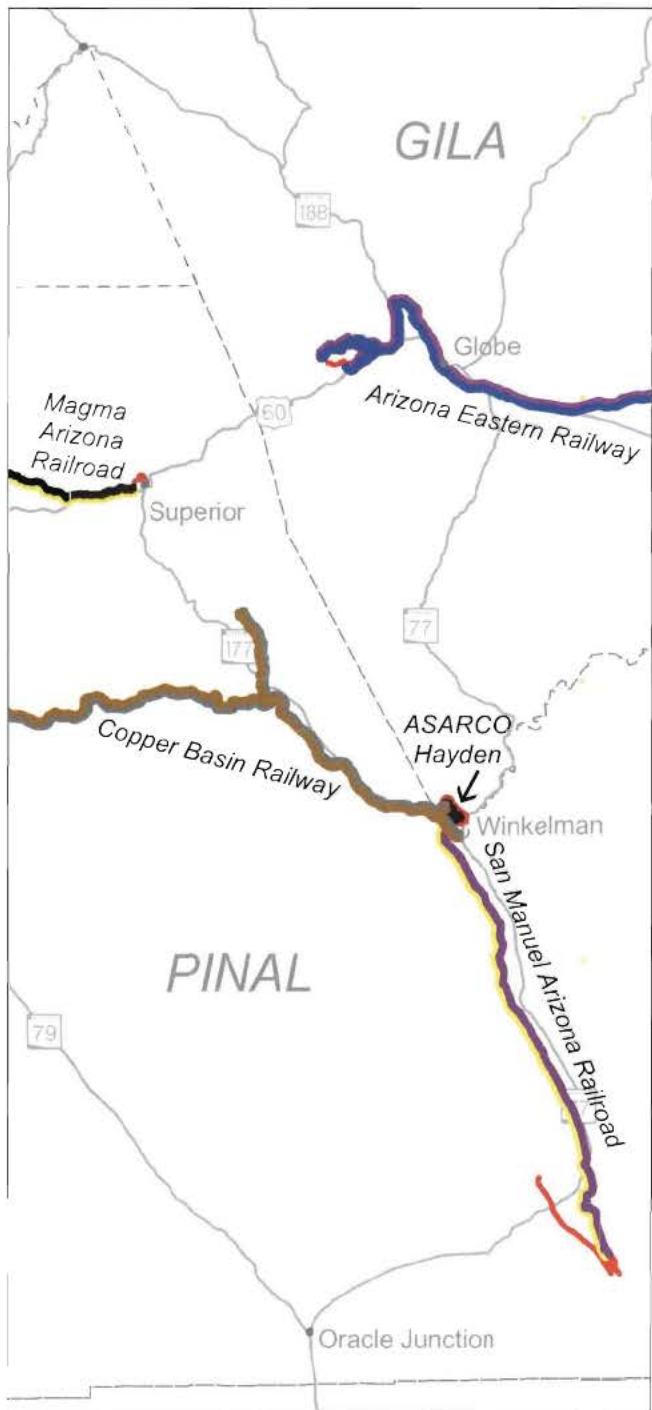
- - - - - County Boundaries



Prepared by
Arizona Department of Transportation
Planning Division, Data Bureau GIS Section
Source: Public Transportation Division
(602) 712-7333 March 2007

0 20 40 80 Miles

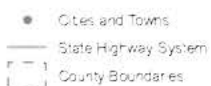
Central - Eastern (Copper Country) Arizona Region



AAR Reporting Marks



Railroad Status



Prepared by
Arizona Department of Transportation
Planning Division, Data Bureau GIS Section
Source: Public Transportation Division
(602) 712-7333
March 2007

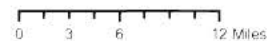


EXHIBIT B

**STOCK ASSIGNMENT AGREEMENT
SEPTEMBER 26, 2006**

[attached hereto]

STOCK ASSIGNMENT AGREEMENT

This STOCK ASSIGNMENT AGREEMENT is made as of this 26th day of September, 2006 (this "Agreement"), among ASARCO LLC, a Delaware limited liability company ("ASARCO") and Rail Partners II, LLC, a Florida limited liability company ("RPII").

RECITALS

- A. ASARCO and RPII are entering into this Agreement pursuant to (i) that certain Order of the United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division (the "Court"), dated September 12, 2006, authorizing Asarco to purchase shares of capital stock of Copper Basin Railway, Inc., a Delaware corporation ("CBRY"), owned by RPII and (ii) that certain Mutual Settlement Agreement and General Release of all Claims, dated September 26, 2006 ("Release"), among ASARCO, RPII and Durden.
- B. RPII owns 2200 shares of common stock of CBRY (the "Shares") representing 55% of all of the capital stock of CBRY.
- C. ASARCO desires to purchase the Shares and RPII desires to sell the Shares to ASARCO on the terms and subject to the conditions herein.

NOW, THEREFORE, in consideration of the premises, the terms and provisions set forth herein and in the Release, the mutual benefits to be gained by the performance thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.** RPII hereby sells, assigns, transfers, conveys and delivers to ASARCO all of RPII's right, title and interest in and to the Shares any and all rights of RPII relating to the Shares in consideration for the payment by ASARCO to RPII of [REDACTED]

2. **Representations and Warranties of RPII.** RPII hereby represents and warrants to ASARCO that, on and as of the date of this Agreement:

(a) **Organization.** RPII is a limited liability company duly organized and validly existing under the laws of the State of Florida. RPII has all requisite limited liability company power and authority to own the Shares and conduct all necessary and appropriate activities relating thereto.

(b) **Authorization.** This Agreement has been duly and validly executed and delivered by RPII and constitutes a valid and binding obligation of RPII enforceable against RPII in accordance with its terms.

(c) **No Conflicts.** The execution and delivery by RPII of this Agreement, the performance by RPII of its obligations hereunder and the consummation by RPII of the transactions contemplated hereby will not (i) result in any violation or breach of, or constitute a default under, any term or provision of any note, bond, mortgage, indenture, lease, franchise, permit, license, written contract, agreement, loan, instrument, conditional sale contract,

insurance policy or other instrument or document to which RPII is a party or by which any of its properties or assets are bound, (ii) result in any violation of any law, statute, rule, ordinance, code or regulation or any order, judgment, injunction, ruling or decree of any court or other government or governmental regulatory body applicable to RPII or any of its properties or assets or (iii) result in the creation of, or impose on RPII any obligation to create, any lien, pledge, mortgage, deed of trust, security interest, attachment, levy or other similar encumbrance affecting title (each, a "Lien") upon the Shares.

(d) *Title and Capitalization.* RPII owns beneficially and of record the Shares, free and clear of all Liens, other than restrictions on transfer imposed by applicable federal or state securities laws. The Shares represent 55% of the outstanding capital stock of CBRY.

(e) *Litigation.* There are no administrative or arbitral action, suits or proceedings (whether public or private and whether civil, criminal or administrative) pending or, to the knowledge of RPII, threatened in writing by or before any court or other governmental authority.

3. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained in this Agreement is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, and no person shall be deemed a third-party beneficiary under or by reason of this Agreement. Any provision of this Agreement may only be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may only be given, with the written agreement of the parties hereto. This Agreement shall be governed in accordance with the laws of the State of Arizona, without giving effect to principles of conflicts of law. This Agreement and the documents referred to herein constitute the entire agreement among the parties with respect to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter other than the Mutual Release and the Transition Agreement contemplated thereby. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the date first above written.

Rail Partners II, LLC

By: Rail Management Corporation

Its: Managing Member

By:

K. Earl Durden, Chairman of the Board

ASARCO LLC

By:

Joseph F. Lapinsky 9/26/06
Joseph F. Lapinsky, Chief Executive Officer

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the date first above written.

Rail Partners II, LLC

By: Rail Management Corporation

Its: Managing Member

By:



K. Earl Durden, Chairman of the Board

ASARCO Incorporated

By:

Joseph F. Lapinsky, Chief Executive Officer

AGREEMENT

THIS AGREEMENT is made as of September 26, 2006 (the "Agreement") between Rail Management Corporation, a Delaware corporation ("RMC") and ASARCO LLC, a Delaware limited liability company ("ASARCO")

RECITALS

A. RMC has provided certain management services for Copper Basin Railway, Inc., a Delaware corporation ("CBRY") consisting primarily of accounting services pursuant to the terms of an Agreement dated January 1, 1994 (the "Management Agreement").

B. RMC and ASARCO, among others, are entering into a certain Mutual Settlement Agreement and General Release of all Claims dated September 26, 2006 (the "Release") providing for, among other things, the termination of the Management Agreement on 11:59 p.m. September 26, 2006, and the execution of this Agreement whereby RMC makes certain representations to ASARCO regarding CBRY and agrees to transition the services it provides to CBRY to ASARCO.

NOW, THEREFORE, in consideration of the premises, the terms and provisions set forth herein and in the Release, the mutual benefits to be gained by the performance thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Representations and Warranties of RMC. RMC hereby represents and warrants to ASARCO that, on and as of the date of this Agreement:

(a) *Organization.* RMC is a corporation duly organized and validly existing under the laws of the State of Delaware.

(b) *Authorization.* This Agreement has been duly and validly executed and delivered by RMC and constitutes a valid and binding obligation of RMC enforceable against RMC in accordance with its terms.

(c) *Title and Capitalization.* To the best knowledge of RMC, there are no outstanding options, warrants, calls, rights, convertible securities or other agreements or commitments of any character pursuant to which CBRY is or may be obligated to issue or sell any issued or unissued shares, interests, participations or other equivalents of capital stock of CBRY, however designated.

(d) *Subsidiaries.* CBRY has no subsidiaries and, to the best knowledge of RMC, does not have the power, whether directly or indirectly through one or more intermediaries, to direct or cause the direction of the management or policies of any other entity through the ownership of voting securities, by contract or otherwise.

(e) *Indebtedness and Liabilities.* CBRY has no long term indebtedness and, to the best knowledge of RMC, has no debts or liabilities or obligations of a type required to be reflected on a balance sheet prepared in accordance with GAAP, except for liabilities or obligations described in the balance sheet attached as Schedule 1(e) hereto.

(f) *Real and Personal Property.* CBRY does not own or lease any real property except for the property located in Pinal and Gila Counties, Arizona ("Real Property"). CBRY owns the Real Property free and clear of all liens, pledges, mortgages, deeds of trust, security interests, attachments, levies or similar encumbrance affecting title (each, a "Lien"). To the best knowledge of RMC, CBRY owns and has good and valid title to, or has valid rights to use, all tangible and intangible personal property used by it in connection with the conduct of its business free and clear of all Liens.

(g) *Unions.* CBRY is not a party to or bound by any collective bargaining agreement or other similar labor contract, nor is any such contract or agreement in the process of being negotiated.

(h) *Contracts.* To the best knowledge of RMC, CBRY is not in breach or default in the performance of its duties and obligations under any contract, agreement, indenture, note, bond, loan, instrument, lease, conditional sale contract or mortgage.

(i) *Litigation.* Schedule 1(i) hereto sets forth a correct and complete list of all judicial, administrative or arbitral action, suits or proceedings (whether public or private and whether civil, criminal or administrative) by or before any court or other governmental authority that are pending, or to RMC's knowledge, threatened, against CBRY.

(j) *Compliance with Laws.* To the best knowledge of RMC, CBRY holds all permits that are required to conduct its business as currently conducted. CBRY has conducted its operations in compliance with all applicable laws, except where the failure to comply would not reasonably be expected to have a material adverse effect on the business, operations or financial condition of CBRY.

2. **Taxes.** All tax returns which RMC is aware of and which are required to be filed by or on behalf of CBRY on or before the date of this Agreement have been timely filed or will be filed in a timely manner with the appropriate taxing authority and, to the best knowledge of RMC, all such tax returns are accurate and complete in all material respects. All taxes of CBRY which RMC is aware of and which are due and payable on or before the date of this Agreement (whether or not shown on any tax return) have been or will be timely paid when due (including, without limitation, any withholding taxes required to be collected by CBRY and paid over to any taxing authority). All estimated taxes required to be paid in respect of CBRY which RMC is aware of have been paid in full when due in accordance with applicable tax laws. All deficiencies asserted or assessments which RMC is aware of and which have been made as a result of any examinations by any governmental authority with respect to any taxes payable by or asserted against CBRY have been paid in full, RMC is aware of no pending or threatened (in writing) examinations, audits, disputes, claims or other proceedings with respect to any taxes

payable by or asserted against CBRY, and RMC is not aware that CBRY has given, been requested in writing to give, or is subject to, any waiver or extension of any statute of limitations relating to the payment of taxes. RMC is not aware that CBRY will be required (i) to include any amount in taxable income, or will be precluded from claiming any tax loss or deduction, for any taxable period ending after the date hereof as a result of a change in accounting method or as a result of any agreement with any governmental authority with respect to any such taxable period or (ii) include any amount in taxable income after the date hereof in respect of any income that accrued prior to the date hereof.

3. Transition Services. Commencing upon the date hereof until October 31, 2006 ("Transition Period"), RMC will transition from RMC to ASARCO the operations conducted by RMC for the benefit of CBRY as of the date hereof or required to be provided under the Management Agreement (the "Services"), including, without limitation, the services described in the attached Schedule 3. During such transition, RMC will continue to provide the services described in the attached Schedule 3 to CBRY. In consideration for the Services provided during the Transition Period, ASARCO will pay RMC a fee of \$8,000. No other payments will be due to RMC. Each Party will cooperate in good faith with each other with the objective of effecting the transition in a timely and efficient manner. RMC will provide ASARCO with cooperation, assistance, information and services and access to all information, documentation, properties and employees as reasonably necessary facilitate the orderly transition and migration of the Services to ASARCO. RMC will assist ASARCO in obtaining any third-party consents necessary for ASARCO to use and access any software, hardware, databases, data or other third-party property or materials used by RMC in connection with the Services or reasonably necessary for ASARCO to use in taking over the Services. RMC shall reasonably cooperate with ASARCO's directions to effect the orderly transition and migration from RMC of all Services. RMC agrees not to disclose or use any confidential or proprietary information of CBRY or ASARCO for any reason other than providing the Services.

4. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained in this Agreement is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, and no person shall be deemed a third-party beneficiary under or by reason of this Agreement. Any provision of this Agreement may only be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may only be given, with the written agreement of the parties hereto. This Agreement shall be governed in accordance with the laws of the State of Arizona, without giving effect to principles of conflicts of law. This Agreement and the documents referred to herein constitute the entire agreement among the parties with respect to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter other than the Mutual Release and the Stock Assignment contemplated therein. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
as of the date first above written.

Rail Management Corporation

By: _____
K. Earl Durden, Chairman of the Board

ASARCO LLC

By: Joseph F. Lapinsky 9/26/06
Joseph F. Lapinsky, Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
as of the date first above written.

Rail Management Corporation

By:



K. Earl Durden, Chairman of the Board

ASARCO LLC

By:

Joseph F. Lapinsky, Chief Executive Officer

SCHEDULE 1(e)

Copper Basin Railway, Inc. August 31, 2006 Balance Sheet

[see attached]

COPPER BASIN RAILWAY, INC.
BALANCE SHEET
AT AUGUST 31, 2006

SCHEDULE 1(e)

ASSETS

Current Assets:

Cash & Cash Equivalents
Accounts Receivable
Prepaid Expenses
Inventory

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Total Current Assets

[REDACTED]

Fixed Assets:

Property & Equipment
Less Accumulated Depreciation

[REDACTED]
[REDACTED]

Net Fixed Assets

[REDACTED]

Total Assets

[REDACTED]

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities:

Accounts Payable
Accrued Expenses
Note Payable - RMC

[REDACTED]
[REDACTED]
[REDACTED]

Total Current Liabilities

[REDACTED]

Deferred Income Taxes

[REDACTED]

Total Liabilities

[REDACTED]

Partnership Capital:

Capital Stock - Common
Retained Earnings

[REDACTED]
[REDACTED]

Total Stockholders' Equity

[REDACTED]

Total Liabilities & Stockholders' Equity

[REDACTED]

SCHEDULE 1(i)

Copper Basin Railway, Inc. Pending Litigation

Arizona Pacific Materials, LLC. v. Copper Basin Railway, Inc.

Pending in the Superior Court of the State of Arizona, Pinal County

Case No.: CV-2004-00955

SCHEDULE 3

Services

General accounting services and support, including processing and payment of all invoices, accounts payable, and payroll and processing and collection of all accounts receivable.

Preparing financial statements in accordance with GAAP for the month of September and for the nine-month period ended September 30, 2006.

Remittance and reporting of all payroll, fuel, sales and use, property, franchise and other taxes.

Transition and migration of computer systems, software and data.