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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36795

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Office of Proceedings
August 23, 2024
Part of
Public Record

**STEFAN SOLOVIEV, EXECUTOR, THE ESTATE OF SHELDON H. SOLOW
— CONTINUANCE IN CONTROL EXEMPTION — COLORADO PACIFIC SAN LUIS
RAILROAD LLC**

VERIFIED PETITION FOR EXEMPTION

(EXPEDITED HANDLING REQUESTED)

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 Stefan Soloviev, Executor
the Estate of Sheldon H. Solow*

Dated: August 23, 2024

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August 23, 2024
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Docket No. FD 36795

**STEFAN SOLOVIEV, EXECUTOR, ESTATE OF
SHELDON H. SOLOW — CONTINUANCE IN CONTROL EXEMPTION
— COLORADO PACIFIC SAN LUIS RAILROAD LLC**

VERIFIED PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and 49 C.F.R. §1122, Stefan Soloviev, Executor, the Estate of Sheldon H. Solow (the “Estate”), a non-carrier, hereby files this Verified Petition for Exemption from the requirements of 49 U.S.C. §11323-11324 to continue in control of the Colorado Pacific San Luis Railroad LLC (“CXSL”), a non-carrier wholly owned subsidiary of Soloviev Investors LLC, once CXSL acquires, and becomes a Class III common carrier operating over, all of the track and certain other assets currently owned and operated by the San Luis Central Railroad Company (“SLC”).

SUMMARY OF THE PROPOSED TRANSACTION

The Estate currently controls fifty percent (50%) of a Class III rail carrier, the Colorado Pacific Railroad LLC (“CXR”) through the Estate’s control of fifty percent (50%) of KCVN, LLC.¹ The other fifty percent (50%) of CXR is owned and controlled by Mr. Soloviev, who is

¹ As is summarized in pleadings and decisions in prior proceedings before this Board, CRX is the wholly owned subsidiary of KCVN, LLC. *See, e.g.,* Docket No. 36005, *KCVN and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of V and S Railway, LLC Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado* (served April 16, 2016). Mr. Solow is deceased, and his 50% interest in KCVN and indirectly, CRX, is now part of the Estate.

also the Estate’s executor. The Estate also currently controls 100% of the Colorado Pacific Rio Grande Railroad LLC (“CXRG”), a Class III rail carrier that received exemption authority in Docket No. FD 36656 to acquire in bankruptcy the assets of the San Luis Rio Grande Railroad (“SLRG”).² The Estate received authority from the Board to continue in control of the CXRG in Docket No. FD 36662, *Stefan Soloviev, Executor, Estate of Sheldon H. Solow—Continuance in Control Exemption—Colorado Pacific Rio Grande Railroad, LLC* (Notice Effective February 16, 2023).³

CXSL is the permitted assignee of a July 1, 2024 Asset Purchase Agreement (“APA”) between SLC and Soloviev Investors, Inc. whereby SLC has agreed to sell 100% of its tracks and related railroad assets, as well as certain other assets, to Soloviev Investors LLC or its permitted assignee.⁴ Soloviev Investors LLC is also controlled by the Estate. On August 22, 2024, in conjunction with its acquisition and planned operation of the SLC’s assets as a newly formed Class III carrier, CXSL filed a Notice of Exemption in Docket No. FD 36794, *Colorado Pacific San Luis Railroad LLC, Acquisition and Operation of the Assets of the San Luis Central Railroad Company*. The closing date of the APA transaction is generally tied to the effective date of the exemption authority for CXSL to acquire SLC, whereupon the CXSL will commence common carrier operations over the Line and provide service to the rail shippers located along the Line.

The SLC is a Class III railroad formed in 1913 to construct and operate approximately 13

² Approximately 1.5 miles of the SLRG track known as the Blanca Spur were acquired in Docket No. FD 36694, *Colorado Pacific Rio Grande Railroad LLC – Petition for Exemption – Acquisition and Operation of a Line of Railroad in Costilla County, Colorado* (served September 18, 2023).

³ It is intended that CXR, CXRG, and CXSL will all eventually be owned and controlled by the Soloviev Group, a non-carrier corporation headed by Mr. Soloviev which has interests in agriculture, real estate development, energy, logistics, and philanthropy. That transition will be accompanied by the appropriate filings required by the STB’s regulations.

⁴ The assignment of the APA to CXSL was effective July 31, 2024.

miles of track for the purpose of providing common carrier railroad service to farmers and other shippers in the San Luis Valley of Colorado. The SLC's operations are confined to its 13-mile, stub-ended line, which since 1913 has connected to the mainline track now owned by the CXRG at its MP 269, also known as Sugar Junction, located approximately two miles east of Monte Verde, Colorado.

As explained below, because the Line of the SLC connects to the mainline of the CXRG, the Estate may not seek continuance in control authority pursuant to the class exemption in 49 CFR §1180.2(d)(2). As such, the closing date of the APA and the effective date of the exemption authority to acquire and operate the SLC, unless extended, could occur prior to the effective date of a decision from the Board on this Petition for Exemption. In light of this possibility, in order for the CXSL to begin operations immediately upon receiving acquisition and operating authority, the Estate will enter into a Voting Trust Agreement pursuant to 49 C.F.R. Part 1013 on or before the APA closing date. Pursuant to Part 1013 and Board practice, the terms of the Voting Trust Agreement will ensure the Estate does not control CXSL until the continuance in control authority covered by this Petition Exemption becomes effective.

The Estate provides the following additional information and support for this Petition below.

The Full Name and Address of the Petitioner:

Stefan Soloviev, Executor
Estate of Sheldon H. Solow
9 West 57th Suite 3000
New York, NY 10019

Petitioner'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

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

The Estate intends to consummate the proposed continuance in control transaction upon the effective date of a decision granting this Petition for Exemption, in keeping with the procedures set forth at 49 C.F.R. §1013.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The exemption sought herein will allow the Estate to continue to exercise common control of CXR, CXRG, and CXSL pending final disposition of the Estate. It will also permit CXSL to seamlessly continue to provide rail service to the shippers along the SLC's Line and to also begin the process of developing additional traffic by drawing on the resources of the Estate and its affiliate companies.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

The Estate does not directly own any rail property. The properties of CXR, CXRG and CXSL are located in Colorado.

Maps - Exhibits A and B: 49 C.F.R. § 1180.6(a)(6)

A map showing the tracks of CXSL and CXRG is attached as Exhibit A. A map showing the location of CXR's tracks is attached as Exhibit B.

Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)

No agreement is contemplated or necessary for the Estate to continue in control of CXSL once it acquires the SLC and commences common carrier operations.

ARGUMENT

I. The Exemption Criteria of 49 U.S.C. §10502 are Satisfied

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. §11323(a)(5).⁵ But for the fact that the 13-mile SLC line acquired by CSXL connects to the CXRG main line at Sugar Junction, this control transaction would meet all the criteria for a class exemption from the full regulatory requirements promulgated at 49 C.F.R. §1180.2(d)(2). Because that connection is present, the Estate must instead seek an exemption from the procedures that would otherwise be applicable to a “minor” transaction under 49 U.S.C. §§11323-24 and 49 C.F.R. Part 1180 through this petition pursuant to 49 U.S.C. §10502(a)(a). Under that provision, “the Board, to the maximum extent consistent with [Part IV of 49 U.S.C.], shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part— (1) is not necessary to carry out the transportation policy of section 10101 of this title; and (2) either— (A) the transaction or service is of limited scope; or (B) the

⁵ Pursuant to 49 U.S.C. §11324(d), “In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that--

(1) as a result of the transaction, there is likely to be 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.”

application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.” The Board has granted such exemption authority in numerous similar situations.⁶

A. Regulation is Not Needed to Carry Out the Rail Transportation Policy

The continuance in control of the CXSL is part of an overall transaction that is intended to continue and to enhance the rail service provided to shippers along the former SLC Line, and to increase the ability of farmers along the Line to ship their production to markets via railroad instead of by trucks, the mode utilized by some of the current shippers due in part to the inability of the SLC to meet their needs. Adding CXSL to the railroads controlled by the Estate will enable the infusion of resources and other support necessary to achieve these objectives.

Exempting the Estate from the full regulatory requirements of §11323-24 and 49 CFR Part 1180 in these circumstances is therefore appropriate because this control transaction is consistent with the Rail Transportation Policy in multiple ways. It will allow to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; 49 U.S.C. §10101(1); an exemption is also consistent with the policy of minimizing Federal regulatory control over the rail transportation system and making fair and expeditious regulatory decisions when regulation is required. *Id.* at §10101(2). By permitting the addition of CXSL to the two carriers already controlled by the estate, the exemption will also facilitate the development

⁶ Docket No. FD 362591, *Ken Burenga and Chesapeake and Delaware, LLC – Continuance in Control Exemption – Dover and Delaware River Railroad, LLC* (Served February 15, 2019). Docket No. FD 35642, *Twin Cities & Western Railroad Company, The Estate of Douglas M. Head and the DMH Trust FBO Martha M. Head – Continuance in Control Exemption – Sisseton Milbank Railroad Company* (Served July 18, 2012). Finance Docket No. FD 34913, *Genesee & Wyoming, Inc. – Continuance in Control Exemption – Chattahoochee Bay Railroad, Inc.* (Served November 9, 2006); Finance Docket No. 34730, *James George and J&JG Holding Company, Inc. – Continuance in Control Exemption – Saginaw Bay Southern Railway Company* (Served October 17, 2005).

and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public. *Id.* at §10101(4). This control transaction will also foster sound economic conditions in transportation and ensuring effective competition and coordination between rail carriers and other modes; *id.* at §10101(5) and granting the requested exemption will also reduce regulatory barriers to entry into and exit from the industry. *Id.* at §10101(7). It will also facilitate the honest and efficient management of railroads and encourage and promote energy conservation. *Id.* at 10101(9) and (14).

B. The Transaction is Limited in Scope

This transaction is clearly limited in scope. The entirety of the SLC system acquired by CXSL is confined to a 13-mile, stub-ended line of railroad. Further, the historical purpose and use of the track by SLC since its creation in 1913 was to provide railroad service to agricultural shippers in that section of the San Luis Valley of Colorado, and CXSL intends to continue that service and to try to expand it. Total revenues of the SLC have been less than \$5,000,000 and are expected to stay below that amount for the indefinite future. Accordingly, the Estate's continuance in control of the CXSL, CRX, and CRGX is a transaction that is limited in scope.

C. Regulation of the Transaction Is Not Needed to Protect Shippers from Abuse of Market Power

Under §10502(a), a showing that a transaction is limited in scope relieves a party from having to demonstrate that regulation of the transaction is not needed to protect shippers from abuse of market power. However, there is no need for such protection to accompany this transaction in any event. On the contrary, the continuance in control of CSXL will result in efficiencies and improvements through its connection to CXRG that should result in measurable benefits to the rail shippers along the Line. No shipper along the CSXL line will lose rail service

options because of the transaction, and the transaction should enhance that existing service while CXSL pursues providing service to new shippers and shipping greater volumes and types of commodities by incentivizing shifting traffic from truck to rail.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Because this transaction does not involve a Class II carrier and one or more Class III carriers, the labor protection requirements of 49 U.S.C. §11326 do not apply.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. The Estate's continuance in control of CXSL will not result in changes in carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed continuance in control also is exempt from historic preservation reporting requirements. The control transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed transaction does not itself involve the acquisition or operation of a rail line. Consequently, the provisions of 49 C.F.R. § 1180.4(g)(4) are not applicable.

Voting Trust

The Estate anticipates that the closing date for CXSL to acquire the SLC Line, unless extended, will occur prior to the effective date of a decision issued by the Board in this proceeding. Consequently, on or before the closing date of that transaction the Estate will enter into a Voting Trust agreement pursuant to 49 C.F.R. §1013 that ensures the Estate does not control CXSL until

the continuance of control exemption covered by this Petition for Exemption becomes effective.

Expedited Handling Requested

The Estate respectfully requests expedited consideration of this Petition. But for the sole reason that the tracks of the CXSL connect to the main line of the CXRG, this control transaction would have met all the criteria of obtaining the requisite authority in 30 days pursuant to the class exemption in 49 C.F.R. §1180(d)(2). In order to minimize the length of time the CXSL must be placed in the Voting Trust pursuant to Section §1013, the Estate asks the Board to grant this Petition on an expedited basis.

Respectfully submitted,

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

Law Office of Thomas W. Wilcox, LLC

1629 K. Street NW, Suite 300

Washington, D.C. 20006

202-508-1065

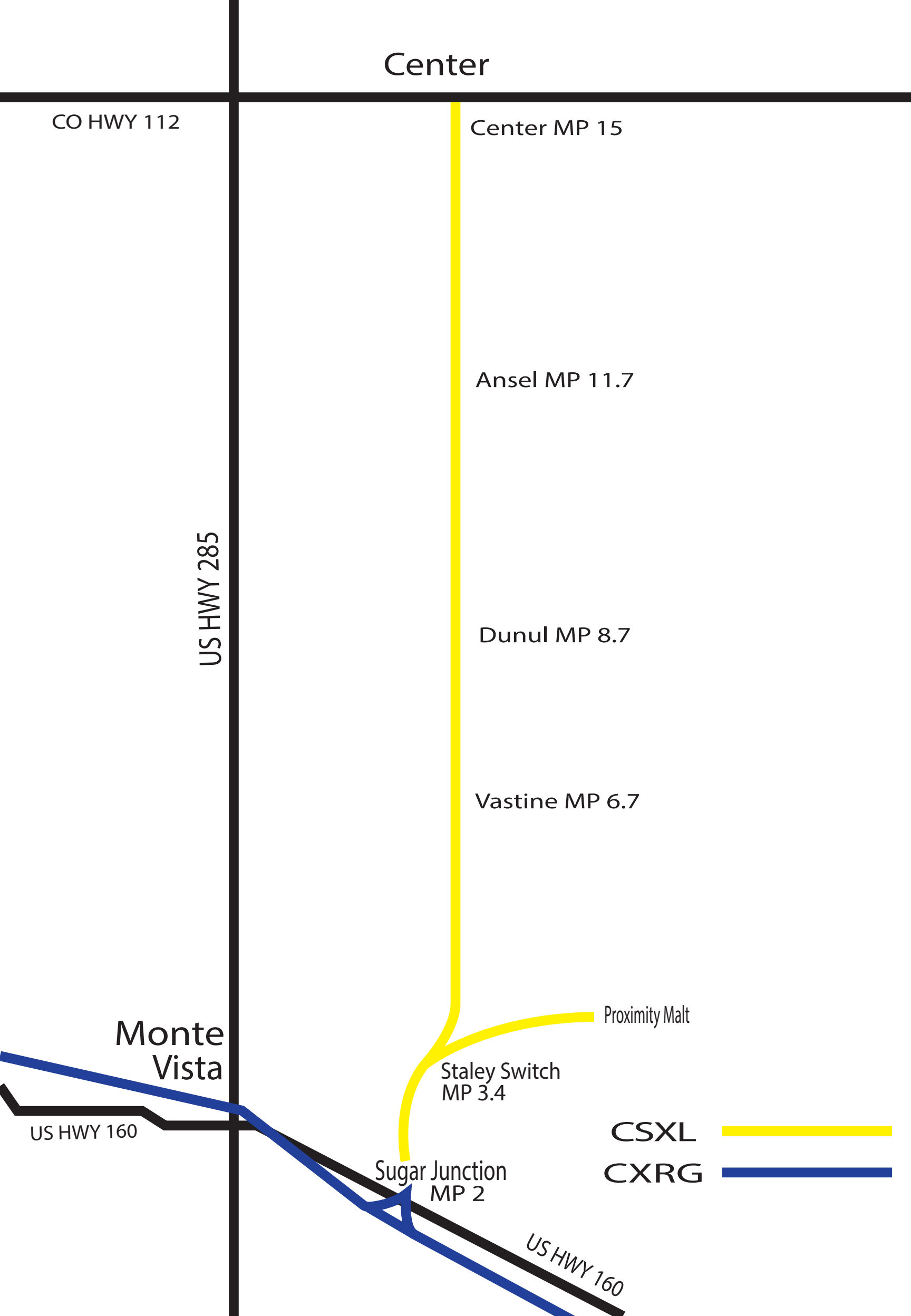
tom@twilcoxlaw.com

*Attorney for Stefan Soloviev, Executor, Estate of
Sheldon H. Solow*

August 23, 2024

EXHIBIT A

Map of Colorado Pacific San Luis Railroad LLC and Colorado Pacific Rio Grande Railroad LLC



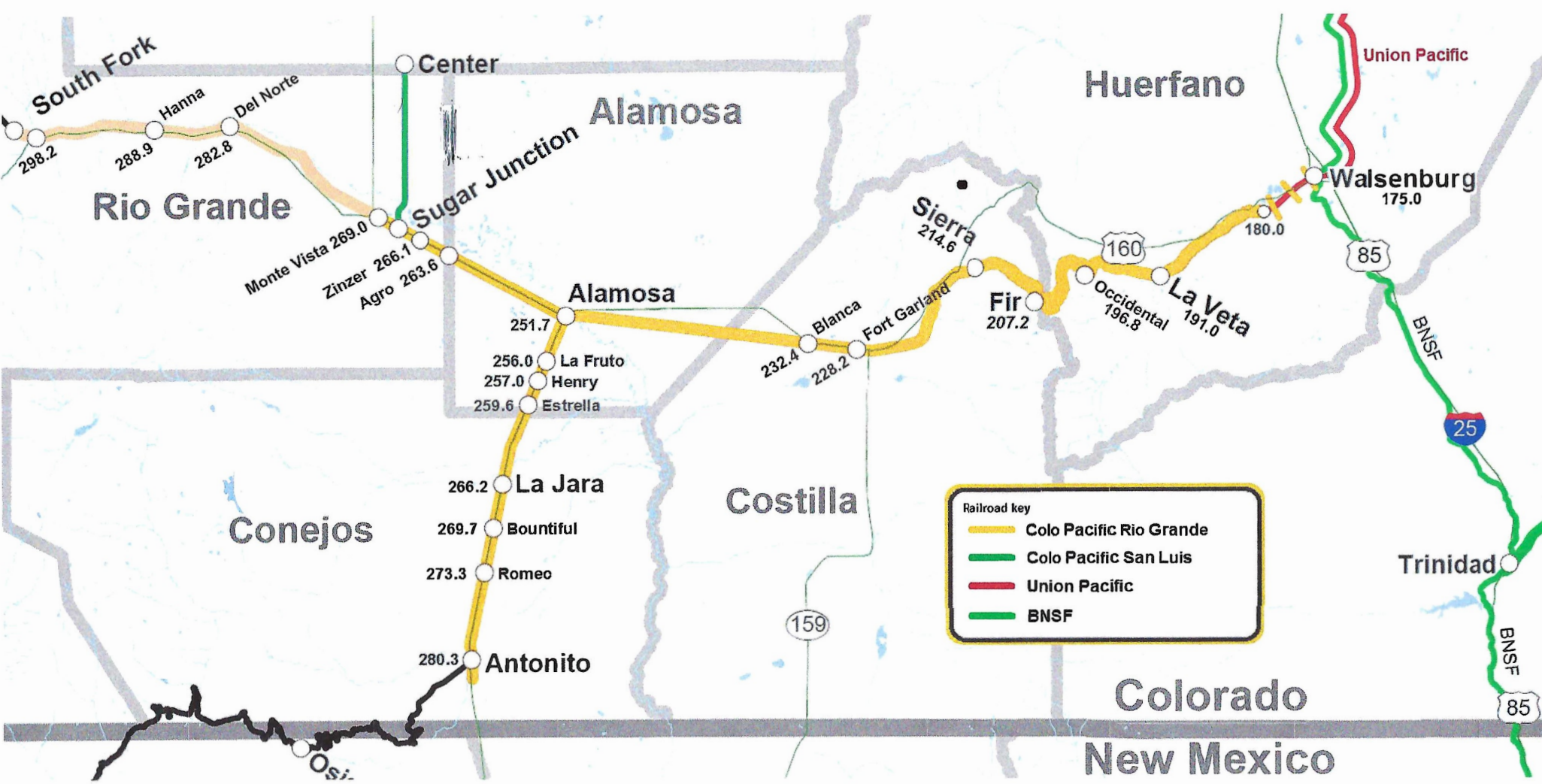
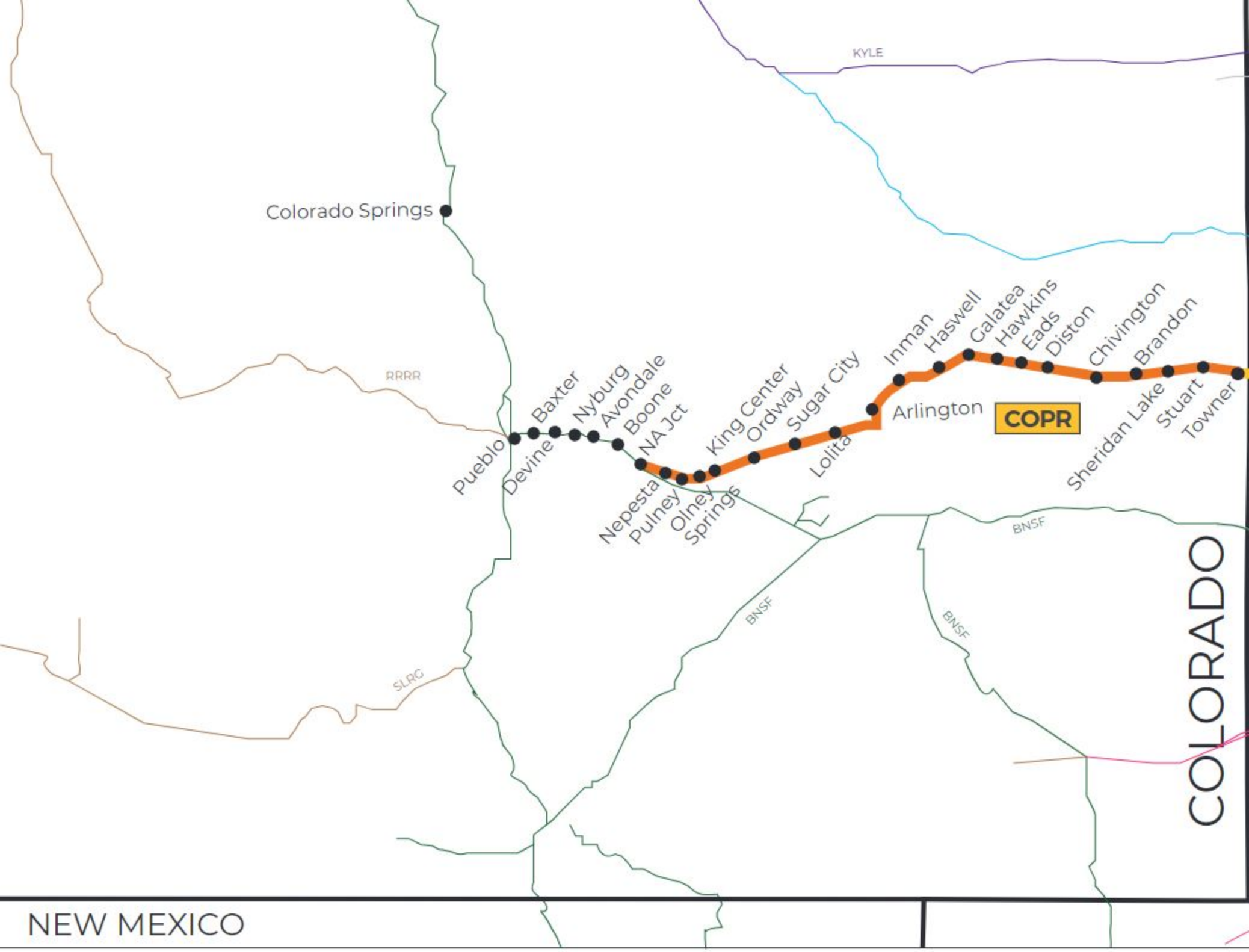


EXHIBIT B

Map of Colorado Pacific Railroad LLC



VERIFICATION

I, William S. Osborn, an attorney for Stefan Soloviev, Executor, Estate of Sheldon H. Solow, 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: August 22, 2024



William S. Osborn