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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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March 27, 2025  
Part of  
Public Record

FD 36849

KANSAS & OKLAHOMA RAILROAD, LLC  
– LEASE AND OPERATION EXEMPTION WITH  
INTERCHANGE COMMITMENT –  
UNION PACIFIC RAILROAD COMPANY

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PETITION FOR EXEMPTION  
PURSUANT TO 49 U.S.C. § 10502(a)

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PUBLIC VERSION

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RAILROAD, LLC

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Kansas & Oklahoma Railroad, LLC (“K&O”), a Class III railroad common carrier, tenders this petition (the “Petition”) pursuant to 49 U.S.C. § 10502 and the corresponding regulations at 49 C.F.R. § 1121 for an exemption from the formal requirements of 49 U.S.C. § 10902 authorizing, after the fact, K&O’s continued lease and operation of approximately 165.98 miles of railroad (the “Lines”) owned by Union Pacific Railroad Company (“UP”). The Lines extend between – (1) milepost 523.02 at Geneseo, Kansas, and milepost 606.0 at McCracken, Kansas; and (2) milepost 664.5 at Healy, Kansas, and milepost 747.5 at Towner, Colorado. The subject lease (the “Lease”), dating to 1997, includes (and has included from its inception) a provision restricting K&O’s interchange of traffic with connecting railroad carriers other than UP. The particulars of the interchange commitment were modified as one part of various amendments (supplements) to the Lease undertaken in 2018.

K&O has leased and operated the Lines for roughly 24 years. As detailed below, the original 2001 lease transaction with K&O, involving a longer length of track than is the case today, was authorized under the Board's class exemption procedures at 49 C.F.R. part 1150, subpart D. In 2018, K&O and UP agreed to amend (nominally, to supplement) the 1997 Lease to, among other things – (1) extend its term; (2) account for the abandonment of various portions of the original leased premises (as detailed below); and (3) adjust the Lease's interchange commitment provisions. These 2018 Lease modifications were disclosed to the Board in filings submitted in a proceeding initiated by a Colorado grain elevator seeking more favorable rates for shipping grain via K&O in interchange with a third-party short line (Colorado Pacific Railroad LLC – "CXR"). *See Kansas & Oklahoma Railroad, Inc. – Acquisition and Operation Exemption – Central Kansas Railway, LLC*, FD 34030 (STB served Feb. 25, 2001) ("*K&O – Weskan*").

In *K&O – Weskan*, the Board ordered K&O "to file a petition for exemption or application to obtain after-the-fact authority to renew the Lease and implement any amendments thereto by March 27, 2025," remarking, in so doing, that, "Because a significant amount of time has passed since [K&O and UP had supplemented] the Lease and those transactions may raise questions requiring further Board consideration, the Board directs K&O to file a petition for exemption or application *rather than a notice of exemption*." *K&O – Weskan*, slip op at 6 and n.11 (emphasis added and citation omitted). K&O understands that, but for the passage of time since the supplements to the Lease were agreed to, and but for the

interchange commitment challenge presented in *K&O – Weskan*, K&O could have sought authorization under the class exemption procedures at 49 C.F.R. part 1150, subpart E for the Lease adjustments that the Board seized upon in *K&O – Weskan*.

In support of its Petition, and in accordance with the substantive requirements of 49 C.F.R. § 1121.3, K&O offers the following:

## **INFORMATION ABOUT THE PROPOSED TRANSACTION**

### ***The Petitioner***

K&O is a Class III railroad common carrier. K&O's business address is 315 W 3<sup>rd</sup> Street, Pittsburg, KS 66762. Currently, K&O operates approximately 937 route miles of railroad in western-central Kansas and far-eastern Colorado.

### ***The Proposed Transaction and Operational/Service Impact***

K&O seeks to continue to lease and operate as part of its broader system of lines approximately 165.98 route miles of UP-owned railroad line (the Lines) extending between – (1) milepost 523.02 at Geneseo, Kansas, and milepost 606.0 at McCracken, Kansas; and (2) milepost 664.5 at Healy, Kansas, and milepost 747.5 at Towner, Colorado. A map of the Lines is attached as Exhibit A. The Lines were part of a larger lease transaction dating back to 1997 (with the Lease supplemented once in 1998, and again in 1999) – as between UP and the prior leasehold operator (Central Kansas Railway, LLC – “CKRL”), before K&O's assumed the leasehold interest in the Lines a few years thereafter.

K&O assumed the leasehold interests in the Lines via assignment from CKRL, and has provided common carrier service over them since 2001.<sup>1</sup> At the time of the FD 34030 proceeding, the leasehold encompassed, among other lines, a through route between Geneseo to Towner, consisting of portions of the historic Missouri Pacific Railroad Company's ("MoPac") Council Grove and Horace Subdivisions, and all of MoPac's Hoisington Subdivision. MoPac was merged into UP on January 1, 1997, before the 1997 lease transaction authorized in FD 34030. A few years later, a large, intermediate portion of the route – a segment between milepost 606.0 at McCracken and milepost 664.5 at Healy – was abandoned (subject to K&O's concurrent discontinuance). *See Union Pacific Railroad Company – Abandonment Exemption – In Lane, Ness, and Rush Counties, KS*, AB-33 (Sub-No. 214X), *et al.* (STB served Oct. 15, 2004), and K&O's and UP's subsequent notices of consummation of discontinuance and abandonment filed in the above-referenced dockets, on May 31, 2005, and November 24, 2005, respectively.<sup>2</sup>

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<sup>1</sup> *Kansas & Oklahoma Railroad, Inc. – Acquisition and Operation Exemption – Central Kansas Railway, LLC*, FD 34030 (STB served June 12, 2001).

<sup>2</sup> *See also Union Pacific Railroad Company – Abandonment Exemption – In McPherson, Ellsworth and Rice Counties, KS*, AB-33 (Sub-No. 158X), *et al.* (STB served Nov. 13, 2000); and *Union Pacific Railroad Company – Abandonment Exemption – In McPherson and Saline Counties, KS*, AB-33 (Sub-No. 147X), *et al.* (STB served Mar. 17, 2000), each of which resulted in CKRL's discontinuance of common carrier service over certain line segments included within the scope of the original 1997 Lease prior to assignment to K&O.

### ***Interchange Commitment***

In accordance with 49 C.F.R. § 1121.3(d), K&O hereby certifies that the subject lease transaction involves contract terms that would limit K&O's interchange of traffic originating or terminating on the Lines with any third-party connecting carrier (such as CXR). Accordingly, the information required under Section 1121.3(d) is supplied below (subject to the confidentiality provisions of 49 C.F.R. §§ 1104(4(a) and 1121.3(d)(1) where applicable):

#### **49 C.F.R. 1121.3(d)(1)(i)**

K&O has certified that the terms of the subject Lease includes interchange commitment terms in favor of UP. The affected K&O interchange points are as follows: Wichita, Kansas and Hutchinson, Kansas (BNSF Railway Company); Wichita, Kansas (South Kansas & Oklahoma Railroad, LLC); and Wichita, Kansas (Wichita Terminal Association).

#### **49 C.F.R. 1121.3(d)(1)(ii) [HIGHLY CONFIDENTIAL]**

A confidential, complete version of the documents setting forth the subject interchange agreement are attached (under seal) as Highly Confidential Exhibit B.

#### **49 C.F.R. 1121.3(d)(1)(iii)**

The customers located along the Lines that currently use the Lines or have used the Lines in the following two years are as follows: Bartlett Grain;

Thunderbird Grain; The Scoular Company; ADM Grain; Seaboard Foods; Scott  
Coop; Midland Marketing; United Ag Services; Hess Services; and Heartland Mills.

**49 C.F.R. 1121.3(d)(1)(iv) [HIGHLY CONFIDENTIAL]**

The aggregate number of carloads that the customers listed  
immediately above originated and terminated on the Lines for each of the past two  
calendar years is as follows:

2023: {{\_\_\_\_\_}}

2024: {{\_\_\_\_\_}}

**49 C.F.R. 1121.3(d)(1)(v)**

K&O, through the undersigned counsel, certifies that is has, on this  
Petition filing date, provided notice of the present lease transaction and of the  
transaction's inclusion of an interchange commitment on each of the above-listed  
customers located along the Lines.

**49 C.F.R. 1121.3(d)(1)(vi)**

The only third-party railroad with which K&O could interchange via  
the Lines is CXR. No other third-party railroads connect with the Lines.

**49 C.F.R. 1121.3(d)(1)(vii) [HIGHLY CONFIDENTIAL]**

{{\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_}}

**49 C.F.R. 1121.3(d)(1)(viii)**

The case caption indicates the presence of an interchange commitment.

**THE EXEMPTION STANDARDS AT 49 U.S.C. § 10502 HAVE BEEN MET**

The lease and operation of a railroad line by a Class III rail carrier is governed by 49 U.S.C. § 10902, which requires the filing of an application and the Board's approval of that application prior to closing on the subject rail line purchase. Ordinarily, however, a transaction involving a Class III carrier's lease and operation of a railroad line would be authorized pursuant to the generally-available class exemption procedures at 49 C.F.R. part 1150, subpart E. But, in this case, in light of the Board's directive in *K&O – Weskan*, K&O may not utilize the class exemption procedures to authorize after-the-fact K&O's longstanding common carrier operations over the Lines, albeit under the 2018 modifications to, and extension of, the Lease. K&O may, as *K&O – Weskan* provides, invoke the exemption procedures under 49 U.S.C. § 10502.

Where the agency's class exemption procedures are not available, the Board, "to the maximum extent consistent with this part, shall exempt" a transaction "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 application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”

As demonstrated below, the proposed lease transaction satisfies Section 10502’s statutory criteria for the requested exemption.

**A. Detailed Scrutiny Under 49 U.S.C. § 10902 Is Not Necessary To Carry Out The Rail Transportation Policy of 49 U.S.C. § 10101**

Granting K&O’s Petition to continue its lease of the Lines is clearly consistent with the goals articulated in the National Rail Transportation Policy (“RTP”) set forth in 49 U.S.C. § 10101. The RTP favors minimizing federal regulatory control over the rail transportation system; expediting regulatory decisions; and reducing barriers to entry and exit from the industry. 49 U.S.C. §§ 10101(2), (7), and (15). The individual exemption eliminates the need for expensive, unnecessary, and time-consuming processes attendant to preparing and reviewing a formal application to acquire a rail line under Section 10902. Reliance here on the adequate and expeditious individual exemption procedures minimizes regulation and reduces the regulatory burden on K&O, thereby furthering important RTP policy considerations.

In addition, granting this Petition will enable K&O to continue to operate its railroad system efficiently in furtherance of 49 U.S.C. § 10101(9). Beyond the many RTP goals discussed above that would be advanced by granting the subject Petition, favorable Board action would not run thwart any RTP objectives. For these reasons, granting the subject Petition would not only be consistent with the RTP, but denial of the Petition would run counter to the

objectives of Sections 10101 and 10502, by leaving the K&O-UP leasehold arrangement subject to outdated lease terms dating back to 1997, and forcing the two railroads to conduct themselves under specific contract terms that no longer serve either party well.

### **B. The Proposed Acquisition Is Of Limited Scope**

The subject transaction involves K&O's (a Class II carrier) continued lease and operation of roughly 165.98 route miles of railroad located in a single state. The Lines have been leased to, and operated by, K&O for roughly 24 years. Continuation of K&O's lease of the Lines will have no impact on service, dispatching, maintenance, employees, the environment, or historic resources. As such, the proposed transaction clearly is of limited scope.

### **C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse**

Since K&O's continued lease of the Lines demonstrably is of limited scope, K&O is not required to prove that regulation is not needed to protect shippers from market power abuse. Even so, the transaction will not subject shippers to market power abuse, because K&O has, and will possess, no such market power to exercise or abuse.

## **LABOR PROTECTION**

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. 49 U.S.C. § 10902(d), however, precludes the Board from imposing labor

protection for Class III carriers receiving authority under Section 10902.

Accordingly, the Board may not impose labor protective conditions here because K&O is – and will remain – a Class III carrier.

Had K&O been permitted to secure after-the-fact authorization to continue common carrier service over the Lines under the 2018 Lease modifications, then the advance notice to labor requirements of 49 C.F.R. § 1150.42(e) would have applied as well (since K&O's annual revenues exceed \$5 million). But 49 C.F.R. § 1121.4(h), applicable here instead, requires such advance notice only in the case of transactions involving the acquisition or operation of rail lines by a Class II railroad. Under the circumstances, K&O's continued operation of the Lines would preserve an employment *status quo*, such that – if the Section 1150.42(e) provisions were available – K&O would have sought a fairly routine waiver of the advance notice to labor regulations here in keeping with such cases as *Wheeling & Lake Erie Railway Company – Acquisition and Operation Exemption – CSX Transportation, Inc.*, FD 34341 (STB served Sep. 2, 2003); and *Wisconsin & Southern Railroad, L.L.C. – Acquisition and Operation Exemption – Union Pacific Railroad Company*, FD 35848 (STB served Nov. 6, 2014).

## ENVIRONMENTAL REVIEW

As indicated above, the proposed transaction would entail the continuation of the K&O operational and service *status quo*. K&O anticipates no operational changes flowing from the proposed transaction. As pertinent here, 49 CFR § 1105.6(c)(1)(i) provides that transactions involving railroad line operations

under Section 10902 ordinarily require no environmental review. K&O anticipates that the proposed transaction will have no impact upon service levels, and the transaction includes no plans to construct railroad lines. Accordingly, the Board should find that no environmental review is required here.

### **HISTORIC REVIEW**

The Board's regulations provide that historic review normally is not required for a railroad line transaction of this sort. And, in any event, "further [Board] approval is required to abandon any service," and as is the case here, "there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older." See 49 CFR § 1105.8(b)(1). The Board should conclude here, also, that granting the Petition requires no historic resources impact analysis.

WHEREFORE, K&O respectfully requests that the Board grant the exemption sought in this Petition.

Respectfully submitted,

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

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**ATTORNEY FOR KANSAS &  
OKLAHOMA RAILROAD, LLC**

Dated: March 27, 2025

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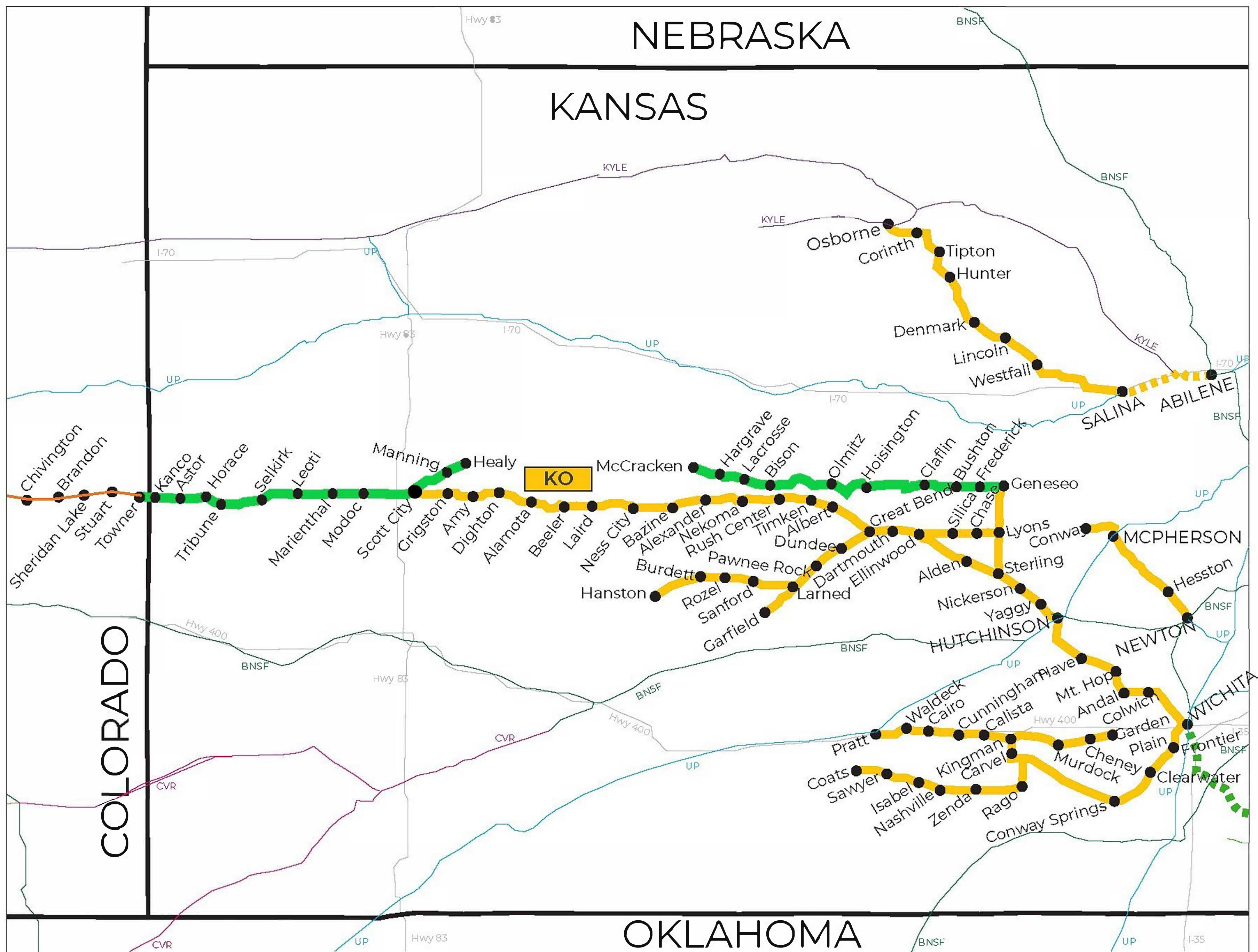
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**EXHIBIT A**

**MAP**



## LEGEND

- Kansas & Oklahoma Railroad (KO)
- Leased Lines
- - - KO Trackage Rights
- - - SKOL Trackage Rights
- KYLE
- CVR
- COPR

## Interchanges

- Abilene, KS - BNSF
- Hutchinson, KS - BNSF, UP
- Newton, KS - BNSF
- Wichita, KS - BNSF, SKOL, UP
- McPherson - UP
- Salina - UP

**Total Miles: 904.3**

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**HIGHLY CONFIDENTIAL EXHIBIT B**

**LEASE DOCUMENTS CONTAINING  
INTERCHANGE COMMITMENT TERMS**

**EXCLUDED FROM THE PUBLIC VERSION**

## CERTIFICATE OF SEVICE

I hereby certify that I have, on this 27<sup>th</sup> day of March, 2025, served a copy of the foregoing Petition (Public Version) via electronic mail to counsel for Union Pacific Railroad Company, and to counsel for Weskan Grain LLC.

/s/ *R. A Wimbish*

Robert A. Wimbish  
Counsel for Kansas & Oklahoma  
Railroad, LLC