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July 30, 2019

248269

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 30, 2019
Part of
Public Record

Re: **Docket No. FD 36325**
Spokane, Spangle & Palouse Railway, L.L.C. -- Lease and Operation
Exemption -- Washington State Department of Transportation

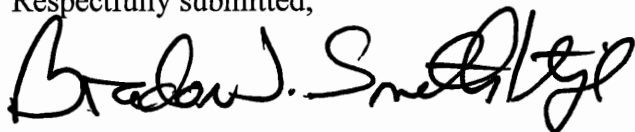
Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is an **Emergency Petition for Waiver and for Expedited Effective Date**, dated July 30, 2019.

Please note that expedited consideration of this Emergency Petition is requested.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Bradon J. Smith
Attorney for Spokane, Spangle & Palouse
Railway, LLC

BJS/tjl

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36325

SPOKANE, SPANGLE & PALOUSE RAILWAY, L.L.C.
-- LEASE AND OPERATION EXEMPTION --
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

**EMERGENCY PETITION FOR WAIVER
AND FOR EXPEDITED EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

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

**ATTORNEYS FOR SPOKANE, SPANGLE &
PALOUSE RAILWAY, LLC**

Dated: July 30, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36325

SPOKANE, SPANGLE & PALOUSE RAILWAY, L.L.C.
-- LEASE AND OPERATION EXEMPTION --
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

**EMERGENCY PETITION FOR WAIVER
AND FOR EXPEDITED EFFECTIVE DATE**

Spokane, Spangle & Palouse Railway, LLC ("SSPR") hereby petitions the Board to partially waive the 30-day effectiveness period specified by 49 C.F.R. § 1150.32(b) and permit SSPR's notice of exemption in this docket to become effective by August 5, 2019, six days earlier than currently scheduled. Waiver is urgently needed to permit SSPR to handle an inbound empty unit train for loading on the schedule anticipated by all involved parties and avoid an unnecessary disruption of carload train service for the general shipper base.

SSPR filed its notice of exemption on July 2, 2019 for the lease and operation of 102.6 miles of rail line owned by the Washington State Department of Transportation ("WSDOT") and extending from Marshall through Palouse to Pullman, Washington, from Palouse to the Washington/Idaho state line, and from Colfax through Pullman to the Washington/Idaho state line (the "Lines"). Based on the filing date, SSPR's exemption was expected to become effective on August 1, 2019, and transition plans among SSPR, WSDOT, Washington & Idaho Railway, Inc. ("WIM," the Lines' prior lessee), BNSF Railway Company ("BNSF," the connecting Class I carrier at Marshall) and the Lines' shippers have been implemented based on an August 1st start-up date for SSPR. Most significantly, Pacific Northwest Farmer's Cooperative, Inc. ("PNW"), one of the largest shippers on the Lines, has

reserved for the week of August 5th and for handling by SSPR a 110-car BNSF shuttle train of empty hopper cars for the outbound loading of wheat for export via Portland, Oregon. Under the shuttle train arrangements with BNSF (which SSPR has already adopted as of August 1st), that train will be spotted, loaded and returned to BNSF in 24 hours or less. SSPR has all necessary staffing and other arrangements in place to handle this important movement, while WIM has been de-mobilizing its assets and labor resources and employees are in the process of departing for other jobs.

When notice of SSPR's exemption was served and published in the *Federal Register* this past Friday, however, it unexpectedly provided for an effective date of August 11, 2019, rather than August 1st, based on a minor clarification that SSPR submitted on July 12, 2019.¹ The unanticipated delay disrupts the transition planning on which all parties have cooperated, and creates particular concern for handling the already-scheduled BNSF shuttle train that is due to arrive at Marshall on August 5th. A slight advancement of the current effectiveness date is necessary and warranted to meet the shipping needs of the Lines' customers.

In appropriate and analogous circumstances, the Board has acted to shorten the effective period for a railroad's class exemption in order to accommodate a timely initiation of service and "protect the interests of affected shippers." *Washington State Department of Transportation -- Acquisition Exemption -- Palouse River and Coulee City Railroad, Inc.*, Docket No. FD 35024, *et seq.* (STB served May 30, 2007) at 3. *See also, e.g., Delmarva Central Railroad Company -- Change in Operators Exemption -- Cassatt Management, LLC d/b/a Bay Coast Railroad*, Docket No. FD 36196 (STB served Jun. 8, 2018); *Ohio & Pennsylvania*

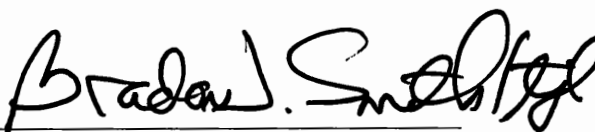
¹ That filing simply corrected a single mistaken reference to the Lines being located in Washington and Idaho, rather than solely in Washington. Nothing else in SSPR's notice of exemption, including the line descriptions, the overall length of the Lines, and the draft *Federal Register* notice, was changed.

Railroad Company -- Lease and Operation Exemption -- P&LE Properties, Inc., Docket No. FD 32711 (ICC served Jun. 23, 1995). Partial waiver of the full 30-day effectiveness period in the limited and unique circumstances present here would avoid disruption of rail service on the Lines and is fully consistent with the Rail Transportation Policy of 49 U.S.C. § 10101. As shown on Exhibits 1, 2 and 3, PNW, WSDOT and WIM each strongly support the requested waiver and expedited effectiveness of SSPR's exemption.

In these circumstances, a partial waiver is appropriate and necessary, and the Board should move expeditiously to allow SSPR's exemption to become effective.

WHEREFORE, SSPR respectfully requests that the Board partially waive the 30-day effectiveness period specified by 49 C.F.R. § 1150.32(b) and permit SSPR's notice of exemption in this docket to become effective by August 5, 2019.

Respectfully submitted,

By: 

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR SPOKANE, SPANGLE &
PALOUSE RAILWAY, LLC**

Dated: July 30, 2019

July 29, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

Re: Docket No. FD 36325
Spokane, Spangle & Palouse Railway LLC — Lease and Operation Exemption — Washington State
Department of Transportation

Support for Waiver of 30-day Effective Period.

Dear Ms. Brown:

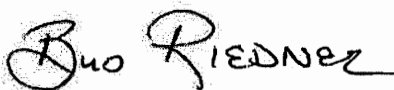
Pacific Northwest Farmer's Cooperative (PNW) is a 1700-member, farmer- owned cooperative in Eastern Washington State and ships 20-24 mil bushels of grain annually from its grower members. Currently, PNW is engaged in the 2019-2020 grain harvest and, during this harvest period, we will ship between 2-4 mil bushels to export and domestic markets.

PNW owns a 110-car rail loading facility located on a Washington Department of Transportation (WSDOT) owned short line from Marshall, WA to Palouse, WA. WSDOT recently contracted with a new short line operator, the Spokane, Spangle and Palouse Railway LLC (SS&P). PNW was just informed that STB approval of SS&P as the new operator for the line has been delayed from August 1, 2019 to August 11, 2019 due to a minor amendment after the initial application. The delayed date essentially eliminates PNW's ability to ship grain by rail during our critical harvest period.

It is our understanding that there is little issue for SS&P to get STB approval to operate on the short line. Due to this certainty of approval by STB, PNW requests that SS&P be given approval or conditional approval to service our rail line as of the initial date of August 5, 2019 so that we can accommodate our producers grain harvest.

Without access to our rail facility, PNW will be unable to meet sales obligations and receive harvest grain. We strongly urge your consideration to our request; harvest time is a critical time for PNW and its producer owners.

Regards,



Bud Riedner

Pacific Northwest Farmer's Cooperative, Inc.



**Washington State
Department of Transportation**

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310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
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July 29, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

Re: **Docket No. FD 36325**
Spokane, Spangle & Palouse Railway LLC — Lease and Operation
Exemption — Washington State Department of Transportation

Support for Waiver of 30-day Effective Period.

Dear Ms. Brown:

I write to express support for the waiver request of Spokane, Spangle & Palouse Railway ("SSPR") in the above-captioned matter. The partial waiver requested would permit SSPR to begin operations on August 1, 2019; if denied, it would result in a one to two week disruption of important rail service. Furthermore, granting the partial waiver of the time in question would ensure continued, uninterrupted, rail service to an area that is critically important to the regional and national economies.

The service area is a critical gateway for goods and commodities; the prospect of rail service is important to the rural economies of Washington with many family farms and local businesses threatened by the disruption. As the Docket reflects, timely rail service is critical to shippers and receivers along the line.

The Washington State Department of Transportation has an interest in continued, uninterrupted rail service given the limited alternatives to business and economic interests. We support SSPR's petition for waiver and respectfully urge the Board to act on it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Biggs'.

Jason Biggs, PE
Program Manager – Rail Freight and Ports Division
Washington State Department of Transportation

July 30, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

Re: **Docket No. FD 36325**
Spokane, Spangle & Palouse Railway LLC — Lease and Operation
Exemption — Washington State Department of Transportation

Support for Waiver of 30-day Effective Period.

Dear Ms. Brown:

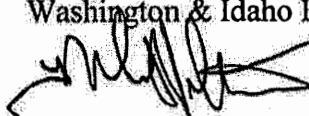
I am writing in support of Spokane, Spangle Palouse Railway LLC's ("SSPR") request for authority to commence local rail operations by August 5, 2019, to replace our company as the current operator, Washington & Idaho Railway ("WIR"). We believe a timely STB-approved operating authority is necessary to ensure that service is not significantly disrupted.

SSPR and WIR have been in communication regarding the transition at the corporate and ground level. SSPR is in the process of mobilization, and WIR is in the process of de-mobilization of assets and labor based on the time line we have all been working toward to complete the transition as of August 5, 2019; and therefore, WIR asks STB adheres to the time line our companies placed in motion that would allow SSPR to be a carrier effective 8/05 rather than 8/11.

I appreciate the Board's consideration of this letter filing.

Sincerely,

Washington & Idaho Railway



Mike Williams, owner

CC: All parties of Record