

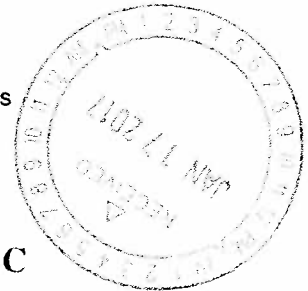
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

242475

FD 36084

ENTERED
Office of Proceedings
January 17, 2017
Part of
Public Record



WEST BRANCH INTERMEDIATE HOLDINGS, LLC
AND CONTINENTAL RAIL LLC

- ACQUISITION OF CONTROL EXEMPTION -

CIMARRON VALLEY RAILROAD, L.C.,
CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.,
WYOMING & COLORADO RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)

MOTION FOR A PROTECTIVE ORDER

 GRANTED Office of Proceedings	DECISION ID NO.: <u>45650</u>
	DECIDED DATE: <u>2/2/17</u>
	SERVICE DATE: <u>2/2/17</u>
	APPROVED: <u>Rachelle Campbell</u> Director
	☐

Respectfully submitted,

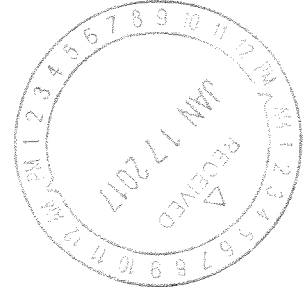
John D. Heffner
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(202) 742-8607

Counsel for Applicants

Dated: January 17, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36084



**WEST BRANCH INTERMEDIATE HOLDINGS, LLC
AND CONTINENTAL RAIL LLC**

- ACQUISITION OF CONTROL EXEMPTION -

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UNDER 49 CFR § 1180.2(d) (2)**

MOTION FOR A PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b), West Branch Intermediate Holdings, LLC, and Continental Rail LLC (“Applicants”) hereby request that the Board issue a protective order allowing them to file under seal a Letter of Intent (“LOI”) which will govern the transaction that is the subject of the above-docketed proceeding. Applicants will submit a final Purchase and Sale Agreement (“the Agreement”) once negotiations are complete and it is executed. Applicants are filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2)

for Applicants' acquisition of control of three Class III common carrier short line railroads presently owned by David Durbano and managed under the name Western Rail Group. The carriers include Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., and Wyoming & Colorado Railroad, Inc.

Applicants have submitted under seal a confidential version of the LOI with Mr. Durbano for the sale of control of these three railroads in an envelope marked "Confidential" subject to this request for a protective order. The LOI contains commercially sensitive terms and information and the Agreement, once completed and executed, will reflect extensive private negotiations and will contain commercially sensitive and confidential terms and information. The public release of both documents could cause competitive or other injury to both Applicants and Mr. Durbano. Public disclosure of these documents also is not necessary for the consideration or disposition of the subject acquisition of control notice of exemption.

Applicants thus request that the Board accept both the LOI and the Agreement, once submitted under seal, and that it adopt the proposed protective order contained in the appendix hereto to govern access to these two documents. This approach is consistent with that previously taken by the Board in similar circumstances. *See, e.g., Iowa Pacific Holdings, LLC and Permian Basin Railways*

– *Control Exemption – Cape Rail, Inc. and Massachusetts Coastal Railroad, LLC*,
FD 35684 (STB served Oct. 26, 2014); *Michael Williams – Control Exemption –*
St. Maries River Railroad, Inc., FD 35365 (STB served Apr. 28, 2010); and
Genesee & Wyoming, Inc. – Control Exemption – Columbus and Greenville
Railway Company, et al., FD 35139 (STB served May 13, 2008).

WHEREFORE, Applicants respectfully requests that the Board adopt the
protective order contained in the appendix hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Heffner", with a long, sweeping horizontal line extending to the right.

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
(202) 742-8607

Dated: January 17, 2017

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the the Letter of Intent and the Purchase and Sale Agreement (“the Agreement”),¹ once completed and executed, between West Branch Intermediate Holdings, LLC, and Continental Rail LLC as Buyer and David Durbano as Seller (hereafter “The Parties”) filed under seal on January 17, 2017 in FD 36084.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to The Parties of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.
3. Confidential Information shall not be disclosed in any way or to any person without the written consent of The Parties or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.
4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on The Parties, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.
5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

¹ Collectively the “Documents”

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the production and use of Confidential Information of in FD 36084, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36084 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that The Parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____