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FOUNDED 1866

February 28, 2006

Via Hand Delivery

Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Suite 500
Washington, DC 20423-0001

Re: STB Finance Docket No. 34821, Norfolk Southern Railway Company - Trackage Rights Exemption - Meridian Speedway LLC; STB Finance Docket No. 34822, Kansas City Southern, The Kansas City Southern Railway Company and Meridian Speedway, LLC - Exemption of Transactions within a Corporate Family; and STB Finance Docket No. 34823, Kansas City Southern Railway Company - Trackage Rights Exemption - Meridian Speedway

Dear Ms. Rutson:

By letter dated February 23, 2006, Norfolk Southern Railway Company ("NSR"), Kansas City Southern ("KCS"), The Kansas City Southern Railway Company ("KCSR") and Meridian Speedway, LLC ("MSLLC") (collectively, the "Parties") provided the Section of Environmental Analysis ("SEA") with information relevant to the application of "categorical exclusions" from requirements for environmental and historic documentation, under the Surface Transportation Board's ("STB" or the "Board") regulations for the implementation of its obligations under the National Environmental Policy Act of 1969 ("NEPA")¹ and the National Historic Preservation Act of 1966, as amended², to the above-identified notices of exemption filed with the STB by the Parties on January 17, 2006. The February 23, 2006 letter was submitted by William A. Mullins, counsel for KCS, KCSR and MSLLC ("February 23, 2006 letter").

NSR concurs with the analysis set out in the February 23, 2006 letter of the application of the Board's categorical exclusions from environmental and historic documentation to both the trackage rights actions that are the subject of the notices of exemption in STB Finance Docket Nos. 34821 and 34823 and the intra-family corporate transaction that is the subject of the notice of exemption in STB Finance Docket No. 34822. NSR agrees with the conclusion stated in the February 23, 2006 letter that the trackage rights and intra-family corporate transactions that are the subject of the three notices of exemption do not require environmental or historic review by the Board. Further, I am authorized by KCS, KCSR and MSLLC to indicate their concurrence with the content of this letter.

¹ 42 U.S.C. §§ 4321 *et seq.*

² 16 U.S.C. § 470.

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A description of the actions that are the subject of the three above-identified notices of exemption is contained in the February 23, 2006 letter. Briefly summarized, the Parties have entered into a series of agreements to address existing capacity limitations on KCSR's existing rail line between Shreveport, LA and Meridian, MS ("the Line") while continuing long-standing cooperative arrangements between NSR and KCSR to handle freight traffic over the Line. The notices of exemption before the Board provide for trackage rights over the Line to be obtained by NSR and by KCSR from MSLLC, and for an intra-family corporate transaction among KCS, KCSR and MSLLC to transfer the Line from KCSR to MSLLC, to establish KCSR as the contract operator of the Line for MSLLC and to allow certain trackage rights to be assigned from KCSR to MSLLC.

The Parties met with SEA and explained that they believe the three notices of exemption are subject to categorical exclusions from STB environmental analysis under NEPA and the Board's environmental rules. The Board is an independent federal agency with jurisdiction over certain surface transportation matters, including railroad control transactions, acquisitions and mergers. *See* 49 U.S.C. §§ 11321-11326. The Board has already accepted the three notices of exemption filed by the Parties.³ NEPA generally requires federal agencies to consider "to the fullest extent possible" environmental consequences "in every recommendation or report on major federal actions significantly affecting the quality of the human environment."⁴ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality ("CEQ")⁵ and by the STB.⁶ SEA is responsible for conducting the environmental review on behalf of the Board, evaluating potential environmental impacts and recommending environmental mitigation conditions to the Board where appropriate.⁷

Actions whose environmental effects are typically insignificant are normally excluded from NEPA review. 40 CFR 1501.4(a)(2); 49 CFR 1105.6(c). The STB's environmental regulations set out classifications of actions for which no environmental documentation is normally required. Among these STB categorical exclusions are transactions involving trackage rights (49 CFR 1105.6(c)(4)) and transactions involving corporate changes, such as a change in ownership or operator (49 CFR 1105.6(c)(2)(ii)). The two trackage rights actions and the intra-corporate family transaction that are subject of the Parties' three notices of exemption fall within these categorical exclusions from environmental review by the Board.

³ The decisions issued by the Board's Director of Proceedings are attached. The effective date of the three notices of exemption was extended until April 10, 2006 by order of the Board. A copy of that decision is also attached.

⁴ 42 U.S. §4332(2)(c).

⁵ 40 CFR Parts 1500-1508.

⁶ 49 CFR Part 1105.

⁷ In imposing environmental mitigation conditions, the Board has consistently focused on the potential environmental impacts that would result directly from transaction-related changes to activity levels on existing rail lines and at rail facilities. The Board typically does not require mitigation for pre-existing environmental conditions, such as the effects of current railroad operations.

The STB's environmental regulations also address its responsibilities for historic review and consultation under NHPA. As in the case of environmental review under NEPA, SEA is responsible for implementing the Board's obligations under the NHPA. The Board's regulations establish categorical exclusions from historic review for certain classes of actions. 49 CFR 1105.8(b). Among the actions for which historic review is not required are trackage rights (49 CFR 1105.8(b)(3)) and transfers of property between corporate affiliates where there will be no significant change in operations (49 CFR 1105.8(b)(2)). The two trackage rights actions and the intra-corporate family transaction identified above fall within these categorical exclusions from historic review by the STB.

To assist SEA in its independent determination that the Parties' notices of exemption are appropriately categorically excluded from environmental and historic review, the February 23, 2006 letter provides general information about the actions, including a map of the Line, descriptions of planned capacity and safety enhancement projects for the Line under consideration by KCSR, projections of the volume of additional freight traffic the Parties expect to handle over the Line as a result of the actions that are the subject of the three notices of exemption⁸ and analysis supporting the conclusion that the actions do not warrant environmental or historic documentation.⁹

We understand that SEA wishes to provide copies of this letter and the February 23, 2006 letter to potentially interested parties so that they may have the opportunity to provide SEA with any comments they may have. The Board's purpose in providing this information to the public is to encourage public involvement and consultation to gain input on any potentially significant environmental impacts related to

⁸ The February 23, 2006 letter also explained that, as part of their agreements, the Parties have developed an allocation mechanism to establish the contractual rights in perpetuity as between NSR and KCSR to the overall capacity of the Line after the KCSR capital improvement projects are completed. The 13 NSR/21 KCSR train start split and bases for additional allocation reflected in Section 6.b. of the Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement merely establish that contractual allocation and are not projections of future NSR and KCSR traffic volume on the Line.

⁹ Railroads do not require Board authority to increase capacity on their lines by upgrading existing lines, adding sidings or double-tracking their main lines, or to increase the level of traffic on a line. *City of Detroit v. Canadian National Ry. Co.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995); STB F.D. No. 33966, *Friends of the Aquifer, City of Hauser et al.*, at 6 (served August 15, 2001); STB F.D. No. 34111, *North San Diego County Transit Development Board—Petition for Declaratory Order*, at 8 n.15 (served Aug. 21, 2002); STB F.D. No. 33611, *Union Pacific Railroad Company—Petition for Declaratory Order—Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX* (served Aug. 21, 1998). As the Board has stated, "there is no statutory requirement for a carrier to obtain Board approval to build or expand facilities that assist the railroad in providing its existing operations but that do not give the carrier the ability to penetrate new markets." *Friends of the Aquifer*, *id.* at 6; *North San Diego County*, *id.* at 8; see *Nicholson v. ICC*, 711 F.2d 364, 368-70 (1983), *cert. denied*, 464 U.S. 1056 (1984); STB F.D. No. 33466, *Borough of Riverdale—Petition for Declaratory Order—The New York Susquehanna and Western Ry.* (served Sept. 10, 1999). As KCSR has indicated in the February 23, 2006 letter, KCSR has been implementing and planning extensive rail line upgrades and capacity improvements on the Line for several years, independently of the recent agreements with NSR. Because these rail line upgrades and improvements are not subject to STB review, consistent with Supreme Court precedent the Board is not required to consider environmental impacts that might arise from these actions. *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004) (no environmental review by DOT of increased Mexican truck traffic in the United States required because DOT licensing regulations are not the legally relevant cause of the alleged impact).

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the notices of exemption filed by the Parties so that the Board can assess public concerns and issues in determining whether further environmental analysis is necessary.

We further understand that SEA intends to provide for a 20-day comment period, and that comments (one original and ten copies) may be submitted to:

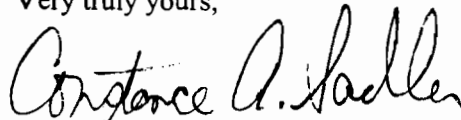
Office of the Secretary
Case Control Unit
Finance Docket Nos. 34821, 34822 and 34823
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Attention: Phillis Johnson-Ball
Environmental Project Manager
Environmental Filing

Comments may also be submitted electronically at www.stb.dot.gov. Finally, we understand that questions from the public can be directed to Phillis Johnson-Ball of the Board's Section of Environmental Analysis at (202) 565-1530.

If you have any questions, please feel free to contact me.

Very truly yours,



Constance A. Sadler

Encls.

cc: James A. Squires, Esq.
Robert B. Terry, Esq.
William A. Mullins, Esq.