

DI# 0102029001

333 West Vine Street, Suite 1201
Lexington, Kentucky 40507
Telephone (859) 225-8700

101 South Queen Street
Martinsburg, West Virginia 25401
Telephone (304) 263-0836

7000 Hampton Center, Suite K
Morgantown, West Virginia 26505
Telephone (304) 285-2500

Heather G. Harlan
Telephone — (304) 347-1194
Facsimile — (304) 343-3058

VIA AIRBORNE EXPRESS

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Bowles Rice
McDavid Graff & Love PLLC**

ATTORNEYS AT LAW

600 Quarrier Street
Charleston, West Virginia 25301

Post Office Box 1386
Charleston, West Virginia 25325-1386
Telephone (304) 347-1100
www.bowlesrice.com

September 11, 2002

5th Floor, United Square
501 Avery Street
Parkersburg, West Virginia 26101
Telephone (304) 485-8500

3 West Piccadilly Street
Winchester, Virginia 22601
Telephone (540) 723-8877

E-mail Address:
hharlan@bowlesrice.com



Re: Finance Docket No. 34251
Notice of Exempt Transaction Under 49 C.F.R. § 1150.41
Line of CSX Transportation, Inc.

**ENTERED
Office of Proceedings**

SEP 12 2002

**Part of
Public Record**

Dear Williams:

In accordance with 49 C.F.R. § 1150.41(g), please find enclosed for filing with the Surface Transportation Board one original and ten (10) copies of a Notice of Exemption submitted on behalf of Elk River Railroad, Inc. to exercise, pursuant to that certain lease dated August 1, 1989, an option to purchase the property described herein from CSX Transportation, Inc.

As discussed in phone conversations with Mr. David Konschnik of the Surface Transportation Board, your office has already received a check in the amount of \$1,000.00. Because 49 C.F.R. § 1002.2(f)(14)(ii) provides that the fee for a notice of exemption under 49 C.F.R. § 1150.41-1150.45 is \$1,300.00, a check for an additional \$ 300.00 is enclosed herein. Also enclosed is a 3.5 inch diskette, formatted for WordPerfect, that contains the notice and summary. Finally, an additional copy of this filing is enclosed; please have it date stamped and returned to me at the above address.

FEE RECEIVED

SEP 12 2002

**SURFACE
TRANSPORTATION BOARD**

HGH/hgh
Enclosures

1051858.1

Very truly yours,

Heather G. Harlan

FILED

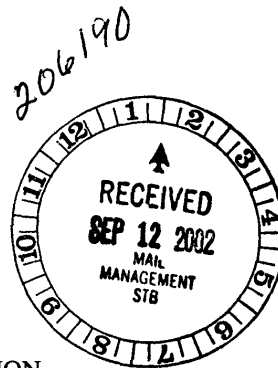
SEP 12 2002

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34251

THE ELK RIVER RAILROAD, INC.
ACQUISITION AND OPERATION EXEMPTION
LINE OF CSX TRANSPORTATION, INC.



VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

SEP 12 2002

Part of
Public Record

FEE RECEIVED

SEP 12 2002

SURFACE
TRANSPORTATION BOARD

FILED

SEP 12 2002

SURFACE
TRANSPORTATION BOARD

F. T. Graff
Heather G. Harlan
BOWLES RICE MCDAVID GRAFF & LOVE, P.L.L.C.
600 Quarrier Street
Charleston, WV 25301
(304) 347-1100

Attorneys for Elk River Railroad, Inc.

September 11, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34251

THE ELK RIVER RAILROAD, INC.
ACQUISITION AND OPERATION EXEMPTION
LINE OF CSX TRANSPORTATION, INC.



VERIFIED NOTICE OF EXEMPTION

On August 1, 1989, CSX Transportation, Inc. ("CSXT") leased that certain existing rail line described below (the "Line") to the Elk River Railroad, Inc. ("TERRI").¹ Under the terms of that Lease, TERRI was given an option to purchase the Line. TERRI now intends to exercise that option and accordingly, TERRI, a Class III rail carrier, hereby files this Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41, *et. seq.* to acquire and operate the Line.

In accordance with the requirements of 49 C.F.R. §§ 1150.43, TERRI submits the following information:

Name and Address of the Class III Rail Carrier Applicant: 49C.F.R. § 1150.43(a)

Elk River Railroad, Inc.
200 Greenbrier Road
Summersville, WV 26651

Applicant's Representative: 49 C.F.R. § 1150.43(b)

F.T. Graff
Bowles Rice McDavid Graff & Love, PLLC
600 Quarrier Street
Charleston, WV 26301

¹ On or about July 15, 1989, TERRI filed a Notice of Exemption with the Interstate Commerce Commission. That Notice, which was approved on July 21, 1989 can be found at Finance Docket No. 31497.

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

On August 1, 2002, TERRI and CSXT reached a final agreement whereby under the terms of that certain lease dated August 1, 1989 between CSXT and TERRI, TERRI intends to exercise its option to purchase the property described below.

Operator of the Property: 49 C.F.R. § 1150.43(d)

TERRI will operate the property.

Summary of the Proposed Transaction: 49 C.F.R. § 1150.43(e)

- (1) The railroads transferring the subject property are:
CSX Transportation, Inc.
500 Water Street - J200
Jacksonville, FL 32202
- (2) TERRI intends to consummate the transaction on or about September 13, 2002.
- (3) The mile-posts of the subject property are as follows:

Elk River Subdivision between milepost 6.2, at or near Gilmer, and milepost 67.3, at or near Hartland, in Gilmer, Braxton, and Clay Counties, West Virginia.

- (4) There are sixty one (61.1) total route miles being acquired.

Map: 49 C.F.R. § 1150.43(f)

A map showing the area to be served by TERRI, including origins, termini, stations, cities, counties, and States, is attached hereto as Exhibit A.

Certification of Class III Status: 49 C.F.R. § 1150.43(g)

The applicant hereby certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.

General Statement of Labor Impacts: 49 C.F.R. § 1150.42(e)

TERRI expects no impact upon labor as a result of its acquisition. Further, 49 C.F.R. § 1150.42(e) is inapplicable because the projected annual revenue of the carrier to be acquired or operated, together with the acquiring carrier's projected annual revenue, is not expected to exceed \$ 5 million.

Environmental and Historic Preservation Data: 49 U.S.C. § 1105

Under 49 C.F.R. § 1105.6(c) (2), the proposed acquisition by TERRI is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e) (4) or (5).

Under 49 C.F.R. § 1105.8(b) (1), the proposed acquisition is also exempt from historic preservation reporting requirements. TERRI's acquisition of the lines is for the purpose of continued rail operations. In addition, Surface Transportation Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in appropriate form is attached hereto as Exhibit B.

Respectfully submitted,



F. T. Graff

Heather G. Harlan

BOWLES RICE MCDAVID GRAFF & LOVE, P.L.L.C.

600 Quarrier Street

Charleston, WV 25301

(304) 347-1100

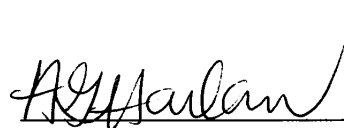
Attorneys for Elk River Railroad, Inc.

September 11, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2002, a copy of the foregoing
Verified Notice of Exemption was served by first class mail, postage prepaid, upon:

Betty Jones
CSX Transportation, Inc.
500 Water Street - J200
Jacksonville, FL 32202

A handwritten signature in black ink, appearing to read "H. G. Harlan", written over a horizontal line.

Heather G. Harlan

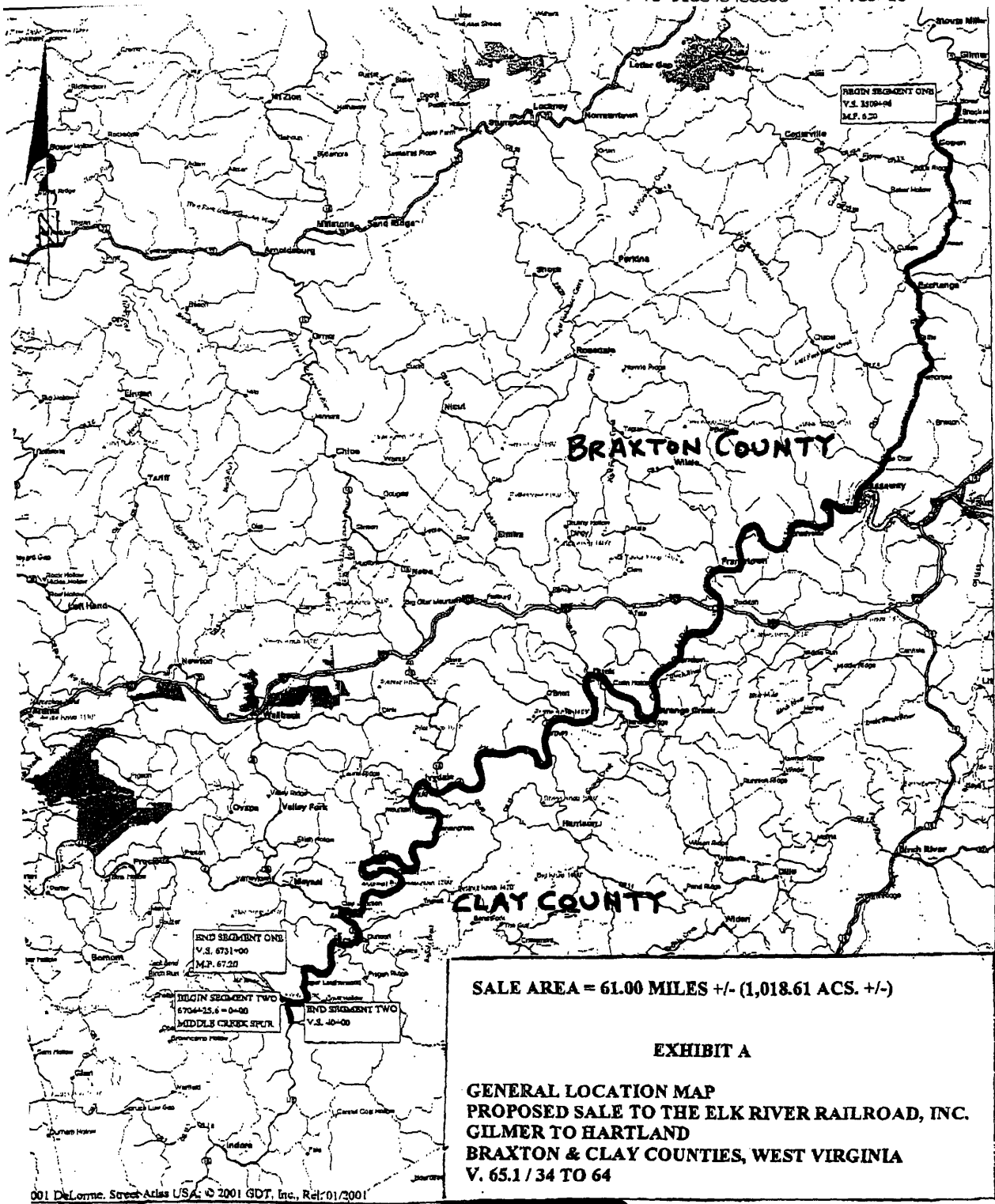


EXHIBIT
A

**EXHIBIT B
CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34251
**THE ELK RIVER RAILROAD, INC.
ACQUISITION AND OPERATION EXEMPTION
LINE OF CSX TRANSPORTATION, INC.**

The Elk River Railroad, Inc. ("TERRI") has filed a notice of exemption to to acquire and operate CSX Transportation Inc.'s ("CSXT") line between milepost 6.2, at or near Gilmer, and milepost 67.2, at or near Hartland, in Gilmer, Braxton, and Clay Counties, West Virginia. Comments must be filed with the Board and served on:

F. T. Graff
BOWLES RICE MCDAVID GRAFF & LOVE, P.L.L.C.
600 Quarrier Street
Charleston, WV 25301
(304) 347-1100

This notice is filed under 49 C.F.R. §§ 1150.41. If the notice contains false or misleading information, this exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

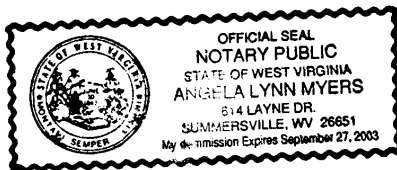
VERIFICATION

STATE OF WEST VIRGINIA
COUNTY OF NICHOLAS

I, Frank Jorgensen, being duly sworn, depose and state that I am Chief Executive Officer of Elk River Railroad, Inc., that I have read the foregoing Verified Notice of Exemption and know the facts asserted therein, that said facts are true as stated to the best of my knowledge, information, and belief, and that I am qualified and authorized to make this verification.

Frank Jorgensen
Frank Jorgensen

SUBSCRIBED AND SWORN TO before me this 6th day of
September, 2002.



Angela Lynn Myers
Notary Public

My Commission expires: Sept. 27, 2003

1050442.1

NO. 334 P. 8/15

SEP. 5, 2002 5:37PM BOWLES RICE