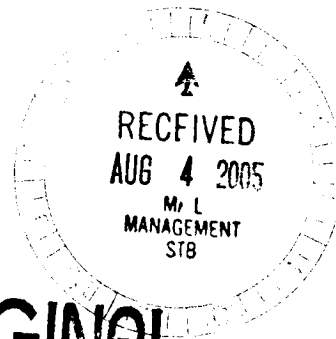


214483

JOHN D. HEFFNER, PLLC
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(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net



ORIGINAL

August 4, 2005

BY HAND

ORIGINAL

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

ENTERED
Office of Proceedings

AUG 04 2005

Part of
Public Record

RE: STB Docket No. AB-441 (Sub-No. 4X), San Pedro
Railroad Operating Company, LLC-Abandonment
Exemption-In Cochise County, AZ,

Dear Mr. Williams:

On behalf of San Pedro Railroad Operating Company (SPROC), I am enclosing for filing in the above-captioned proceeding an original and ten copies of its Reply to the "Verified Opposition of Sonora-Arizona International, LLC."

I am also enclosing a copy of this filing on a disk formatted in MS Word as well an original signed verification page to accompany David Parkinson's verified statement submitted with SPROC's Reply to Chemical Lime Company's Statement in Opposition submitted yesterday.

ORIGINAL

Please date stamp and return one copy of this letter and Reply.

Sincerely yours,

John D. Heffner
Counsel for SPROC

Enclosures:

cc: Mr. David L. Parkinson
All parties

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL



STB DOCKET NO. AB-441 (Sub-No. 4X)
SAN PEDRO RAILROAD OPERATING
COMPANY, LLC-ABANDONMENT EXEMPTION-
IN COCHISE COUNTY, AZ

ENTERED
Office of Proceedings

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Public Record

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PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502
FROM 49 U.S.C. 10903

REPLY OF
SAN PEDRO RAILROAD OPERATING COMPANY, LLC
TO VERIFIED OPPOSITION OF
SONORA-ARIZONA INTERNATIONAL, LLC

John D. Heffner
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Washington, D.C. 20036
(202) 263-4180

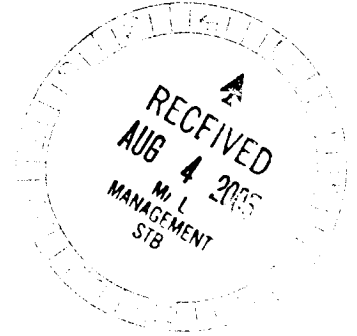
ORIGINAL

Attorney for San Pedro
Railroad Operating
Company, LLC

Dated: August 4, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-441 (Sub-No. 4X)
SAN PEDRO RAILROAD OPERATING
COMPANY, LLC—ABANDONMENT EXEMPTION—
IN COCHISE COUNTY, AZ



PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502
FROM 49 U.S.C. 10903

REPLY OF
SAN PEDRO RAILROAD OPERATING COMPANY, LLC
TO VERIFIED OPPOSITION OF
SONORA-ARIZONA INTERNATIONAL, LLC

INTRODUCTION

Pursuant to the Board's decision served July 28, 2004, San Pedro Rail Operating Company ("SPROC") submits this Reply to the Verified Opposition of Sonora-Arizona International, LLC ("Sonora"), August 1, 2005. SPROC has shown that its request to abandon the subject rail line meets both the exemption criteria of 49 U.S.C. 10502 and the formal public convenience and necessity standard of 49 U.S.C. 10903 and that the subject abandonment should be granted.

BACKGROUND

On June 6, 2005, SPROC filed a Petition for Exemption with the Board under 49 U.S.C. 10502 to abandon

approximately 76.2 miles of railroad track and right of way south of milepost 1040.15 at Curtiss, AZ, and extending through Paul Spur to Douglas, in Cochise County, AZ.¹ Chemical Lime Company, the only shipper on the subject railroad south of Curtiss submitted a protest to the abandonment on July 14, 2005, to which SPROC replied yesterday, August 3, 2005. Thereafter, on July 26, 2005, Sonora filed a Motion for Leave to submit its Opposition after the Board's July 14, deadline for protests and the Board granted that request over SPROC's opposition in the July 28, decision.

COMMENTS AND ARGUMENT

Sonora describes itself as an Arizona Limited Liability Company organized by Charles M. Sotelo, its principal owner. Sonora states that it opposes this abandonment because it has, in its words, "pursued, developed, and is in the process of implementing significant business ventures including expending financial

¹ The subject line consists of four segments. (1) the segment of railroad designated as the Bisbee Branch, which extends between milepost 1085.0 at Bisbee Junction, AZ, and milepost 1090.6 at Bisbee, AZ, a distance of 5.6 miles (first segment). The remaining line segments are collectively designated as the Douglas Branch and include (2) the segment of railroad extending between milepost 1097.3 near Paul Spur, AZ, and milepost 1106.5 near Douglas, AZ, a distance of 9.2 miles (second segment); (3) the segment of railroad extending between milepost 1055.8 near Charleston, AZ, and milepost 1097.3 near Paul Spur, AZ, a distance of 41.5 miles (third segment); and (4) the segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles (fourth segment).

resources in an effort to bring traffic to the 76.2 miles of railroad in Cochise, AZ, at issue in this matter."

Sonora Verified Opposition (hereafter "Sonora VO") at 2,3. Sonora then devotes the rest of its filing to identifying a series of business opportunities for the railroad that it wants the Board to believe that it has discovered and no one else has pursued. Sonora VS at 3-7. This is false.

Thanks to the previous efforts of other entrepreneurs to save this line and subsequent abandonment requests when those efforts proved unsuccessful, the Board is well familiar with this line of railroad. It is also familiar with Mr. Sotelo in his previous efforts to save this line. See, Charles M. Sotelo-Petition for Declaratory Order-Line Relocation in Cochise County, AZ, STB Finance Docket No. 34191 (decision served October 25, 2002, denying Mr. Sotelo's request that the Board issue an order declaring that the construction of a short rail line connecting the Douglas branch of SPROC's predecessor to the Mexican border was a line relocation not requiring STB approval). Mr. Sotelo's efforts would be entitled to some credibility if he could only bring his good intentions to fruition.

First, SPROC believes the Board should have some background information on Mr. Sotelo so it can determine the amount of weight to give Sonora's protest. For

starters, SPROC did its own research with the Arizona Corporation Commission and found that Mr. Sotelo established Sonora. Second, in talking with a local newspaper reporter, SPROC found that Mr. Sotelo had served a year in federal prison around 1980 for possession and sale of narcotics.² After rehabilitating himself, Mr. Sotelo entered the real estate business in Arizona promoting certain business ventures. Mr. Sotelo sought chapter 11 bankruptcy protection for one of these ventures in 1996. According to a series of articles appearing in the Sierra Vista Herald/Bisbee Daily Review, Mr. Sotelo has been trying for years to interest the various short line owners of the subject railroad in "business opportunities." But so far, none have come to fruition.³

The Board should disregard Sonora's protest. It is the alter ego of Charles M. Sotelo. Neither Sonora nor Mr. Sotelo are rail customers or political subdivisions served by the Line. Neither has indicated that it wishes to preserve service by offering financial assistance to save the line through purchase or an operating subsidy. Neither appears to have stepped up to the plate to bring industry to the line or acquire it in previous abandonments. The

² See, information attached as Exhibit A.

³ Copies of these articles are attached as Exhibit B.

most that either brings to the table are speculative business opportunities and under longstanding Board precedent are entitled to little weight. Cf., Idaho Northern & Pacific Railroad Company-Abandonment Exemption-In Wallowa and Union Counties, OR, STB Docket No. 433X (served May 12, 1997) (holding that unsupported speculation about future traffic is not a sufficient basis to reopen a proceeding).

SPROC submits with this Reply the Verified Statement of its Chairman David L. Parkinson. Mr. Parkinson addresses and refutes each of Sonora's assertions about the "business opportunities" the line presents. There is one opportunity that Sonora cites at page 5 of its statement with which SPROC has substantial familiarity and which requires some comment, establishing a connection with the Mexican rail system at Naco. Each of SPROC's predecessors has attempted to do so without success. SPROC has discussed this connection with Mexican rail carrier Ferromex and its part owner, the Union Pacific Railroad. SPROC agrees that there are potential opportunities. The reality is that Ferromex and UP do not believe sufficient cross border traffic exists to justify an additional connection through Naco. SPROC submits as Exhibit C an

email from an official at Ferromex declining to establish this connection.

In closing, Sonora has not submitted any evidence showing that SPROC showing that rail service should be continued under the statutory public convenience and necessity test of 49 U.S.C. 10903 or that it is ineligible for an exemption from the formal abandonment requirements under 49 U.S.C. 10502.

CONCLUSION

Accordingly, SPROC respectfully requests that the Board reject Sonora's specious arguments and promptly grant this abandonment exemption request on September 23, 2005, as indicated in the Board's decision acknowledging its receipt.

Respectfully submitted,



John D. Heffner, PLLC
Suite 800
1920 N Street, N.W.
Washington, D.C. 20036
(202) 263-4180

Attorney for San Pedro
Railroad Operating
Company, LLC

Dated: August 4, 2005

EXHIBIT A



FEDERAL BUREAU OF PRISONS

Inmate Locator

Inmate Locator

Locate a Federal Inmate
(includes all inmates from 1982 to present)

➤ **Inmate Locator**

➤ **Visiting - General Info**

- Visiting Hours
- Who Can Visit?
- Background Checks
- Business Visits
- Special Circumstances
- Visiting Room Procedures
- Conjugal Visits

➤ **Locate Inmates Released Before 1982**

➤ **Who is a "Federal" Inmate?**

➤ **Privacy Policy**

 [Printer Friendly Version](#)

Related Documents

[Link opens in a new window](#)

- **Admission & Orientation Program**
- **Inmate Legal Activities Policy**
- **Release of Information Policy**
- **Telephone Regulations**
- **Victim & Witness Notification Program**
- **Visiting Regulations**
- **Visitor Information Form**

Name

Register Number

Age

Race

Sex

Release Date

Actual / Projected

1. CHARLES MAZARIA SOTELO	01300-008	59	White	M	01-17-1980
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15A Sierra Vista Herald/Bisbee Daily Review, Friday, Sept. 1, 2000

Sotelo on drug bust: 'I let people down'

MICHAEL PARNELL
Herald/Review

BISBEE — Bisbee's Sotelo said he hopes Bisbee voters will judge him on a lifetime of accomplishments, not one "stupid mistake" — a felony drug conviction more than two decades ago.

But he conceded, "It's a skeleton. It comes up and haunts you. It's something that stays with you the rest of your life."

Sotelo acknowledged criticism from older members of the community, especially Hispanics, some of whom have not forgiven him. "I was a rising star. I let people down," he said.

Sotelo, who would be Bisbee's first Hispanic mayor if elected, attributed some of the feeling about his drug bust to dismay at those who reject stereotypes. "It makes all Mexicans look bad. It makes all Hispanics look bad," he said.

"I've tried to show by my history since then. I've tried to make amends," he said.

Sotelo said he served a year in federal prison in Boron, Calif., after being convicted on a charge of conspiracy to sell 5 ounces of cocaine. He said he was arrested in 1978 after he introduced an undercover police officer posing as a buyer to a drug dealer.

He was arrested in Pima County and convicted in U.S. Federal District Court there. He said he believes he got prison time rather than probation because the judge wanted to make an example of

him since he was a former Bisbee police officer.

"It hurt my parents real bad," Sotelo said. "I vowed that I would work twice as hard to put them behind me and make them proud again."

The Bisbee native has gone on to a successful career in real estate sales and business. He is proud of having had the 14th largest Hispanic-owned business in Pima County, of his service to the Arizona-Mexico Commission and other accomplishments.

His rights have been restored since his release from prison, Sotelo said, and he counsels others to avoid his error. "I've been able to talk to kids," he said. "I let them know, and I try to make it regrettable."

"When you see the steel keys locking against those bars, and you hear those bars slam shut against each other ... it's something that stays with you the rest of your life."

Sotelo said he tutored Hispanics and blacks in basic English, math and other adult basic education skills while in prison, in an effort to help his classmates get their general education degrees. "You turn a negative into a positive," he said. "What else can you do?"

He said he realized then how important education and hard work are to success, and thus prison was a "motivator" for his efforts since. Coming back to Bisbee was not easy because of the embarrassment, he said, but "I was lucky. I had the support of my family."

- 3" Wood Blinds - 2" Vinyl Blinds - 1" Mini Blinds - 1/2" Micro Blinds

EXHIBIT B

Convention Center parking lot owner files for bankruptcy

MIKE HICKS
Herald/Review

Border Cities Land Corp., owners of the Hulse Convention Center, has filed for Chapter 11 bankruptcy protection.

In its May 21 filing in U.S. Bankruptcy Court in Tucson, the corporation listed debts of \$814,594 and assets of \$1,666,035.

Chapter 11 is a type of bankruptcy filing that gives a financially troubled firm court protection from creditors while it reorganizes its business affairs.

Border Cities President Char-

les Colwell Tuesday declined to comment in detail on the issue. He agreed the filing was done to gain some time to develop a payment plan for the back taxes the corporation owes Cochise County.

The corporation acquired the back tax debt when it bought the Convention Center from former Bisbee resident and businessman Don Fry and his partner, O.L. Pitts of Fort Worth, Texas, in December.

Cochise County Back Taxes Supervisor Marion Fletcher said

See BANKRUPTCY...Page 2

Marketplace

Sierra Vista Herald/Bisbee Daily Review

Crossing a dream

Naco Industrial Development sees potential in pos

MICHAEL PARNELL
Herald/Review

NACO, Ariz. — A new railroad crossing east of Naco, Ariz., could lead to warehouses and light industrial development on both sides of the border, a tourist train running to Copper Canyon and the Sea of Cortez and maybe even a hotel serving visitors with the finest in Mexican hospitality.

That is the dream of Bisbee develop-
ment LLC, which has purchased 50 acres at a proposed border train crossing east of Naco, Ariz. But even though the firm offered to donate the

the rail through the heart of Ambos Nacos to link with track it owns on the Benson to Douglas line. Sotelo has tried to persuade Con States Rail that it would be better if the crossing conformed to the Naco, Ariz., land use plan, which calls for the location east of town in what is now undeveloped desert. The railroad runs parallel to the border on both sides near the proposed crossing. The Mexican line is

for 1 mile. Sotelo has tried to persuade Con States Rail that it would be better if the crossing conformed to the Naco, Ariz., land use plan, which calls for the location east of town in what is now undeveloped desert. The railroad runs parallel to the border on both sides near the proposed crossing. The Mexican line is

From Page 1D
in her own

osing

... continued from Page 1D

Looking at making a bazillion dollars, we have that little strip of land, but his companies — Naco Industrial Development and Valle Realty & Development Co. — would profit.

The railroad crossing were to be built, then it brings in with it a community development plan to build a light industry and downtown revitalization," said Mitchell, project manager for Naco Industrial Development.

Sotelo said he will make his money off the sale of homes and commercial buildings and the light industry and warehouse development. He said he will come from a thriving business in the United States and sell it for sale.

It was the potential for development that prompted the formation of Naco Industrial Development and purchase of the 50 acres at the crossing site, Sotelo and Mitchell said. The land was purchased from a railroad. "We could not come to terms with States Rail who who could not come to terms with States Rail."

States Rail worked with the Naco Industrial Association and Cochise County Planning and Zoning Commission to get to be reasonable with us," Mitchell said. But when the railroad could not obtain the rancher's land in the Dallas, Texas-based company con-

might find itself in the railroad business, Sotelo said. He has explored the option of purchasing the line from States Rail, building his own line or starting up his own railroad.

Sotelo said Naco, Sonora, officials prefer the eastern crossing. Both towns would benefit from the warehouses and light industry that would gather around a new freight crossing. "It's just perfect," he said.

Sotelo sees beyond the freight-hauling business. He wants to launch Copper Canyon excursions and trips to either Juarez or Topolobampo on the Sea of Cortez for sea cruises to Baja California. "This is for our tourist trade, to feed off Kartchner Caverns and Bisbee," he said.

A long-range goal is to build a hotel in Naco, Ariz., to provide high-quality service to tourists served by the train, Sotelo said.

That may be a dream, he admitted. But if the railroad crossing becomes reality, then Bisbee, Sierra Vista, Benson, Tombstone, Douglas, both Nacos, Agua Prieta, Ciénega and other towns in Mexico all will derive benefits from the goods and services moving

Railroad link with Mexico on County's list

DLANE SAUNDERS
Herald/Review

NACO, Ariz. — The west may not be the best — at least for linking railroads from both sides of the international border with Mexico.

The Cochise County Board of Supervisors will consider a letter conveying their endorsement of a plan to connect the railroads on the east side of Naco, Ariz., and Naco, Sonora, Mexico, during a regular meeting at 10 a.m. Monday. The public meeting will be in Building B of the County Complex, 1415 W. Melody Lane, in Bisbee.

Currently, trucks pick up loads from Mexican trucks and haul them to railroad cars. The loaded trucks, carrying copper

and other materials from mines in Mexico, travel a route on Purdy Lane and Bisbee Junction Road. The roads currently have posted 15-ton weight limit signs, but the loaded trucks are believed to weigh more.

Local residents and officials on both sides of the border believe Dallas-based States Rail and Ferro Mexico should be linked at the east side of both communities. This would reduce the risks of shipping hazardous waste through residential neighborhoods, they say.

But States Rail General Manager Tanya Cecil said last week that placement of the railroad connection is out of her hands. Grupo Mexico, which owns the railroad Ferro Mexico, will

See RAILROAD ... Page 9A

Railroad ... continued from Page 1A

make the decision of where to place the connection, Cecil said. She explained executives from States Rail are in "very intense negotiations" with Mexican railroad officials.

Naco, Sonora, City Manager C. Olegu Aparicio Rochin said she, too, prefers the railroads connect on the east side of both communities. She asked that the supervisors give her a signed letter endorsing the east side rail link. She then can present the letter to Mexican officials.

Local developer Charlie Sotelo, who owns 50 acres of land at the proposed east side connection site, told the supervisors last week that the rail connection on the Naco, Ariz., side of the border is only about a third of a mile on the east side of town, with the Mexican connection in Naco, Sonora, "hardly anything at all."

Cecil had told the supervisors the cost of installing new rails is about \$1 million a mile, plus the

cost of the land. The railroad currently has a right-of-way through the west side of Naco, Ariz., although the rails would have to be reinstalled, she said.

Supervisors Chairman Mike Palmer asked Sotelo if he was willing to donate land to the railroad so it can connect with its Mexican counterpart on the east side of both Nacos.

Sotelo said he was willing to consider granting an easement, or even a land donation, "with terms and conditions. We can come up with something if everybody wants to."

That would be a plan that Sixto de la Pena, a Naco, Sonora, physician, could support. He told the supervisors he fears a spill of sulfuric acid, which is often carried in railroad tank cars.

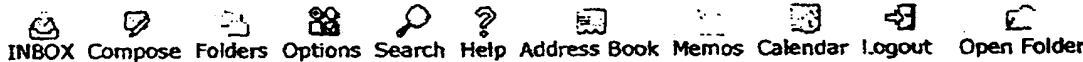
"If we have an accident with sulfuric acid (on the west side of) Naco, Sonora, nobody is going to live to tell about it," he said.

In a related matter, the board will consider eliminating the 15-ton weight limit on Purdy Lane.

Also Monday, the board will set the agenda for the Feb. 7 Board of Supervisors meeting.

EXHIBIT C

Mail :: INBOX: Re: Your Nov. 15 communication

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Print

Date: Tue, 25 Jan 2005 16:38:07 -0600

From:

To:

Subject: Re: Your Nov. 15 communication

Dave:

For you to get an idea, our weakest gateway is Mexicali/Calexico, where we interchange close to 10,000 cars annually. This gateway had a very significant increase in 2004 with 34%. At one time, we were considering closing this gateway because of the low volume but after last year's increase we think we can further develop this border. The next border, Nogales, interchanged almost 46,000 cars in 2004.

I think that it is a good idea to liquidate the land that connects to our track in Naco. I anticipate that there will be problems to open the gateway there and would be easier to get government's approval farther out from the city.

I hope the above gives you a better idea. Let's keep in touch.

Regards,

Rogelio

dave@arizonarg.com wrote:

> Rogelio: Thank you for the status report. Of course, we are disappointed that >Ferromex cannot move ahead with Naco at this point. I have two questions that >will help our future efforts:

> 1. What approximate level of traffic would it take to interest Ferromex in >reopening the Naco Crossing?
> 2. Given the current situation we will likely liquidate the property on the US >side of the border leading to your rails in the center of Naco. That still >leaves us the option to connect east of Naco, which is more politically >acceptable should we wish to pursue the crossing in the future. Are you ok with >that? Best Regards, Dave

>Quoting Rogelio Velez Lopez de la Cerda <rvelez@ferromex.com.mx>:

>

>

>

>>Dave:

>>At this time, we are not considering the opening of a new gateway at >>Naco because the potential volume does not justify investment and >>operating expenses. As you may know, we have just reopened that gateway >>at Ojinaga/Presidio to begin interchanges with the Texas Pacific and >>until we determine success we will not consider another gateway. >>Apache has been in touch with us and we are trying to resolve their >>problems with UP. I have meetings with UP on Jan. 25 and this item is in >>the agenda.

>>I understand that this decision is not what you are expecting but at >>this time this is our position. Let's keep in touch and with an open >>mind to opportunities.

>>Best regards,

>>Rogelio

>>

>>dave@arizonarg.com wrote:

>>

>>

>>

<http://64.92.112.127/horde/imp/message.php?index=642>

1/26/05

VERIFIED STATEMENT
OF DAVID L. PARKINSON

David L. Parkinson, being duly sworn, deposes and states as follows:

1. My name is David L. Parkinson. I am Chairman and Chief Financial Officer of Arizona Rail Group, which owns the San Pedro Railroad Operating Company, Petitioner in this abandonment proceeding. I have read the Verified Opposition of Sonora-Arizona International, Inc. (SAI), submitted in this proceeding and would like to offer the following response.

2. The development of the Port of Guaymus for deep-water container ships is a speculative project at best. It is not even an approved Mexican government project. Moreover, utilizing Guaymas as an alternative container port to the U.S. West Coast ports has been discussed for several years and generally regarded as a non-competitive alternative to the U.S. West Coast container ports. Distances to Guaymus from China and the other Asian Pacific Rim countries are not shorter than U.S. West Coast container ports as claimed in the SAI filing.

3. SAI suggests that Ferromex supports the Naco rail project "contingent upon a lack of objection from the Union Pacific Railroad." SPROC and its predecessor owners of the

San Pedro & Southwestern Railroad worked long and hard to convince the Union Pacific (UP) that a Naco AZ/Sonora rail connection would be viable as an alternative to the UP Nogales AZ crossing. The UP has shown no interest in the Naco rail crossing and as my verified statement to the Chemical Lime Company (CLC) opposition filing proves, Ferromex, in fact, has stated that it cannot support the Naco rail crossing. See the email from a Ferromex official appended to my reply as Exhibit C. In addition, Ferromex and the UP already operate a high quality, high capacity route linking the two countries via Nogales.

4. Speculation that Phelps Dodge and Ford Motor Company would use the Naco rail crossing is unproven and unsubstantiated.

5. SPROC thoroughly researched the rail movement of commodities to the Grupo Mexico mines in northern Sonora. Identifiable commodities that Grupo Mexico was willing to commit to rail via Naco only totaled about 400 carloads per year. Ferromex found this volume far insufficient to consider reopening the Naco rail connection.

6. SPROC thoroughly demonstrates the financial unviability of the line in its reply filing to the CLC opposition filing.

DAVID L. PARKINSON, being duly sworn according to law, hereby deposes and states that (s)he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information and belief.

And. L. Palmieri

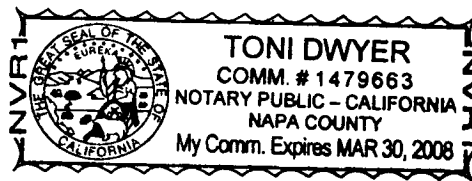
Subscribed and sworn to before me, a Notary Public, in and for
the City of Napa in the State of California this 2nd
day of August 2005

Louis Meyer
Notary Public

Notary Public

My Commission expires:

03.30.2008



CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing reply of San Pedro Railroad Operating Company was served on August 4, 2005, on the following by first-class mail:

Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001

Rusty A. Brewer
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004



John D. Heffner