

CONFIDENTIAL

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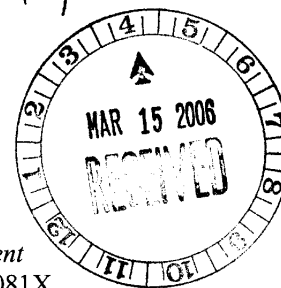
March 15, 2006

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

Confidential Material
Under Seal

MAR 15 2006

Not for Public
Inspection



Re: *San Pedro Railroad Operating Company, LLC – Abandonment
Exemption – In Cochise County, AZ; STB Docket No. AB-1081X*

Dear Sir:

I am enclosing an original and ten (10) copies of the Petition of Sonora-Arizona International LLC for Clarification and for Stay of Effective Date (Confidential Version) in the above referenced proceeding. An extra copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

Thank you for your assistance.

Sincerely,

Charles A. Spitulnik

Enclosure

ND: 4845-4355-2256, Ver 1

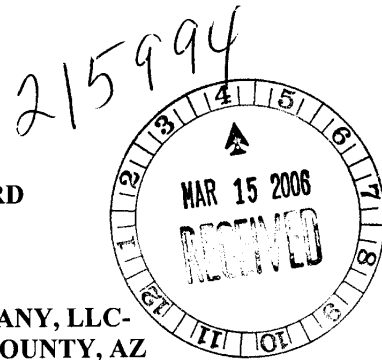
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CONFIDENTIAL VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-1081X
SAN PEDRO RAILROAD OPERATING COMPANY, LLC-
ABANDONMENT EXEMPTION-IN COCHISE COUNTY, AZ**



**PETITION OF
SONORA-ARIZONA INTERNATIONAL LLC
FOR CLARIFICATION AND FOR STAY OF EFFECTIVE DATE**

Communications with respect to this
document should be addressed to:

CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, DC 20001
(202) 842-2345

Counsel for SONORA-ARIZONA
INTERNATIONAL LLC

Filed: March 15, 2006

CONFIDENTIAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-1081X
SAN PEDRO RAILROAD OPERATING COMPANY, LLC-
ABANDONMENT EXEMPTION-IN COCHISE COUNTY, AZ**

**PETITION OF
SONORA-ARIZONA INTERNATIONAL LLC
FOR CLARIFICATION AND FOR STAY OF EFFECTIVE DATE**

Sonora-Arizona International LLC ("Sonora-LLC"), pursuant to 49 C.F.R. § 1117.1, hereby Petitions this Board for (1) clarification of the scope of the abandonment and of the property that is the subject of the Offer of Financial Assistance in this proceeding, and (2) for an extension of the expiration of the period within which the parties should reach an agreement on the terms and conditions for the purchase of the line until after that clarification has been issued.

On October 17, 2005, San Pedro Railroad Operating Company ("SPROC") filed a Petition for Exemption in this proceeding with respect to 76.2 miles of track and railroad right-of-way in Cochise County, AZ, consisting of four segments:

- (1) A 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;
- (2) A 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;
- (3) A 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; and

(4) A segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles.

See Decision served February 3, 2006, STB Docket No. AB-1081X, San Pedro Railroad Operating Company, LLC - - Abandonment Exemption - - In Cochise Co., AZ.

As part of the Petition for Exemption, SPROC filed a statement of the Net Liquidation Value of the Line, coupled. *See* Petition for Exemption, Exhibit F (the "NLV Exhibit"). The NLV Exhibit included statements that total right-of-way involved in the abandonment is 76.2 miles" but that the "track system (including sidings and yards) equals approximately 69.9 miles." NLV Exhibit at 1. While the NLV Exhibit assumed that "all main track assets from MP 7.0 to 67.9 as well as sidings, spurs are owned in fee simple and are the property of San Pedro & Southwestern Railway", the NLV submitted applied to all 76.2 miles, not just the 60.9 miles between MP 7.0 and 67.9. NLV Exhibit at 1. The NLV presented was \$5.4 Million. NLV Exhibit at 12.

SAI filed an Offer of Financial Assistance ("OFA") on February 13, 2006. SAI offered to pay the \$5.4 million NLV that applicants had presented in the Petition for Exemption in exchange for the full 76.2 miles of "track and railroad right-of-way in Cochise County, AZ," that is the subject of that Petition. To comply with the Board's regulations that require an Offeror to pay the greater of the going concern value or the NLV (49 C.F.R. §1152.27(a)(3)), SAI offered to pay the full NLV that SPROC had stated for the 76.2 miles of right-of-way that was subject to the Petition for Exemption.

As part of the negotiation of the terms and conditions for the purchase of the line, SAI provided a draft "Term Sheet" to SPROC on Wednesday March 8, 2006. A copy of that draft term sheet is attached at Tab 1. It included all 76.2 miles and, in addition to other terms that SAI

was prepared to negotiate with SPROC, offered to pay the NLV that SPROC had presented to the STB.

SPROC responded with a revised term sheet that decreased the amount of property to be sold, and increased the price from the NLV presented to the Board. A copy of SPROC's amended term sheet is attached at Tab 2.¹

The price was increased by a value for the real estate, a value that SPROC elected not to include in the NLV it submitted in this proceeding, and by which it is bound. According to previous decisions from this Board:

The Board, like the ICC before it, has historically and repeatedly in its regulations and decisions defined NLV as the value of the physical assets of a line at their highest and best nonrail use and has calculated NLV as the sum of the gross salvage value of rail and track materials, less removal and disposal costs, plus the value of the right-of-way real estate held in fee simple.

STB F.D. No. 34335, *Keokuk Junction Railway Company--Feeder Line Acquisition--Line Of Toledo, Peoria And Western Railway Corporation Between La Harpe And Hollis, IL, slip op.* (Service Date: February 7, 2005). Despite having submitted a description of the NLV in this proceeding that did not include the value of the real estate even though the Boards' definition clearly requires that it be included, SPROC is now attempting to change the terms that grew out of the Petition for Exemption that it filed. In discussions with counsel and between the parties, SPROC made no mention of an increased price or a diminished amount of property.

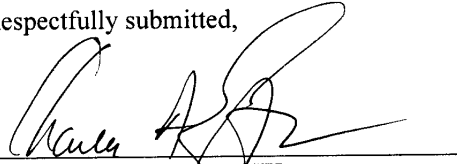
SPROC's actions prevent SAI from taking the next step in the negotiation process. SAI can not even come to this Board and ask for a determination of the terms and conditions for sale pursuant to 49 C.F.R. §1152.27 (h) because SPROC's changes in the description of property

¹ Because SAI has not secured SPROC's consent to disclose the terms that SPROC offered, SAI is designating the SPROC version of the term sheet as Confidential and subject to the Protective Order that governs this proceeding.

available and its attempts to amend the NLV after the fact render the premise for the negotiation uncertain.

WHEREFORE, SAI respectfully requests this Board to (1) require SPROC to clarify the scope and extent of the property that is the subject of the abandonment and therefore properly within the scope of the OFA; and (2) extend the deadline for submission of requests for assistance in determining terms and conditions for the sale pursuant to 49 U.S.C. §10904(e) and 49 C.F.R. §1152.27(h) for a reasonable period beyond the date that the property definition has been clarified.

Respectfully submitted,



CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, DC 20001
(202) 842-2345

Counsel for SONORA-ARIZONA
INTERNATIONAL LLC

Dated: March 15, 2006

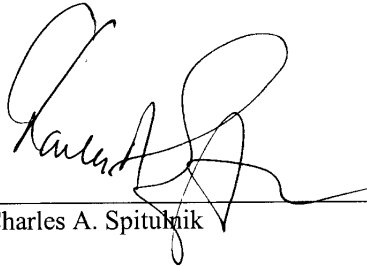
ND: 4842-7223-2960, Ver 1

CONFIDENTIAL

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March 2006, a copy of the foregoing PETITION OF SONORA-ARIZONA INTERNATIONAL, LLC FOR CLARIFICATION AND FOR STAY OF EFFECTIVE DATE (CONFIDENTIAL VERSION) was served by first class mail, postage prepaid, upon:

John D. Heffner, Esq
1920 N Street, N.W.
Suite 800
Washington, DC 20036
Attorney for San Pedro Railroad Operating Company, LLC

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik

ND: 4852-4752-9472, Ver 1

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CONFIDENTIAL

1

CONFIDENTIAL

Term Sheet

Agreement between
Sonora – Arizona International, LLC (“SAI”) and
San Pedro Railroad Operating Company (“SPROC”)

1. Property Description – Map, drawings and track charts to be attached (SPROC to provide all available detailed description of property, including any metes and bounds descriptions that may be available to SPROC, within 5 days of execution of Purchase and Sale Agreement).

Property as described in the SPROC Abandonment application is: approximately 76.2 miles of track and railroad right-of-way in Cochise County, Arizona, consisting of four segments:

- (a) A 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;
- (b) A 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;
- (c) A 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; and
- (d) A segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles.

2. Purchase Price: \$5.4 Million

3. Trackage Rights over the segment of line extending from milepost 1033.008 in Benson, AZ, to milepost 1040.15 in Curtiss, the remaining 7 miles of line owned and/or operated by SPROC. Maps, drawings and track charts to be attached.

- a. Traffic to or from SAI to be delivered at Curtiss at mutually agreed upon interchange point
- b. SPROC to handle all SAI traffic expeditiously and in non-discriminatory manner
- c. Trackage rights not assignable by SPROC without consent of SAI

4. Trackage Rights Fee: \$**TBD** per car mile

- a. All trackage rights fees to be credited towards purchase price of line segment if SPROC elects to sell line segment to SAI

5. Closing: To occur 45 days after execution of Purchase and Sale Agreement

_____ for SPROC
Date: _____
_____ for SAI
Date: _____

DRAFT 03/08/06

SAI – SPROC Term Sheet

Page 2 of 3

6. Condition of property: As is
7. Conditions precedent to closing:
 - a. Completion of HiRail trip
 - b. SPROC to provide Phase I environmental report for review by SAI at least 30 days prior to closing
 - c. Both SAI and SPROC to provide evidence of authority to enter into transaction
 - d. SPROC to provide list and copy of all agreements relating to the line that transfer with the line (easements, leases, etc.) and confirm prior to closing that it has complied with all requirements of those agreements with respect to transfer of ownership of line
 - e. SPROC to provide, within 10 days of closing, detailed drawings (including architectural blueprints if any) of any improvements located on or adjacent to the line that are included in the property being transferred
 - f. SPROC to confirm that execution of Purchase and Sale Agreement, and sale of the line, does not violate any agreement, court order or law to which SPROC is a party or by which it is bound
 - g. SPROC to warrant that no tenant, easement holder or other interested party has a superior right to purchase the property and that all outstanding liens on the property have been extinguished or will be extinguished at the closing
 - h. Both SPROC and SAI to warrant that there is no litigation (including administrative agency proceeding) or investigation pending that would prevent SPROC from selling the line, or SAI from purchasing it
 - i. SPROC to warrant that there are no encroachments on the property from adjoining landholders and that the current use of the property does not encroach on any other adjacent owner's property
 - j. SPROC to warrant that information contained in the historic and environmental reports submitted to the STB are true and remain accurate as of the date of the Closing
8. Right of first refusal: If SPROC elects to sell the 7 mile Curtiss – Benson segment, SAI to have right of first refusal at price to be established, if parties can not agree, by appraisal conducted by mutually agreed upon appraiser
9. Liability and Indemnification:
 - a. SPROC to hold SAI harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including

_____ for SPROC
Date: _____

_____ for SAI
Date: _____

DRAFT 03/08/06

SAI – SPROC Term Sheet

Page 3 of 3

environmental degradation of or caused by use of the property) on or before the closing date

- b. SAI to hold SPROC harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including environmental degradation of or caused by use of the property) after the closing date.

10. Insurance: SPROC to maintain current insurance that covers the line in effect until closing

11. Closing:

- a. SPROC to provide grant deed to SAI.
- b. SAI to wire transfer funds to account designated by SPROC
- c. Parties to execute Trackage Rights Agreement at closing
- d. SPROC to deliver executed assignments of all leases, agreements, easements relating to the line, such assignment to include where necessary the consent of the other party to the agreement.
- e. SPROC to deliver assignment of any warranties related to the line or to materials attached to it or structures on the line.
- f. Each party to provide resolutions of Board of Directors or of shareholders if an LLC, certified by the corporate secretary, that confirm corporate authorization to enter into the transactions
- g. Each party to provide opinion of counsel that corporation is duly authorized to enter into the transactions, that all regulatory approvals have been received, and that the transactions are otherwise within the authority of the corporation and in compliance with all applicable laws

12. Risk of Loss: Prior to closing remains with SPROC

ND: 4830-9520-6144, Ver 1

____ for SPROC
Date: _____

____ for SAI
Date: _____

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Term Sheet

Agreement between
Sonora – Arizona International, LLC (“SAI”) and
San Pedro Railroad Operating Company (“SPROC”)

1. Property Description – Map, drawings and track charts to be attached (SPROC to provide all available detailed description of property, including any metes and bounds descriptions that may be available to SPROC, within 5 days of execution of Purchase and Sale Agreement).

Property as partially described in the SPROC Abandonment ~~application~~ petition is: approximately ~~76.2~~ 60.9 miles of track and railroad right-of-way in Cochise County, Arizona, consisting of four segments:

~~(a) — A 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; No track on this segment; no railroad locally assessed property.~~

~~(b) — A 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; No track on this segment; no railroad locally assessed property.~~

~~(ae) A 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; and~~

~~(bd) A segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles.~~

Only operational right-of-way described as centrally valued property for tax purposes is included in the sale. Locally assessed non-operational property is retained by Seller.

2. Purchase Price: ~~\$5.4~~ \$5.65 Million consisting of \$5.4 million in track and OTM; \$.25 million (\$250,000) in operating right-of-way.

3. Haulage ~~Trackage~~ Rights over the segment of line extending from milepost 1033.008 in Benson, AZ, to milepost 1040.15 in Curtiss, the remaining 7 miles of line leased ~~owned~~ and/or operated by SPROC. Maps, drawings and track charts to be attached.

- a. Traffic to or from SAI to be delivered at Curtiss at mutually agreed upon interchange point
- b. SPROC to handle all SAI traffic expeditiously and in non-discriminatory manner
- c. Haulage ~~Trackage~~ rights not assignable by SPROC without consent of SAI

4. Haulage ~~Trackage~~ Rights Fee: \$TBD per car mile

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- a. All ~~haulage~~ ~~trackage~~ rights fees to be credited towards purchase price of leased line segment if SPROC elects to ~~sell~~ transfer leased line segment to SAI
5. Closing: To occur 45 days after execution of Purchase and Sale Agreement
6. Condition of property: As is, where is.
7. Conditions precedent to closing: Due diligence completed within 30 days of signing term sheet agreement.
 - a. Completion of HiRail trip
 - b. SPROC to provide Phase I existing environmental report dated _____ for review by SAI at least 30 days prior to closing
 - c. Both SAI and SPROC to provide evidence of authority to enter into transaction
 - d. SPROC to provide list and copy of all agreements relating to the line that transfer with the line (easements, leases, etc.) and confirm prior to closing that it has complied with all requirements of those agreements with respect to transfer of ownership of line. SAI to obtain Union Pacific consent to transfer of ground easement for line segment (b), if required.
 - ~~e. SPROC to provide, within 10 days of closing, detailed drawings (including architectural blueprints if any) of any improvements located on or adjacent to the line that are included in the property being transferred. None exist.~~
 - f.e. SPROC to confirm that execution of Purchase and Sale Agreement, and sale of the line, does not violate any agreement, court order or law to which SPROC is a party or by which it is bound
 - g.f. SPROC to warrant that no tenant, easement holder or other interested party has a superior right to purchase the property and that all outstanding liens on the property have been extinguished or will be extinguished at the closing. Property may be subject to reversionary rights.
 - h.g. Both SPROC and SAI to warrant that there is no litigation (including administrative agency proceeding) or investigation pending that would prevent SPROC from selling the line, or SAI from purchasing it
 - i.h. SPROC to warrant that there are no encroachments on the property from adjoining landholders and that the current use of the property does not encroach on any other adjacent owner's property. As is, where is.
 - j.i. SPROC to warrant that information contained in the historic and environmental reports submitted to the STB are true and remain accurate as of the date of the Closing
8. Right of first refusal: If SPROC elects to transfer lease agreement with the consent of the UP, sell to the 7 mile Curtiss – Benson segment, SAI to have right of first refusal at price to be established, if parties can not agree, by business appraisal conducted by mutually agreed upon business appraiser

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FILED UNDER PROTECTIVE ORDER

9. Liability and Indemnification:

- a. SPROC to hold SAI harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including environmental degradation of or caused by use of the property) on or before the closing date with SPROC's liability limited to one year and \$50,000.
- b. SAI to hold SPROC harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including environmental degradation of or caused by use of the property) after the closing date.

10. Insurance: SPROC to maintain current insurance that covers the line in effect until closing

11. Closing:

- a. SPROC to provide ~~grant~~ quit claim deeds to SAI.
- b. SAI to wire transfer funds to account designated by SPROC
- c. Parties to execute Haulage ~~Trackage~~ Rights Agreement at closing
- d. SPROC to deliver executed assignments of all leases, agreements, easements relating to the line, such assignment to include where necessary the consent of the other party to the agreement. If UP consent required for line segment (b), SAI shall obtain.
- e. SPROC to deliver assignment of any warranties related to the line or to materials attached to it or structures on the line.
- f. Each party to provide resolutions of Board of Directors or of shareholders if an LLC, certified by the corporate secretary, that confirm corporate authorization to enter into the transactions
- g. Each party to provide opinion of counsel that corporation is duly authorized to enter into the transactions, that all regulatory approvals have been received, and that the transactions are otherwise within the authority of the corporation and in compliance with all applicable laws

12. Risk of Loss: Prior to closing remains with SPROC

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FILED UNDER PROTECTIVE ORDER