

JOHN D. HEFFNER, PLLC
1920 N STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

ORIGINAL



BY HAND

June 2, 2006

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

216771

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad
Limited Liability Company
Abandonment Exemption

FEE RECEIVED
JUL 1 - 2 2006
SURFACE
TRANSPORTATION BOARD

Dear Mr. Williams:

On behalf of New Mexico Gateway Railroad Limited Liability Company ("NMGR"), I am enclosing for filing in the above-captioned proceeding an original and ten copies of a Notice of Exemption for abandonment of a rail line. I am also enclosing a filing fee check for \$3,100 as well as a copy of this filing on a disk formatted in MS Word. Also note that some of the documents accompanying this filing variously refer to the Applicant as New Mexico Gateway Railroad, LLC, or New Mexico Gateway Railroad, Limited Liability Company. The correct name is "New Mexico Gateway Railroad Limited Liability Company."

Please date stamp and return one copy of this notice and transmittal letter.

Sincerely yours,


John D. Heffner

FILED

JUN 14 2006

SURFACE
TRANSPORTATION BOARD

Enclosures:

cc: Jay Kleberg

BEFORE THE
SURFACE TRANSPORTATION BOARD

216771

STB DOCKET NO. AB-995X
NEW MEXICO GATEWAY RAILROAD
LIMITED LIABILITY COMPANY
—ABANDONMENT EXEMPTION—

NOTICE OF EXEMPTION
UNDER 49 CFR 1152.50

ENTERED
Office of Proceedings

JUN 15 2006

Part of
Public Record

FEE RECEIVED

JUN - 2 2006

SURFACE
TRANSPORTATION BOARD

FILED

JUN 14 2006

SURFACE
TRANSPORTATION BOARD

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

Attorney for Verde Intermodal
Railroad, LLC, on behalf of
New Mexico Gateway Railroad
Limited Liability Company

Dated: June 2, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-995X
NEW MEXICO GATEWAY RAILROAD
LIMITED LIABILITY COMPANY
—ABANDONMENT EXEMPTION—

NOTICE OF EXEMPTION
UNDER 49 CFR 1152.50

Pursuant to the Board's regulations at 49 CFR 1152.50, Verde Intermodal Railroad, LLC ("Verde") files this Notice of Exemption on behalf of New Mexico Gateway Railroad Limited Liability Company ("NMGR") so that NMGR may discontinue service over and abandon NMGR's common carrier obligation, if any, over an out-of-service line of railroad serving an industrial park at Santa Teresa, NM. The subject line consists of approximately 4,000 feet of track in Dona Ana County, NM. The Line traverses United States Postal Service Zip Code 88008. A map showing the subject line is attached as Exhibit A. Because the line has never handled any common carrier rail freight since its original construction as a private sidetrack back in 2001, this abandonment is exempt from regulation under 49 CFR 1152.50.

Background And Explanation

This abandonment notice of exemption presents a novel situation. Simply stated, Verde seeks to terminate the common carrier obligation (if any) of a noncarrier, NMGR, which was authorized to commence service as a class III short line railroad to serve a new industrial park at Santa Teresa, NM, but never consummated that authority or instituted service. Verde files this request so that the Union Pacific Railroad ("UP") may serve the subject track as a industrial track pursuant to a standard industry sidetrack agreement. So that Verde may utilize the exemption procedures of 49 CFR 1152.50 to accomplish this abandonment, it has obtained a letter from the industrial park's former owner, Santa Teresa Real Limited Partnership ("STLP"), "authorizing Verde to appear before the Board on behalf of NMGR with full power and authority to terminate NMGR's STB operating authority..." A copy of that letter is attached to this filing.

As background information, STLP originally intended to construct about 10,000 feet of railroad track to serve an industrial park it was building at Santa Teresa, NM, near El Paso, TX. STLP originally constructed the subject track as private-owned trackage outside STB jurisdiction but, part way through the project, felt that it would be cheaper to utilize a common carrier short line railroad to serve the facility than to

use the connecting line haul railroad, UP, to provide service or operate the track itself. Accordingly, STLP established NMGR to act as a class III short line common carrier railroad for the purpose of serving its Santa Teresa facility and NMGR sought an exemption from the Board to operate this facility.¹ STLP never completed construction of all of the industrial trackage it intended to build and NMGR never consummated the operating authority it obtained. In October 2004, Verde acquired STLP's physical assets at the Santa Teresa industrial park but did not acquire either NMGR or its common carrier rights and obligations, if any. Verde is now completing construction of the industrial park and has been contacted by tenants or potential tenants seeking rail service. Verde desires to extinguish any common carrier obligation that NMGR could have acquired and to arrange to have UP serve the customers. Verde files this abandonment exemption to accomplish that result.

Verde recognizes that Board precedent limits the use of exemption filings to rail carriers subject to its jurisdiction. See, Wisconsin Department of Transportation-Abandonment Exemption, FD No. 31303 (served Dec. 5, 1988). While Verde could obtain the result it seeks (extinguishing NMGR's common carrier authority) by filing an adverse abandonment or

¹ STB FD No. 34103, New Mexico Gateway Railroad, LLC - Operation Exemption- Santa Teresa Limited Partnership Rail Terminal (slip op. served October 29, 2001).

discontinuance application as the former Interstate Commerce Commission suggested that the Wisconsin Department of Transportation might do,² such a requirement here elevates form over substance. The Board's requirements for an application are much more onerous than those for any sort of exemption filing and the application filing fee is roughly five times that for a class exemption notice. Accordingly, Verde submits that no public purpose would be served by requiring this abandonment to be initiated by means of an "adverse abandonment application."

Furthermore, the Board has on occasion allowed a party to file an abandonment request on behalf of another upon presentation of an appropriate power of attorney authorizing that party to act for the other. Verde submits as an attachment to this filing a letter from NMGR's corporate affiliate Santa Teresa authorizing it to act on behalf and in the name of NMGR.

In accordance with the aforesaid regulation, Verde makes the following assertions:

1. Proposed consummation date.

The proposed consummation date of this abandonment will be at least 50 days from the filing date.

2. Certification required in Section 1152.50(b).

² Id. at 6.

The required certification by Verde on behalf of NMGR as well as by a former representative of NMGR are set forth as Exhibit B to this Notice of Exemption.

3. 49 CFR 1152.22(a)(1): Exact name of applicant.

The exact name of the applicant is Verde Intermodal Railroad, LLC, acting on behalf of the New Mexico Gateway Railroad Limited Liability Company.

4. 49 CFR 1152.22(a)(2): Common carrier status.

Because NMGR never consummated the operating authority it acquired in 2001, Verde does not believe that NMGR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. However, Verde is submitting this abandonment notice out of caution in the event that the Board deems Verde a common carrier railroad. Verde is a nonrailroad party that acquired the physical assets over which NMGR would conduct its business as a common carrier railroad. At the time Verde acquired these assets, it did not realize that it might have to seek Board authorization to acquire rail assets, assuming that NMGR was a common carrier in the first place. Any failure to seek Board operating authority was inadvertent and should be excused.

5. 49 CFR 1152.22(a)(3): Relief sought.

Verde on behalf of NMGR seeks authority to discontinue rail service over and abandon the common carrier authority, if

any, associated with the subject line. Verde intends for the Union Pacific Railroad to provide service over this line under a standard industry sidetrack agreement.

6. 49 CFR 1152.22(a)(4): Detailed map.

A detailed map of the subject line in accordance with the requirements of 49 CFR 1152.22(a)(4) is attached hereto as Exhibit A.

7. 49 CFR 1152.22(a)(7): Representative information.

The name, title, and address of Verde's and NMGR's representative to whom all correspondence should be sent is:

John D. Heffner
John D. Heffner, PLLC
Suite 800
1920 N Street N.W.
Washington, D.C. 20036

8. 49 CFR 1152.22(a)(8): U.S. zip code (s).

The Line traverses United States Postal Service Zip Code 88008.

9. 49 CFR 1152.22(e)(4): Public use/property interests.

Applicant does not believe the subject line's right-of-way is suitable for alternative public use as it will continue to function as a rail line, albeit as an exempt industrial spur. Applicant is not aware of any restriction on title to the property, including any reversionary interest that

would affect the transfer of title or the use of property for other than rail purposes.

10. Federally granted right-of-way.

To the best of Applicant's knowledge, the right of way does not consist of any federally granted lands. Any documentation in the railroads' possession shall be made available promptly to those requesting it.

11. The level of labor protection.

No labor protection applies as this proceeding involves abandonment of NMGR's entire railroad and NMGR never consummated the operating authority it received back in 2001 and has never hired any railroad operating employees.

12. Certificate of compliance with the notice requirements of Section 1152.50(d)(1) and 1105.11 and the newspaper publication requirements of Section 1105.12.

The required certificates are set forth as Exhibits C-1 through C-3 to this Notice of Exemption.

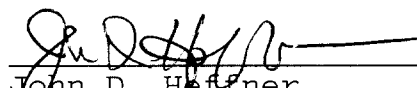
13. Environmental and Historic Reports.

A combined Environmental and Historic Report is attached to this Notice of Exemption.

14. Verification

The required verifications (by both Verde on behalf of NMGR and by a former NMGR representative) are set forth as Exhibit D to this Notice of Exemption.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John D. Heffner", is written over a horizontal line.

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

Counsel

Dated: June 2, 2006



May 8, 2006

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W., Suite 800
Washington, D.C. 20036

RE: Abandonment of New Mexico Gateway Railroad rail line

Dear Mr. Heffner:

I am writing at your request and at the request of Verde Realty (Verde) in connection with the abandonment of the New Mexico Gateway Railroad Limited Liability Company (NMGR) trackage at Santa Teresa, NM. I am writing in my capacity as a representative of the Santa Teresa Limited Partnership (STLP), which sold a certain industrial park including railroad rights of way and track at Santa Teresa, NM, to Verde.

On or about October 2004 STLP sold Verde an industrial park with railroad trackage located thereon at Santa Teresa, NM. As part of its development of this facility, STLP had planned to construct about ten thousand feet of railroad trackage to serve customers located inside its facility. STLP established NMGR as an affiliated short line railroad to operate that trackage. NMGR obtained authority from the federal Surface Transportation Board to operate as a common carrier railroad serving those customers located inside STLP's industrial park. Before STLP could complete the track construction and NMGR could implement the start up of service, STLP sold the industrial park, rights of way and tracks to Verde.

It is my understanding that Verde intends to complete construction of the railroad facilities but that it desires that the Union Pacific Railroad operate those facilities directly, rather than through NMGR. Accordingly, Verde has requested that I furnish this letter in support of the request by NMGR to the Board to abandon the railroad operating authority NMGR had previously obtained.

John D. Heffner, Esq.

May 8, 2006

Page 2

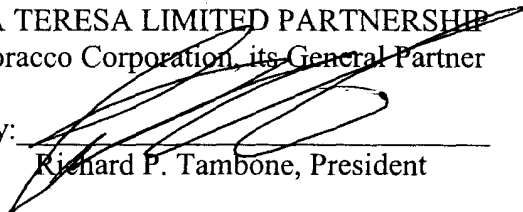
By this letter, I am authorizing Verde to appear before the Board on behalf of NMGR with full power and authority to seek to terminate NMGR's STB operating authority originally granted by the Board on October 29, 2001, in FD No. 34103, to operate as a railroad common carrier.

Please do not hesitate to contact me if you need further assistance.

Very truly yours,

~~SANTA TERESA LIMITED PARTNERSHIP~~

By: ~~Soracco Corporation, its General Partner~~

By: 

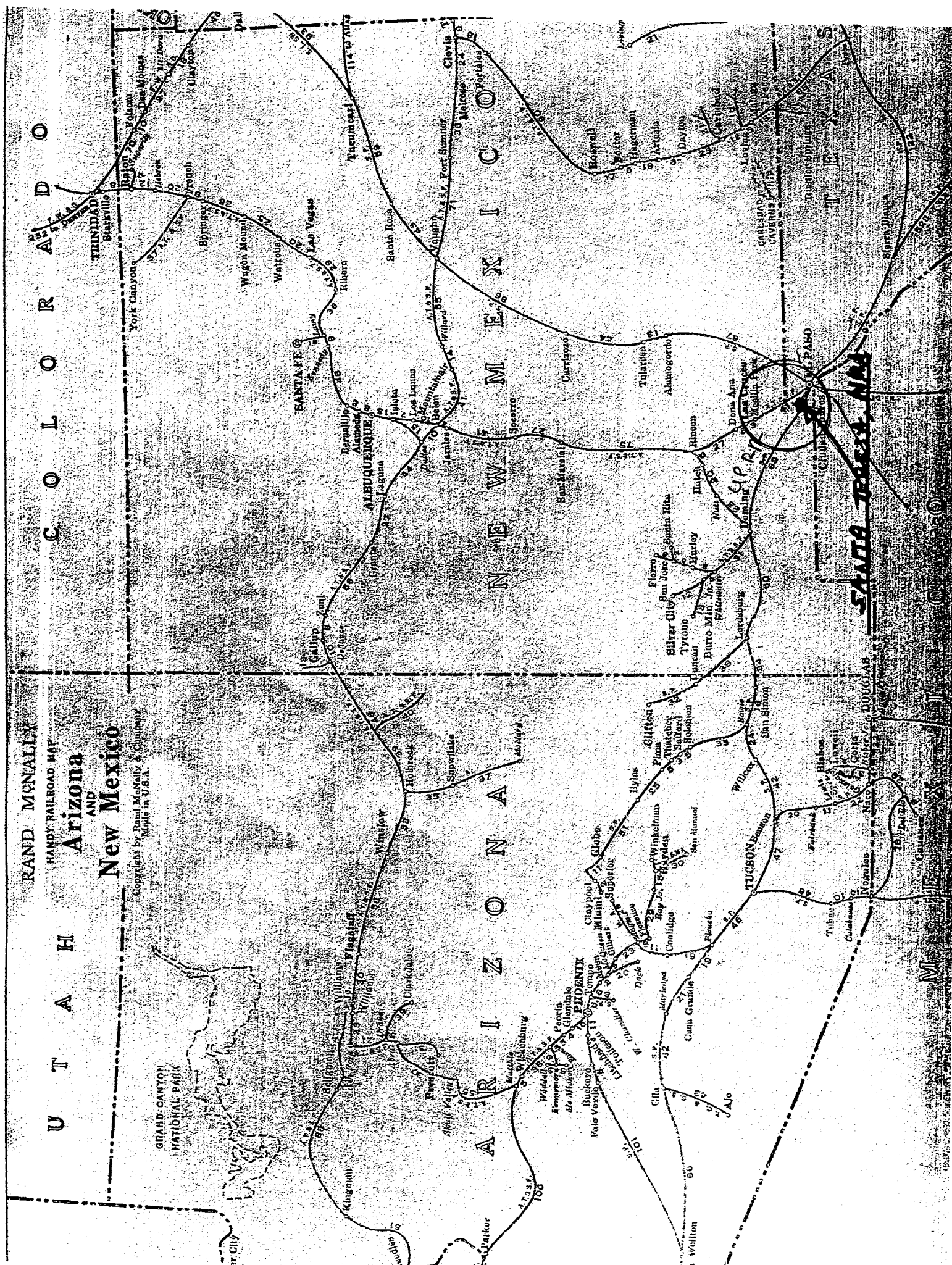
Richard P. Tambone, President

EXHIBIT A

UTAH
AND
ARIZONA
AND
NEW MEXICO

RAND McNALLY
HANDY RAILROAD MAP
Copyright by Rand McNally & Company
Made in U.S.A.

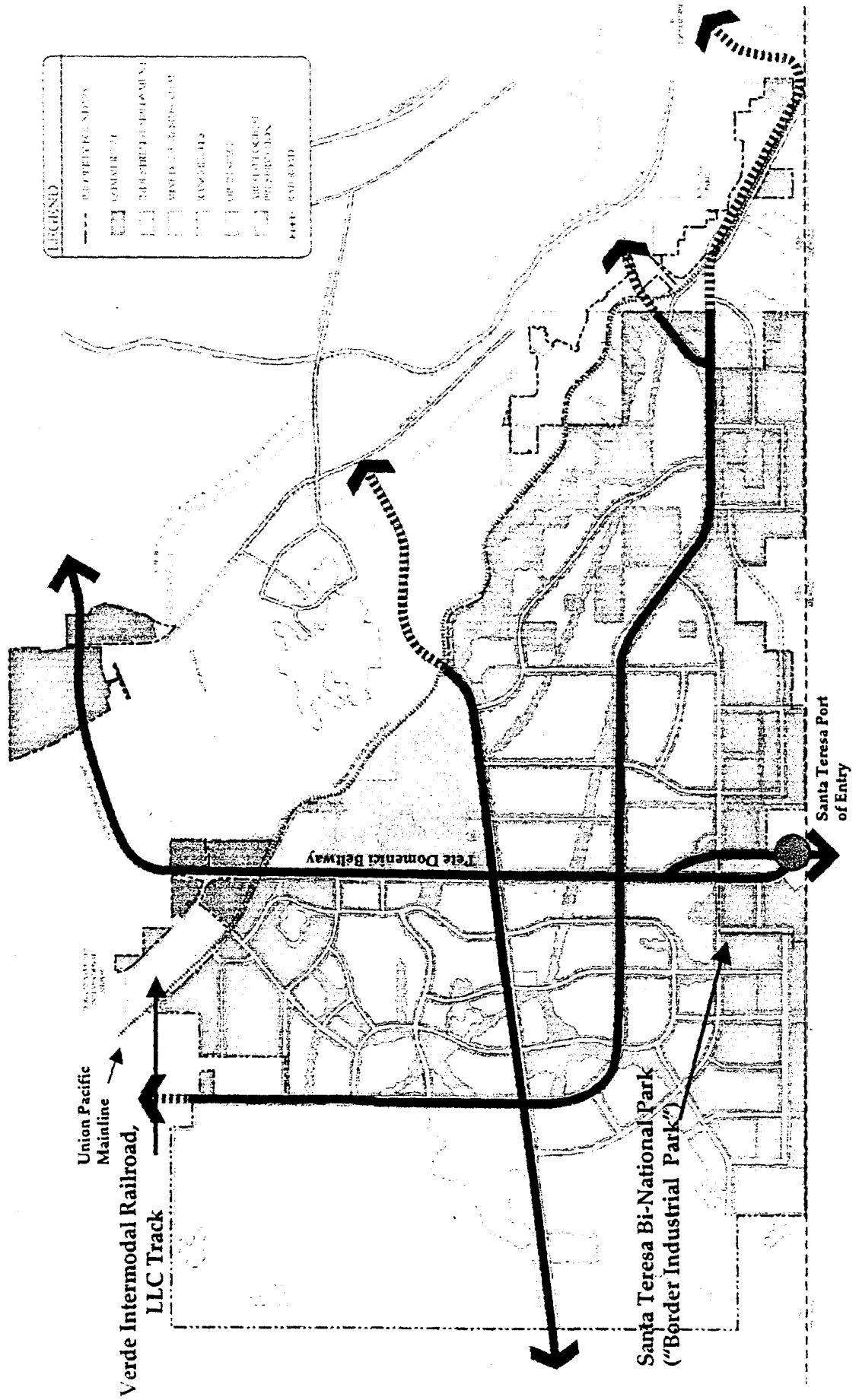
GRAND CANYON
NATIONAL PARK

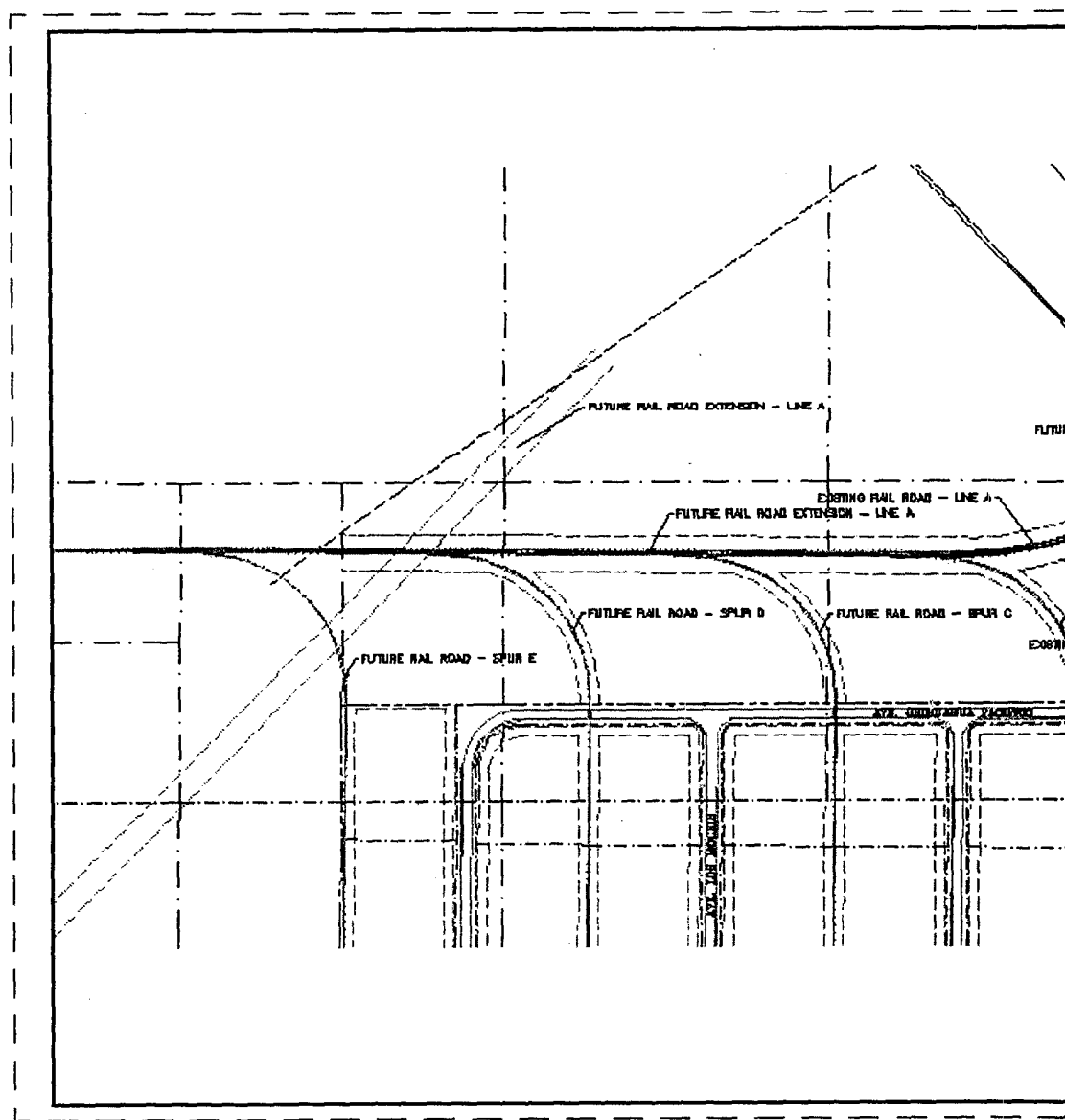


SANTA FE RAILWAY



Santa Teresa Intermodal Railroad, LLC





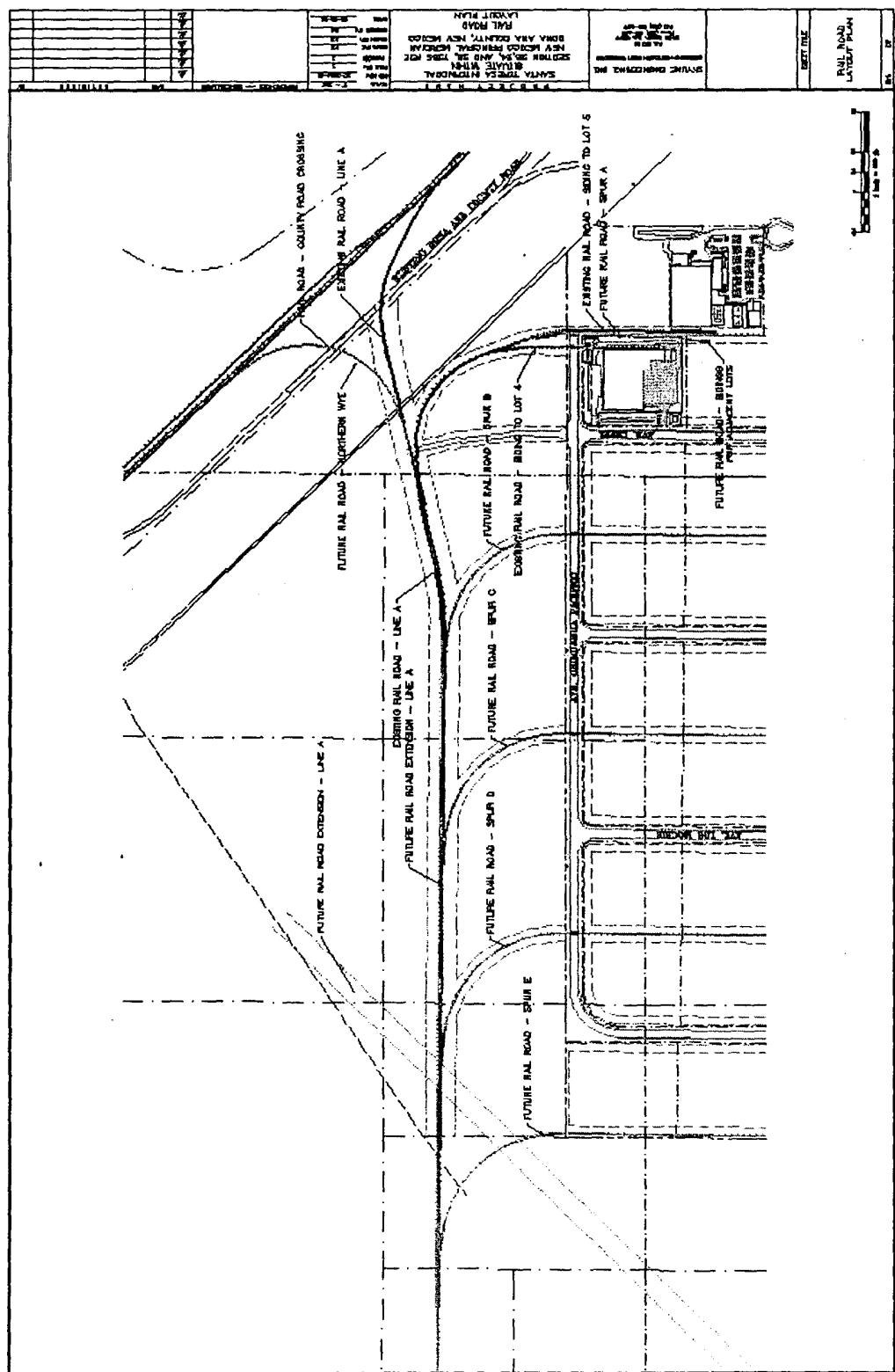


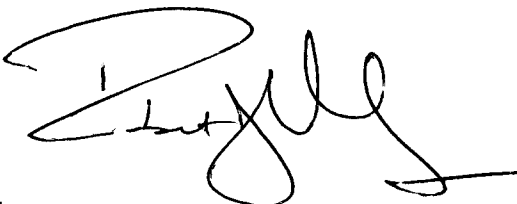
EXHIBIT B

CERTIFICATION REQUIRED
IN 49 C.F.R. SECTION 1152.50(b)

In accordance with 49 C.F.R. Section 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket No. AB-995X:

(1) no traffic has moved over the line for at least two years prior to the date hereof and any overhead traffic on the line can be rerouted over other lines and (2) no formal complaint filed by a user of rail service on the line (or state or local governmental agency acting on behalf of such a user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two year period prior to the date hereof. The foregoing certification is made on behalf of New Mexico Gateway Railroad, LLC, by the undersigned after due and careful investigation of the matters herein certified and based on the best knowledge, information and belief of the undersigned.

Mr. Jay Kleberg

A handwritten signature in black ink, appearing to read 'Jay Kleberg', written over a horizontal line.

Dated:

5/19/06

EXHIBIT B

**CERTIFICATION REQUIRED
IN 49 C.F.R. SECTION 1152.50(b)**

In accordance with 49 C.F.R. Section 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket No. AB-995X: (1) no traffic has moved over the line for at least two years prior to the date hereof and any overhead traffic on the line can be rerouted over other lines and (2) no formal complaint filed by a user of rail service on the line (or state or local governmental agency acting on behalf of such a user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two year period prior to the date hereof. The foregoing certification is made on behalf of New Mexico Gateway Railroad Limited Liability Company, by the undersigned after due and careful investigation of the matters herein certified and based on the best knowledge, information and belief of the undersigned.

NEW MEXICO GATEWAY RAILROAD LIMITED LIABILITY COMPANY

By: SANTA TERESA LIMITED PARTNERSHIP, its Managing Member

By: SORACCO CORPORATION, its General Partner

By: 
Richard P. Tambone, President

Dated:

EXHIBIT C-1

CERTIFICATE OF COMPLIANCE
WITH NOTICE REQUIREMENTS OF
49 C.F.R. 1152.50(d)(1)

In accordance with 49 C.F.R. 1152.50(d)(1), I hereby
certify that:

On May 19, 2005 (at least 10 days before a notice of
exemption was filed), I caused to be served by U.S. Mail (first
class postage prepaid) written notice of intent by New Mexico
Gateway Railroad, LLC, to discontinue service over, and abandon,
a line of railroad upon the following:

New Mexico Public Regulatory Commission
P.E.R.A. Building
1120 Paseo De Peralta
P.O. Box 1269
Santa Fe, NM 87501

National Park Service
National Center for
Recreation and Conservation
1849 C Street, N.W.
Org. Code 2220
Washington, DC 20240

Chief USDA Forest Service
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Mr. Ted Hale
MTMCTEA
720 Thimble Shoals Blvd.
Suite 130
Newport News, VA 23606-2574

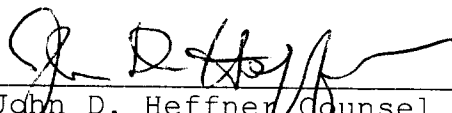

John D. Heffner Counsel

EXHIBIT C-2

CERTIFICATE OF COMPLIANCE
WITH NOTICE REQUIREMENTS OF
49 C.F.R. 1105.11

In accordance with 49 C.F.R. 1105.11, I hereby certify that on May 9, 2006 (at least 20 days before a notice of exemption is filed), I caused to be served by U.S. Mail (first class postage prepaid) a combined Environmental and Historic Report of New Mexico Gateway Railroad, LLC, upon the following agencies:

Director of Community Planning, Dona Ana County, Las Cruces, NM
U.S. Natural Resource Conservation Service, Albuquerque, NM
U.S. Fish and Wildlife Service, Albuquerque, NM
National Park Service, Denver, CO
U.S. Environmental Protection Agency, Dallas, TX
New Mexico Environment Department, Santa Fe, NM
U.S. Army Corps of Engineers, Albuquerque, NM
U.S. National Geodetic Survey, Silver Spring, MD
New Mexico Department of Transportation, Santa Fe, NM
State Clearinghouse, State of New Mexico, Santa Fe, NM
New Mexico Historic Preservation Division, Santa Fe, NM



John D. Heffner
Counsel

EXHIBIT C-3

CERTIFICATE OF COMPLIANCE WITH THE
NEWSPAPER PUBLICATION REQUIREMENTS OF
SECTION 49 CFR 1105.12

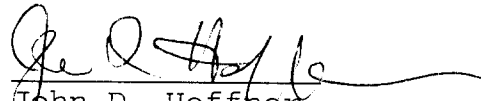
The undersigned further certifies that a "Notice of Intent to Discontinue Rail Service and Abandon" was published in the form prescribed by the Board for out of service abandonment exemptions. The notice was published one time in a newspaper of general circulation serving the county in which the Line is located as follows:

County
Dona Ana County

Newspaper
The El Paso Times

Date
May 25, 2006

Respectfully submitted,


John D. Heffner
Counsel

PUBLISHERS AFFIDAVIT

VERDE REALTY

STATE OF TEXAS
COUNTY OF EL PASO

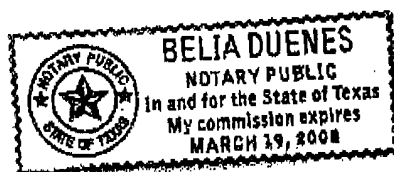
Before me, a Notary Public in and for El Paso County, State of Texas, on this day personally appeared TERRIE CARTER who state upon oath that he is the CLASSIFIED SUPERVISOR of the El Paso Times, a daily newspaper published in the City and County of El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he was such upon the dates herein mentioned:

That the LEGAL copy was published in the El Paso Times for the ONE DAY. The dates of such publication being as follows, to wit MAY 25, 2006

Subscribed and sworn to before me, Signed Jennie M. Carter

This the 25th day of MAY 2006

Belia Duenes



NOTICE TO BE PLACED IN A NEWSPAPER OF GENERAL CIRCULATION SERVING DONA ANA COUNTY

Verde Intermodal, Inc. ("Verde"), acting on behalf of New Mexico Gateway Railroad, LLC ("NMGR") gives notice that on or after May 29, 2006, it intends to file with the Surface Transportation Board, Washington, D.C. 20423, a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments permitting the abandonment of an out-of-service line of railroad located at Santa Teresa, NM. The line traverses United States Postal Service Zip Code 88008. NMGR's notice has been docketed as STB Docket Number AB-995X.

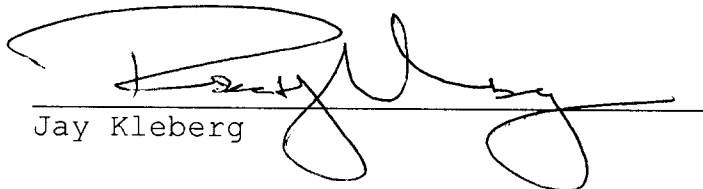
The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to Section of Environmental

Number AB-995X.
The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling SEA at 202-565-1548.
Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trail use, public use, and offers of financial assistance) must be filed with the Board's Office of the Secretary, 1925 K Street, NW, Washington, DC 20423 (See 49 CFR 1104.1(a) and 1104.3(a)), and one copy must be served on applicant's representative (See 49 CFR 1104.12(a)). Questions regarding offers of financial assistance, public use or trail use may be directed to the Board's Office of Congressional and Public Services at 202-565-1594. Copies of any comments or requests for conditions should be served on the applicant NMGR's representative: John D. Heffner, PLLC, 1920 N Street, NW, Suite 800, Washington, DC 20036.

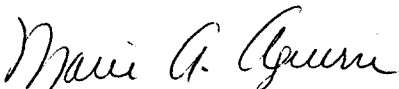
EXHIBIT D

VERIFICATION

Jay Kleberg, being duly sworn, states that he represents Verde Intermodal Railroad, LLC, appearing on behalf of New Mexico Gateway Railroad, LLC; that he is authorized to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in Docket No. AB-995 on behalf of New Mexico Gateway Railroad, LLC; that he has examined all of the statements in the Notice of Exemption; that he has knowledge of the facts and matters relied upon in the Notice of Exemption; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


Jay Kleberg

Subscribed and sworn to before me,
a Notary Public in and for the State
and County above name, this
day of May 19, 2006.

Notary Public 

My Commission expires: 3-17-2009

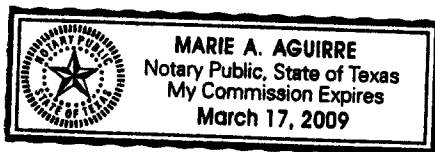


EXHIBIT D

VERIFICATION

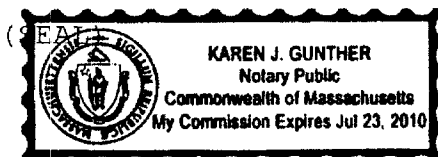
Richard P. Tambone, being duly sworn, states that he appears on behalf of New Mexico Gateway Railroad Limited Liability Company; that New Mexico Gateway Railroad Limited Liability Company, is authorized to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in Docket No. AB-995; that he has examined all of the statements in the Notice of Exemption; that he has knowledge of the facts and matters relied upon in the Notice of Exemption; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.

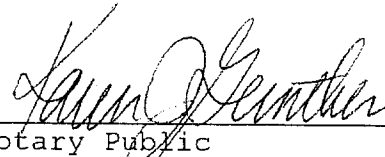


Richard P. Tambone

County of Middlesex
Commonwealth of Massachusetts

On this 2nd day of June, 2006, before me, the undersigned notary public, personally appeared Richard P. Tambone, who proved to me through satisfactory evidence of identification which was personal knowledge, to be the person whose name is signed on this document and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.





Notary Public
My Commission expires: 7/23/2010

COMBINED ENVIRONMENTAL AND HISTORIC REPORT

Environmental Issues

The following information is provided in accordance with 49 C.F.R. § 1105.7:

Background And Explanation

By a verified notice of exemption filed with the Board on June 2, 2006, pursuant to 49 CFR 1152.50, Verde Intermodal Railroad, LLC ("Verde" or "Applicant") seeks authority on behalf of New Mexico Gateway Railway Limited Liability Company ("NMGR") to discontinue service over and abandon a rail line originally authorized for operation by NMGR on October 29, 2001, in STB FD No. 34103. NMGR has provided Verde with a power of attorney authorizing it to act on its behalf in a letter to be filed with that notice of exemption.

As is explained in more detail below and in the notice of exemption, NMGR was established by Santa Teresa Limited Partnership ("STLP") for the purpose of serving an industrial park it was building at Santa Teresa, NM, as a class III short line common carrier railroad. STLP never completed construction of all of the industrial trackage it intended to build and NMGR never consummated the operating authority it obtained in STB FD No. 34103 to operate the subject trackage. In October 2004, Verde acquired STLP's physical assets at the industrial park at Santa Teresa but did not acquire either NMGR or its common

carrier rights and obligations. Verde is completing construction of the industrial park and has been contacted by tenants or potential tenants seeking rail service. Verde desires to extinguish any common carrier obligation that NMGR could have acquired (Verde does not believe one was acquired) and to arrange to have the Union Pacific Railroad Company ("UP") serve customers using this trackage as "exempt" industrial trackage under 49 U.S.C. 10905.

(1) Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Applicant proposes to discontinue its common carrier service over and abandon a short segment of track located in Santa Teresa, NM. The subject trackage does not have any milepost numbers and consists of approximately 4,000 feet of lead track and sidings extending off UP's Los Angeles to El Paso, TX, mainline. As noted above, the purpose of this abandonment filing is to change the status of the subject trackage from a "line of railroad" subject to Board entry and exit jurisdiction under 49 U.S.C. 10901 and 10903-4 to "exempt" industrial, spur, or switch trackage under 49 U.S.C. 10905. UP will replace NMGR as the serving carrier and will provide

common carrier rail service for those customers that chose to locate on the subject trackage pursuant to its tariffs, exempt rate quotations, and rail transportation contracts. There is no plan to salvage or remove the trackage. NMGR has not provided any transportation for compensation over the subject trackage since the track was constructed.

The only alternative to this action would be to require Verde to acquire NMGR's common carrier rights and obligation by filing an exemption for acquisition and operation of a rail line and for Verde instead of UP to provide service as a common carrier. Verde believes that this would not be a prudent utilization of its resources.

(2) Transportation System

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

Applicant anticipates that the proposed action will have no effect on regional or local transportation systems or patterns and will result in no diversion of traffic to other transportation modes or systems. There has been no rail traffic on the subject line for more than two years and therefore there is no traffic to divert.

(3) Land Use

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

Applicant believes that the proposed action will not be inconsistent with local land use plans. On May 9, 2006, Verde acting on behalf of itself and NMGR contacted officials in Dona Ana County, seeking information as to the current land use plans for that jurisdiction. (Attachment 1). Applicant will provide SEA with copies of replies by local land use officials as soon as they are received. To date, none have been received.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

On May 9, 2006, Verde acting on behalf of itself and NMGR contacted the appropriate National Resources Conservation Service Office (NCRS).¹ (Attachment 2). On May 17, 2006, NCRS replied advising that there are no prime farmlands or soils of statewide importance in the project area and that it has no objections to the proposed action. A copy of its response is submitted as Attachment 2-A.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

¹ Formerly the U.S. Soil Conservation Service.

Because the subject trackage is inland, this provision is inapplicable.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

The subject line's right-of-way is not suitable for alternative public use because it will be retained for continued rail service as "exempt" industrial trackage under 49 U.S.C. 10905.

(4) Energy

(i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

The proposed abandonment will have no effect on the transportation of energy resources because no revenue traffic has ever moved over the subject line since it was built. There will be no effect on the transportation of recyclables because no recyclables have ever moved over the subject line. The proposed action will increase overall energy efficiency by retaining this trackage for rail service, albeit as "exempt trackage", thereby offering customers in the park rail service

in lieu of less energy efficient truck service. Thus, the proposed action will cause no diversion from rail to motor carriage.

(5) Air

Will the proposed action result in (A) a minimum increase in rail traffic of 100 percent (measured in gross tons annually) or eight trains per day on an affected rail line, (B) an increase in rail yard activity of 100 percent as measured in carload activity or (C) an increase in motor carrier traffic of either 50 vehicles per day or an increase in truck traffic exceeding 10 percent of the average daily traffic on a given highway segment? If any of the enumerated thresholds is exceeded, quantify the anticipated increase in air emissions. If a Class I or nonattainment area is affected, are increased emissions within parameters of the affected State Implementation Plan?

The above thresholds will not be exceeded. See (2) above.

(6) Noise

If any of the thresholds identified in item (5) is surpassed, state whether the proposed action will cause an increase in noise levels exceeding either (i) a three decibel Ldn incremental increase or (ii) 65 decibels?

The above thresholds will not be exceeded.

(7) Safety

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

Applicant believes that the proposed action will result in improvement to public safety by retaining the track for rail service by UP instead of shifting traffic to motor carrier service.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

Applicant does not anticipate that any hazardous materials will be transported over the subject line.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There are no known hazardous waste sites on the subject line, and Applicant is not aware of any hazardous materials spills that may have occurred along the right-of-way.

(8) Biological Resources

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

On May 9, 2006, Verde acting on behalf of itself and NMGR, contacted the U.S. Fish and Wildlife Service (USF&WS) about the

proposed action. (Attachment 3) Applicant does not believe that the abandonment will affect any endangered or threatened species or critical. By letter dated May 25, 2006, USF&WS replied. A copy is submitted as Attachment 3-A.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected and describe any effects.

Applicant does not anticipate that the abandonment will affect any wildlife sanctuaries or refuges, or National or State parks or forests. Nevertheless, Verde on behalf of itself and NMGR contacted the National Park Service to obtain its views and will furnish SEA with any comments received. (Attachment 4).

(9) Water

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistency.

No in-stream salvage operations will be required. No action known to be inconsistent with federal, state, and/or local water quality standards is contemplated. If any permits or applications are found to be necessary, they will be obtained and any conditions or procedures required by regulatory agencies will be complied with. Verde on behalf of itself and NMGR contacted state and federal agencies in New Mexico responsible

for environmental matters. (Attachments 5 and 6). Any comments received will be submitted.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the affects.

On May 9, 2006, Verde acting on behalf of itself and NMGR contacted the U.S. Army Corps of Engineers. (Attachment 7) While Applicant does not anticipate that any permits under Section 404 will be required or that any designated wetlands or 100-year flood plains will be affected, Applicant will provide SEA with the Corps of Engineers' response.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

On May 9, 2006, Verde acting on behalf of itself and NMGR contacted both the U.S. Environmental Protection Agency and the environmental agency in New Mexico regarding this question and will provide their comments once received. (Attachments 5 and 6) Applicant does not anticipate that any permits will be required.

(10) Proposed Mitigation

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Applicant does not expect any adverse impacts, therefore it is not proposing any mitigation measures.

Historic Issues

The following information is provided in accordance with 49 CFR 1105.8(d).

(1) Map

A copy of a map of the subject line is attached to this report as Attachment 8.

(2) Description of the subject line

The subject line consists of approximately 4,000 feet of lead and siding track originally built in 2001 and 2002 by STLP as industrial trackage off the UP Los Angeles to El Paso main line for the purpose of serving a newly established industrial park at Santa Teresa, NM. Verde currently owns two existing tracks (the track map furnished with this Report shows additional tracks which have yet to be built). The right of way on the first track extending between the UP connection and the end of track is 150 feet wide. The right of way on the second track (the Drill Track) is 80 feet wide. The land is flat.

(3) Photographs of structures at least 50 years old

There are no structures of any sort located on the subject trackage of any age. Photographs of the track and right of way are attached as Attachments 9A-9C.

(4) Dates of construction/alteration of structures

Applicant understands that the subject trackage was built in 2001 and 2002 with the original intent of operating it first as "exempt" industrial trackage and then as a common carrier short line railroad. STLP originally intended to build 10,000 feet of trackage but only constructed 4,000 feet.

(5) History of carrier operations

See discussion above. Up until Verde's acquisition of the subject real estate in October 2004, NMGR had never been asked to provide rail service for any customer. Since then, Verde has been completing the construction of this industrial park and has had several inquiries from tenants wishing to use rail service. Rather than providing service itself or through NMGR, Verde contacted UP about providing service. UP suggested that Verde extinguish NMGR's common carrier obligation and arrange with UP to provide that service. Verde now has several parties anxious to utilize UP's rail service as soon as the additional track needed to serve them is constructed and UP is ready to begin service.

(6) Documents in carrier's possession

Applicant states that there are no structures on the subject line of any sort, historical or otherwise.

(7) Eligibility for National Register; archeological resources

Applicants are unaware of any structures on the right-of-way that are eligible for listing in the National Register. On May 9, 2006, Applicant contacted the State Historic Preservation Officer and is awaiting his or her reply. (Attachment 13). Applicant will forward to SEA any comments received. Any potential archeological sites within the right of way would have previously been disturbed during the construction of the subject line.

(8) Description of ground disturbance or fill

The trackage was built on flat land without any need for deep cuts or fill.

Certification

In accordance with the requirement at 49 CFR 1105.7(c), Verde acting on behalf of itself and NMGR certifies that it has sent a copy of the Environmental and Historic Report to all agencies listed at 1105.7(b) and to the State Historic Preservation Officer and that it has consulted with these agencies in preparing this report.

Respectfully submitted,



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

Counsel for Verde Intermodal
Railroad, LLC, on behalf of itself
and New Mexico Gateway Railroad
Limited Liability Company

Dated: June 2, 2006

ATTACHMENT 1

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

Dona Ana County
Chuck McMahon
Director of Dona Ana County Community Planning
430 South Main Street
Las Cruces, New Mexico 88001

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

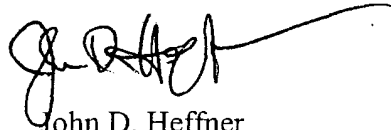
Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map which should assist in your review of the environmental and/or historic impacts (if any) which may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to local land use plans – particular issues for which we seek your comment. See, item 3 of the EHR at page 4. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John D. Heffner', with a long horizontal flourish extending to the right.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 2

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

USDA Natural Resources Conservation Service
517 Gold Avenue
6200 Jefferson North East
Albuquerque, NM 87109

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

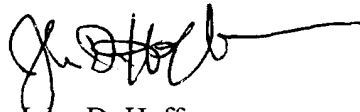
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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to prime agricultural land – particular issues for which we seek your comment. See, item 3 of the EHR at page 4. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John D. Heffner', with a long horizontal flourish extending to the right.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 2-A

United States Department of Agriculture



Natural Resources Conservation Service
6200 Jefferson NE
Albuquerque, New Mexico 87109
Phone: (505) 761-4400 Fax: (505) 761-4462
Web site: www.nm.nrcs.usda.gov

May 17, 2006

Mr. John D. Heffner, PLLC
1920 N. Street, N.W., Suite 800
Washington, D.C. 20036

RE: STB Docket No. AB-995X, New Mexico Gateway Railroad, LLC Abandonment Exemption

Dear Mr. Heffner:

We have received your request for evaluation of above referenced project. There are no prime farmlands or soils of statewide importance in the project area. The Natural Resources Conservation Services has no objections to the proposed action.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis L. Alexander", is written over a large, stylized, light-colored circular mark.

DENNIS L. ALEXANDER
State Conservationist

ATTACHMENT 3

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

U.S. Fish & Wildlife Service
500 Gold Avenue, SW
Albuquerque, NM 87102

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map which should assist in your review of the environmental and/or historic impacts (if any) which may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to endangered or threatened species or critical habitats – particular issues for which we seek your comment. See, item 8 of the EHR at pages 7-8. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 3-A



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Mexico Ecological Services Field Office

2105 Osuna NE

Albuquerque, New Mexico 87113

Phone: (505) 346-2525 Fax: (505) 346-2542

MAY 25 2006

Thank you for your recent request for information on threatened or endangered species or important wildlife habitats that may occur in your project area. The New Mexico Ecological Services Field Office has posted lists of the endangered, threatened, proposed, candidate and species of concern occurring in all New Mexico Counties on the Internet. Please refer to the following web page for species information in the county where your project occurs: http://ifw2es.fws.gov/NewMexico/SBC_intro.cfm. If you do not have access to the Internet or have difficulty obtaining a list, please contact our office and we will mail or fax you a list as soon as possible.

After opening the web page, find New Mexico Listed and Sensitive Species Lists on the main page and click on the county of interest. Your project area may not necessarily include all or any of these species. This information should assist you in determining which species may or may not occur within your project area.

Under the Endangered Species Act, as amended (Act), it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with us further. Similarly, it is their responsibility to determine if a proposed action has no effect to endangered, threatened, or proposed species, or designated critical habitat. If your action area has suitable habitat for any of these species, we recommend that species-specific surveys be conducted during the flowering season for plants and at the appropriate time for wildlife to evaluate any possible project-related impacts. Please keep in mind that the scope of federally listed species compliance also includes any interrelated or interdependent project activities (e.g., equipment staging areas, offsite borrow material areas, or utility relocations) and any indirect or cumulative effects.

Candidates and species of concern have no legal protection under the Act and are included on the web site for planning purposes only. We monitor the status of these species. If significant declines are detected, these species could potentially be listed as endangered or threatened. Therefore, actions that may contribute to their decline should be avoided. We recommend that candidates and species of concern be included in your surveys.

Also on the web site, we have included additional wildlife-related information that should be considered if your project is a specific type. These include communication towers, power line safety for raptors, road and highway improvements and/or construction, spring developments and livestock watering facilities, wastewater facilities, and trenching operations.

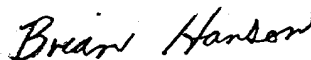
Under Executive Orders 11988 and 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and floodplains, and preserve and enhance their natural and beneficial values. We recommend you contact the U.S. Army Corps of Engineers for permitting requirements under section 404 of the Clean Water Act if your proposed action could impact floodplains or wetlands. These habitats should be conserved through avoidance, or mitigated to ensure no net loss of wetlands function and value.

The Migratory Bird Treaty Act (MBTA) prohibits the taking of migratory birds, nests, and eggs, except as permitted by the U.S. Fish and Wildlife Service. To minimize the likelihood of adverse impacts to all birds protected under the MBTA, we recommend construction activities occur outside the general migratory bird nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until nesting is complete.

We suggest you contact the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division for information regarding fish, wildlife, and plants of State concern.

Thank you for your concern for endangered and threatened species and New Mexico's wildlife habitats. We appreciate your efforts to identify and avoid impacts to listed and sensitive species in your project area.

Sincerely,

A handwritten signature in cursive script that reads "Brian Hanson".

Brian Hanson
Acting Field Supervisor

ATTACHMENT 4

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

U.S. National Park Service
12795 Alamenda Parkway
Denver, CO 80228

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map which should assist in your review of the environmental and/or historic impacts (if any) which may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to wildlife sanctuaries or refuges or national or state parks or forests – particular issues for which we seek your comment. See, item 8 of the EHR at page 8. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

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

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 5

JOHN D. HEFFNER, PLLC
1920 N STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

May 9, 2006

U.S. Environmental Protection Agency
1445 Ross Avenue
Suite 1200
Dallas, TX 75202

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to air and water quality, wetlands, and flood plains – particular issues for which we seek your comment. See, items 5 and 9 of the EHR at pages 6, 8 and 9. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

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Sincerely,

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John D. Heffner

Attorney for

New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 6

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

New Mexico Environment Department
Harold S. Runnels Building
1190 Saint Francis Drive
Santa Fe, NM 87502

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

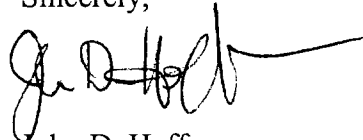
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John D. Heffner

Attorney for

New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 7

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE -- Room 313
Albuquerque, NM 87109-3435

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

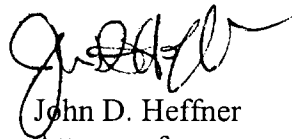
Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map which should assist in your review of the environmental and/or historic impacts (if any) which may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to air and water quality, wetlands, and flood plans – particular issues for which we seek your comment. See, items 5 and 9 of the EHR at pages 6, 8 and 9. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a stylized flourish extending to the right.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

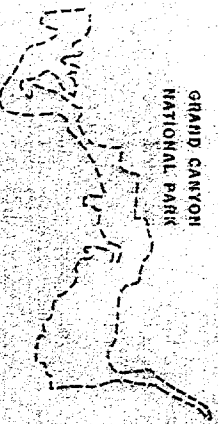
cc: Jay Kleberg

ATTACHMENT 8

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RAND McNALLY
HANDY RAILROAD MAP
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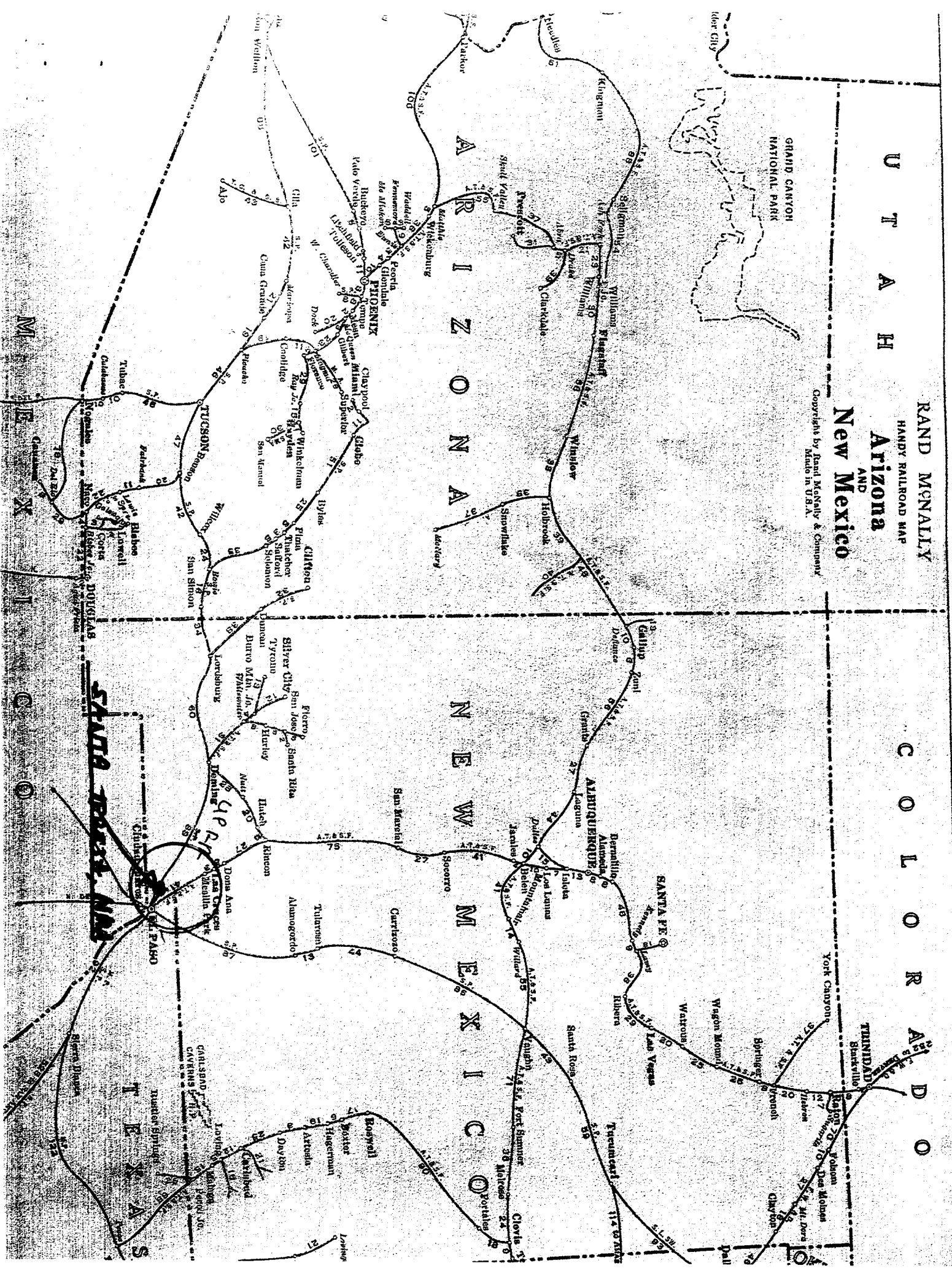
Copyrighted by Rand McNally & Company
Made in U.S.A.



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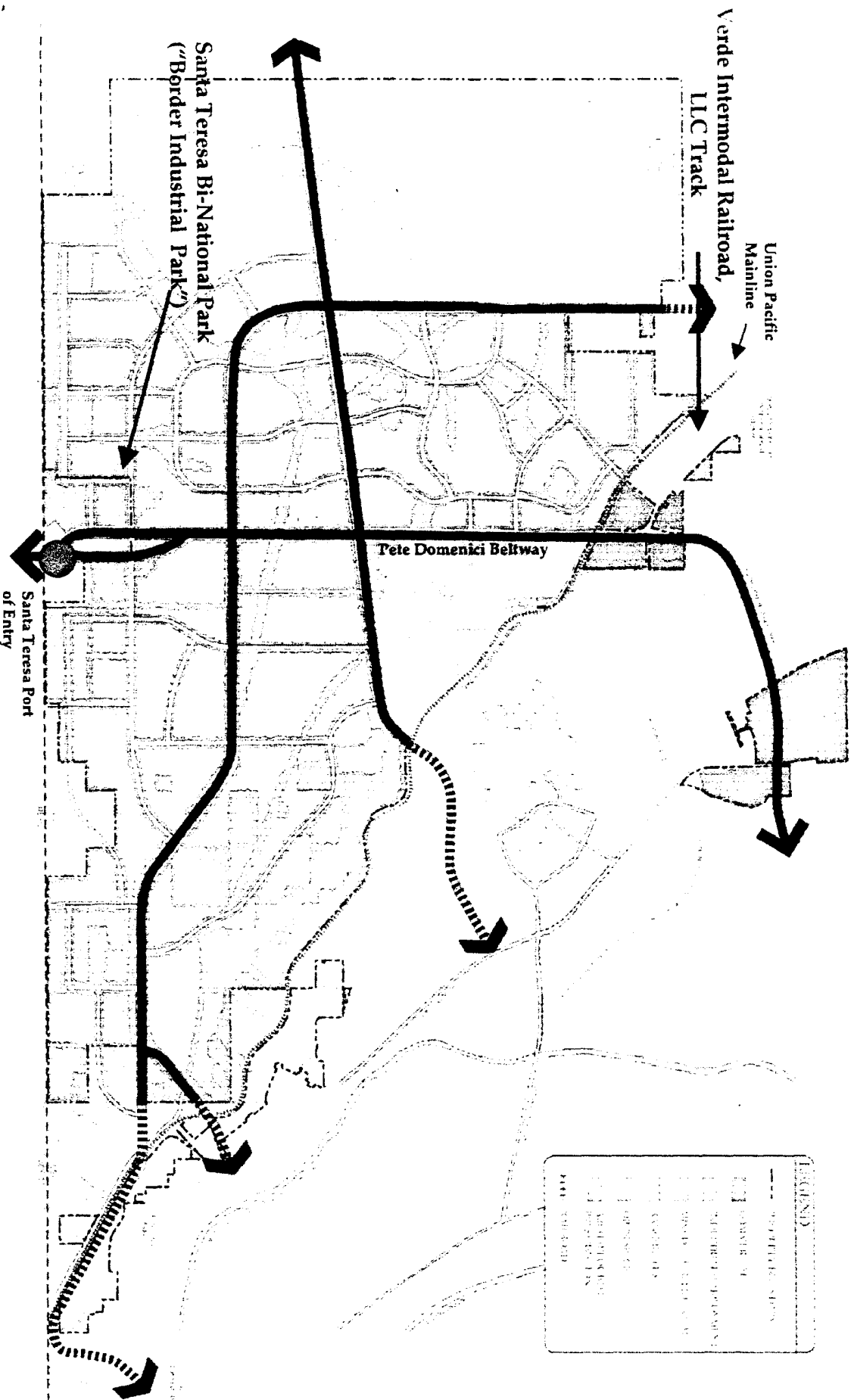
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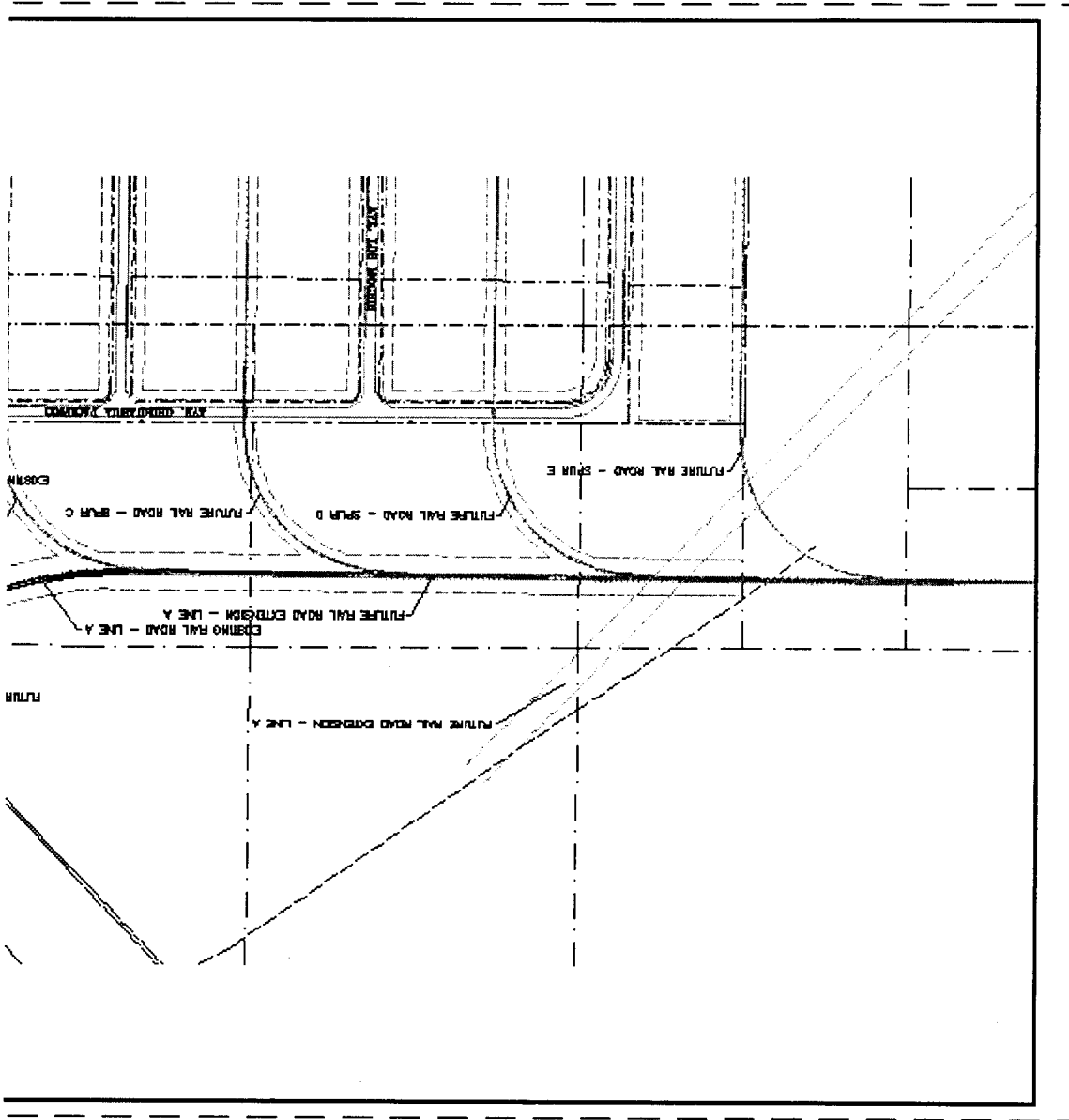
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Santa Teresa Intermodal Railroad, LLC





ATTACHMENT 9A

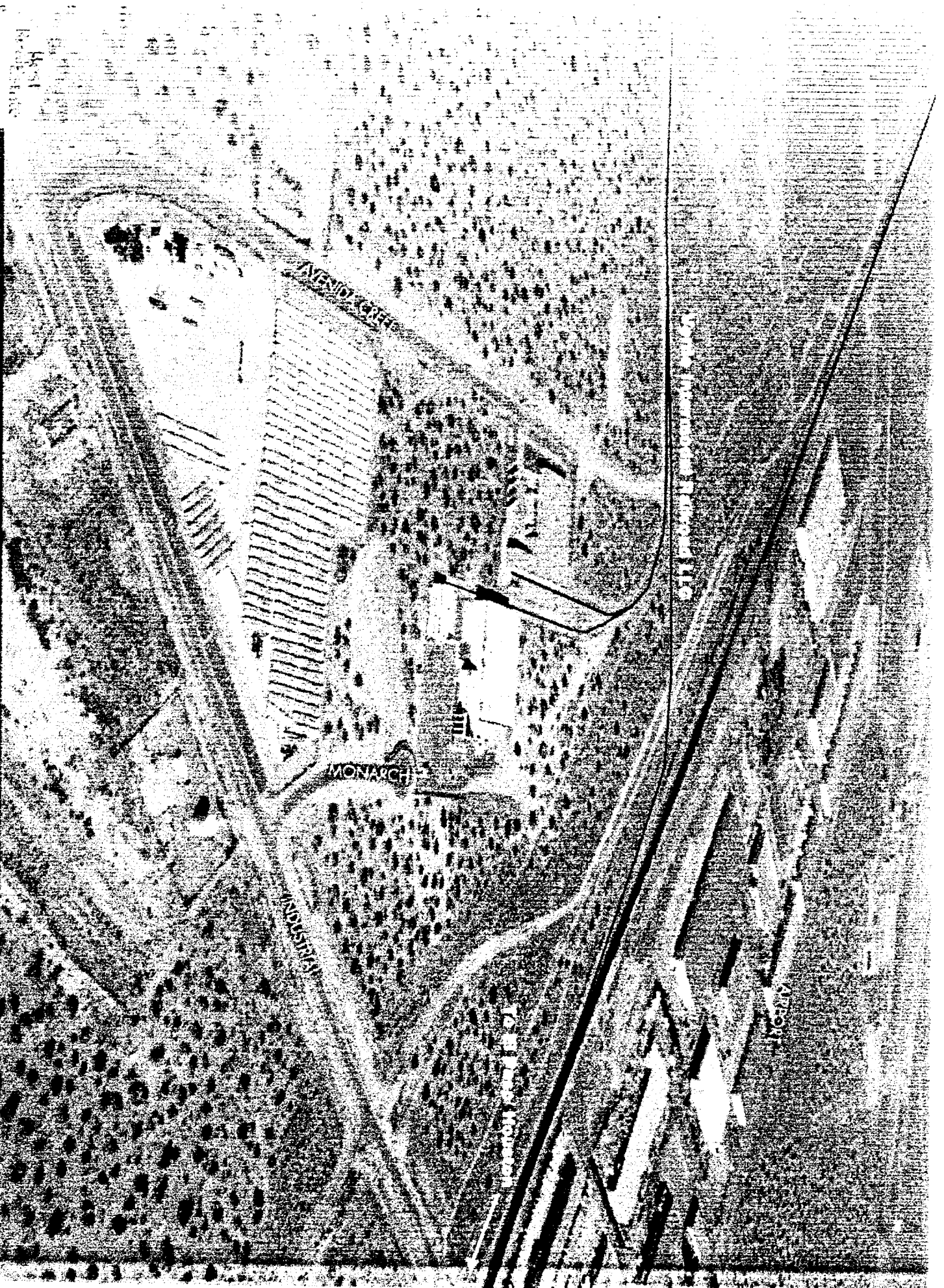


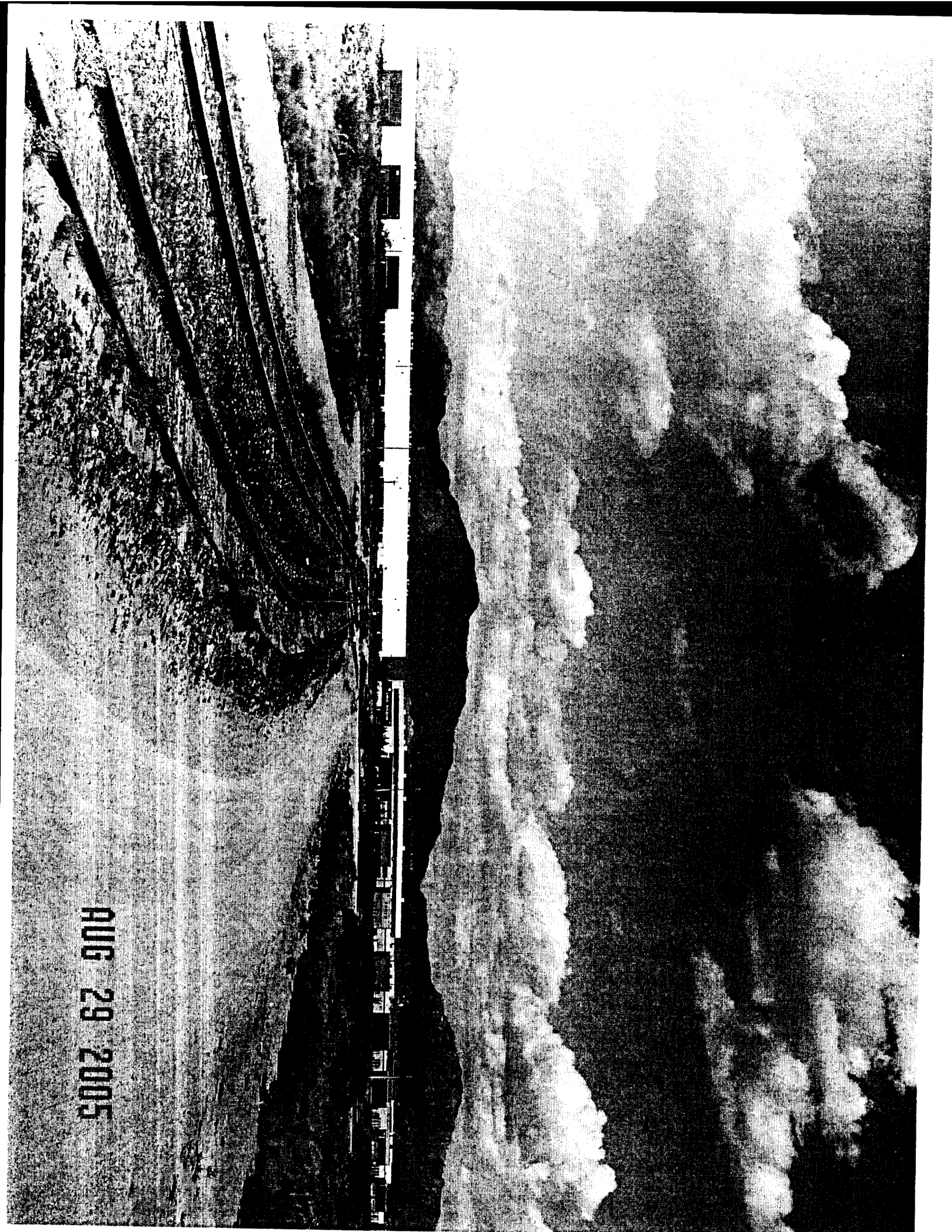
Photo Taken: March 23, 2008

SANTA TERESA INDUSTRIAL LAND

EL PASO, TEXAS

ATTACHMENT 9B

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ATTACHMENT 9C



006 29 2005

ATTACHMENT 10

JOHN D. HEFFNER, PLLC

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May 9, 2006

National Oceanic & Atmospheric Administration
U.S. National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20190-3282

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

To Whom It May Concern:

This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50.

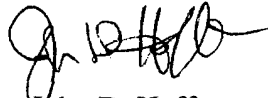
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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to impacts on the National Geodetic Survey activities and projects – particular issues for which we seek your comment. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

Applicant has not yet filed its abandonment notice at the STB. However, at such time as Applicant submits its request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Heffner", written over a horizontal line.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

ATTACHMENT 11

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

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WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

New Mexico Department of Transportation
1120 Cerrillos Road
Santa Fe, NM 87504-1149

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

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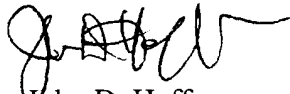
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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to local land use plans, transportation systems, energy resources, noise and safety – particular issues for which we seek your comment. See, items 2, 3, 4, 6, and 7 of the EHR at pages 3-6. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which, as we have mentioned, will be delivered to the STB.

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John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 12

JOHN D. HEFFNER, PLLC

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(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

State Clearinghouse
Office of the Governor
State Office Building
Santa Fe, NM 87505

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

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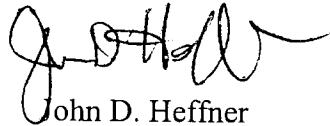
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Sincerely,

A handwritten signature in black ink, appearing to read "John D. Heffner". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg

ATTACHMENT 13

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

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WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

May 9, 2006

New Mexico Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87505

Re: STB Docket No. AB-995X
New Mexico Gateway Railroad, LLC
Abandonment Exemption

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This letter is to advise you that New Mexico Gateway Railroad, LLC ("NMGR" or "Applicant") proposes to abandon a 4000 foot long rail line in Santa Teresa, NM. On or about May 29, 2006, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment under the STB's out of service abandonment regulations, 49 CFR 1152.50. This line traverses U.S. Postal Service zip code 88008.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map which should assist in your review of the environmental and/or historic impacts (if any) which may arise as a consequence of the abandonment or salvage of the rail structure on this line.

In connection with this abandonment, Applicant is required by the STB's regulations (at 49 C.F.R. 1105) to prepare as part of its Application an Environmental and Historic Report addressing the following issues:

- (I) Are sites or structures listed in the National Register of Historic Places affected? If so, describe the effects.

To the best of Applicant's knowledge, no site or structures listed in the National Register of Historic Places will be affected.

- (ii) Will sites or structures 50 years old or older be affected? If so, and such sites or structures are not listed in the National Register or Historic Places, Applicant would submit, at the earliest possible juncture, a description of the line, including a map, as well as photographs and descriptions of such structures to the appropriate State Historic Preservation Office for review and include a copy of the cover letter in the Environmental and Historic Report.

There are no structures on the Line that are 50 years old or older. Applicant will supplement this report with a map of the line and color pictures of the right-of-way as soon as possible.

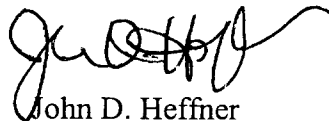
- (iii) Will culturally significant locations, archaeological sites, or unique land forms be affected? If so, applicant should consult with the involved State Historic Preservation Office.

To the best of Applicant's knowledge, no culturally significant locations, archaeological sites, or unique land forms will be affected.

A copy of the draft report is enclosed for your review.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Sincerely,



John D. Heffner
Attorney for
New Mexico Gateway Railroad LLC

cc: Jay Kleberg