

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35155

FPN-USA INC.
-- OPERATION EXEMPTION --
TIJUANA-TECATE SHORTLINE
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31

NOTICE OF OPERATION OF RAIL LINE

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

Dated: July 11, 2008

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NOTICE OF OPERATION OF RAIL LINE

INFORMATION REQUIRED BY 49 CFR 1150.33

Name and Address of Applicant **49 CFR 1150.33(a)**

FPN-USA, Inc.¹
P.O. Box 2308
La Mesa, CA 91943

Applicant's Representative **49 CFR 1150.33(b)**

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Statement of Agreement(s) **49 CFR 1150.33(c)**

FPN-USA, Inc. ("FPN") anticipates submitting in the very near future a proposal to the Mexican State of Baja California ("Baja California") to operate a state-owned

¹ The name and address of the right-of-way owner is the Tijuana-Tecate Short Line, Tecate Old railroad Station, Blvd. Defensores de Baja California 53 Col. La Vinita, Tecate, B.C. Mexico C.P. 21460.

rail line known as the Tijuana-Tecate Shortline that connects San Ysidro, CA, with Division, CA, through Mexico.²

FPN plans to commence operations once its proposal has been accepted by Baja California and it has executed an operating agreement with Baja California, more than thirty days after the filing of this notice.

Operator of the Property

49 CFR 1150.33(d)

In all cases anticipated by this Notice, and as described in the transaction summary provided below, FPN will hold itself out to provide common carrier rail freight service over the subject rail property.

Brief Summary of Transaction

49 CFR 1150.33(e)

This exemption involves the substitution of a common carrier rail service formerly provided under contract to Baja California by the Carrizo George Railroad ("Carrizo"). Under this exemption FPN will replace Carrizo as Baja California's contract operator over the Tijuana-Tecate Shortline on that portion of the line between approximately MP 15.0 at San Ysidro, CA, and MP 59.6 at Division (hereafter "the Line"), a distance of approximately 44.6 miles almost all of which are in Mexico.

² FPN is the American counterpart of Ferrocarriles Peninsulares del Noroeste, the operator of the line in Mexico. Mexican law requires that Mexican nationals hold majority control of a railroad corporation to be eligible to operate a line there.

By way of background, the Tijuana-Tecate Shortline constitutes a portion of a longer rail line owned by an entity named the San Diego & Arizona Eastern Railway Company (SD&AE), a former Southern Pacific Railroad subsidiary.³ As relevant here, about 30 years ago the Southern Pacific sold the SD&AE to the San Diego Metropolitan Transit Development Board (MTDB), a public agency desiring to use a part of the right of way to construct a light rail line. That agency in turn entered into an operating contract with a short line railroad⁴ for the entire line between downtown San Diego on the west and Plaster City on the east. Subsequently, that carrier sought to terminate its operations and the MTDB selected another short line railroad (the San Diego & Imperial Valley Railroad Company or "SD&IV") to take over that operating contract.⁵

Some years later, the SD&IV in turn subleased the segment from a point called San Ysidro⁶ on the US/Mexican border through Mexico to Plaster City, CA, to another newly-established class III short line railroad, Carrizo. Recently, Carrizo has been performing service only

³ SD&AE's line extends between Plaster City, CA, on the east and downtown San Diego on the west.

⁴ Originally with short line railroad holding company Kyle Railways which established the San Diego & Arizona Eastern Transportation Company as its subsidiary to operate the entire line.

⁵ The history of the SD&IV and its predecessors can be found in the Interstate Commerce Commission's decision in San Diego & Imperial Valley Railroad Company, Inc.-Exemption From 49 U.S.C. 10901 and 11301, 1 I.C.C.2d 941 (1985).

⁶ The SD&IV continues to provide service between San Ysidro and San Diego.

sporadically outside of the Tijuana Region on the Mexican portion of the line. As a result, Baja California railroad officials in charge of administering the Tijuana-Tecate Short Line are in the process of cancelling Carrizo's operating contract and have invited others including FPN to submit bids to operate the Line. Carrizo still continues to provide regular service between the Mexican border at MP 59.6 at Division and Plaster City.

If selected by Baja California, FPN will as noted above replace service provided by Carrizo between San Ysidro and Division. FPN also requests incidental trackage rights inside the United States between MP 59.6 at Division and MP 65.8 at Campo because there is no place to interchange at Division.

FPN will be owned, staffed, and managed by people familiar with the Line and its customers as FPN personnel were formerly employed by either Carrizo or its predecessors.

In support of this exemption request FPN notes that the Board has entry jurisdiction over railroads and rail lines that provide service between a point in the United States and another point in the United States through a foreign country. 49 U.S.C. 10501(a)(2)(E); San Diego & Imperial Valley R. Co., Inc.-Exemption, supra; Trans-Ontario Railway Company - Exemption - 49 U.S.C. 10901, ICC Finance Docket No. 30566, served Feb. 5, 1985 (1985 Lexis

599). Also in support of its exemption request, FPN submits the following additional documents:

Exhibit A a map depicting the Line;

Exhibit B the verified statement of Kenneth Kahan, an officer of FPN, explaining the events that led to the filing of this notice;

Exhibit C a statement in Spanish from Jorge Octavio Monraz Sustaita, Director General of the State Government of Baja California Tijuana-Tecate Short Line Administration, explaining that the State is in the process of rescinding Carrizo's operating contract;

Exhibit D a translation of that statement along with a notarized affidavit attesting to the translator's truthfulness;

Exhibit E a statement by the Union Pacific Railroad attesting as to its willingness to work with FPN should it be selected by Baja California as the Line's operator;

Exhibit F an identification of the type and amount of traffic that FPN would expect to handle over the Line (submitted under seal);

Certificate of Carrier Classification **49 CFR 1150.33(g)**

FPN certifies, with this transaction, that its projected annual revenues will not result in the creation of a class I or class II rail carrier. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit G to this notice.

Transactions Imposing Interchange Commitments **49 CFR**
1150.33(h)

In response to the Board's new requirement that an exemption notice disclose the existence of any provision in an operating agreement that limits interchange with other railroads and identification of the interchange points, FPN notes that the Line will connect with SD&IV at San Ysidro and with Carrizo at Division. FPN does not anticipate that the operating agreement to be negotiated with Baja California will contain any provisions limiting interchange with other carriers.

Labor Protection

Labor protection is discretionary under 49 U.S.C. 10901 and FPN asks that it not be imposed here.

Caption Summary

49 CFR 1150.34

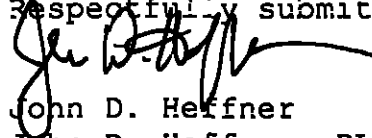
A caption summary in the prescribed form is attached as Exhibit H to this Notice.

Environmental and Historic Preservation Data **49 CFR 1105**

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

Dated: July 11, 2008

EXHIBIT A

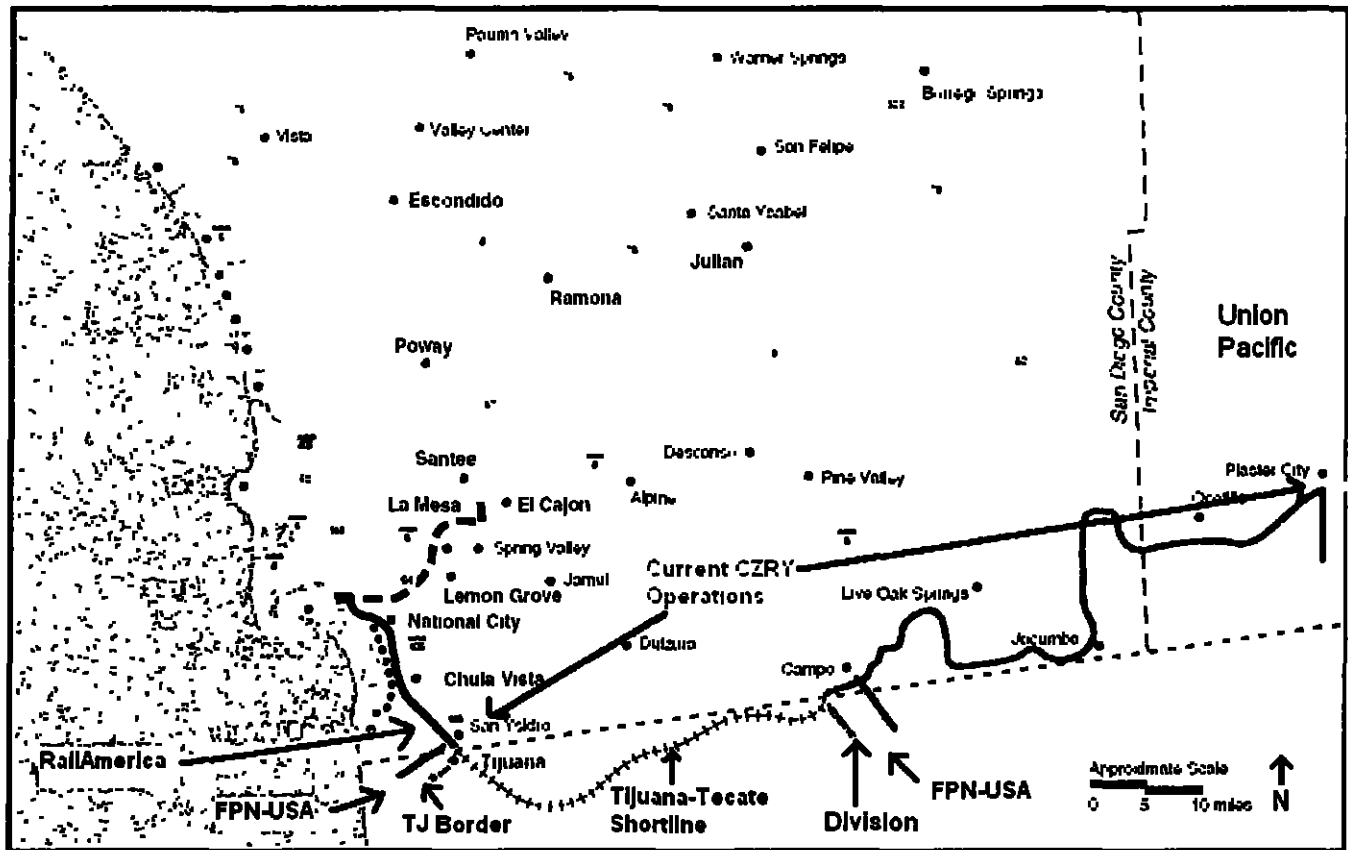


EXHIBIT B

VERIFIED STATEMENT
OF KENNETH A. KAHAN

Kenneth A. Kahan, being duly sworn, deposes and states as follows:

My name is Kenneth A. Kahan. My business address is FPN-USA Inc., P.O. Box 2308, La Mesa, CA 91943. I currently serve as Secretary on the Board of Directors of FPN-USA Inc. ("FPN"), a newly established class III short line railroad formed for the purpose of bidding on and operating a line of railroad owned by the Mexican State of Baja California and known as the Tijuana-Tecate Short Line. Pending the start up of operations as a railroad, I am performing various administrative duties associated with commencement of service. Prior to assuming this position, I served as Vice President of Operations with the Carrizo George Railroad ("Carrizo"). All together I have 15 years of experience in the railroad industry.

I have been asked to prepare this statement in support of the verified notice of exemption to be filed with the federal Surface Transportation Board to permit FPN to assume railroad operations formerly provided by Carrizo over the Tijuana-Tecate Short Line in Baja California, Mexico. FPN is the American counterpart of Ferrocarriles Peninsulares del Noroeste, the operator of the line in

Mexico. Because Mexican law requires that Mexican nationals hold majority control of a railroad corporation to be eligible to operate a line there, we have formed a separate Mexican controlled entity to operate that part of the Tijuana-Tecate Short Line in Mexico.

The Tijuana-Tecate Short Line has had a long and colorful history. As background, the line was originally constructed in the Nineteenth Century as the Mexican portion of the San Diego & Arizona Eastern Railway Company (SD&AE) to provide the City of San Diego with a competitive rail outlet.¹ Shortly after the line's construction, the Southern Pacific Railroad (SP) acquired control of this mountainous and curvy railroad. During the ensuing years after the SP sold the entire railroad to the San Diego Metropolitan Transit Development Board (MTDB), the railroad has had no fewer than three contract operators.² In addition, the Mexican State of Baja California acquired that portion of the line inside Mexico, known as the Tijuana-Tecate Short Line. Over the past thirty years the SD&AE line has faced numerous operating challenges

¹ In competition with the Santa Fe Railway, now BNSF Railway Company, which built a line south from Los Angeles.

² The initial operator was Kyle Railway's San Diego & Arizona Eastern Transportation Company. After it obtained permission to terminate operations, the MTDB replaced it with a short line subsidiary formed by Rail-Tex, Inc. [the San Diego & Imperial Valley Railroad Company or SD&IV]. Some years later RailAmerica, Inc., acquired control of and merged with Rail-Tex and its various short line subsidiaries including the SD&IV.

including fires, washouts and other weather-induced incidents, and bridge and tunnel problems that have made it difficult to sustain a through service over the entire line between San Ysidro on the west at the US/Mexican border and the Union Pacific interchange on the east at Plaster City, CA. SD&IV eventually leased the portion of the line between those points to Carrizo.

Recently, Carrizo has been performing service only sporadically outside of the Tijuana Region on the Mexican portion of the line. As a result, Baja California railroad officials in charge of administering the Tijuana-Tecate Short Line are in the process of cancelling Carrizo's operating contract.³ I am including with this filing a statement from Jorge Octavio Monraz Sustaita, Director General of the State Government of Baja California's Tijuana Tecate Short Line Administration, attesting to the cancellation. Mexican authorities are soliciting bids from new operators on a closed invitational bid basis and FPN has received one of the only two or three invitations that have been issued. Because our management team includes people who formerly ran and managed this railroad and are familiar with its customers and traffic, I believe that we

³ Mexican authorities are also cancelling Carrizo's contract for failure to maintain the line contrary to its contractual obligation.

are in a very good position to win the bid. I should also note that the Union Pacific Railroad has indicated its desire to work with FPN should it takeover operations on this line.

It is my understanding that Carrizo is terminating many former employees and reducing operations to save money. I have also heard that the Internal Revenue Service is seeking to collect unpaid payroll withholding taxes.

Finally, FPN has notified officials with MTDB, SD&IV, and the Union Pacific Railroad that it will be filing this request for an exemption with the Board.

EXHIBIT C



ADMINISTRADORA DE LA VÍA CORTA TIJUANA-TECATE

ADM 203/2008
Tecate, Baja California, a 10 de abril del 2008.

ING. GERARDO ÁVILA ARREGUÍN
JEFE DEL DEPARTAMENTO FERROVIARIO
DEL CENTRO SCT EN B.C.
Presente.

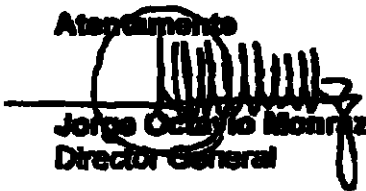
Por este conducto y en respuesta a su oficio Número 6.2.412.046/2008 recibido el día 15 de marzo del presente donde solicita un informe del las causas que propiciaron los retrasos en la entrega de mercancías a algunos clientes del servicio ferroviario.

Al respecto le informo que en el pasado mes de marzo se inició un proceso de rescisión administrativa de contrato a la empresa Cantzo Gorge Railway Inc., ya que hemos tenido algunos problemas de cumplimiento de contrato de nuestra prestadora de servicios de apoyo técnico y operativo, que como es de su conocimiento es lo que originó algunos retrasos en la entrega de la mercancía a los usuarios de la vía corta Tijuana Tecate, como lo comenta en su oficio; motivo por el cual ya se tomaron las medidas correctivas poniendo a disposición de los usuarios en las notificaciones de aviso de llegada de mercancía, los teléfonos de esta Administradora a mi cargo, con la finalidad de que cuando se presente alguna situación similar, actuar de manera inmediata para que no se retrase la entrega de mercancía a los clientes, además se han llevado a cabo reuniones con los usuarios de manera periódica.

Por otra parte le informo que la mercancía retrasada fue entregada en su totalidad el día lunes 17 de marzo del presente, informando inmediatamente a los clientes.

Sin más por el momento, aprovecho la ocasión para enviarle un cordial saludo quedando a sus órdenes para cualquier aclaración al respecto.

Atentamente



Jorge Octavio Monrrez Sustaita
Director General

ADMINISTRADORA DE LA
VIA CORTA TIJUANA-TECATE

08 MAYO 2008

DESPACHADO

c.p. Ing. Héctor José Gómez Rodríguez.- Director General del Centro SCT Baja California.
Ing. Juan Ramón Guerrero Márquez.- Secretario de Infraestructura y Desarrollo Urbano del Estado
Ing. Ramón Plascencia Flores.- Subdirector Regional del Transporte Ferroviario.
M. en I. Francisco Luis Quiroz Pareda.- Subdirector de Transporte del Centro SCT en B. C.
Archivo
JCM/sgp

Antigua Estación de Ferrocarril Tecate
Div. Defensores de Baja California 229 Col. La Villa
Tecate, B.C. México. C.P. 21400
Tels. (662) 521-2903 al 66; Fax: (662) 521-2900
www.baja-defensores.com

EXHIBIT D

-SEAL-

**STATE GOVERNMENT OF OF BAJA CALIFORNIA
TIJUANA-TECATE SHORT LINE ADMINISTRATION**

ADMI 203/2008

Tecate, Baja California, April 10th 2008

**ING. GERARDO ÁVILA AREGUÍN
CHIEF OF THE RAILROAD DEPARTMENT
OF THE SCT CENTER IN BAJA CALIFORNIA
Present.**

By this means, and in response to your official letter Number 6.2.412.046/2008, of March 15th of this year, in which you request a report on the causes for delays on the delivery of freight to some railroad service customers.

In this regard, I Inform to you that this past month of March an administrative process was begun to rescind the contract with Carrizo Gorge Railway, Inc., because we've had some problems of contractual compliance with our technical and operational support services provider, which as you know, is what caused the delays on the delivery of freight to the users of the Tijuana-Tecate short line, as mentioned in your official letter; this is the motive for which corrective measures have already been taken, making available to rail users, the telephone number of this Administration in my charge in the notifications of freight arrival, with the purpose of acting immediately in case of having another similar occurrence, so that the delivery of freight to customers is not delayed, in addition to having periodical meetings with all users.

Additionally, I Inform to you that the freight which was delayed on delivery has been delivered completely by Monday 17th of March, having informed the customers immediately.

Without further matter, I use this occasion to send you my best regards, making myself available to you for further discussion.

Kindly,

-signature-

**Jorge Octavio Monraz Sustaita
Director General**

**TIJUANA-TECATE SHORT LINE
ADMINISTRATION**

DISPATCHED
MAY 8TH 2008

**C.C. Ing. Héctor José Gómez Rodríguez – Director General of SCT Center in Baja California
Ing. Juan Ramón Guerrero Moreno – Secretary of Infrastructure and Urban Development of the State.
Ing. Ramón Plazola Flores – Regional Subdirector of Railroad Transportation
M en I. Francisco Luis Quintero Pereda – Subdirector of Transportation SCT Center in Baja California.
Archives
JDMS/agc**

**Tecate Old Railroad Station
Blvd. Defensores de Baja California 53 Col La Viñita
Tecate, B.C. México C.P 21460
Ph: (665) 521 2903 – 05; Fax (665) 521 2906
www.fcbc.com.mx**

VERIFICATION

STATE OF *California*
County of *San Diego* SS
CITY OF *El Cajon*

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

Subscribed and sworn to before me, a Notary Public, in and for
the City of *El Cajon* in the State of *California* this *9th*
day of *July* 2008

Kathy L. Tilley
Notary Public

My Commission expires:

5-11-09

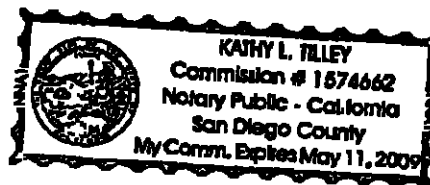


EXHIBIT E

UNION PACIFIC RAILROAD COMPANY



John J. Miller
Interline Marketing
Tel : (402) 544-4522
Fax : (402) 233-2483

1400 Douglas Street STOP 1350
Omaha, NE 68179-1350

March 12, 2008

Mr. Daniell Romero
Administrator
Carrizo Gorge de Mexico S.A. de D.V.
362C Front Street
El Cajon, CA 92020

Dear Mr. Romero:

You had e-mailed me indicating that there has been confusion as to the management and control of the Tecate-Tijuana Shortline (T&T) encompassing the trackage operated by Carrizo Gorge Railway, Inc (CZRY). You noted that CZRY was obligated by contract to use Carrizo Gorge de Mexico as the operator of the line as CG de Mexico is the only Mexican railroad recognized by the State of Baja Mexico. You further stated that CG de Mexico is a separate corporation from CZRY with no common management.

Please be advised that Union Pacific will work with whichever entity is the dually authorized railroad with the authority of the State of Baja to operate the T&T rail line. We have in the past worked well with Gary Sweetwood when he was successful in opening the tunnels and re-establishing the rail connection with UP at Plaster City, CA UP entered into a Cooperative Marketing Agreement with Mr. Sweetwood and the CZRY whereby UP adopted the CZRY stations in Baja to facilitate the marketing of rail traffic UP is very much interested in growing our rail traffic to and from Baja as we feel there is a significant opportunity.

If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "John J. Miller".

John J. Miller
Manager – Shortline Development

cc: Drew Collier, Vice President – Mexico and Interline Marketing
John Rebensdorf, Vice President – Network Planning & Operations
Gary Sweetwood, Administrator – CG de Mexico & President – FPN-USA, Inc.

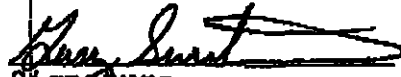
EXHIBIT F
Public Version
Traffic and revenue data omitted

EXHIBIT G

EXHIBIT G

CERTIFICATION

I, Gary Sweetwood, an officer of the
FPN-USA Inc. (President) (" FPN-USA ") hereby certify under
penalty of perjury that the projected annual railroad operating
revenues of \$3,900,000, in the aggregate, will not exceed
\$5,000,000, and that FPN-USA INC will be a Class III rail
carrier as set forth at 49 CFR 1201 (1-1) (a). Further, I
certify that I am qualified and authorized to make this
certification on behalf of FPN-USA Inc.


Signature

VERIFICATION

STATE OF CA)
County of San Diego) SS
CITY OF El Cajon)

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

Kenneth A. Kahan

Subscribed and sworn to before me, a Notary Public, in and for
the City of El Cajon in the State of California, this 30th
day of June, 2008

Kathy L. Tilley
Notary Public

My Commission expires:

5/11/09



EXHIBIT H

EXHIBIT H

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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TIJUANA-TECATE SHORTLINE
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PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

NOTICE OF OPERATION OF RAIL LINE

FPN-USA, Inc. ("FPN"), a newly created class III short line railroad and noncarrier, has filed a Verified Notice of Exemption under 49 CFR 1150.31 to operate a line of railroad known as the Tijuana-Tecate Shortline that connects San Ysidro, CA, with Division, CA, through Mexico. The Line is owned by the State of Baja California which is seeking bids from new operators. The subject rail property ("the Line") extends approximately 44.6 miles between approximately MP 15.0 at San Ysidro, CA, and MP 59.6 at Division, CA, through the State of Baja California, Mexico (hereafter "the Line"). In addition, FPN seeks incidental trackage rights inside the United States between MP 59.6 at Division and MP 65.8 at Campo because there is no place to interchange at Division.

FPN plans to consummate this transaction once its proposal has been accepted by Baja California and it has executed an operating agreement with Baja California, more than thirty days after the filing of this notice.

This notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35155, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 395 E Street, S.W., Washington, D.C. 20423. In addition, a copy of each pleading must be served on:

John D. Heffner, Esq.
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202) 296-3334

(seal)

Vernon A. Williams
Secretary

VERIFICATION

STATE OF CA)
) SS
CITY OF El Cajon

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

Kenneth Kahan

Subscribed and sworn to before me, a Notary Public, in and for
the City of El Cajon, in the State of California this 3rd
day of June, 2008

Kathy L. Tilley
Notary Public

My Commission expires:

May 11, 2009

