

The applicants certify that: (1) The carriers that are the subject of this notice do not connect with each other; (2) that this transaction is not part of a series of anticipated transactions that would connect these rail carriers with each other; and (3) the transaction does not involve a Class I carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

The earliest the transaction could be consummated is February 16, 2017, the effective date of the exemption (30 days after the verified notice of exemption was filed). The parties expect to consummate the transaction on or about February 17, 2017.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 effectiveness of the exemption. Petitions to stay must be filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36087, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

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Decided: January 30, 2017.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Marline Simeon,**  
Clearance Clerk.

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of, and for Continental to manage, the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

## **SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36067]

### **New Orleans Public Belt Railroad— Temporary Trackage Rights Exemption—Illinois Central Railroad Company**

On January 12, 2017, New Orleans Public Belt Railroad (NOPB), a Class III rail carrier, filed a request under 49 CFR 1180.2(d)(8) for a one-year extension of temporary overhead trackage rights over a line of railroad of the Illinois Central Railroad Company (IC), over two segments of IC's rail lines as follows: (1) IC's McComb Subdivision, between IC's connection with the Kansas City Southern Railway Company (KCS) at or near IC milepost 906.4 at East Bridge Junction in Shrewsbury, La., and IC milepost 900.8 at Orleans Junction in New Orleans, La. (approximately 5.6 miles); and (2) IC's Baton Rough Subdivision, between IC milepost 444.2 at Orleans Junction and IC milepost 443.5 at Frellsen Junction in New Orleans, La. (approximately 0.7 miles), for a total distance of approximately 6.3 miles (the Line).

NOPB was authorized to acquire the temporary overhead trackage rights over the Line by notice of exemption served and published in the **Federal Register** on October 14, 2016 (81 FR 71,161). According to NOPB, the temporary trackage rights permit it to interchange traffic with the Kansas City Southern Railway Company (KCS) on KCS trackage in New Orleans on a trial basis.

Under 49 CFR 1180.2(d)(8), the parties may, prior to the expiration of the temporary trackage rights, file a request for a renewal of the temporary rights for an additional period of up to one year, including the reasons for the extension. NOPB states that the temporary trackage rights are scheduled to expire on January 31, 2017. NOPB further states that the initial operations have been successful, and NOPB and IC have agreed to extend the rights for an additional year, to January 31, 2018, to confirm the longer-term feasibility of operations.

NOPB filed a copy of the amendment to the temporary trackage rights agreement with its request for the one-year extension. NOPB also acknowledges that any further extension of these rights, or a conversion of the rights from temporary to permanent, would require a separate notice of exemption filing pursuant to 49 CFR 1180.4(g).

In accordance with 49 CFR 1180.2(d)(8), NOPB's temporary trackage rights over the Line will be extended for one year and will expire on

January 31, 2018. The employee protective conditions imposed in the October 14, 2016 notice remain in effect.

Board decisions and notices are available on our Web site at "[WWW.STB.GOV](http://WWW.STB.GOV)."

Decided: January 27, 2017.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Marline Simeon,**  
Clearance Clerk.

[FR Doc. 2017-02217 Filed 2-1-17; 8:45 am]

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## **SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36091]

### **David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC—Corporate Family Transaction**

David L. Durbano (Durbano), an individual, Saratoga Railroad, LLC (Saratoga), a noncarrier corporation wholly owned by Durbano, and Wyoming and Colorado Railroad Company, Inc. (WYCO), a Class III rail carrier controlled by Durbano,<sup>1</sup> (collectively, the Parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction in which: (1) Saratoga will acquire from WYCO and operate an approximately 23.71-mile rail line between milepost 0.57 at Walcott and milepost 24.28 at Saratoga in Carbon County, Wyo. (the EB Line); and (2) Durbano will continue in control of Saratoga when it becomes a Class III rail carrier, upon Saratoga's acquisition of the EB line, while remaining in control of WYCO and Durbano's three other Class III rail carriers: Southwestern Railroad, Inc. (SWRR), Cimarron Valley

<sup>1</sup> Durbano has controlled WYCO since WYCO acquired a 131.52-mile line from Union Pacific Railroad Company (UP) in 1987. See *Wyo. & Colo. R.R.—Acquis. & Operation Exemption—Certain Lines of Union Pac. R.R.*, FD 31140 (ICC served Nov. 30, 1987) (1987 Acquisition). The line being acquired by Saratoga was part of the 1987 Acquisition and is known as Encampment Branch or the EB Line. The remainder of the former UP line acquired in the 1987 Acquisition has either been abandoned or sold through a series of proceedings. See *Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo.*, AB 307 (Sub-No. 1X) (ICC served June 25, 1990); *Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo.*, AB 307 (Sub-No. 2X) (ICC served May 19, 1995 and Sept. 15, 1995); *Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo.*, AB 307 (Sub-No. 3X) (STB served Sept. 16, 1996, as modified by subsequent decisions served on May 16, 2003, and December 31, 2003); *Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo.*, AB 307 (Sub-No. 4X) (STB served Oct. 10, 2003, as modified by subsequent decisions served on Nov. 10, 2003, and Feb. 27, 2009).

Railroad, L.C. (CVR), and Clarkdale Arizona Central Railroad, L.C. (CACR).

According to the Parties, Durbano, individually and through his control and ownership of Western Group and Snowy Range Cattle Company, both noncarrier holding companies, currently owns and controls WYCO, SWRR, CVR and CACR.<sup>2</sup> WYCO operates in Oregon doing business as the Oregon Eastern Railroad. WYCO owns but does not operate the EB Line in Wyoming.<sup>3</sup> SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; and CACR operates in Arizona. The Parties state that, because Durbano owns and controls all four rail carriers, Durbano has not entered into any agreements or written instruments to undertake the proposed transaction.

The Parties state that the purpose of this transaction is to undertake a corporate reorganization for the eventual purpose of selling certain assets or stock of various Durbano-controlled railroad companies, except for Saratoga.<sup>4</sup> Saratoga certifies that its annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million.

Unless stayed, the exemption will be effective on February 16, 2017 (30 days after the verified notice was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The Parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however,

<sup>2</sup> Mr. Durbano also owns, and Western Group manages, Verde Canyon Railroad, LLC, an intrastate passenger excursion railroad not subject to the Board's jurisdiction.

<sup>3</sup> The EB Line was authorized for abandonment in 2006 and the Parties state that the tracks, ties, and other track materials were salvaged. *See Wyo. & Colo. R.R.—Aban. Exemption—in Carbon Cty., Wyo.*, AB 307 (Sub-No. 6X) (STB served May 31, 2006). The Parties state that, for a number of reasons, WYCO never consummated the abandonment of the EB Line and never filed a notice of consummation. As a result, WYCO's abandonment authority expired and the corridor remains a line of railroad subject to the Board's jurisdiction.

<sup>4</sup> *See W. Branch & Cont'l Rail—Acquis. of Control Exemption—Cimarron Valley R.R.*, Docket No. FD 36084; *N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R., Whitewater Div.*, Docket No. FD 36085; and *W. Branch Intermediate Holdings & Cont'l Rail—Continuance in Control Exemption—N.M. Cent. R.R.*, Docket No. FD 36087.

does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

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 effectiveness of the exemption. Petitions for stay must be filed no later than February 9, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36091, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

According to the Parties, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at "[WWW.STB.GOV](http://WWW.STB.GOV)."

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Raina S. Contee,**  
*Clearance Clerk.*

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## **SURFACE TRANSPORTATION BOARD**

**[Docket No. FD 36085]**

### **New Mexico Central Railroad, LLC— Acquisition and Operation Exemption—Southwestern Railroad, Inc., Whitewater Division**

New Mexico Central Railroad, LLC (NMCR),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate certain lines of railroad in New Mexico (the Lines) collectively referred to as the Whitewater Division, currently operated and owned or leased by Southwestern Railroad, Inc. (Southwestern). In particular, NMCR will acquire

Southwestern's leasehold interest in a line between Deming (MP 1134) and Rincon (MP 1080) and ownership interest in lines: Between Deming (MP 0.0) and Peruhill (MP 5+3,763 feet); between Peruhill (MP 5+3,763 feet) and Whitewater (MP 30+2,972 feet); between Whitewater (near MP 30+2,972 feet) and the Tyrone Industrial Spur at Burro Mountain Jct. (near MP 33+5,256 feet); between Whitewater (MP 0+0750 feet) and Santa Rita (MP 16+1,500 feet); and between Hannover, Jct. (MP 14+1,345.4 feet) and the connection line at the Fierro Industrial Spur at the Sharon Steel Plant (near MP 6+1,804 feet). The total Southwestern mileage NMCR will acquire (by purchase or lease) and operate is approximately 116 miles.<sup>2</sup>

On the same day NMCR filed its verified notice of exemption, West Branch and Continental also filed a verified notice of exemption in *West Branch Intermediate Holdings & Continental Rail—Continuance in Control Exemption—New Mexico Central Railroad*, Docket No. FD 36087, for West Branch to acquire and for Continental to manage NMCR upon NMCR's becoming a Class III carrier.<sup>3</sup>

NMCR has executed a letter of intent for it to purchase the Lines. NMCR and Southwestern are currently negotiating a purchase and sale agreement governing the purchase of the Lines as well as certain other assets. The parties expect to reach an agreement shortly, which NMCR states will not contain an interchange agreement.

NMCR certifies that its projected annual revenues resulting from the transaction will not result in its becoming a Class I or Class II rail carrier. NMCR notes, however, that its annual operating revenues will exceed \$5 million. Accordingly, in compliance with 49 CFR 1150.32(e), NMCR submitted a letter on December 16, 2016, certifying that it posted the required 60-day labor notice of this transaction at the Southwestern employees' workplace at Deming. NMCR states that the notice was not served on the national offices of labor unions with employees who work on

<sup>2</sup> Southwestern also leases and operates a BNSF Railway Company (BNSF) line known as the Carlsbad Division, which consists of approximately 227.6 miles of railroad linking Clovis, Carlsbad, and Loving, N.M. Southwestern recently petitioned for an exemption to discontinue service over the Carlsbad Division. *See Sw. R.R.—Discontinuance of Serv. Exemption—in Curry, Roosevelt, Chaves & Eddy Cties., N.M.*, AB 1251X (filed Jan. 17, 2017).

<sup>3</sup> In Docket No. FD 36084, West Branch and Continental have invoked the class exemption at 49 CFR 1180.2(d)(2) for West Branch to acquire control and for Continental to manage the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

<sup>1</sup> NMCR is a newly established entity owned by West Branch Intermediate Holdings, LLC (West Branch), and managed by Continental Rail LLC (Continental). West Branch currently controls an existing Class III carrier, Delta Southern Railroad, Inc. (Delta).