

242897

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

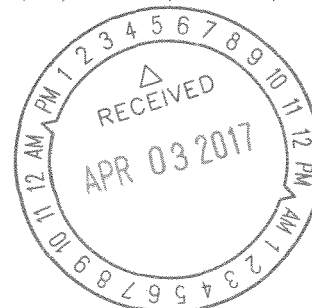
ENTERED
Office of Proceedings
April 3, 2017
Part of
Public Record

William A. Mullins
E-Mail: wmullins@bakerandmiller.com

(202) 663-7823 (Direct Dial)

April 3, 2017

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W., Room 1034
Washington, DC 20006



Re: David L. Durbano – Continuance in Control – Texas & Eastern Railroad, LLC,
FD 36111

Dear Ms. Brown:

Enclosed for filing are an original and eleven copies of a verified notice of exemption under 49 C.F.R. §1180.2(d)(2) pursuant to which David L. Durbano seeks to continue in control of Texas & Eastern Railroad, LLC ("T&ER") upon T&ER becoming a Class III carrier in Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110, which is being filed concurrently.

Please acknowledge receipt and filing of the Notice by date-stamping the enclosed eleventh copy and returning it to the courier to return to me.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(38)(iv), I have enclosed is a filing fee check in the amount of \$1,800.00. If there are any questions about this matter, please contact me directly or Crystal M. Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "William A. Mullins".

William A. Mullins
Attorney for David L. Durbano

cc: Stuart A. Fredman
Bruce Carswell

FILED
April 3, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 3, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



FD 36111

**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

April 3, 2017

Attorneys for David L. Durbano

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36111

**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

Pursuant to the class exemption at 49 C.F.R. §1180.2(d)(2), David L. Durbano (“Durbano”) hereby provides this verified notice of exemption from 49 U.S.C. §11323 for Durbano to continue in control of Texas & Eastern Railroad, LLC (“T&ER”)(currently a non-carrier owned and controlled by Durbano) upon T&ER becoming a Class III rail carrier in Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110, while Durbano remains in control of other Class III STB regulated carriers, which he owns, either directly or indirectly, and controls. The carriers currently owned and controlled by Durbano include: Southwestern Railroad, Inc. (“SWRR”); Cimarron Valley Railroad, L.C. (“CVR”); Clarkdale Arizona Central Railroad, L.C. (“CACR”); Wyoming and Colorado Railroad Company, Inc. (“WYCO”); and Saratoga Railroad, LLC (“Saratoga”).

This proceeding is related to Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110, in which T&ER has filed for authority

under 49 C.F.R. §1150.31 to replace the Rusk, Palestine & Pacific Railroad, LLC ("RP&P")¹ as the exclusive operator over approximately 27 miles of railroad line (the "Line")² between Rusk and Palestine, TX that is currently owned by the Texas Parks and Wildlife Authority and leased to the TSRA.³

In support of this notice of exemption and in compliance with 49 C.F.R. §1180.4(g), Durbano and T&ER state the following:

INFORMATION REQUIRED BY 49 C.F.R. §1180.6

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

49 C.F.R. §1180.6(a)(1)(i) – Description of Transaction and Parties Thereto:

Description of the Proposed Transaction.

In this proceeding, Durbano seeks to continue in control of T&ER upon T&ER becoming a Class III rail carrier in FD 36110, while Durbano remains in control of other Class III STB regulated carriers currently owned and controlled by Durbano, including: SWRR; CVR; CACR; WYCO; and Saratoga.

¹ In 2012, RP&P leased the line that is the subject of this proceeding from the Texas State Railroad Authority ("TSRA"). See Rusk, Palestine & Pacific Railroad, LLC – Operation Exemption – Texas State Railroad Authority, FD 35669 (STB served September 14, 2012). TSRA has given RP&P notice that it has terminated the lease and has selected T&ER as the replacement operator.

² There are currently no mileposts on the Line. In the prior FD 35669 transaction, in order to facilitate interchange between RP&P and Union Pacific Railroad Company ("UP"), RP&P and UP entered into an interchange agreement that allowed RP&P to operate over approximately 1.3 miles of track owned and operated by UP between a point where the Line connects with UP and UP's yard located in Palestine, TX. T&ER will either take assignment of this existing interchange agreement or enter into a new interchange agreement.

³ Upon the effective date of this notice and the notice filed in FD 36110, T&ER will become a carrier and replace RP&P as the Line's exclusive lessee and operator.

Description of the Parties.

Applicant, Durbano (individually and through his control and ownership of Western Group and Snowy Range Cattle Company, both non-carrier holding companies) currently owns and controls five Class III carriers subject to the STB's jurisdiction: WYCO, SWRR, CVR, CACR, and Saratoga. Durbano's STB regulated rail carrier subsidiaries are located as follows: WYCO operates in Oregon; SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; CACR operates in Arizona, and Saratoga owns but does not operate a 23.71-mile rail line between milepost 0.57 (at Walcott, WY) and milepost 24.28 (at Saratoga, WY) in Carbon County, Wyoming, commonly referred to as the "EB Line." The EB Line is a non-operating carrier.

T&ER is a non-carrier indirectly owned by Durbano. T&ER will become a common carrier railroad subject to the Board's jurisdiction upon consummation of the transaction in FD 36110.

Names, Addresses, and Phone Numbers of Involved Parties.

Applicant's Legal Name and Address:

David L. Durbano
P.O. Box 1544
Ogden, Utah 84402

T&ER's Legal Name and Address:

Texas & Eastern Railroad, LLC
3819 Airport Road, N714
Ogden, UT 84405-1532

Durbano controls the following rail carriers who operate in the states specified:

Carriers:

Wyoming and Colorado Railroad Company, Inc.
Southwestern Railroad, Inc.

State

Oregon
New Mexico⁴

⁴ On January 17, 2017, Southwestern Railroad, Inc. filed to discontinue service over an approximately 227.6 mile rail line known as the Carlsbad Division in Curry, Roosevelt, Chaves, and Eddy, Counties, New Mexico owned by BNSF. BNSF resumed operations over the Carlsbad Division on January 17, 2017. Southwestern Railroad, Inc.'s discontinuance

Cimarron Valley Railroad, L.C.
Clarkdale Arizona Central Railroad, L.C.
Saratoga Railroad, LLC

Kansas, Oklahoma, and Colorado
Arizona
Wyoming

Certification.

Durbano hereby certifies that (1) the rail lines to be operated by T&ER do not connect with any other railroads in the Durbano corporate family; (2) the proposed continuance in control is not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, pursuant to 49 C.F.R. §1180.2(d)(2), the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. §11323.

Durbano's counsel to whom questions should be directed:

William A. Mullins
Crystal Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW, Ste. 300
Washington, DC 20037
Tel: (202) 668-7820
Fax: (202) 663-7849

49 C.F.R. §1180.6(a)(1)(ii) – Proposed Schedule for Consummation:

Durbano and T&ER intend to consummate this transaction on or after the effective date established by the Board in FD 36110 for T&ER to replace RP&P as the exclusive operator of the Line, which is anticipated to be May 3, 2017.

49 C.F.R. §1180.6(a)(1)(iii) – Purpose to be accomplished by transaction:

Durbano seeks to continue in control of T&ER upon T&ER becoming a rail carrier to promote operating efficiency and maximize the reliability of rail service provided by T&ER.

proceeding is currently pending before the Board. SWRR continues to operate over its Whitewater Division in New Mexico.

49 C.F.R. §1180.6(a)(5) -- List of States in Which the Parties' Property is Located.

Applicant Durbano controls the following rail carriers who operate in the states specified:

<u>Carriers:</u>	<u>State</u>
Wyoming and Colorado Railroad Company, Inc.	Oregon
Southwestern Railroad, Inc.	New Mexico
Cimarron Valley Railroad, L.C.	Kansas, Oklahoma, and Colorado
Clarkdale Arizona Central Railroad, L.C.	Arizona
Saratoga Railroad, LLC	Wyoming

Durbano seeks to remain in control of his existing carriers and T&ER upon T&ER becoming a carrier. T&ER's operations are located in Texas.

49 C.F.R. §1180.6(a)(6) -- Maps Exhibit.

Attached to this Notice as Exhibit 1 are two maps:

- (1) The first map shows the location of the other railroads controlled and owned by Durbano.
- (2) The second map shows the Line to be operated by T&ER

49 C.F.R. §1180.6(a)(7)(ii) -- Agreement.

Durbano has not and does not plan to enter into any agreement related to applicant's continuance in control of T&ER.

49 C.F.R. §1180.4(g)(1)(i) -- Level of Labor Protection.

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 rail carriers.

49 C.F.R. §1180.4(g)(4) – Interchange Commitments:

Durbano certifies that neither this continuance in control transaction nor the related change of operator's exemption in FD 36110 contain any provision or agreement that would limit future interchange with a third-party connecting carrier.

49 C.F.R. §1105.6 through 1105.8--Environmental Report.

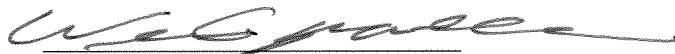
The proceeding is exempt from environmental review under 49 CFR §1105.6(c)(2)(i) because the proposed action will not cause any significant changes in carrier operations.

In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b)(2) because the transaction involves the sale, lease, or transfer of property between corporate affiliates with no significant changes in operations.

Caption Summary

While not required by the regulations, attached to this Notice as Exhibit 2 is a proposed caption summary.

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

April 3, 2017

Attorneys for David L. Durbano

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

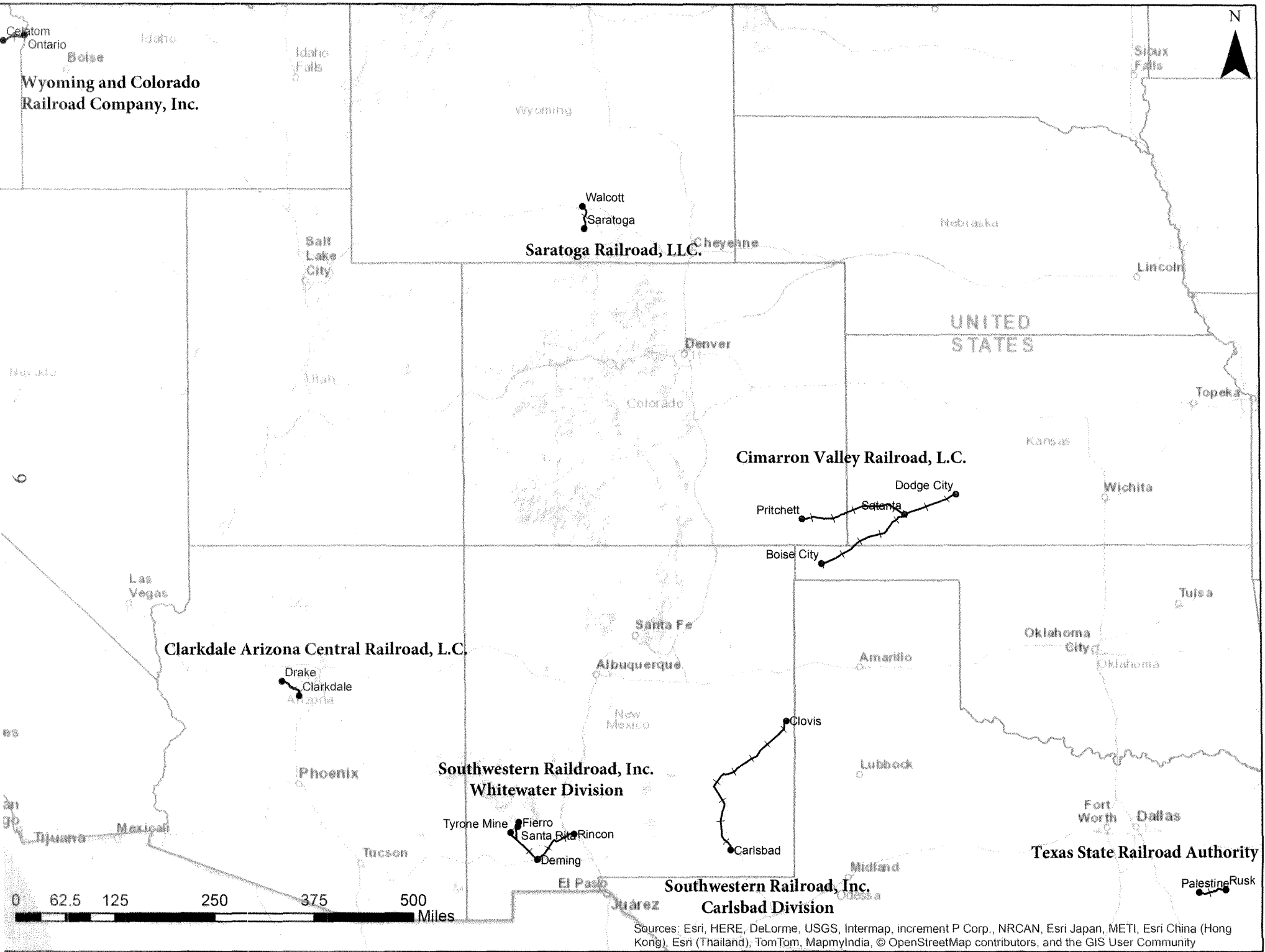
FD 36111

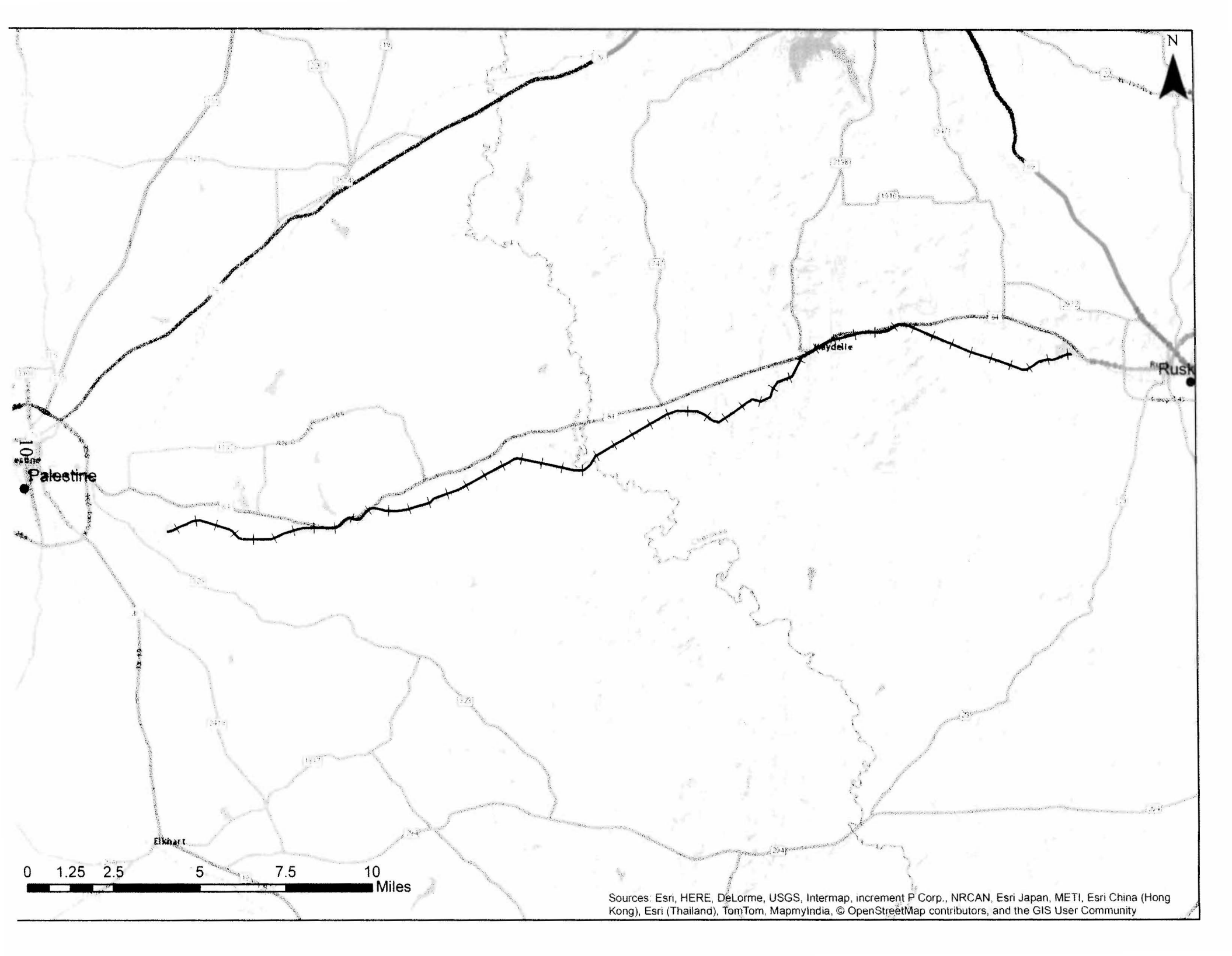
**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

EXHIBIT 1

MAPS





**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36111

**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

EXHIBIT 2

PROPOSED CAPTION SUMMARY

PROPOSED CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION**

(Finance Docket No. 36111)

**DAVID L. DURBANO. – CONTINUANCE IN CONTROL EXEMPTION -- TEXAS &
EASTERN RAILROAD, LLC**

David L. Durbano (“Durbano”) has filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Texas & Eastern Railroad, LLC (“T&ER”) upon T&ER becoming a rail carrier in Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110, while Durbano remains in control of other Class III STB regulated carriers currently owned and controlled by Durbano, including: Southwestern Railroad, Inc. (“SWRR”); Cimarron Valley Railroad, L.C. (“CVR”); Clarkdale Arizona Central Railroad, L.C. (“CACR”); Wyoming and Colorado Railroad Company, Inc. (“WYCO”); and Saratoga Railroad, LLC (“Saratoga”).

This transaction is related to a concurrently filed verified notice of exemption in Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110, in which T&ER has filed for authority under 49 C.F.R. §1150.31 to replace Rusk, Palestine & Pacific Railroad, LLC (“RP&P”) as the exclusive operator over approximately 27 miles of railroad line (the “Line”)¹ between Rusk and Palestine, TX that is currently owned by the Texas Parks and Wildlife Authority and leased to the Texas State Railroad Authority (“TSRA”).²

¹ There are currently no mileposts on the Line.

² Upon the effective date of the FD 36110 transaction, T&ER will become a carrier and replace RP&P as the Line’s exclusive lessee and operator.

Durbano and T&ER intend to consummate this transaction on or after the effective date set by the Board for T&ER's acquisition of the Line in FD 36110.

Durbano controls five other Class III rail carriers: SWR, CVR, CACR, WYCO, and Saratoga. Durbano certifies that (1) the rail lines to be operated by T&ER do not connect with any other railroads in the Durbano corporate family; (2) the proposed continuance in control is not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

If the notice of exemption contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) can be filed at any time. The filing of a Petition to Revoke will not automatically stay the proposed transaction. Any petitions to revoke must be filed with the Board and served on Durbano's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820.

Decided: _____

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36111

**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

EXHIBIT 3

VERIFICATION

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36111

**DAVID L. DURBANO – CONTINUANCE IN CONTROL – TEXAS & EASTERN
RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1180.2(d)(2)**

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, David L. Durbano, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification and the foregoing verified notice of exemption is true and correct to the best of my knowledge and belief.

Executed this 3 day of April 2017



David L. Durbano