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246426

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ENTERED
Office of Proceedings
September 25, 2018
Part of
Public Record

September 25, 2018

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: Washington Eastern Railroad, LLC – Change in Operators Exemption – Eastern Washington Gateway Railroad Company, FD 36226

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and eleven copies of a Verified Notice of Exemption (“Notice”) under 49 C.F.R. §1150.31, et seq. filed on behalf of Washington Eastern Railroad, LLC.

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. This submission also includes an electronic copy of the entire filing and a separate electronic copy of a draft Federal Register notice.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(11)(ii), I have enclosed a filing fee check in the amount of \$2,000.00. 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.

FILED
September 25, 2018
SURFACE
TRANSPORTATION BOARD

Sincerely,

William A. Mullins
Attorney for Washington Eastern Railroad, LLC

cc: Stuart A. Fredman
Bruce Carswell

FEE RECEIVED
September 25, 2018
SURFACE
TRANSPORTATION BOARD

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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION



**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**

September 25, 2018

**Attorneys for Washington Eastern
Railroad, LLC**

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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §1150.31, et. seq., Washington Eastern Railroad, LLC (“WERR”),¹ a non-carrier, hereby files this Verified Notice of Exemption (“Notice”) to permit WERR to assume operations over approximately 107.8 miles of railroad line (known as the “CW Branch”) between milepost 1.0 near Cheney, WA, to the end of the track at milepost 108.8 in Coulee City, WA and to permit WERR to assume operations over approximately 5.9 miles of track (known as the “Geiger Spur”),² which connects with the CW Branch at Geiger Junction near Medical Lake, WA. The Geiger Spur is owned by the County of Spokane, WA. The CW Branch is owned by the State of Washington, Department of Transportation (“WDOT”). Both the CW Branch and

¹ David L. Durbano, who owns 100% of WERR’s parent company, Wyoming Colorado Railroad, Inc., is filing a related proceeding to continue in control of WERR upon it becoming a carrier while remaining in control of other existing Durbano owned and controlled Class III STB regulated carriers. See David L. Durbano – Continuance in Control – Washington Eastern Railroad, LLC, FD 36227 (filed concurrently).

² The Geiger Spur consists of two segments: the first segment extends from milepost 2.5 (at the east gate of Fairchild Air Force Base) to milepost 4.93 (at McFarlane and Hayford Roads) near Airway Heights, WA and the second segment extends from milepost 0.0 at Geiger Junction at its connection with the CW Branch to milepost 3.45, where it connects with the first segment at milepost 2.7.

the Geiger Spur are currently leased to Eastern Washington Gateway Railroad Company (“EWG”) (collectively, the Geiger Spur and the CW Branch will be referred to as the “Lines”).

Upon the effective date of this Notice, WERR will become a carrier and replace EWG as the Lines’ lessee and operator. EWG is aware that WDOT is terminating its contract and has selected WERR as the new operator in place of EWG and does not object to the proposed change in operator for the Lines. The Lines are located in Spokane, Lincoln, and Grant Counties, in the state of Washington.

REQUIRED INFORMATION

In support of the Notice, WERR submits the following information as required by 49 C.F.R. § 1150.32-1150.34:

(a) **Full name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

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

(b) **Applicant’s Representatives: 49 C.F.R. §1150.33(b)**

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

(c) **Statement Concerning Agreement: 49 C.F.R. §1150.33(c)**

WERR has reached an agreement in principle with WDOT to replace EWG as the lessee and operator of the Lines upon the effective date established by the Board (“Agreement”). A final version of the Agreement is expected to be executed shortly.

(d) **Operator of the Property: 49 C.F.R. § 1150.33(d)**

WERR will replace EWG as the operator of the Lines pursuant to a lease. Upon WERR's assumption of operations, EWG will have no further common carrier obligation on the Lines.

(e) **Summary of the Transaction: 49 C.F.R. § 1150.33(e)**

WERR, a non-carrier, seeks to assume EWG's operations over approximately 107.8 miles of railroad line, known as the CW Branch, between milepost 1.0 near Cheney, WA, to the end of the track at milepost 108.8 in Coulee City, WA, and to permit WERR to assume EWG's operations over approximately 5.9 miles of track, known as the Geiger Spur, which connects with the CW Branch at Geiger Junction near Medical Lake, WA. The Geiger Spur is owned by the County of Spokane, WA. The CW Branch is owned by WDOT. The Lines are currently leased to EWG.³ BNSF currently has trackage rights over the CW Branch from milepost 1.0 at Cheney, WA to milepost 6.30 at Four Lakes, WA.⁴ WERR's lease of the Lines will continue to be subject to BNSF's trackage rights.

³ The Lines that are the subject of this notice of exemption are the same lines for which EWG obtained authority to lease and operate in Eastern Washington Gateway Railroad Company – Lease and Operation Exemption – Washington State Department of Transportation, FD 35029 (STB served May 25, 2007) (CW Branch), and Eastern Washington Gateway Railroad Company – Change in Operator Exemption – Rail Line of Spokane County, WA, FD 35201 (STB served Dec. 5, 2008) (Geiger Spur).

⁴ BNSF Railway Company – Trackage Rights Exemption – State of Washington, Department of Transportation, FD 36001 (STB served Mar. 21, 2016).

- (1) Name and address of railroad transferring the subject property:

Owner of the Geiger Spur:

County of Spokane
Washington Division of Engineering and Roads
1026 West Broadway Avenue
Spokane, WA 99260-0170

Owner of the CW Branch:

Washington State Department of Transportation
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300

- (2) Proposed time schedule for consummation:

The transaction is expected to be consummated on or after October 21, 2018 (30 days after the filing of the Notice).

- (3) Mileposts of the subject property:

The CW Branch extends from a connection with BNSF Railway Company at milepost 1.0 near Cheney, WA, to the end of the track at milepost 108.8 in Coulee City, WA.

The Geiger Spur consists of two segments. The first segment extends from milepost 2.5 (at the east gate of Fairchild Air Force Base) to milepost 4.93 (at McFarlane and Hayford Roads) near Airway Heights, WA. The second segment extends from milepost 0.0 at Geiger Junction at its connection with the CW Branch to milepost 3.45, where it connects with the first segment at milepost 2.7.

- (4) Route miles being acquired:

The CW Branch line consists of 107.8 miles.

The Geiger Spur consists of two segments totaling 5.9 miles.

(f) **Map: 49 C.F.R. § 1150.33(f)**

A map of the Geiger Spur and of the CW Branch are attached as Exhibit A.

(g) **Certification of Revenues: 49 C.F.R. § 1150.33(g)**

WERR hereby certifies that its projected annual revenues resulting from the transaction will not exceed those that would qualify it as a Class III carrier. See certification attached as Exhibit B.

(h) **Interchange Commitments: 49 C.F.R. §1150.33(h)**

WERR hereby certifies that the underlying lease and operation agreement does not contain any provision or agreement that would limit future interchange with a third-party connecting carrier.

ADVANCE NOTICE REQUIREMENTS

WERR's projected annual revenues will not exceed \$5 million as a result of this transaction. See Exhibit B. For this reason, the 60-day advance notice and posting requirements of 49 C.F.R. § 1150.32(e) does not apply here.

ENVIRONMENTAL AND HISTORIC IMPACTS

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is exempt from environmental reporting requirements because the proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § § 1105.7(e)(4) or (5).

Also, under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval would be required for WERR to discontinue or WDOT to

abandon service. There are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

CAPTION SUMMARY

A caption summary in the appropriate form (49 C.F.R. § 1150.34) is attached as Exhibit C to the Notice.

SHIPPER NOTICE

Pursuant to 49 C.F.R. § 1150.32(b), WERR hereby certifies that it has contemporaneously with this filing, furnished all known shippers on the Lines with notice of the proposed change in operators exemption. See Exhibit D to the Notice.

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

September 25, 2018

Attorneys for Washington Eastern Railroad,
LLC

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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT A

MAP

WASHINGTON EASTERN RAILROAD, LLC

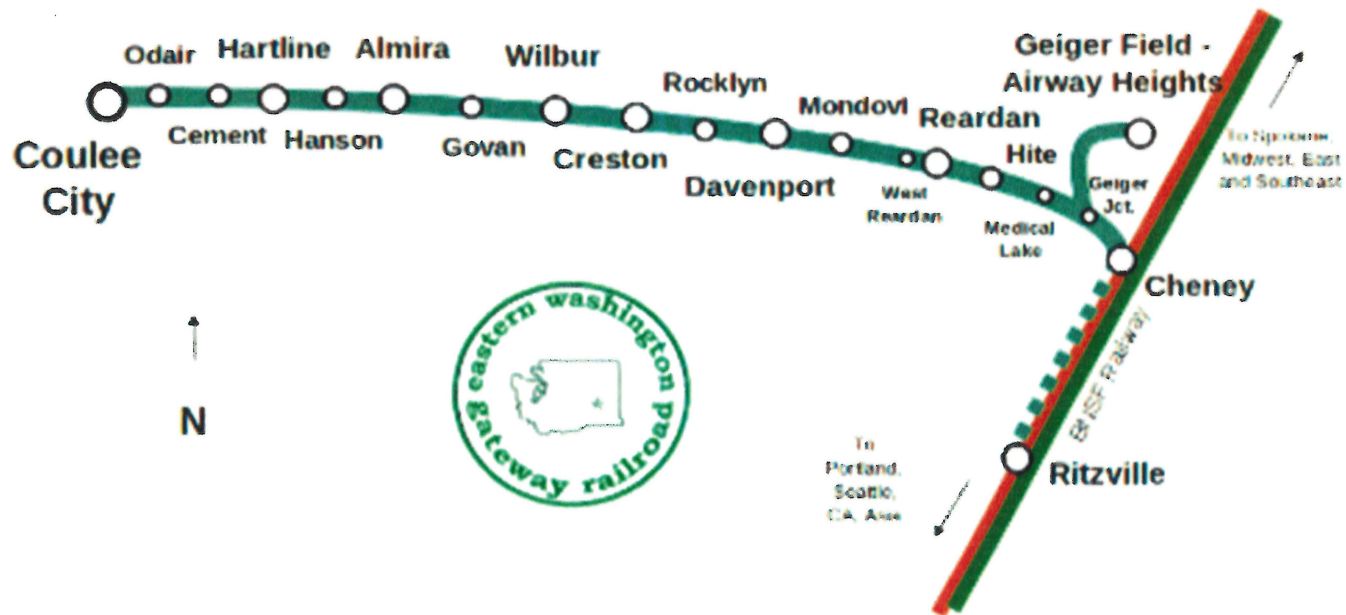
– CHANGE IN OPERATORS EXEMPTION –

EASTERN WASHINGTON GATEWAY RAILROAD COMPANY

FD 36226

Eastern Washington Gateway Railroad

System Map



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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

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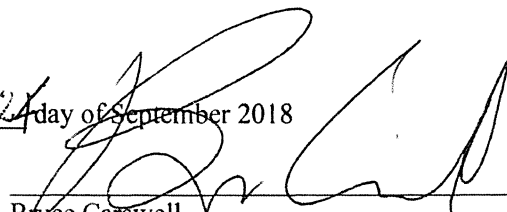
EXHIBIT B

**WASHINGTON EASTERN RAILROAD, LLC
CERTIFICATION OF REVENUES 49 C.F.R. § 1150.33(g)**

CERTIFICATION OF REVENUES

I, Bruce Carswell, Vice President of Operations, The Western Group,⁵ hereby certify that the projected annual rail revenues of the Washington Eastern Railroad, LLC ("WERR") will not as a consequence of the transaction exceed \$5,000,000.00 or result in WERR becoming a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 C.F.R. §1150.35.

Executed this 24 day of September 2018



Bruce Carswell
The Western Group

⁵ The Western Group manages the various short line railroads and railroad related companies owned and controlled by Mr. Dave Durbano, including what will become the Washington Eastern Railroad, LLC.

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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36226

Washington Eastern Railroad, LLC (“WERR”),¹ a non-carrier, seeks to lease and assume the operations of Eastern Washington Gateway Railroad Company (“EWG”) over approximately 107.8 miles of railroad line known as the CW Branch between milepost 1.0 near Cheney, WA, to the end of the track at milepost 108.8 in Coulee City, WA, and to permit WERR to assume EWG’s operations over approximately 5.9 miles of track known as the Geiger Spur,² which connects with the CW Branch at Geiger Junction near Medical Lake, WA.³ EWG is aware that WDOT is terminating its contract and has selected WERR as the new operator in place of EWG and does not object to the proposed change in operator for the Lines. The Geiger Spur is owned by the County of Spokane, WA. The CW Branch is owned by the State of Washington,

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² The Geiger Spur consists of two segments: the first segment extends from milepost 2.5 (at the east gate of Fairchild Air Force Base) to milepost 4.93 (at McFarlane and Hayford Roads) near Airway Heights, WA and the second segment extends from milepost 0.0 at Geiger Junction at its connection with the CW Branch to milepost 3.45, where it connects with the first segment at milepost 2.7.

³ BNSF Railway Company (“BNSF”) currently has trackage rights over the CW Branch from milepost 1.0 at Cheney, WA to milepost 6.30 at Four Lakes, WA BNSF Railway Company – Trackage Rights Exemption – State of Washington, Department of Transportation, FD 36001 (STB served Mar. 21, 2016). WERR’s lease and operations will be subject to BNSF’s trackage rights operation.

Department of Transportation (“WDOT”) (collectively, the Geiger Spur and the CW Branch will be referred to as the “Lines”).⁴

Comments must be filed with the Board and served on WERR’s representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820. This notice is filed under 49 C.F.R. § 1150.31, et. seq. 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.

Decided: _____

By the Board

⁴ The Lines that are the subject of this notice of exemption are the same lines for which EWG obtained authority to lease and operate in Eastern Washington Gateway Railroad Company – Lease and Operation Exemption – Washington State Department of Transportation, FD 35029 (STB served May 25, 2007) (the CW Branch), and Eastern Washington Gateway Railroad Company – Change in Operator Exemption – Rail Line of Spokane County, WA, FD 35201 (STB served Dec. 5, 2008).

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SURFACE TRANSPORTATION BOARD
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FD 36226

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– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT D

**CERTIFICATE OF COMPLIANCE WITH
49 C.F.R § 1150.32(b)
SERVICE REQUIREMENTS**

CERTIFICATION OF SERVICE

I hereby certify that, in compliance with the notice requirements of 49 C.F.R. § 1150.32(b), I have served a true copy of the foregoing change of operator notice of exemption by first-class mail, postage prepaid, or by a more expeditious manner, this 25th day of September, 2018, on all known shippers on the railroad lines that are the subject of the FD 36226 proceeding.



William A. Mullins
Attorney for Washington Eastern Railroad, LLC

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

FD 36226

**WASHINGTON EASTERN RAILROAD, LLC
– CHANGE IN OPERATORS EXEMPTION –
EASTERN WASHINGTON GATEWAY RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

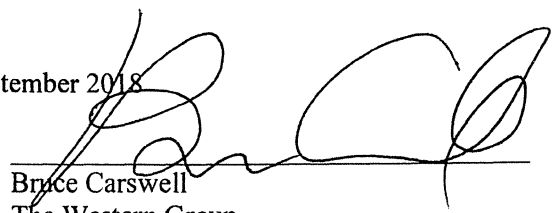
EXHIBIT E

VERIFICATION

Verification

Pursuant to 28 U.S.C. 1746, I, Bruce Carswell, Vice President of Operations, The Western Group, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of the Washington Eastern Railroad, LLC in FD 36226 and the foregoing verified notice of exemption is true and correct to the best of my knowledge and belief.

Executed this ~~24~~ day of September 2018



Bruce Carswell
The Western Group