

**MULLINS LAW GROUP PLLC***Transportation Solutions for the 21<sup>st</sup> Century*

2401 Pennsylvania Avenue N.W.  
 Suite 300  
 Washington, D.C. 20037

**William A. Mullins**  
[wmullins@mullinslawgroup.net](mailto:wmullins@mullinslawgroup.net)  
[mullinslawgroup.net](http://mullinslawgroup.net)

Telephone: (202) 663-7850  
 Direct: (202) 663-7823  
 Facsimile: (202) 459-2115

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 Office of Proceedings  
 April 1, 2024  
 Part of  
 Public Record

April 1, 2024

**VIA E-FILING**

Cynthia T. Brown, Chief  
 Section of Administration, Office of Proceedings  
 Surface Transportation Board  
 395 E Street, SW  
 Washington DC 20423-0001

Re: Wyoming and Colorado Railroad Company, Inc., -- Abandonment  
 Exemption – In Carbon County, WY AB-307(Sub-No. 6X)

**Petition For Waiver of the Consummation Notice Requirement**

Dear Ms. Brown:

Due to Wyoming and Colorado Railroad Company, Inc.'s ("WYCO") failure to file for consummation authority for its authorized abandonment in AB-307 (Sub-No. 6), a subsidiary of Western Group Holding Company, Inc. ("Western Group"), Saratoga Railroad, LLC,<sup>1</sup> ("Saratoga"), currently possesses a common carrier obligation over what is an essentially a 23.71-mile abandoned railroad right-of-way between milepost 0.57, near Walcott, and milepost 24.28 at Saratoga, in Carbon County, Wyoming (the "Line"). There are no tracks on the Line. The Line includes no shippers or stations. No traffic has been handled on the Line since January

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<sup>1</sup> David L. Durbano ("Durbano") owns Western Group, which owned and controlled WYCO until WYCO was acquired by Jaguar in 2020. See OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC – Acquisition of Control Exemption – Cimarron Valley Railroad, L.C.; Southwestern Railroad, Inc.; Texas & Eastern Railroad, LLC; Washington Eastern Railroad, LLC; and Wyoming and Colorado Railroad, Inc., FD 36440 (STB Served Oct. 16, 2020). Prior to the acquisition by Jaguar, Durbano owned and controlled WYCO. See Wyo. & Colo. R.R. – Acquis. & Operation Exemption – Certain Lines of Union Pac. R.R., FD 31140 (ICC served Nov. 30, 1987). In 2017, Durbano, through Saratoga Railroad, LLC ("Saratoga"), at the time a non-carrier corporation wholly owned by Durbano, acquired the Line from WYCO. See David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC – Corporate Family Transaction, FD 36091 (STB Served Feb. 2, 2017). Saratoga was not included in the sale to Jaguar.

2003.<sup>2</sup> Due to WYCO's failure to file its consummation notice, Saratoga now possesses a common carrier obligation over what is essentially an abandoned line. Because Saratoga desires to relieve itself of the common carrier obligation on the Line and to sell the right-of-way to an adjoining landowner, Saratoga hereby petitions the Surface Transportation Board ("STB" or "Board") to grant a waiver from WYCO's requirement to have filed a consummation notice within one year and to allow Saratoga to officially consummate the abandonment without the need to refile for abandonment authority.

By petition filed on February 10, 2006, WYCO sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the Line.<sup>3</sup> The STB issued a decision served on May 31, 2006 (the "May 31 Decision") granting the petition for exemption.<sup>4</sup> Following the May 31 Decision authorizing the abandonment of the Line, the tracks, ties, and other track materials were salvaged. Per the Board's May 31 Decision, WYCO had until May 31, 2007, to consummate its abandonment authority of the Line. If it did not and there were no legal or regulatory barriers to consummation, WYCO's abandonment authority would expire.<sup>5</sup> WYCO salvaged the Line; however, due to an unintentional oversight and a number of shifts within the corporate family and legal representation, the consummation notice for the abandonment did not get timely filed with the Board. Thus, Western Group/Saratoga is filing this letter seeking a waiver of WYCO's requirement to have filed its consummation notice

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<sup>2</sup> The last active rail shipper on the Line was Louisiana-Pacific Corporation (LP). LP operated a sawmill in Saratoga that closed in January of 2003 and no traffic has moved over the Line since the closing of the sawmill. See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB 307 (Sub-No. 6X) (STB served May 31, 2006).

<sup>3</sup> See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB 307 (Sub-No. 6X) (STB served May 31, 2006) ("WYCO II").

<sup>4</sup> WYCO initially began the abandonment process in 2003, shortly after the last active rail shipper on the Line had closed its sawmill in Saratoga, Wyoming. However, WYCO learned that Intermountain Resources, LLC ("IMR") had an interest in purchasing and reopening the sawmill and WYCO postponed its efforts to undergo the abandonment process at the time. Ultimately, WYCO and IMR could not negotiate an agreement that was profitable for WYCO and WYCO proceeded with filing for an abandonment exemption in July 2004. The Board denied WYCO's petition for abandonment exemption in WYCO I without prejudice because WYCO failed to present evidence supporting its argument that the Line could not be operated on a profitable basis. See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB-307 (Sub-No. 5X) (STB served Nov. 10, 2004) ("WYCO I").

<sup>5</sup> The abandonment was subject to environmental, historic preservation, and standard employee protective conditions. *Id.* The Board issued an Environment Assessment on April 11, 2006, recommending four environmental conditions and concluding that the environmental impact statement process was unnecessary. See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB-307 (Sub-No. 6X) (STB served April 11, 2006).

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requirement by May 31, 2007 and requests the Board to allow Saratoga to now consummate the abandonment authority and without the need to go through the abandonment process again.

Western Group/Saratoga takes very seriously the requirements of § 1152.29(e) and is aware that the expectation is for a party to timely provide notice of abandonment consummation by the notice deadline. However, requiring Saratoga to go through the abandonment process again after the Board previously authorized the abandonment and the Line has been salvaged would impose additional costs on Western Group and unnecessarily consume the Board's time and resources. Western Group/Saratoga's request is not without precedent. The Board has previously retroactively waived the notice of consummation requirement for abandonment of rail lines. See Abe Fairmont, LLC – Abandonment Exemption – In Fillmore County, Neb., AB 1106X (STB served Jan. 29, 2018); BNSF Railway Co. – Discontinuance of Service Exemption – In Fillmore County, Neb., AB 6 (488X)(STB served Jan. 29, 2018); Fillmore Western Railway Company – Abandonment Exemption – In Fillmore County, NEB, AB 492 (Sub-No. 2X) (STB served Jan. 29, 2018)(granting waiver where new owner intended for the rail line to become non-jurisdictional industry track); and Union Railroad Company, LLC – Abandonment Exemption – In the City of McKeesport, Allegheny County, PA, AB 183 (Sub-No. 5X) (STB served Nov. 15, 2022). Here, the failure to timely file a notice following the May 31 Decision in 2006 was due to an honest mistake, a change in corporate structure, and a change in regulatory counsel. The track was salvaged long ago, and the right-of-way is ready to be sold. But clear title cannot be obtained due to WYCO's failure to timely file its consummation notice. Western Group is now trying to clean up the record, consummate the abandonment, and clear up title so the property can be sold without STB jurisdiction.

No party will be prejudiced by the Board granting the waiver sought here and there is no utility in forcing Saratoga to go through the abandonment process for a line that has been salvaged since 2006 and has no shippers. With this petition, Saratoga, as the successor to WYCO's ownership of the Line, is simultaneously filing the required consummation notice. Western Group/Saratoga respectfully requests that the Board waive the otherwise applicable deadlines for filing a consummation notice or extension request and accept the attached consummation notice. Doing so avoids wasting the time and resources of both Western Group and the Board. In closing, Western Group apologizes for this unfortunate oversight. Please contact me should you have any questions about this Petition.

Sincerely,

/s/ **William A. Mullins**

William A. Mullins  
Attorney for Western Group Holding  
Company, Inc./Saratoga Railroad LLC

cc: Parties of Record

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

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**STB Docket No. AB-307 (Sub-No. 6X)**

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**WYOMING AND COLORADO RAILROAD COMPANY, INC.  
– ABANDONMENT EXEMPTION –  
IN CARBON COUNTY, WYOMING**

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**PETITION FOR WAIVER OF THE CONSUMMATION NOTICE  
REQUIREMENT**

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**EXHIBIT A**

**CONSUMMATION NOTICE**

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Re: Wyoming and Colorado Railroad Company, Inc., -- Abandonment  
Exemption – In Carbon County, WY AB-307(Sub-No. 6X)

Dear Ms. Brown:

In a Board Decision served in the above-referenced proceeding on May 31, 2006 (the “May 31 Decision”), the Board granted Wyoming and Colorado Railroad Company, Inc.'s ("WYCO") petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 23.71-mile line of railroad between milepost 0.57 near Walcott, and milepost 24.28 (the “Line”), at Saratoga, in Carbon County, Wyoming. The May 31 Decision was granted subject to environmental, historic preservation, and standard employee protective conditions. Notice of the exemption was served and published in the Federal Register on March 2, 2006 (71 FR 10755-56). The Line was completely salvaged following the 2006 abandonment authority and there has been no service over the Line since 2003. WYCO had until May 31, 2007, to tender formal notice of abandonment consummation, but due to an inadvertent oversight, WYCO never filed the notice of consummation, and the Line has remained subject to Board jurisdiction.

Saratoga Railroad, LLC (“Saratoga”) acquired the Line from WYCO in a 2017 Corporate Family Transaction. Western Group, a noncarrier holding company, owns and controls Saratoga. At the time of the 2017 Corporate Family Transaction, WYCO owned but did not operate the Line. See David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC – Corporate Family Transaction, FD 36091 (STB served Feb. 2, 2017). Assuming the corresponding petition for waiver of the consummation deadline is granted, Western Group/Saratoga, the current owners of the Line, are hereby advising the Board that Saratoga is consummating WYCO's previously granted abandonment authority and has fully abandoned the Line.

Should you have any questions concerning the subject notice of abandonment consummation or any other element of this proceeding, please contact the undersigned counsel for Western Group/Saratoga.

Sincerely,

/s/ ***William A. Mullins***

William A. Mullins  
Counsel for Western Group Holding Company, Inc.  
and Saratoga Railroad LLC