

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
November 20, 2025
Part of
Public Record

FINANCE DOCKET NO. FD 36849

KANSAS & OKLAHOMA RAILROAD, LLC. – LEASE AND
OPERATION EXEMPTION WITH INTERCHANGE
COMMITMENT – UNION PACIFIC RAILROAD COMPANY

COMMENTS OF COLORADO PACIFIC RAILROAD LLC

Pursuant to the decision served in this proceeding by the Surface Transportation Board (“STB” or “Board”) on June 25, 2025, as supplemented by the decisions served in this proceeding on August 8, 2025, and November 13, 2025, Colorado Pacific Railroad LLC (“CXR”) submits these comments on the Petition for Exemption (“Petition”) filed by Kansas & Oklahoma Railroad, LLC (“K&O”) in this Docket. CXR appreciates the opportunity to provide these comments. The factual statements made in these comments are verified by Mr. Jason Jones, the Chief Operating Officer of CXR, pursuant to the attached Verification.

I. Identity and Interest of CXR

CXR is a Class III rail carrier subject to the Board’s jurisdiction. CXR is also a wholly-owned subsidiary of KCVN, LLC, and an affiliate of Weskan Grain LLC (“Weskan”),¹ which has challenged the proposed lease agreement that has been presented to the Board for approval by the K&O in this proceeding. CXR owns and operates a 121.9-mile railroad line that connects at

¹ CXR is wholly owned by KCVN, LLC which is in turned owned 50% by the Estate of Sheldon H. Solow (“Estate”) and 50% by Stefan Soloviev. Weskan is owned by Soloviev Investors, which is 100% owned by Solow Realty & Development, which is in turned owned by the Estate.

Towner, Colorado – near the Colorado-Kansas border - to the rail line owned by the Union Pacific Railroad Company (“UP”) and operated by K&O that is the subject of this proceeding (“UP Lease Track”). Specifically, the UP Lease Track extends from Towner east to Scott City, Kansas, where it connects to K&O-owned track continuing further east, and to other track operated by K&O and covered by the same UP lease that extends from Scott City to Healy, Kansas. Exhibit 1 (Map).

CXR’s track, historically known as the Towner Line, was acquired by CXR in January, 2018 pursuant to the Board’s “feeder line” processes under 49 U.S.C. §10707 and 49 C.F.R. Part 1151.1.² As explained in more detail below, the Towner Line and UP Lease Track were part of the same approximately 825-mile railroad line that once extended from St. Louis, Missouri to Pueblo, Colorado. Accordingly, freight railroad traffic originating in Kansas on the UP Lease Track can physically be transported west over the Towner Line either by running through the Towner connection onto CXR’s track or via an interchange established between K&O and CXR. Similarly, traffic originating on the Towner Line can be transported east over the UP Lease Track or interchanged with K&O.

Weskan’s Stockton grain elevator facility was constructed at Milepost 752.5 of the Towner Line in 2022 and became operational in 2023. CXR provides common carrier rail service to the Stockton Facility and CXR is also available to respond to reasonable requests for rail service from other shippers on the Towner Line and in eastern Kansas via interchange with K&O at Towner.

² See, e.g., Docket No. 36005, *KCVN and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of V and S Railway, LLC Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado* (served July 31, 2017)(“Feeder Line Case”).

II. Additional Background

As mentioned above, the Towner Line and the UP Lease Track are vestiges of the Missouri Pacific Railroad Company (“MoPac”) rail line that was constructed in the 1800s and extended over 825 miles from St. Louis, Missouri to Pueblo, Colorado. The Mopac was merged into UP in 1982 and over time UP sold, abandoned, or leased segments of the Mopac line to various entities. These segments included the Towner Line, which UP sold to the State of Colorado in 1998 after UP received authority from the Board to abandon it as part of the UP/SP merger proceeding.³ The State of Colorado subsequently sold the Towner Line to V&S Railway, Inc. in 2005, which soon thereafter ceased all freight service over it and allowed the entire Towner Line to fall into disrepair.⁴

CXR’s attempts to acquire the Towner Line began in 2014 when V&S responded to a *bona fide* cash offer from KCVN to purchase the line by surreptitiously tearing up the track and attempting to sell it, which CXR was successful in halting with the help of a Colorado State Court and this Board.⁵ With the further assistance of the Board’s decisions in the *Feeder Line Case*, CXR finally acquired the Towner Line from V&S Railway in January 2018 for \$10,000,000.⁶ CXR and KCVN then invested over \$3,500,000 between 2018 and 2019 to upgrade the main line track, bridges and sidings to bring the entire Towner Line up to FRA Class 2 status.⁷

³ Finance Docket No. 32760, *Union Pacific Corp, et al – Control and Merger – Southern Pacific Rail Corp, et al* (Decision No. 44), 1 S.T.B. 233 (1996) at 257, 354-57, 494-97, 510-11, and 524-28.

⁴ See *Feeder Line Case*, at 2-4.

⁵ See, e.g. Docket NOR 42140, *Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers, and Colorado Wheat Research Foundation, and KCVN, LLC v. V & S Railway, LLC* (where among other actions, the Board enjoined the track’s removal).

⁶ *Feeder Line Case* (decision served December 18, 2017).

⁷ Additional factual information about the investments in the Towner Line may be found in the Verified Statement of William Osborn included as Exhibit B to the Feeder Line Application

After the initial track upgrades were completed KCVN and CXR began then working with UP and the BNSF Railway Company (“BNSF”) to reestablish and upgrade previously existing interchange tracks with both Class I railroads at NA Junction, Colorado on the western end of the Towner Line. This additional \$3,500,000 million capital outlay restored the Towner Line’s historic ability to facilitate the transportation of commodities westward by rail to Pueblo, Colorado and beyond, including UP and BNSF-served origins and destinations to the north and south. The combined investments restored the Towner Line as a means by which freight rail shipments could flow through Colorado in both westward and eastward directions.

Since taking over common carrier operations of the Towner Line from K&O in 2021 (see below) CXR has acquired several locomotives and it owns a small fleet of grain hopper railcars. CXR also has transported approximately 5200 carloads of grain over the Towner Line since 2023. The traffic has been mostly wheat shuttle trains that are assembled at the Stockton Facility, which has 3.1 million bushels of upright grain storage capacity and 2.2 million bushels of ground storage capacity, and it can be expanded. The facility receives grain grown by Colorado and western Kansas farmers that is presently delivered by truck and then loaded into railcars for outbound shipping by UP or BNSF shuttle trains.

CXR operates to and from NA Junction pursuant to handling carrier agreements with UP and BNSF, whereby CXR delivers the shuttle trains to either carrier at the NA Junction interchange tracks. There are other rail shippers along the Towner Line but to date CXR has not received a request for rail service from them.

filed by CXR and KCVN LLC on February 14, 2020 in Docket No. FD 36386 - *KCVN, LLC and Colorado Pacific Railroad, LLC -Feeder Line Application - Line of Union Pacific Railroad Company Located in Pueblo, Fremont, Chaffee, Lake, and Eagle Counties, Colorado.*

III. The Relationship Between CXR and K&O

The relationship between CXR and K&O is rooted in the efforts by KCVN and CXR to acquire the Towner Line. Due to its established position as the operator of the UP Lease Track that was physically a continuation of the Towner Line, K&O was a natural fit to be the operator of the Towner Line if CXR acquired it. Consequently, discussions about K&O being the operator of the Towner Line started in 2014, and in March 2016 a representative of K&O submitted a verified statement in support of the CXR's Feeder Line Application that described the arrangement and K&O's proposed operating plan.⁸ As described by K&O then, the arrangement would have entailed K&O conducting operations over the Towner Line by entering onto the track at the Towner connection, which would "restore[]" the line to "its historic status as part of a route running from points in Kansas to Pueblo, Colorado, to enable rail transportation of other commodities originating west and east of the Towner Line." Story V.S. at 2. Mr. Story further stated "[t]he K&O would be able to conduct freight operations over the Towner Line due to [the connection at Towner], and Watco has always been interested in expanding the K&O's ability to provide freight service west of Towner." *Id.* K&O also expressed a belief in 2016 that "the Towner Line has great potential to become an important transportation link to allow more wheat growers in this area of Colorado access to a variety of markets, and for shippers of other commodities located in the Midwest and Intermountain West to have them transported to markets to the east and west, respectively." *Id.* at 4.

⁸ See Docket FD 36005, Feeder Line Application of Colorado Pacific Railroad LLC, Volume I, Exhibit C, Verified Statement of Doug Story dated March 9, 2016 (Story V.S.) (Exhibit 2).

But none of the aspirations K&O expressed in 2016 came to pass. After CXR acquired the Towner Line CXR and K&O entered into an Operating Agreement dated January 1, 2019, with an initial term of two years, but with rights to extend. Exhibit 3. The Agreement established K&O as the exclusive common carrier operator of the Towner Line, and K&O obtained the requisite operating authority from the Board.⁹ During the term, K&O and CXR attempted to develop traffic on the Towner Line, but without success. As one example, in April, 2021, K&O established rates for the transportation of corn by K&O from origins on the UP Lease Track to Ordway, CO, a destination on the Towner Line. Exhibit 4. The rates included “all in rates for both railroads” from origins on the UP Lease Track to Ordway, a distance of up to 164 miles (from Scott City, KS to Ordway, CO).

This new business never materialized, but the example is nevertheless noteworthy because, as discussed below, unbeknownst to CXR and KCVN, K&O and UP had previously amended their lease in 2019 and inserted an interchange commitment in the form of a punitive fee assessed K&O for each car that originated at locations on the UP Lease Track and terminated on the Towner Line. The fee created a financial disincentive for the movement of any commodities over the Towner Line that originated on the UP Lease Track, contrary to the letter and spirit of the Operating Agreement. However, no reference to the fee was made in K&O’s communication of the rates for corn from origins on the UP Lease Track to Ordway in 2021.

In the end, K&O only transported a few rail cars in interstate service over the Towner Line over the term of the Operating Agreement, as most of K&O’s use of the track was for car storage.¹⁰ The limited freight service included a “test run” of four railcars of corn from Stuart, CO on the

⁹ Docket No. FD 36310, *Kansas & Oklahoma Railroad, LLC – Operation Exemption – Colorado Pacific Railroad, LLC* (Served June 24, 2019).

¹⁰ Exhibit 5 (Spreadsheet produced by K&O pursuant to the Operating Agreement).

Towner Line eastward to the Seaboard Corporation hog feed mill located approximately 45 miles away at Leoti, KS. *See* Exhibit 6. K&O did not transport any railcars from origins on the UP Lease Track west over the Towner Line during the term of the Operating Agreement.

Due to the lack of traffic, K&O and CXR mutually agreed to allow the Operating Agreement to expire on its own terms on December 31, 2021. The expiration was accompanied by K&O seeking and obtaining authority to discontinue its operating authority, and CXR assuming the responsibilities of the common carrier operator over the track.¹¹

IV. **The Interchange Commitment**

CXR became generally aware anecdotally through its interactions with K&O leading up to CXR's acquisition of the Towner Line and discussions about K&O being the operator that an interchange commitment existed in K&O's lease with UP. However, while neither carrier denied the existence of the restriction, its specific terms were never disclosed to CXR by K&O or UP. Learning the nature and extent of the restriction was not pursued by CXR at that time due to the more immediate need to rehabilitate the dilapidated Towner Line so it could support the transportation of any commodities at all. However, CXR and KCVN directly raised the interchange commitment issue with both UP and K&O in early 2021. *See, e.g.*, Exhibit 7 (May 5, 2021 letter from CXR and KCVN counsel to UP counsel). Despite CXR's and KCVN's voiced concerns, both railroads continued to refuse to disclose the nature and scope of the interchange commitment.

Consequently, CXR was unaware of the fact that, near the end of first year of the term of its Operating Agreement with K&O in 2019, K&O and UP amended their lease to modify its

¹¹ Docket No. AB 853 (Sub-No. 4X) *Kansas & Oklahoma Railroad, L.L.C. — Discontinuance of Service Exemption — In Crowley, Pueblo, and Otero Counties, Colo.* (Served July 28, 2022)

original interchange commitment by replacing it with the financial penalty to be placed on any railcar that originated on the UP Lease Track and would interchange with CXR at Towner. The existence of this and other lease amendments was revealed in early 2025 in the public versions of pleadings filed by Weskan and K&O in STB Docket No. FD 34030, *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, LLC*.

CXR does not know the magnitude of the Asset Use Fee penalty referenced in that proceeding but it now suspects that the lack of new rail freight traffic development on the Towner Line over the term of the Operating Agreement was due at least in part to this restriction in K&O's lease with UP. CXR believes that this undisclosed financial barrier materially contributed to the fact that over the term of Operating Agreement not one carload of grain or other commodity was transported from an origin on the UP Lease Line westward over the Towner Line, and it is one reason (along with extremely high rates set by K&O) why no carloads have been interchanged by K&O with CXR for transportation over the Towner Line since December 31, 2021 when that agreement expired.

V. The Interchange between CXR and K&O

Pursuant to the Operating Agreement, CXR and K&O agreed to “establish and maintain interchange tracks at Towner connecting the Rail Line to RAILROAD's line at Milepost 747.5 at Towner of rail (sic) and terms and conditions for interchange that facilitate and encourage development of traffic over the Rail Line.” Exhibit 4 at Section 6.6. However, because K&O's limited operations over the Towner Line entailed its locomotives simply coming onto CXR's track using the existing end-to-end connection of the tracks at Towner, no interchange agreement was entered into over the term of the Operating Agreement.

In May 2023 CXR and K&O revived discussions of potentially establishing interchange tracks in conjunction with proposals to transport grain from Weskan's facilities in Kansas to its Stockton facility. *See* Exhibit 8. To date, these discussions have not entailed establishing an interchange at Towner. Rather, CXR and K&O have discussed the feasibility of either (1) conducting the interchange of cars on a siding located approximately 8.5 miles east of Towner at approximately Milepost 741 of the UP Lease Line at Walkinghood, KS; or (2) reinstituting the prior arrangement set out in the Operating Agreement whereby K&O came directly onto the Towner Line where the tracks connected. Under the latter arrangement, K&O would directly serve the Stockton facility.

To date, CXR and K&O have exchanged drafts of an interchange agreement but have not been able to mutually agree to its terms and so no interchange of carloads has taken place.

VI. Effect of the Interchange Commitment on CXR

CXR acquired the Towner Line through the Feeder Line process in Docket No. FD 36005 to restore common carrier railroad service over it. CXR and KCVN then invested millions of dollars in the track and other facilities, resulting in the Towner Line having the capacity and track grade to handle large volumes of grain and other commodities from shippers located on the UP Lease Line for movement west to either the Stockton facility or to NA Junction and points west.

To the extent that provisions in the proposed lease between K&O and UP prevent or significantly disincentivize Kansas shippers from transporting their commodities over the Towner Line, this has a direct, adverse impact on CXR's operations and its ability to recoup its capital investment and to have sufficient funds to maintain the Towner Line. Accordingly, CXR concurs with Weskan that the Board should not approve the lease transaction as proposed by UP and K&O

unless the interchange commitment is removed, and other appropriate relief is granted to ensure that CXR has a reasonable ability to provide common carrier rail service in response to shipper needs.

Respectfully submitted,

/ss/ Thomas W. Wilcox

THOMAS W. WILCOX

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Attorney for Colorado Pacific Railroad LLC

November 20, 2025

VERIFICATION

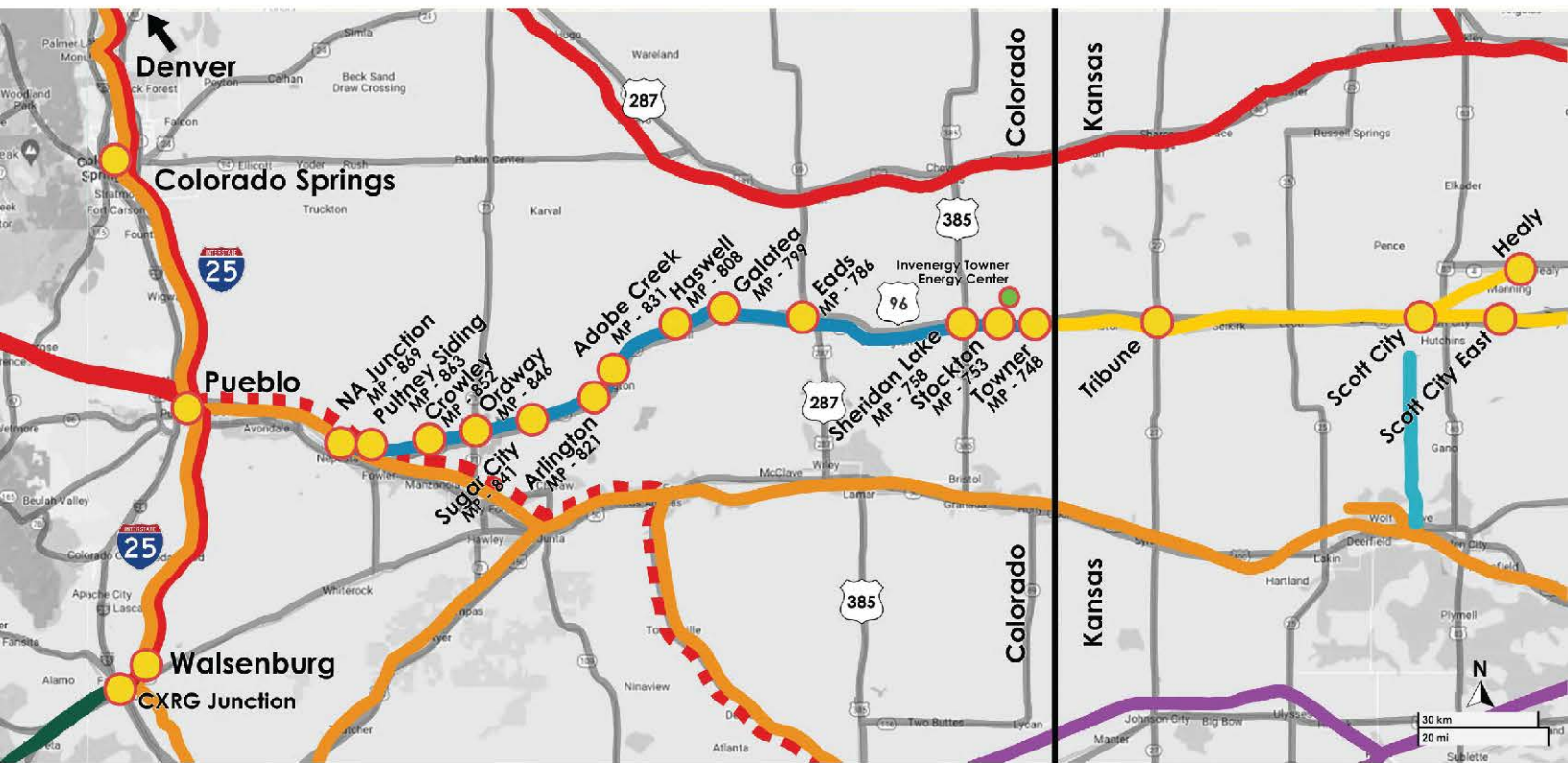
I, Jason Jones, the Chief Operating Officer of Colorado Pacific Railroad LLC (“CXR”), state, under penalty of perjury, that the facts set forth in the foregoing Comments of Colorado Pacific Railroad LLC are true and correct to the best of my knowledge.

Executed: November 20, 2025



Jason Jones

EXHIBIT 1



Colorado Pacific Railroad System Map (with Freight Railroads) 2024

- CXR
- BNSF
- UP
- K&O
- UP Trackage Rights
- CXRG
- Cimarron Valley RR
- Garden City Western (Out of Service)
- Highways

- Connections:**
- CXR - BNSF at NA Junction
 - CXR - UP at NA Junction
 - CXR - K&O at Towner, CO.
 - CXRG - UP at Walsenburg

CXR Headquarters - 601 State Ave, Alamosa, CO 81101

Colorado Pacific Railroad (CXR) - Sidings and Spur Tracks (TF)	
Stuart Siding	6,234
Sheridan Lake Grain Elevator Track	1,780
Brandon Elevator Spur Tracks	1,120 and 1,080
Chivington Siding	6,350
Eads Sidings	6,520, 980 and 1,880
Haswell Sidings	6,694 and 3,100
Arlington Spur Track	500
Adobe Creek Siding	6,568
Sugar City Grain Elevator Siding	3,070
Oradway Siding and Spur Track	7,409 and 880
Crowley Spur Track	820
Olney Springs Spur Track	730
Pullney Siding	6,238
NA Junction Sidings	7,650 and 2,680

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. 35006

**KCVN, LLC/COLORADO PACIFIC RAILROAD, LLC – FEEDER LINE
APPLICATION – LINE OF V AND S RAILWAY, LLC, LOCATED
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLORADO**

VERIFIED STATEMENT OF DOUG STORY

My name is Doug Story. I am the Vice President of Agricultural Marketing of Watco Transportation Services, LLC (“Watco”) and have been in my current position at Watco since 2004. Watco is one of the largest privately-held short line railroad operators in the United States. The company operates 34 short line railroads on more than 4,700 miles of track in 36 states. Its affiliated companies also operate 28 industrial contract switching locations in 24 states and one in Western Australia, as well as 23 railcar repair shops, 8 locomotive shops and 52 terminals. Watco specializes in transporting commodities including salt, aggregates, chemicals, metals and, as particularly relevant here, grain.

The Kansas and Oklahoma Railroad (“K&O”) is one of the short line railroads owned and operated by Watco. The K&O operates over 840 miles of track located predominantly in western and central Kansas, making the K&O one of the largest single short line railroads in the United States. The tracks of the K&O are both owned by it and leased by it from the Union Pacific Railroad Company.

The K&O's system extends into eastern Colorado, where it physically connects to the eastern terminus of the Towner Line, the line of railroad owned by the V AND S Railway, LLC ("V&S") that is the subject of this Feeder Line Application. The K&O would be able to conduct freight railroad operations over the Towner Line due to this connection, and Watco has always been interested in expanding the K&O's ability to provide freight service west of Towner. However, we have never been able to expand our relationship with V&S, particularly since V&S stopped providing freight service over the line in 2012 and began taking steps to abandon it. In addition to reinstituting rail service to grain farmers located along the line, we believe that the Towner Line could eventually be restored to its historic status as part of a route running from points in Kansas to Pueblo, Colorado, to enable rail transportation of other commodities originating west and east of the Towner Line.

Over the past two years, KCVN, LLC ("KCVN") and Watco have engaged in discussions about the possibility of the K&O becoming the third party railroad operator of the Towner Line in the event that KCVN and/or Colorado Pacific Railroad, LLC ("CPRR"), a subsidiary of KCVN, was able to acquire the line from V&S. Accordingly, in conjunction with KCVN's initial attempt to purchase the line beginning in July, 2014, and continuing to the current period, Watco and the K&O have been involved in business negotiations with KCVN/CPRR regarding the possibility of entering into long term lease and operating agreement between K&O and CPRR should that transaction take place.

Specifically, the parties contemplate that under the proposed agreement K&O would lease the Towner Line for an initial period of 5-10 years, which would be automatically renewed for subsequent periods absent termination. The agreement would

also provide that K&O would have the exclusive rights to conduct common carrier railroad operations over the line, for which it would seek approval from this Board. These operations would be conducted with K&O locomotives, equipment and crews. K&O would also assume responsibility for rehabilitating, and maintaining the Towner Line to FRA Class I standards, and in compliance with applicable federal and state regulations.

In terms of rehabilitating the line to the point at which freight operations could safely be conducted over it again, KCVN and CPRR have done a preliminary analysis and KO will work with them to put together and execute a rehabilitation plan for the Railroad. In terms of specific operational aspects, the on-duty stations would be located at Scott City, KS and, if required, at Pueblo, CO. K&O service teams would provide track maintenance, mobile mechanical repair and locomotive repair services for the Towner Line operations. K&O is also willing and able to allocate at least two crew members to exclusively operate over the Towner Line, and the railroad has two locomotives and the fleet of at least 1,100 covered hopper rail cars available to serve the shippers located on the line. The service over the line would be provided on an “as needed” basis for the customers located over the line, and K&O is willing and able to enhance the number of crew members, locomotives and railcars according to the customers’ needs. While negotiations are still ongoing, Watco and K&O have every reason to believe that the agreement will be finalized if, and as soon as, the line is acquired by KCVN/CPRR.

Watco and the K&O are extremely interested in the possibility of the K&O becoming the third party railroad operator of the Towner Line if it is acquired by the

KCVN/CPRR, and we believe the Towner Line has great potential to become an important transportation link to allow more wheat growers in this area of Colorado access to a variety of markets, and for shippers of other commodities located in the Midwest and Intermountain West to have them transported to markets to the east and west, respectively.

Verification Page

I, Doug Story, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed, March 9, 2016

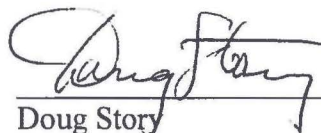

Doug Story

EXHIBIT 3

OPERATING AGREEMENT

(Colorado Pacific Railroad—Kansas & Oklahoma Railroad)

PARTIES

THIS OPERATING AGREEMENT ("Agreement") dated as of January 1, 2019 ("Effective Date"), by and between the COLORADO PACIFIC Railroad, LLC, a Delaware limited liability company, being a subsidiary of KCVN, LLC, a Delaware limited liability company ("CPR") and KANSAS & OKLAHOMA RAILROAD, LLC., a Kansas limited liability company ("RAILROAD").

RECITALS

A. CPR has acquired a certain line of railroad and related right-of-way and railroad assets, (the "Rail Line"), as more particularly described in Section 1.1 below, and it desires RAILROAD to use, manage, and provide freight operations over the Rail Line under the terms and conditions outlined herein.

B. RAILROAD desires to use, manage and to provide freight rail operations over the Rail Line in accordance with the terms and conditions of this Agreement.

C. In consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties hereto enter into this Agreement setting forth the terms and conditions for RAILROAD's use, management, and operation of the aforesaid Rail Line.

SECTION ONE

PROPERTY COVERED BY THIS AGREEMENT

Section 1.1. The rail properties subject to this Agreement on the Effective Date shall consist of (1) the 121.9 mile line of railroad historically known as the Towner Line, extending between milepost 747.5 near Towner, Colorado and milepost 869.4 near NA Junction, Colorado (the "Rail Line") and (2) the underlying railroad right-of-way, and other associated railroad assets, all located in Pueblo, Crowley, Kiowa, and Otero Counties, Colorado (together with the Rail Line, collectively referred to as the "Premises"). The Premises were acquired by CPR by (i) orders of the Surface Transportation Board in STB Docket No. FD 36005, a copy of which is attached hereto as Exhibit A (the "STB Order"), and (ii) a Bill of Sale between CPR and the V&S Railway, LLC ("V&S") dated January 5, 2018, a copy of which is attached hereto as Exhibit B (the "Bill of Sale") and (iii) an Agreement for Assignment and Assumption of Contracts between CPR and V&S dated January 5, 2018 (the "Assignment Agreement"), a copy of which is attached as Exhibit C; and (iv) a Quitclaim Deed between CPR and V&S, a copy of which is attached hereto as Exhibit D (the "Quitclaim Deed"). All rights granted to Railroad pursuant to this Agreement are made expressly subject to the provisions of the Bill of Sale, Assignment Agreement, and the terms of each of the Quitclaim Deeds conveying the Premises to CPR filed in the land records of Crowley, Kiowa, Pueblo, and Otero Counties, Colorado.

Section 1.2. The Premises shall also include rail tracks and other railroad facilities or other improvements that have been constructed and/or installed on the Premises between January 5, 2018 and the Effective Date, and those tracks, facilities and other improvements that may be added, from time to time, over the term of this Agreement after the Effective Date.

SECTION TWO

TERM OF AGREEMENT

Section 2.1. Unless terminated earlier in accordance with Section 15 hereof, this Agreement shall remain in effect for a term beginning on the Effective Date hereof and extending through December 31, 2021 ("Term").

Section 2.2. The Term of this Agreement may be extended, and the terms and conditions of the extended Agreement modified, by mutual agreement of CPR and Railroad, provided each party notifies the other of its desire to extend the agreement not less than nine (9) months prior to the end of the Term.

SECTION THREE

ACCESS TO AND USE OF THE PREMISES

Section 3.1. Subject to the limited exception set forth below in Subsection 3.2, CPR agrees to provide RAILROAD with exclusive access to the Premises as identified above for the provision of Railroad Services, as defined in Section 6, subject to the terms and conditions set out in this Agreement, and RAILROAD agrees to exclusively use the Premises in accordance with those terms and conditions.

Section 3.2. During the Term of this Agreement, and any extensions thereof, CPR shall not grant freight rail operating rights of any kind or nature on the Premises to any other party, *provided however*, that in an event of default as defined in Section 14.1 of this agreement, where termination is a right or remedy available to CPR, and such termination right or remedy is exercised by CPR, RAILROAD shall cooperate with CPR to enable an alternative railroad operations provider to provide freight rail service over the Premises from and after the date of termination.

SECTION FOUR

COMPENSATION FOR USE OF THE PREMISES

Section 4.1. The term "Freight Revenues" as used in this Agreement shall mean payments received by RAILROAD after the Effective Date for providing the Railroad Services described in Section 6, and shall include the following: line haul freight rates, switching fees, demurrage charges, storage charges, and similar charges assessed by RAILROAD to its customers pursuant to RAILROAD'S tariffs and/or railroad industry rules and practices, *provided however*, that revenues from fuel surcharges shall not be included within Freight Revenues, and *provided further* that real estate revenue, easement fees, licenses, utility usage revenues (pipeline, fiber optic lines, overhead electrical lines, etc.) shall be exclusive revenues to CPR and shall not be included within Freight Revenues.

Section 4.2. Solely for purposes of determining the line haul rate portion of Freight Revenues for Rail Services over the Rail Line and the Premises since CPR is a non-carrier and therefore has no intention of holding out to provide common carrier railroad service to any rail shippers, RAILROAD and CPR have agreed upon "CPR freight rates" for grain traffic originating on the Towner Line and delivered by RAILROAD for interchange at Towner, CO, which are attached as Exhibit E. The "rates" assigned to each CPR "station" shall be absorbed under the WTS Freight Tariffs. The "CPR freight rates" shall not be decreased over the Term, and shall be increased over the Term at the same level RAILROAD's rates are increased, unless otherwise mutually agreed by the parties. It is understood by the parties that the rates outlined on Exhibit C, are for movement of railcars in blocks of at least twenty-five (25) railcars.

Section 4.3. Upon the reopening of NA Junction on the western end of the Towner Line CPR and RAILROAD shall meet and confer to establish freight rates for traffic delivered to and received from such interchange point, and other applicable terms and conditions for such service.

Section 4.4. RAILROAD shall be entitled to collect all Freight Revenues from providing Rail Services, subject to the requirements of Section 4.5 and Section 6.

Section 4.5. RAILROAD shall compensate CPR for the use of the Premises by paying, without notice or demand, and without abatement, deduction, offset or set off, an amount calculated pursuant to the schedule below, which shall be CPR's share of all of the Freight Revenues received by RAILROAD in each calendar year after the Effective Date ("Annual Freight Revenue"):

4.5.1 For the first \$1 to \$400,000 Annual Freight Revenue the Revenue Share will be as follows:

- a. Revenue Share
 - i. CPR: 0%
 - ii. RAILROAD: 100%

4.5.2 For any portion of Annual Freight Revenue above \$400,001

- b. Revenue Share
 - i. CPR: 60%
 - ii. RAILROAD: 40%

Section 4.6. The applicable payment to CPR of a share of Annual Freight Revenue, if any, shall be paid by RAILROAD to CPR within sixty (60) days after January 1 of each year following the Effective Date. CPR's share of Freight Revenues received by RAILROAD for Rail Services provided in the final year of the Term shall be paid to CPR within sixty (60) days of the termination date of this Agreement.

SECTION FIVE

SECTION 45G TAX CREDITS

Section 5.1. CPR and RAILROAD acknowledge that:

5.1.1 RAILROAD will operate 121.9 miles of the Rail Line.

5.1.2 Subject to Subsections 3.2 and 5.1 RAILROAD shall be the exclusive freight railroad with rights to operate on the Rail Line and shall be the only freight railroad operating upon the Rail Line.

- 5.1.3 RAILROAD shall claim eligible rail miles as outlined and provided for in this Agreement for the entire term of this Agreement to the extent that such 45G tax credits are available.
- 5.1.4 CPR shall not claim such miles or tax credit under Section 45G.
- 5.1.5 RAILROAD shall pay CPR Ninety Percent (90%) of the net proceeds actually received by Railroad resulting from assignment of tax credits, within sixty (60) days of such receipt. CPR shall indemnify and reimburse RAILROAD for 90% of any amount RAILROAD is determined to be liable to pay and/or refund pursuant to any agreement it makes to assign the tax credits.
- 5.1.6 Any consideration to be paid by RAILROAD to CPR as a result of RAILROAD being eligible to claim the subject 45G tax credit shall be contingent upon RAILROAD successfully "assigning" such tax credit on terms acceptable to RAILROAD.
- 5.1.7 As of the date of this Agreement Congress authorized the extension of 45G railroad tax credits for calendar years 2016 and 2017. The Parties assume the 45G railroad tax credit will be extended throughout the initial term of the Operating Agreement. The payment of proceeds to CPR resulting from the assignment of tax credits is based on this key assumption.

SECTION SIX

RAIL SERVICES

Section 6.1. Subject to the other subsections of this Section 6 and other provisions of this Agreement, over the Term of this Agreement, RAILROAD shall provide rail freight service over the Rail Line and the remainder of the Premises as necessary to accommodate the reasonable needs of rail shippers now or hereafter located along the Rail Line consistent with the physical state of the Rail Line, RAILROAD's obligations as a common carrier railroad and prudent business practices in the railroad industry. Such services shall include, but not be limited to (1) line haul transportation; (2) switching; (3) car storage, and other ancillary services performed in RAILROAD'S discretion ("Rail Services"). RAILROAD shall provide all Rail Services with its own employees, and with its own or leased locomotives and other equipment, unless otherwise agreed to in writing by CPR. RAILROAD shall allow one locomotive, which is commonly used on the line, to be painted in a paint scheme and design selected by CPR, with its company name to be on the locomotive, at the expense of CPR.

Section 6.2. RAILROAD shall favorably consider reasonable requests for Rail Services from KCVN LLC.

Section 6.3. Intentionally Omitted.

Section 6.4. CPR shall not limit RAILROAD's lawful access to the Premises, or interfere with RAILROAD's operations, or its ability to fulfill its common carrier and/or contractual obligations.

Section 6.5. The parties acknowledge, and RAILROAD accepts, that on the Effective Date the Rail Line may only be physically capable of supporting railroad freight service to and from Milepost 785.8 at Eads, Colorado and the interchange between CPR and RAILROAD at milepost 747.5 at Towner, Colorado, and that therefore Rail Services over the Rail Line over all or part of the Term may be limited to that segment of the Rail Line until the remainder of the Rail Line and related track facilities are rehabilitated to the point

they can support freight rail operations; *provided however*, that this Section 6.5 does not apply to limit equipment storage services on the Premises.

Section 6.6. It is the intent of the parties hereto that RAILROAD shall exercise its best efforts to provide competitive interline rail freight service on the Rail Line. In that regard, RAILROAD agrees to (1) establish appropriate tariff and service arrangements applicable to all customers and commodities via any and all connecting carriers; and (2) establish and maintain interchange tracks at Towner connecting the Rail Line to RAILROAD's line at Milepost 747.5 at Towner of rail and terms and conditions for interchange that facilitate and encourage development of traffic over the Rail Line.

Section 6.7 RAILROAD and CPR shall work cooperatively to develop and manage interchange agreements between RAILROAD and connecting railroads.

SECTION SEVEN

RIGHTS OF RAILROAD

Section 7.1. Subject to compliance with the terms and conditions of this Agreement RAILROAD hereby acquires the right to exclusive access to the Premises for the purpose of providing common carrier rail freight service over the Rail Line and related track assets on the Premises, except that CPR may have reasonable access for line maintenance purposes, subject to CPR's obligation to comply with all applicable laws, rules and regulations, and RAILROAD's safety rules and procedures.

Section 7.2. Upon the commencement of rail freight service, RAILROAD hereby acquires the exclusive right to provide common carrier freight Rail Services on the Premises subject to the Provisions of this Agreement, and to do so in a prudent, fair, equitable and businesslike manner, considering the interests of both parties and the public interest.

Section 7.3. RAILROAD shall also acquire the exclusive right to market the provision of Rail Services to existing rail shippers located on the Rail Line and to potential new shippers located or who could locate along the Rail Line, as well as interline freight service to shippers located on other rail lines, except that CPR may promote use of the line to potential shippers, with terms of service and tariff rates to be thereafter negotiated exclusively by Railroad

Section 7.4. RAILROAD shall also acquire the exclusive right to manage and oversee the construction of new industry tracks, connections, switches, and other railroad facilities to facilitate existing and new freight railroad operations, consistent with the provisions of this Agreement.

SECTION EIGHT

MAINTENANCE AND IMPROVEMENTS

Section 8.1. Prior to the Effective Date, the parties shall jointly perform an inspection of the Premises and establish a baseline condition for the Rail Line and other tracks. On or before the Effective Date, or as soon as possible thereafter, CPR shall upgrade the Rail Line and other tracks on the Premises from milepost 785.8 at Eads to milepost 747.5 at Towner to Federal Railroad Administration ("FRA") Class I

standards. However, the failure to complete such initial upgrade by the Effective Date shall not excuse RAILROAD from performing Rail Services pursuant to this Agreement if the tracks meet the standards for "Excepted Track" under FRA rules.

Section 8.2. CPR shall endeavor to upgrade the remainder of the Rail Line and other tracks on the Premises from milepost 785.8 at Eads to milepost 869.4 near NA Junction to FRA Class I standards within the Term.

Section 8.3. Once a segment of track and its signaling and road crossing devices have been upgraded by CPR to FRA Class I standards, CPR shall, during the Term, and at its sole cost and expense, maintain the Rail Line and other tracks on the Premises used for Rail Services, and signaling and road crossing devices at FRA Class I standards, and provide routine maintenance to control weeds and make minor repairs, and shall have reasonable access to allow same. RAILROAD will notify CPR of any maintenance needs which RAILROAD observes or recommends

Section 8.4. CPR shall, at its sole cost and expense, maintain the tracks and facilities making up the interchange tracks between CPR and RAILROAD at Towner, Colorado.

Section 8.5. If CPR and RAILROAD disagree concerning the condition of the Track or any determination by CPR of the appropriate level of maintenance, it is agreed by and between the parties that the dispute shall be resolved using the procedures in Section 13 of this Agreement.

Section 8.6. Railroad shall, upon reasonable request by CPR, allow CPR representatives locomotive cab rides, or use a hi-rail vehicle, for the purpose of visually inspecting the Rail Line. The parties shall, at least once annually, jointly inspect the Track to determine whether they have been maintained in accordance with this Agreement. This joint inspection may be waived if agreed to by the parties.

Section 8.7. Nothing herein shall preclude CPR, at its sole cost and expense, from maintaining the tracks on the Premises to a standard higher than FRA Class I standards.

SECTION NINE

INDUSTRIAL SPUR CONSTRUCTION AND MAINTENANCE

Section 9.1. Subject to the provisions of Section 9.2 hereof, the costs of materials and construction for new industrial spurs shall be borne by the industry or industries involved or CPR. That portion of any such spur which is located upon the Premises shall become the property of CPR. Plans and specifications for any new industrial spur shall be subject to the prior approval of CPR, which approval shall not be unreasonably withheld.

Section 9.2. At RAILROAD's option, an industry may recover its material and construction costs for that portion of a spur located upon the Premises pursuant to an Agreement with RAILROAD providing for such cost recovery based upon a rebate of a reasonable percentage of rail freight charges over a period not to exceed three (3) years. Any amount rebated shall not be deducted from RAILROAD's Freight Revenue for the year(s) in which rebates are provided.

SECTION TEN

CONTROL OF RAIL OPERATIONS

Section 10.1. RAILROAD shall have exclusive management and control of freight rail operations on the Premises and shall therefore control the admission and exit of locomotives, trains, railcars, and the movement of the same thereover. RAILROAD locomotives, cars, trains and employees, while on the Premises, shall be subject to the rules, timetables, regulations, and orders of RAILROAD then in effect. All operating personnel of RAILROAD, prior to operating any locomotive or other track mounted equipment, shall be qualified in accordance with applicable FRA rules and regulations.

Section 10.2. All rules, timetables, regulations and orders governing operations on and along the Premises shall be promulgated by RAILROAD from time to time, and shall be fair, reasonable, uniform and in compliance with all Federal and State laws, rules and regulations. A copy of the most current version of all such rules, timetables, regulations and orders shall be provided to CPR prior to the Effective Date and anytime thereafter during the Term of the Agreement when any changes are made. Rates, tariffs and other commercial arrangements shall be subject only to such Federal or State regulations as may exist covering railroads generally, there being no intent by this Agreement to create any unique regulations.

Section 10.3. CPR shall, within 15 days after the Effective Date, provide RAILROAD with copies of all track and signal maps; structural, bridge and other drawings and plans; files related to maintenance history; customer data and any other data related to the continued operation of the Premises that are in CPR's or its affiliates' possession.

SECTION ELEVEN

INSURANCE AND INDEMNIFICATION

Section 11.1. RAILROAD shall secure and maintain in effect at all times during the Term of this Agreement an insurance policy or policies which shall provide commercial liability coverage (or its equivalent) in an amount not less than \$25,000,000. Additionally, such policy or policies may contain deductible provisions no greater than \$10,000,000 for any single accident (or occurrence). Such policy or policies shall be issued by a reputable insurance company authorized to do business in the State of Colorado or authorized to issue policies effective in the State of Colorado or shall be issued through Lloyd's of London. CPR shall be named as an additional insured under all such policies. Certificates of insurance shall be delivered to CPR as proof of compliance with this paragraph. RAILROAD shall endeavor to provide that policies purchased pursuant to this paragraph shall not be terminated, canceled or materially modified without thirty (30) days' written notice to CPR. CPR shall secure and maintain in effect at all times during the Term of this Agreement an insurance policy or policies which shall provide commercial liability coverage (or its equivalent) in an amount not less than \$25,000,000. Additionally, such policy or policies may contain deductible provisions no greater than \$10,000,000 for any single accident (or occurrence). Such policy or policies shall be issued by a reputable insurance company authorized to do business in the State of Colorado or authorized to issue policies effective in the State of Colorado or shall be issued through Lloyd's of London. RAILROAD shall be named as an additional insured under all such policies. Certificates of insurance shall be delivered to RAILROAD as proof of compliance with this

paragraph. CPR shall endeavor to provide that policies purchased pursuant to this paragraph shall not be terminated, canceled or materially modified without thirty (30) days' written notice to RAILROAD.

Section 11.2. RAILROAD agrees to require all persons entering upon or performing work on the Premises under any agreement with RAILROAD ("Contractors") to agree to hold harmless and indemnify CPR, its officers, agents, and employees, and contractors from and against any liability, loss, claim or expense for bodily injury or death to any persons or damage to any property (including property of or under the control of CPR) arising out of any act of omission of RAILROAD or its employees or agents, and such Contractor on or in connection with the CPR Properties, irrespective of the fault, failure or negligence (other than sole negligence) of CPR. RAILROAD shall also require any such person to secure and maintain in effect at all times during the performance of such work on the CPR Properties a contractual liability insurance policy insuring such person against liability under this Section 11.2. RAILROAD shall provide to CPR a copy of all such certificates of such insurance upon request. CPR agrees to require all persons entering upon or performing work on the Premises under any agreement with CPR ("Contractors") to agree to hold harmless and indemnify RAILROAD, its officers, agents, and employees, and contractors from and against any liability, loss, claim or expense for bodily injury or death to any persons or damage to any property (including property of or under the control of RAILROAD) arising out of any act of omission of CPR or its employees or agents, and such Contractor on or in connection with the CPR Properties, irrespective of the fault, failure or negligence (other than sole negligence) of RAILROAD. CPR shall also require any such person to secure and maintain in effect at all times during the performance of such work on the CPR Properties a contractual liability insurance policy insuring such person against liability under this Section 11.2. CPR shall provide to RAILROAD a copy of all such certificates of such insurance upon request.

Section 11.3. RAILROAD, its officers, agents, contractors and employees shall hold harmless and indemnify CPR, its officers, agents, contractors and employees, against any liability, loss, claim or expense for damage to property (including property of or under control of RAILROAD or CPR) or for personal injury or death or release of hazardous substance or waste, to the extent such property damage, personal injury or death or release shall arise out of any act of omission of RAILROAD in its performance of its rights, responsibilities and duties under this Agreement except to the extent of the fault, failure or negligence of CPR in the performance of its rights, responsibilities and duties under this Agreement. CPR, its officers, agents, contractors and employees shall hold harmless and indemnify RAILROAD, its officers, agents, contractors and employees, against any liability, loss, claim or expense for damage to property (including property of or under control of RAILROAD or CPR) or for personal injury or death or release of hazardous substance or waste, to the extent such property damage, personal injury or death or release shall arise out of any act of omission of CPR in its performance of its rights, responsibilities and duties under this Agreement except to the extent of the fault, failure or negligence of RAILROAD in the performance of its rights, responsibilities and duties under this Agreement.

Section 11.4. To the extent of a dispute between the parties, the matter will be handled pursuant to the dispute resolution procedures outlined in Section 13.

SECTION TWELVE
EASEMENTS, LEASES AND LICENSES

Section 12.1 Unless otherwise agreed by the parties, CPR shall remain responsible for administration and granting of existing and future easements, leases and licenses, private or public grade crossing agreements over, under, along or across the Premises, or agreements related to other encroachments on the Premises ("Premises Agreements") and CPR shall be entitled to the collection of any revenue related thereto. CPR agrees that any Premises Agreements entered into after the Effective Date of this Agreement shall require insurance from persons or entities granted permission to use the Premises which shall name the RAILROAD as an Additional Insured.

Section 12.2 Any permission granted after the Effective Date of this Agreement by CPR to a third party other than a FRA inspector to enter upon the Premises shall include provisions for the third party to reimburse the RAILROAD for flagging and any other related expenses, including customary additives when, in the opinion of the RAILROAD such services are needed.

Section 12.3 Any party or licensee granted an easement, lease, or license by CPR after the Effective Date of this Agreement shall in addition to providing insurance agree to release, defend, indemnify, and hold the RAILROAD, its parent and affiliates, employees, successors, assigns, legal representatives, and agents (collectively, the "Railroad Indemnitees") harmless for any injuries, damages, and losses including legal fees sustained by RAILROAD from and against all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) (collectively, "Liabilities") arising out of or related to such easements, leases, or licenses.

Section 12.4 In granting easements, leases and licenses, crossing agreements, or other encroachments upon the Premises, CPR will not unreasonably limit RAILROAD's lawful access to the Premises, or unreasonably interfere with its operations, or its ability to fulfill its common carrier and/or contractual obligations.

SECTION THIRTEEN
DISPUTE RESOLUTION

Section 13.1. Any dispute or difference of opinion arising between the parties hereto, or the failure of the parties hereto to agree as to matters arising out of this Agreement shall first, at the request of either party, be discussed by a representative of either party having authority to resolve the dispute. This discussion may be in person, at a place mutually agreed to by the parties, or by telephone. If the representatives are able to resolve the matter, then such decision will be binding on the parties.

Section 13.2. To the extent the dispute is not resolved under the provision above, the matter will be handled in Denver, Colorado, under procedures of mediation and conciliation under the auspices of a mediator having at least 10 years of railroad management experience selected by agreement of the parties. If the parties hereto are unable to agree upon the person to be appointed as mediator within thirty (30) days of a request for mediation by either party, said parties shall request the appointment of a mediator by the American Arbitration Association in Denver, Colorado. Each party hereto shall bear its own legal fees, costs and expenses, including without limitations, the cost of its expert witnesses. The fees

and expenses of any mediator incurred in performing the duties hereunder shall be shared equally by said parties.

Section 13.3. If the parties are unable to resolve the dispute through mediation, then the parties will be entitled to move forward through other legal or equitable means.

SECTION FOURTEEN

EVENTS OF DEFAULT

Section 14.1. The following shall be Events of Default:

- 14.1.1 Failure by RAILROAD to make payments of Freight Revenues to CPR when due, and such failure continues for thirty (30) days following written demand therefor;
- 14.1.2 The filing of a petition for bankruptcy, reorganization or arrangement of RAILROAD pursuant to the Bankruptcy Reform Act or any similar proceeding, and such petition is not dismissed within thirty (30) days; or
- 14.1.3 Either party breaches any material provision of this Agreement and fails to act to cure such breach within ninety (90) days after written notice of such breach from the other party.

SECTION FIFTEEN

TERMINATION

Section 15.1. This Agreement shall terminate upon the occurrence of the following:

- 15.1.1 Upon the expiration of ten (10) days after written notice is given by the non-defaulting party upon any Event of Default as provided for in Section 14 hereof; or
- 15.1.2 Upon the expiration of ninety (90) days' written notice that either party has been prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or other governmental action; or
- 15.1.3 At any time by written mutual agreement of RAILROAD and CPR.

Section 15.2. In the event of termination as provided in Section 15.1, RAILROAD shall continue to share revenue on Freight Revenues earned through the date of termination, with the final payment due within sixty (60) days after the termination date. RAILROAD shall not be entitled to recover any revenue paid prior to such termination; provided, however, the RAILROAD shall be entitled to recover any overpayment of revenue which is supported by a final accounting report.

Section 15.3. In the event of any termination of this Agreement other than by an Event of Default, RAILROAD shall vacate the CPR Properties in an orderly manner, and shall deliver to CPR all occupation agreements, track and signal maps, structural, bridges, and other drawings and plans, files related to

customer data and any other data related to the continued operation of the CPR Properties. Upon any termination resulting from an Event of Default by RAILROAD, CPR at any time thereafter may re-enter and take possession of the Premises by affording written notice to RAILROAD specifying such Event of Default and that this Agreement has terminated. RAILROAD hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and RAILROAD hereby waives any and all rights of redemption or re-entry or repossession there may be under law which arises out of this Agreement and the enforcement of the provisions hereof by CPR. The terms "enter," "re-enter," and "re-entry" as used in the Agreement are not restricted to their technical legal meanings.

Section 15.4. In the event of any termination of this Agreement RAILROAD, at its sole cost and expense, shall promptly seek any necessary authority to discontinue rail service from the Surface Transportation Board or other government authority. If RAILROAD fails to do so, CPR may seek such authority on behalf of RAILROAD, and RAILROAD shall reimburse CPR for all costs (including filing fees and attorneys' fees) incurred by CPR. RAILROAD shall not oppose the efforts of any rail carrier designated by CPR to operate the Premises to obtain authority from the STB or other government authority to provide service over the CPR Premises.

Section 15.5. All accrued obligations shall survive the termination of this Agreement. Further, the indemnifications set forth in Section 11 shall survive termination of this Agreement.

SECTION SIXTEEN

AUDITS AND ANNUAL REPORTS

Section 16.1. RAILROAD understands and agrees that its financial and other records pertaining to RAILROAD's access, use, and management of the Premises are subject to State and/or Federal audit and that all such records are to be prepared in accordance with generally accepted accounting principles and maintained in auditable condition for a period of not less than three (3) years after preparation of the records. RAILROAD warrants and agrees to make all such records available to CPR for review and copying, at CPR's expense, at the offices of RAILROAD within fifteen (15) days after RAILROAD's receipt of CPR's request to audit (and perhaps copy) such records. CPR's right to audit and copy RAILROAD's records shall survive termination of the Agreement for a period of one (1) year.

Section 16.2. On or before April 1 of each year after the first year of this Agreement RAILROAD shall provide CPR with an Annual Report, with an update of annual carload volumes, and an accounting of (1) each category of revenues making up the Annual Freight Revenues and (2) RAILROAD's operating expenses, by category of expense, for Rail Services provided by RAILROAD on the Premises in the preceding calendar year. Such report shall be delivered by personal presentation from a RAILROAD employee in CPR's headquarters office in New York City, New York or other mutually agreed location.

SECTION SEVENTEEN

TAXES

Section 17.1. Nothing herein shall be construed to relieve RAILROAD from any liability to pay taxes assessed against its motive power, rolling stock or other equipment, or any other personal property owned by RAILROAD, or from CPR to pay taxes assessed against the CPR Properties, its equipment, or any other personal property owned by CPR.

SECTION EIGHTEEN

COMPLIANCE WITH LAW

Section 18.1. RAILROAD agrees to secure and maintain all necessary governmental authority (including at the town, county, state and federal levels) for its operation on the Premises. RAILROAD will provide copies of all filings to CPR for review and comment and will coordinate all filings with any filings to be made by CPR. Without waiving the generality of the above, RAILROAD shall acquire the right to conduct rail freight service over the Rail Line from the Surface Transportation Board, and shall obtain such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

Section 18.2.

Section 18.3. Both parties agree to comply with all provisions of law and regulations applicable to it and to the CPR Properties, including without limitation regulations promulgated by the FRA, and neither party will not knowingly do, or permit to be done, upon or about the Premises, anything forbidden by such law or regulations.

Section 18.4. In the event of any order from a federal or state agency requiring a new installation of, or upgrade to, any facility of the Premises, such as, but not limited to, highway grade crossing protection or wayside fencing, CPR shall be responsible for compliance with any such order. All cost of installation, operation and maintenance of any such facility shall be born solely by the CPR.

SECTION NINETEEN

FORCE MAJEURE

Section 19.1. RAILROAD shall have no obligation to operate over any portion of the Premises during any period when it is prevented or hindered from operating by acts of God, public authority, strikes, riots, labor disputes, or any other cause beyond its control ("Force Majeure Event").

Section 19.2 Upon the occurrence of a Force Majeure Event, RAILROAD shall diligently attempt to remove the source of the Force Majeure Event and resume operations at the earliest opportunity.

SECTION TWENTY

DEFEASANCE

Section 20.1. RAILROAD shall not make any use of the Premises inconsistent with CPR's right, title and interest therein and which may cause the right to use and occupy the Premises to revert to any party

other than the CPR. So long as the Premises are sufficient to permit RAILROAD to operate a continuous line of railroad between the termini described in Section 1.1, this Agreement shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of CPR Properties is vested in a person other than CPR. CPR shall remain free to grant easements or usage licenses along or under or over the rail tracks on the Premises so long as federal safety clearance rules for RAILROAD's operations are observed.

SECTION TWENTY-ONE

REPRESENTATIONS AND WARRANTIES

Section 21.1. CPR represents and warrants that:

- 21.1.1 It has full power and authority to enter into this Agreement and to carry out the obligations of CPR hereunder.
- 21.1.2 Its execution of and performance under this Agreement does not knowingly violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

Section 21.2. RAILROAD represents and warrants that:

- 21.2.1 It is a corporation duly organized, validly existing, and in good standing under the laws of the Colorado.
- 21.2.2 It has full power and authority to enter into the Agreement and to carry out its obligations hereunder.
- 21.2.3 Its execution of and performance under this Agreement does not knowingly violate any statute, rule, regulation, order, write, injunction or decree of any court, administrative agency or governmental body.

SECTION TWENTY TWO

MISCELLANEOUS PROVISIONS

Section 22.1. Entire Agreement. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of the Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 22.2. Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

- 22.2.1 If intended for CPR, by emailing, or mailing registered or certified mail, return receipt requested, with postage prepared, addressed to CPR at:

Colorado Pacific Railroad, LLC
515 Congress, Suite 2450
Austin, TX 78701
william@texasenergylaw.com

22.2.2 If intended for RAILROAD, by emailing, or mailing registered or certified mail, return receipt requested, with postage prepared, addressed to RAILROAD at:

Craig Richey
Kansas & Oklahoma Railroad, L.L.C.
315 W 3rd Street
Pittsburg, KS 66762
crichey@watcocompanies.com

Section 22.3 Each Notice, demand, request or communication which shall be mailed by registered or certified mail to either party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation.

Section 22.4. Binding Effect and Assignment. This Agreement shall be binding upon the inure to the benefit of CPR and RAILROAD, shall be binding upon the successors and assigns of CPR and RAILROAD, subject to the limitations hereinafter set forth. RAILROAD may not assign its rights under this Agreement or any interest therein, or attempt to have any other person, firm or corporation assume its rights or obligations under this Agreement, without the prior written consent of CPR.

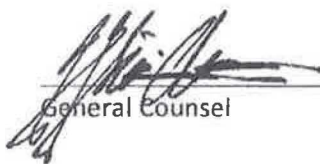
Section 22.4. Severability. If any provision, clause or paragraph of this Agreement or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses or paragraphs of the Agreement which are not affected by the determination. The provisions, clauses or paragraphs of this Agreement and any documents incorporated by reference are declared severable.

Section 22.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of Colorado. RAILROAD's operations under this Agreement shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

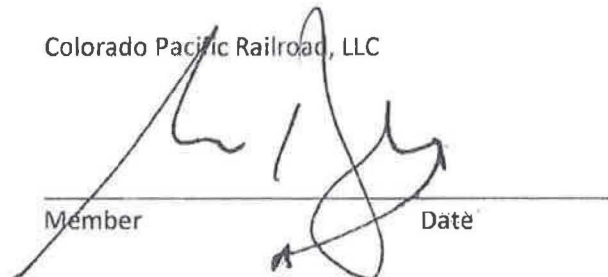
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the 1st day of January, 2019.

APPROVED AS TO FORM

Colorado Pacific Railroad, LLC


General Counsel

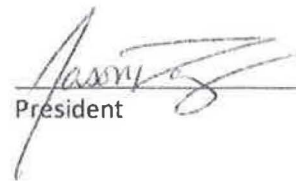
1.7.2019
Date


Member Date

WITNESS:



Kansas & Oklahoma Railroad, L.L.C.



President

EXHIBIT A

STB Order

EXHIBIT B

Bill of Sale

EXHIBIT C

Assignment Agreement

EXHIBIT D

Quitclaim Deed

EXHIBIT E

CPR Grain and Grain Product Freight Rates

For Blocks of At Least Twenty-Five (25) Railcars

CPR Station	St	Towner Interchange
Stuart	CO	\$250
Sheridan Lake	CO	\$250
Brandon	CO	\$275
Chivington	CO	\$325
Eads	CO	\$375
Galatea	CO	\$425
Haswell	CO	\$450
Arlington	CO	\$500
Sugar City	CO	\$550
Ordway	CO	\$575
Olney Springs	CO	\$625
Pulney	CO	\$700
NA Junction	CO	\$800

EXHIBIT 4

ATTORNEY CLIENT PRIVILEGED MATERIAL REDACTED

From: Casey W. Harbour III <charbour@watco.com>

Sent: Tuesday, April 6, 2021 4:56 PM

To: William Osborn <william@texasenergylaw.com>

Cc: Jimmy D. Patterson JR <jpatterson@watco.com>

Subject: Corn Rates

Good Afternoon William,

Below are the corn rates for your review off the west end of the KO to Ordway. These are all in rates for both railroads and if you would like to see additional KO origins just let me know.

Origin	Rate
Scott City	\$1000 per car
Marienthal	\$950 per car
Leoti	\$925 per car
Selkirk	\$875 per car
Tribune	\$810 per car
Horace	\$775 per car
Astor	\$775 per car

Thanks,

Casey Harbour

Sales Manager

Watco

(316) 261-6135 (O) | (913) 669-6357 (C)

charbour@watco.com



EXHIBIT 5

KO_Colorado Pacific

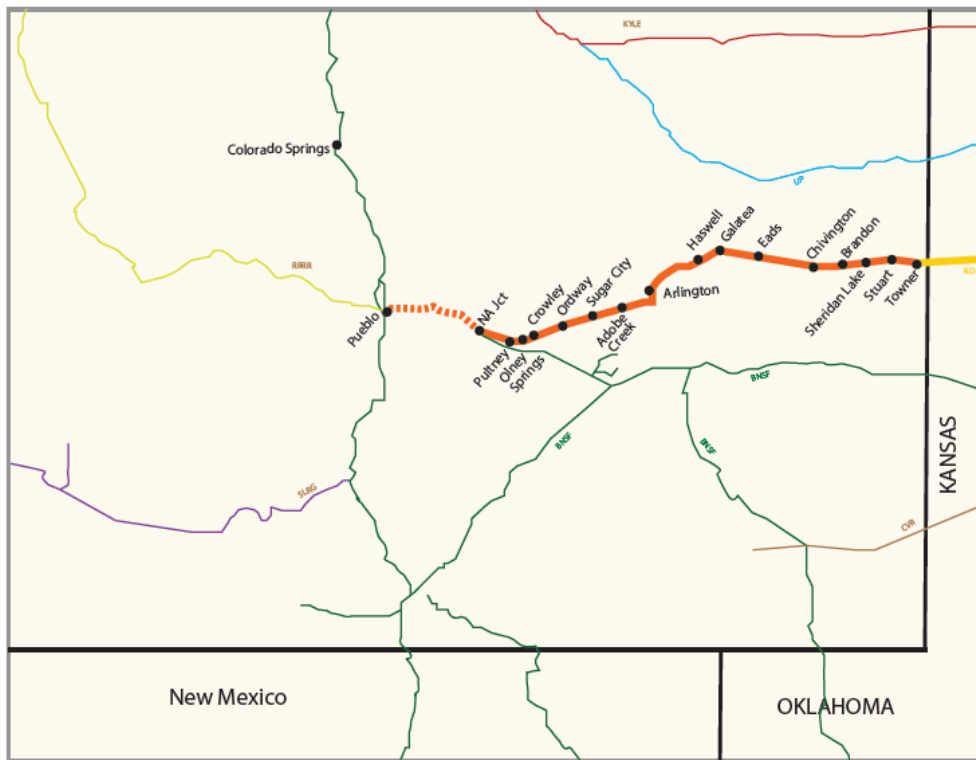
2021						
	Q1 2021	Q2 2021	Q3 2021	Q4 2021	Total	CPR Payable
Freight	\$ -	\$ -	\$ -	\$ -	\$ -	
Switching	\$ -	\$ 26,800	\$ -	\$ -	\$ 26,800	
Storage	\$ 60,300	\$ 14,740	\$ -	\$ -	\$ 75,040	
	\$ 60,300	\$ 41,540	\$ -	\$ -	\$ 101,840	\$ -

2020						
	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Total	CPR Payable
Freight	\$ 28,832	\$ -	\$ -	\$ -	\$ 28,832	
Switching	\$ 61,200	\$ -	\$ 57,400	\$ -	\$ 118,600	
Storage	\$ 37,655	\$ 135,956	\$ 93,950	\$ 61,640	\$ 329,201	
	\$ 127,687	\$ 135,956	\$ 151,350	\$ 61,640	\$ 476,633	\$ 45,979.80

2019						
	Q4 2019				Total	CPR Payable
Freight	\$ 2,804				\$ 2,804	
Switching	\$ -				\$ -	
Storage	\$ -				\$ -	
	\$ 2,804	\$ -	\$ -	\$ -	\$ 2,804	\$ -

Company Code	Customer	Name	Invoice reference	Assignment	Document Number	Document Type	Invoice Posting Period	Revenue Posting Period	Posting Date	Document Date	Local Currency	Amount in local currency	Reference	Net due date	Invoice Qtr/Yr	Revenue Qtr/Yr
KORR	6967	Southern Company Services, Inc.	91164822	ES	91164822	XI	3	3	3/31/2020	3/31/2020	USD	61,200.00	0091164822	4/30/2020	Q1 2020	Q1 2020
KORR	6967	Southern Company Services, Inc.	91166674	ST	91166674	XI	4	3	4/1/2020	4/1/2020	USD	25,110.00	0091166674	5/1/2020	Q2 2020	Q1 2020
KORR	6967	Southern Company Services, Inc.	91169990	ST	91169990	XX	4	3	4/1/2020	4/1/2020	USD	-25,110.00	0091166674	4/1/2020	Q2 2020	Q1 2020
KORR	6967	Southern Company Services, Inc.	91169991	ST	91169991	XI	4	3	4/6/2020	4/6/2020	USD	37,655.00	0091169991	5/6/2020	Q2 2020	Q1 2020
KORR	6967	Southern Company Services, Inc.	91184001	ST	91184001	XI	5	4	5/4/2020	5/4/2020	USD	44,700.00	0091184001	6/3/2020	Q2 2020	Q2 2020
KORR	6967	Southern Company Services, Inc.	91201761	ST	91201761	XI	6	5	6/1/2020	6/1/2020	USD	46,190.00	0091201761	7/1/2020	Q2 2020	Q2 2020
KORR	6967	Southern Company Services, Inc.	91201783	ST	91201783	XX	6	5	6/1/2020	6/1/2020	USD	-46,190.00	0091201761	6/1/2020	Q2 2020	Q2 2020
KORR	6967	Southern Company Services, Inc.	91201784	ST	91201784	XI	6	5	6/1/2020	6/1/2020	USD	46,376.00	0091201784	7/1/2020	Q3 2020	Q2 2020
KORR	6967	Southern Company Services, Inc.	91221536	ST	91221536	XI	7	6	7/1/2020	7/1/2020	USD	44,880.00	0091221536	7/31/2020	Q3 2020	Q2 2020
KORR	6967	Southern Company Services, Inc.	91231172	ES	91231172	XI	7	7	7/20/2020	7/20/2020	USD	30,600.00	0091231172	8/19/2020	Q3 2020	Q3 2020
KORR	6967	Southern Company Services, Inc.	91241197	ST	91241197	XI	8	7	8/3/2020	8/3/2020	USD	32,912.00	0091241197	9/2/2020	Q3 2020	Q3 2020
KORR	6967	Southern Company Services, Inc.	91260355	ST	91260355	XI	9	8	9/1/2020	9/1/2020	USD	23,188.00	0091260355	10/1/2020	Q3 2020	Q3 2020
KORR	4190	Dynegy/Plum Point Services	91268562	ES	91268562	XI	9	9	9/16/2020	9/16/2020	USD	13,400.00	0091268562	10/16/2020	Q3 2020	Q3 2020
KORR	4190	Dynegy/Plum Point Services	91279599	ST	91279599	XI	10	9	10/2/2020	10/2/2020	USD	15,410.00	0091279599	11/1/2020	Q4 2020	Q3 2020
KORR	4190	Dynegy/Plum Point Services	91281967	ES	91281967	XD	10	9	10/6/2020	10/6/2020	USD	13,400.00	0091281967	11/5/2020	Q4 2020	Q3 2020
KORR	6967	Southern Company Services, Inc.	91278864	ST	91278864	XI	10	9	10/1/2020	10/1/2020	USD	22,440.00	0091278864	10/31/2020	Q4 2020	Q3 2020
KORR	4190	Dynegy/Plum Point Services	91299546	ST	91299546	XI	11	11	11/2/2020	11/2/2020	USD	20,770.00	0091299546	12/2/2020	Q4 2020	Q4 2020
KORR	4190	Dynegy/Plum Point Services	91318251	ST	91318251	XI	12	12	12/1/2020	12/1/2020	USD	20,100.00	0091318251	12/31/2020	Q4 2020	Q4 2020
KORR	4190	Dynegy/Plum Point Services	91337738	ST	91337738	XI	1	12	1/4/2021	1/4/2021	USD	20,770.00	0091337738	2/3/2021	Q1 2021	Q4 2020
KORR	4190	Dynegy/Plum Point Services	91355385	ST	91355385	XI	2	1	2/1/2021	2/1/2021	USD	20,770.00	0091355385	3/3/2021	Q1 2021	Q1 2021
KORR	4190	Dynegy/Plum Point Services	91376676	ST	91376676	XI	3	2	3/3/2021	3/3/2021	USD	18,760.00	0091376676	4/2/2021	Q1 2021	Q1 2021
KORR	4190	Dynegy/Plum Point Services	91399633	ST	91399633	XI	4	3	4/7/2021	4/7/2021	USD	20,770.00	0091399633	5/7/2021	Q2 20	

2020	Data As of: 12/31/2020	Report: MKY0135	YTD Customer by Month with O/D Pair											
Railroad	Customer	Month	Revenue Move Type	Commodity	Origin	Destination	Actual Revenue Move \$	Actual Freight Car Count	Revenue Move Count	Total RMI Revenue	I/C Partner	Year	CPR Traffic	
KO	KIGCK	December	Freight	01136-Sorghum grains.	STUAR KO	LEOTI KO	\$2,804	4	4	\$2,804	KO	2019	Y	Q4 2019
KO	Scoular Company	February	Freight	01136-Sorghum grains.	HASWE KO	LEOTI KO	\$12,614	14	14	\$12,614	KO	2020	Y	Q1 2020
KO	Scoular Company	March	Freight	01136-Sorghum grains.	HASWE KO	LEOTI KO	\$16,218	18	18	\$16,218	KO	2020	Y	Q1 2020



Station	Abbr
Stuart	STUAR
Sheridan L.	SHELK
Brandon	BRAND
Chivington	CHIVI
Eads	EADS
Galatea	GALAT
Haswell	HASWE
Arlington	ARLIN
Adobe Cre	ADCRK
Sugar City	SUCTY
Ordway	ORDWA
Crowley	CROWL
Olney Sprir	OLSPR
Pultney	PULTN

LEGEND:	
Colorado Pacific Railroad (121.9 miles)	—————
Colorado Pacific Railroad Trackage Rights (27.4 miles)	—————
Kansas & Oklahoma Railroad	—————
Kyle Railroad (KYLE)	—————
Cimmaron Valley Railroad (CVR)	—————
Rock and Rail Railroad (RRR)	—————
San Louis and Rio Grande Railroad (SLRG)	—————
Burlington Northern and Santa Fe (BNSF)	—————
Union Pacific (UP)	—————

Interchanges - Track miles 149.3	
BNSF - Hutchinson, Wichita, Pueblo	—————
SKOL - Wichita	—————
UP - Hutchinson, Wichita, Pueblo	—————

SECTION FOUR
COMPENSATION FOR USE OF THE PREMISES

Section 4.1. The term "Freight Revenues" as used in this Agreement shall mean payments received by RAILROAD after the Effective Date for providing the Railroad Services described in Section 6, and shall include the following: line haul freight rates, switching fees, demurrage charges, storage charges, and similar charges assessed by RAILROAD to its customers pursuant to RAILROAD'S tariffs and/or railroad industry rules and practices, provided however, that revenues from fuel surcharges shall not be included within Freight Revenues, and provided further that real estate revenue, easement fees, licenses, utility usage revenues (pipeline, fiber optic lines, overhead electrical lines, etc.) shall be exclusive revenues to CPR and shall not be included within Freight Revenues.

2

Section 4.2. Solely for purposes of determining the line haul rate portion of Freight Revenues for Rail Services over the Rail Line and the Premises since CPR is a non-carrier and therefore has no intention of holding out to provide common carrier railroad service to any rail shippers, RAILROAD and CPR have agreed upon "CPR freight rates" for grain traffic originating on the Townner Line and delivered by RAILROAD for interchange at Townner, CO, which are attached as Exhibit E. The "rates" assigned to each CPR "station" shall be absorbed under the WTS Freight Tariffs. The "CPR freight rates" shall not be decreased over the Term, and shall be increased over the Term at the same level RAILROAD's rates are increased, unless otherwise mutually agreed by the parties. It is understood by the parties that the rates outlined on Exhibit C, are for movement of railcars in blocks of at least twenty-five (25) railcars.

Section 4.3. Upon the reopening of NA Junction on the western end of the Townner Line CPR and RAILROAD shall meet and confer to establish freight rates for traffic delivered to and received from such interchange point, and other applicable terms and conditions for such service.

Section 4.4. RAILROAD shall be entitled to collect all Freight Revenues from providing Rail Services, subject to the requirements of Section 4.5 and Section 6.

Section 4.3. Upon the reopening of NA Junction on the western end of the Townner Line CPR and RAILROAD shall meet and confer to establish freight rates for traffic delivered to and received from such interchange point, and other applicable terms and conditions for such service.

Section 4.4. RAILROAD shall be entitled to collect all Freight Revenues from providing Rail Services, subject to the requirements of Section 4.5 and Section 6.

Section 4.5. RAILROAD shall compensate CPR for the use of the Premises by paying, without notice or demand, and without abatement, deduction, offset or set off, an amount calculated pursuant to the schedule below, which shall be CPR's share of all of the Freight Revenues received by RAILROAD in each calendar year after the Effective Date ("Annual Freight Revenue"):

- 4.5.1 For the first \$1 to \$400,000 Annual Freight Revenue the Revenue Share will be as follows:
- a. Revenue Share
 - i. CPR: 0%
 - ii. RAILROAD: 100%
- 4.5.2 For any portion of Annual Freight Revenue above \$400,001
- b. Revenue Share
 - i. CPR: 60%
 - ii. RAILROAD: 40%

Section 4.6. The applicable payment to CPR of a share of Annual Freight Revenue, if any, shall be paid by RAILROAD to CPR within sixty (60) days after January 1 of each year following the Effective Date. CPR's share of Freight Revenues received by RAILROAD for Rail Services provided in the final year of the Term shall be paid to CPR within sixty (60) days of the termination date of this Agreement.

EXHIBIT 6

ATTORNEY CLIENT PRIVILEGED MATERIAL REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Matt Prince <matt.prince@cwcrail.com>
Sent: Monday, December 16, 2019 8:21 PM
To: jz1545@aol.com; William Osborn <william@texasenergylaw.com>; jacobfehr81@gmail.com
Cc: SWeymouth@solo9w57.com; prem@solo9w57.com; sqs@kanagri.com; hsolov4@gmail.com; quintinsoloviev@gmail.com
Subject: Re: Grain delivery to Stuart Railroad Siding

All,
See the link below of the pictures and videos I took today of the first train on the Colorado Pacific Railroad...

https://netorgft4843655-my.sharepoint.com/:f/g/personal/matt_prince_cwcrail_com/EiH6grGsMjROrhGD30XC91YB3UiiC3s6MZxOAVml0slZUw?e=6JSZl9

Exciting stuff...

Let me know if you have any questions. Thanks!

Matt Prince
President
CWC Rail, Inc.
450 Holley Lane
Cornersville, TN 37047
1201 Hickman Street
Eads, CO 81036
(931)324-1410 Office
(931)309-8721 Mobile
matt.prince@cwcrail.com
<https://cwcrail.com>



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From: "jz1545@aol.com" <jz1545@aol.com>

Date: Sunday, December 15, 2019 at 10:31 AM

To: "william@texasenergylaw.com" <william@texasenergylaw.com>, "jacobfehr81@gmail.com" <jacobfehr81@gmail.com>

Cc: "SWeymouth@solo9w57.com" <SWeymouth@solo9w57.com>, Matt Prince <matt.prince@cwcrail.com>, "prem@solo9w57.com" <prem@solo9w57.com>, "sqs@kanagri.com" <sqs@kanagri.com>, "hsolov4@gmail.com" <hsolov4@gmail.com>, "quintinsoloviev@gmail.com" <quintinsoloviev@gmail.com>

Subject: Re: Grain delivery to Stuart Railroad Siding

Good morning William-

Our plan is to load the four cars the day they are spotted; they will be loaded with milo, and billed to Seaboard, Leoti.

Thanks, jz

-----Original Message-----

From: William Osborn <william@texasenergylaw.com>

To: jz1545@aol.com <jz1545@aol.com>; Jacob <jacobfehr81@gmail.com>

Cc: Steven P. Weymouth <SWeymouth@solo9w57.com>; Matt Prince <matt.prince@cwcrail.com>; Prem Sooroojbally <prem@solo9w57.com>; Stefan Soloviev <sqs@kanagri.com>; Hayden Soloviev <hsolov4@gmail.com>; Quintin Soloviev <quintinsoloviev@gmail.com>

Sent: Sat, Dec 14, 2019 5:00 pm

Subject: Grain delivery to Stuart Railroad Siding

Jack and Jacob,

Either Monday or Tuesday Watco will be spotting some empty grain cars at your Stuart railroad siding, about four miles east of Sheridan Lake. A contract has been signed for purchase of the adjacent quarter section, our file name for it is Taylor Quarter. I put a provision in the contract providing you may have immediate access to a 50 foot wide strip of it along the railroad siding, for your grain trucks to drive in for loading to the railcars. I also provided in the contract that you may use however much of that acreage you need for a truck turnaround spot, so they don't have to back out, that would have been a headache. But please try to limit the turnaround area because there will be a need to pay crop damage for whatever part you use.

Could you please get those cars loaded pretty quickly once they arrive?

Matt,

There is a private railroad crossing entering this Taylor quarter, and the grain trucks will need to use it to cross the tracks. Will you please be sure that when Watco spots the empty railcars, they do not foul that road.

Will someone please take a few photos of the cars being loaded with grain so we may have documentation for our file of the date service commenced. This may become of some importance because if the 45(g) tax credit is reinstated, it might be only up to Dec. 31, 2019. Mr. Weymouth would like to be able to get that tax credit for the 2019 railroad rehabilitation expenditures, if possible.

I notice Doug Story mentions car storage contracts. It would be my guess they will want to fill first the sidings closest to the State line, but it will not be satisfactory for them to use the east end of the Stuart siding; it needs to be kept open for temporary use for grain transloading.

Regards,

- Wm

From: Matt Prince <matt.prince@cwcrail.com>
Date: Saturday, December 14, 2019 at 5:24 PM
To: "Jason S. Danz" <jdanz@watcocompanies.com>, Doug Story JR <dstory@watcocompanies.com>
Cc: Bradley Walker <bwalker@watcocompanies.com>, "Jimmy D. Patterson JR" <jpatterson@watcocompanies.com>, KO Operations <KOOperations@watcocompanies.com>, William Osborn <william@texasenergylaw.com>, "Steven P. Weymouth" <SWeymouth@solo9w57.com>, Harvey Crouch <hcrouch@crouchengineering.com>, Angelina Pridemore <apridemore@watcocompanies.com>, Larry Taylor <larry.taylor@cwcrail.com>
Subject: Re: Good news on a Monday morning

Jason,
The Colorado Pacific Railroad is ready for train operations from Milepost 747.5 (Eastern most point) to Milepost 755.7 (Location of Derail and Red Board). A 10 MPH slow order should be placed between Milepost 752.3 and 754.0; this covers the length of the auxiliary track at Stuart. The FRA has been notified that a test train will operate at some point this coming week and the plan for flagging grade crossings has been shared with the Region 6 Chief Inspector along with a copy of the FRA Crossing Signal Waiver. Let me know what day and a window of time that you will be operating onto the CXR so Larry Taylor (Roadmaster CXR/CWC Rail) can be onsite to flag crossings and observe the passing of the train?

Larry Taylor's Contact Information should it be needed:
Mobile: (719)928-2311
Email: larry.taylor@cwcrail.com

Beginning Monday, December 16, 2019, at 12:01am Mountain Time, any occupation of the track between Milepost 747.5 and Milepost 755.7, on the Colorado Pacific Railroad, will require contact with Watco Dispatch. Also, please note that train miles, railroad worker hours, and accidents/injuries will need to be reported to me on a monthly basis to include on the monthly reporting to the FRA on behalf of the Colorado Pacific Railroad.

Thanks!

Matt Prince
President
CWC Rail, Inc.
450 Holley Lane
Cornersville, TN 37047
1201 Hickman Street
Eads, CO 81036
(931)324-1410 Office
(931)309-8721 Mobile
matt.prince@cwcrail.com



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From: "Jason S. Danz" <jdanz@watcocompanies.com>
Date: Wednesday, December 11, 2019 at 7:05 PM
To: Matt Prince <matt.prince@cwcrail.com>, Doug Story JR <dstory@watcocompanies.com>
Cc: Bradley Walker <bwalker@watcocompanies.com>, "Jimmy D. Patterson JR" <jpatterson@watcocompanies.com>, KO Operations <KOOperations@watcocompanies.com>
Subject: RE: Good news on a Monday morning

Good Evening Matt,

We have posted the timetable update for the CPR to KO General Orders. We will make sure that KO crews are briefed on the restrictions for running through the crossings included in the FRA Waiver. Can you get with KO Dispatch and get any of the flagging or speed restrictions added to the Form X on the bulletins. The plan is to still run the 4 empties out on Monday/Tuesday next week. We also have some potential storage opportunities as well. Please let me know when the initial crossing protection plan is submitted to Region 6 per the waiver and we will start planning for some storage agreements.

Thank you

From: Jimmy D. Patterson JR <jpatterson@watcocompanies.com>
Sent: Monday, December 9, 2019 11:32 AM
To: Matt Prince <matt.prince@cwcrail.com>; William Osborn <william@texasenergylaw.com>; Doug Story JR <dstory@watcocompanies.com>; Jason S. Danz <jdanz@watcocompanies.com>
Subject: RE: Good news on a Monday morning

Matt – please keep Jason Danz involved in these discussions as he will be the point of contact for all activity between the KO and CXP.

Thanks,

From: Matt Prince <matt.prince@cwcrail.com>
Sent: Monday, December 9, 2019 11:20 AM
To: William Osborn <william@texasenergylaw.com>; Doug Story JR <dstory@watcocompanies.com>; Jimmy D. Patterson JR <jpatterson@watcocompanies.com>
Subject: Re: Good news on a Monday morning

This email originated from outside the company. Please use caution when opening attachments or clicking on links. Suspicious emails should be reported to emailthreats@watcocompanies.com

William,

This is great news. We (CWC Rail) will be available to "flag" the affected crossings and help with compliance on any stipulations mentioned in the waiver. Thanks!

Matt Prince

President

CWC Rail, Inc.

450 Holley Lane

Cornersville, TN 37047

(931)324-1410 Office

(931)309-8721 Mobile

matt.prince@cwcrail.com

<https://cwcrail.com>



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EXHIBIT 7

LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006
(202) 508-1065
TOM@TWILCOXLAW.COM
WWW.TWILCOXLAW.COM

May 5, 2021

Via Email

Jeremy Berman, Esq.
Senior General Attorney
Union Pacific Railroad Company
1400 Douglas Street, 15th Floor
Omaha, Nebraska 68179

Re: Interchange Commitment in Lease Between Kansas & Oklahoma Railroad
and Union Pacific Railroad Company

Dear Jeremy:

This letter follows up on our phone conversation of April 27 which was in part about the existence of a restrictive interchange commitment in the current lease between Union Pacific Railroad Company ("UP") and the Kansas & Oklahoma Railroad ("K&O") covering lines of railroad in central and western Kansas. As understood by KCVN, LLC ("KCVN") and the Colorado Pacific Railroad, LLC ("Colorado Pacific") this paper barrier effectively prohibits K&O from transporting any commodities from origins in Kansas over the Colorado Pacific's line from Towner, CO to NA Junction, CO ("Towner Line") for interchange with BNSF Railway. You stated on our call that you were unaware of this issue and asked me to provide a general summary of it in advance of possible discussions between KCVN and UP about how to resolve this issue commercially.

This letter provides the requested summary based on a review of relevant filings at the Surface Transportation Board ("STB"), our knowledge of UP's general approach regarding interchange commitments during the relevant time period, and discussions with K&O. As I mentioned on our call, K&O has declined KCVN's request for a copy of the lease or the interchange commitment provision. KCVN hereby makes this same request to UP. I do not represent that this summary is 100% factually accurate, but it should provide you with the information you need to understand this issue from KCVN's standpoint.

Law Office of Thomas W. Wilcox, LLC

Letter to Jeremy Berman, Esq
May 5, 2021
Page 2

As a general historical overview, the tracks at issue were included within 270.9 miles of track UP leased in 1997 to the Central Kansas Railway, LLC (“CKR”), a Class III carrier that no longer exists. The track covered by the original lease to CKR covered two rail lines: (1) between milepost 747.5, at Towner, CO, and milepost 491.20, at Bridgeport, KS; and (2) between milepost 530.6, at Lindsborg, KS, and milepost 545.0, at Sid, KS.¹ CKR conducted operations over the leased tracks between 1997 and 2001, over which time UP abandoned a section of the tracks from Salina to Geneseo, reducing the tracks covered by the lease to approximately 225 miles. In 2001, CKR sold and/or assigned to K&O all of its rights in the 678 miles of track then making up the CKR system, which included the remaining leased UP tracks. As relevant to this issue, as part of the transaction CKR unconditionally assigned its lease with UP in its entirety to K&O.

In 2005, UP abandoned the 58.5-mile segment of the leased track running between MP 664.5, near Healy, KS to MP 606.0, near McCracken, KS. This abandonment further reduced the miles of leased UP track and created a “stranded” 80-mile segment owned by UP and operated by K&O between Healy and MP 747.5 at Towner, CO, which is the interchange with the Towner Line. As you know, UP sold the Towner Line to the State of Colorado in 1998 after attempting to formally abandon it in 1996. Although it remained a line of railroad, the Towner Line was not used for any measurable freight rail service after 1998 and had fallen into significant disrepair when Colorado Pacific acquired it in 2017 through a feeder line proceeding at the Surface Transportation Board. Since acquiring the Towner Line Colorado Pacific has invested \$3.5 million restoring it to FRA Class II standards. Colorado Pacific has also invested \$4.5 million to re-establish the interchange tracks with UP and BNSF at NA Junction.

Colorado Pacific learned of the possible existence of a paper barrier in K&O’s lease with UP when it retained K&O to be the Towner Line’s operator in 2017. During that process, K&O representatives made vague references to being unable to haul grain or other commodities from Kansas over the Towner Line due to the terms of its lease with UP. However, Colorado Pacific was focused solely on the huge task of rehabilitating the Towner Line, reestablishing the NA Junction interchange, and developing freight traffic on the line and did not explore the issue in depth at that time. More recently, however, Colorado Pacific has been exploring opportunities for commodities originating from shippers on the Towner to Healy segment being transported west over the Towner Line to NA Junction for interchange with UP or BNSF for transport to further points west and southwest. This has led to KCVN and Colorado Pacific focusing more on understanding the interchange commitment and its potential adverse effect on such plans.

Although again, we have not seen the UP/K&O lease, it is our understanding and belief that it contains a version of the interchange commitment UP has historically inserted in rental provisions of its leases with short line railroads. Under this provision, UP charges little or no rent for the leased track as long as the short line interchanges 95% or more of the traffic originating on the line with UP. However, prohibitively high rental amounts are triggered if more than 5% of

¹ In connection with the lease of the line, CKR also acquired incidental overhead trackage rights over UP’s 6.30-mile rail line between MP 545.0, at Sid, KS, and MP 551.30, at Salina, KS.

Law Office of Thomas W. Wilcox, LLC

Letter to Jeremy Berman, Esq

May 5, 2021

Page 3

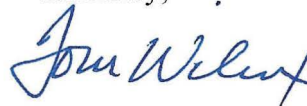
the traffic is interchanged with railroads other than UP. On information and belief, KCVN surmises that the original lease with CKR contained such a provision, and it remained in the lease when it was unconditionally assigned to K&O in 2000. In 2020, K&O representatives informed Colorado Pacific that the lease had been renewed in 2019, and we presume from those discussions that the original interchange commitment, or some version of it, remains in the agreement.

If the foregoing summarizes the current situation with reasonable accuracy, then this would mean that the current version of the lease effectively prohibits K&O from transporting any commodities originating from shippers in Kansas over the Towner to Healy segment for interchange with BNSF at NA Junction. KCVN and Colorado Pacific believe that there is no basis for such an anticompetitive restriction to continue to exist given the long history of the tracks at issue and the current configuration of the lines of railroad in this area of Kansas and Colorado. Accordingly, KCVN's goal is to find a commercially acceptable means to eliminate this paper barrier and to provide shippers along the Towner to Healy line with the opportunity to enter into joint through rates with K&O and either BNSF or UP. One potential solution we have already raised is for UP to sell the Towner to Healy segment to Colorado Pacific, with K&O remaining as the operator of this track. Under this scenario, paper barrier would be eliminated through termination of the lease as to this segment.

Shipments over the Towner Line are expected to commence this year. KCVN and other grain shippers also own rail-served elevators along the Towner to Healy segment that could move to western destinations via the Towner Line. We therefore desire to meet with the appropriate UP representatives at the earliest opportunity to try to resolve this issue to our mutual satisfaction.

Please do not hesitate to call me if you have any questions or desire additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wilcox", written over a horizontal line.

Thomas W. Wilcox

Cc: William Osborn, Esq.

EXHIBIT 8

ATTORNEY CLIENT PRIVILEGED MATERIAL REDACTED

From: Casey W. Harbour III <charbour@watco.com>
Sent: Friday, August 1, 2025 2:22:10 PM
To: Tim Bivens <tbivens@coloradopacific.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interhange

Good Afternoon Tim,

Attached is the interchange agreement for your review.

Have a great weekend!

Casey Harbour

Sales Director

Watco

(316) 261-6135 (O) | (913) 669-6357 (C)

charbour@watco.com



Please see the updated [tariff](#) effective 2.1.25

From: Tim Bivens <tbivens@coloradopacific.com>
Sent: Wednesday, July 30, 2025 10:16 AM
To: Casey W. Harbour III <charbour@watco.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interhange

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I'll be looking for it, appreciate the update

From: Casey W. Harbour III <charbour@watco.com>
Sent: Tuesday, July 29, 2025 11:52 AM

To: Tim Bivens <tbivens@coloradopacific.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interchange

Tim,

I apologize for the delay. I will have a draft to you by the end of the week.

Thanks,

Casey Harbour

Sales Director

Watco

(316) 261-6135 (O) | (913) 669-6357 (C)

charbour@watco.com



Please see the updated [tariff](#) effective 2.1.25

From: Tim Bivens <tbivens@coloradopacific.com>
Sent: Thursday, July 17, 2025 8:18 AM
To: Casey W. Harbour III <charbour@watco.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interchange

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Any update on an interchange agreement proposal?

We've got a customer inquiring about it.

Thank you

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From: Tim Bivens <tbivens@coloradopacific.com>
Sent: Sunday, July 6, 2025 10:04:57 PM
To: Casey W. Harbour III <charbour@watco.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interchange

Hey, just checking in to see if you had an update on the interchange agreement we discussed a few weeks ago.

Also, I saw in my notes I need to send you a timetable with our current contact list. I've got the guys working on the updates now and will hopefully have that to you this week.

Thank you

From: Casey W. Harbour III <charbour@watco.com>
Sent: Wednesday, June 11, 2025 3:49 PM
To: Tim Bivens <tbivens@coloradopacific.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interhange

Thanks Tim!

I will get a calendar invite sent out for 11:00 am central on the 20th.

Casey Harbour

Sales Director

Watco

(316) 261-6135 (O) | (913) 669-6357 (C)

charbour@watco.com



Please see the updated [tariff](#) effective 2.1.25

From: Tim Bivens <tbivens@coloradopacific.com>
Sent: Wednesday, June 11, 2025 4:46 PM
To: Casey W. Harbour III <charbour@watco.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>
Subject: Re: Colorado Pacific Railroad Interhange

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Hey Casey, I'm free all day on the 20th.

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From: Casey W. Harbour III <charbour@watco.com>

Sent: Wednesday, June 11, 2025 3:14:48 PM

To: Tim Bivens <tbivens@coloradopacific.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>

Subject: Re: Colorado Pacific Railroad Interchange

Good Afternoon Tim,

I apologize for the slow response as I was out on vacation all last week with my family.

What does your calendar look like on Friday June 20th for a call with Ed and I?

Thanks,

Casey Harbour

Sales Director

Watco

(316) 261-6135 (O) | (913) 669-6357 (C)

charbour@watco.com



Please see the updated [tariff](#) effective 2.1.25

From: Tim Bivens <tbivens@coloradopacific.com>

Sent: Tuesday, June 3, 2025 9:29 AM

To: Casey W. Harbour III <charbour@watco.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>

Subject: Colorado Pacific Railroad Interchange

You don't often get email from tbivens@coloradopacific.com. [Learn why this is important](#)

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Good morning,

I'm the current GM for the CXR and I'm reaching out to see if you have time next week for a call to discuss getting an interchange agreement set up. I understand Weskan Grain will be ordering cars by rail that is served by the K&O to come to the CXR.

Tim Bivens

General Manager CXRG - CXSL - CXR

Phone: 501-530-0132

Email: tbivens@coloradopacific.com



CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2025, copies of the foregoing Comments of Colorado Pacific Railroad LLC were served by electronic mail on representatives of Union Pacific Railroad Company, Weskan Grain LLC, and the Kansas & Oklahoma Railroad, LLC, and Administrative Law Judge Jenifer Soulikias.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox