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Office of Proceedings
November 16, 2020
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Public Record

November 14, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Docket No. FD 36458, West Virginia State Rail Authority –
Acquisition and Operation Exemption – The Elk River Railroad, Inc.

Dear Ms. Brown:

Enclosed for e-filing in the above referenced docket is a Verified Notice of Exemption (“Notice”) filed on behalf of the West Virginia State Rail Authority (“WVRA”) pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41. The filing fee has been paid electronically via Pay.gov to avoid delay in processing the Notice. However, as a state government entity, WVRA is entitled to a fee waiver under 49 C.F.R. § 1002.2(e)(1) and, thus, requests a refund of the filing fee following processing of this Notice.

Please contact the undersigned if you have any questions regarding this Notice.
Thank you for your attention to this matter.

Respectfully submitted,



Lucinda K. Butler
Executive Director
West Virginia State Rail Authority

FEE RECEIVED
November 16, 2020
SURFACE
TRANSPORTATION BOARD

Enclosures

FILED
November 16, 2020
SURFACE TRANSPORTATION
BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WEST VIRGINIA STATE RAIL AUTHORITY)		
– Acquisition and Operation Exemption –)		Finance Docket No. 36458
The Elk River Railroad, Inc.)		

**WEST VIRGINIA STATE RAIL AUTHORITY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41**

WEST VIRGINIA STATE
RAIL AUTHORITY

Lucinda K. Butler
Executive Director
120 Water Plant Drive
Moorefield, WV 26836
(304) 538-2305
Cindy.K.Butler@wv.gov

Dated: November 14, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WEST VIRGINIA STATE RAIL AUTHORITY)	
– Acquisition and Operation Exemption –)	Finance Docket No. 36458
The Elk River Railroad, Inc.)	
)	

VERIFIED NOTICE OF EXEMPTION

Pursuant to the class exemption procedures at 49 C.F.R. §§ 1150.41-44, the West Virginia State Rail Authority (“WVRA”), a Class III rail carrier, files this Verified Notice of Exemption (“Notice”) from the prior approval requirements of 49 U.S.C. § 10902 to permit WVRA to acquire by purchase and operate approximately 18.0 miles of rail line (including the real property, right of way and/or easement rights underlying such rail line) known as the Buffalo Creek and Gauley Railroad (“BC&G” or the “Line”). The BC&G is currently owned and operated by The Elk River Railroad, Inc. (“TERRI”), a Class III rail carrier, and located between Dundon (Milepost (MP) 0.0)) and Widen (MP 18.0) in Clay County, WV.

In accordance with the requirements set forth at 49 C.F.R. § 1150.43, WVRA submits the following information:

Full Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

West Virginia State Rail Authority
120 Water Plant Drive
Moorefield, WV 26836

Applicant’s Representatives: 49 C.F.R. § 1150.43(b)

Questions or correspondence concerning this Notice should be sent to WVRA’s representative at the following address:

Lucinda K. Butler
Executive Director
120 Water Plant Drive
Moorefield, WV 26836
Telephone: (304) 538-2305 ext. 66842
E-mail: Cindy.K.Butler@wv.gov

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

WVRA and TERRI have executed a Purchase and Sale Agreement for WVRA to acquire the BC&G, plus connecting spur and side tracks, if any, appurtenant property and assets, and underlying real estate and right-of-way, from TERRI. Subject to obtaining the necessary regulatory approvals, the parties intend to consummate the Purchase and Sale Agreement on or after December 14, 2020.

Operator of the Property: 49 C.F.R. § 1150.43(d)

TERRI is currently the sole owner and operator of the BC&G.¹ The BC&G has not carried any traffic in over twenty (20) years. After consummation of the Purchase and Sale agreement, WVRA will own and operate the Line as a common carrier by railroad and will assume all common carrier rights and obligations with respect thereto.

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

1. The name and address of the railroad transferring the subject property:

The Elk River Railroad, Inc.
200 Greenbrier Road
Summersville, WV 26651

2. Subject to obtaining the necessary regulatory approvals, the proposed schedule for consummation of the Purchase and Sale Agreement is on or after December 14, 2020.

¹ See *The Elk River Railroad, Inc. – Merger Exemption – The Buffalo Creek R.R.*, FD 36434 (STB served Nov. 6, 2020).

3. BC&G is an 18-mile rail line extending from a junction point on TERRI's rail line at Dundon (MP 62.2 on TERRI's rail line; MP 0.0 on the BC&G) to Widen (MP 18.0) in Clay County, WV. The BC&G does not connect to any rail line other than TERRI's at Dundon and has not carried any traffic in over twenty years.

4. The total mileage to be acquired and operated is 18.0 miles.

Map: 49 C.F.R. § 1150.43(f)

A map of the BC&G and surrounding area is attached as **Exhibit A** to this Notice.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

WVRA certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. WVRA additionally certifies that its annual projected revenues following the transaction will not exceed \$5,000,000, thus the advance notice and posting requirements of 49 C.F.R. § 1150.42(e) are not applicable. A certificate complying with the provisions of 49 C.F.R. § 1150.43(g) is set forth in **Exhibit B** attached to this Notice.

Interchange Commitment: 49 C.F.R. § 1150.43(h)

WVRA certifies that the acquisition of the BC&G does not include any provision or agreement limiting future freight interchange over the Corridor with third-party connecting carriers. A certificate complying with the provisions of 49 C.F.R. § 1150.43(h) is set forth in **Exhibit B** attached to this Notice.

Environmental and Historic Preservation Information: 49 C.F.R. § 1105

Under 49 CFR §1105.6(c)(1), the purchase and sale of the BC&G is exempt from environmental reporting requirements because the transaction will not result in any significant

changes in carrier operations that would exceed the thresholds outlined in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), WVRA's purchase of the BC&G is also exempt from historic preservation reporting requirements, as the proposed transaction is for the purpose of continued rail operations, additional Board approval would be required to discontinue service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in appropriate form is attached as **Exhibit C** to this Notice.

Respectfully submitted,



Lucinda K. Butler
Executive Director
West Virginia State Rail Authority
120 Water Plant Drive
Moorefield, WV 26836
(304) 538-2305 ext. 66842
Cindy.K.Butler@wv.gov

Dated: November 14, 2020

EXHIBIT A

Map of BC&G

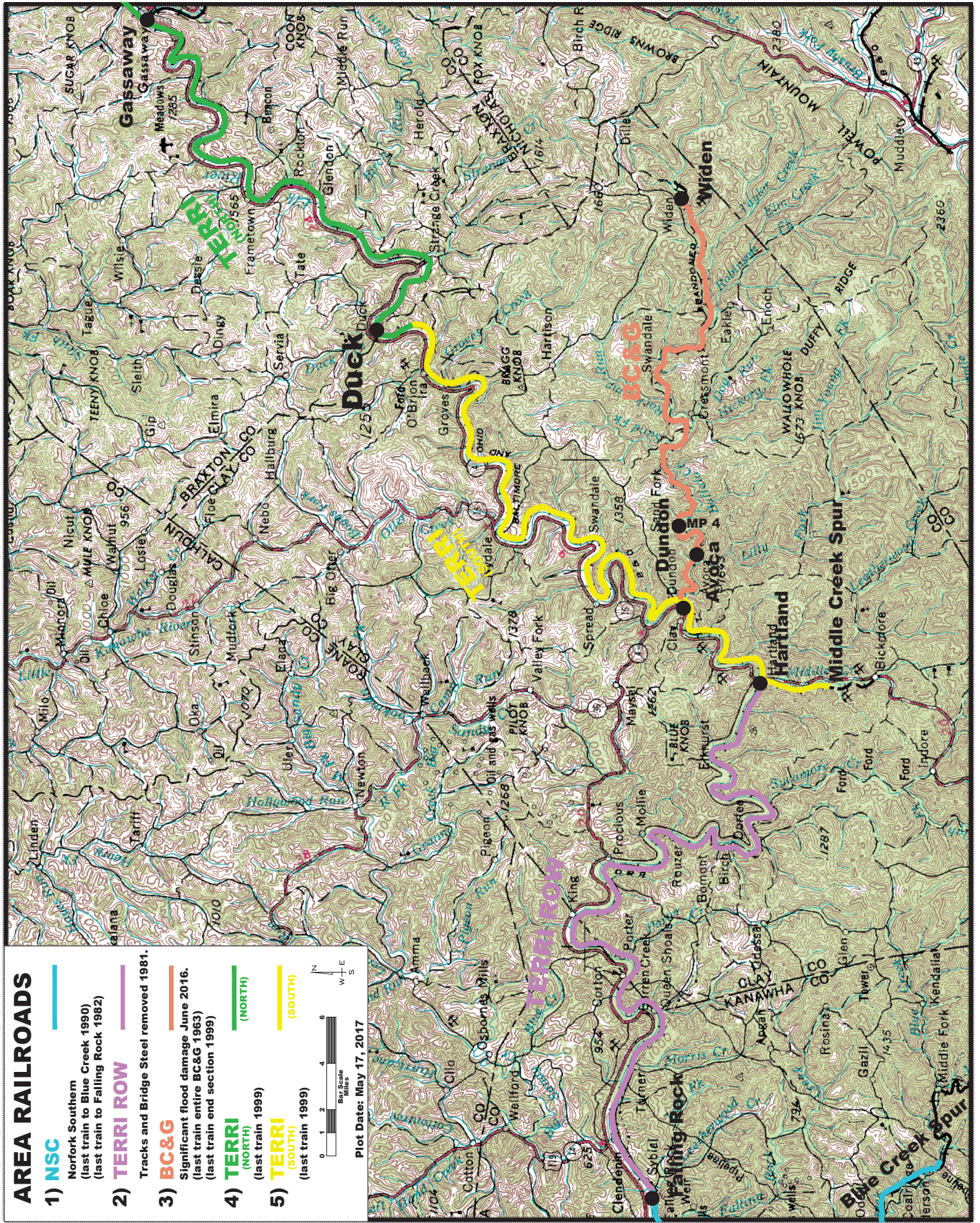


EXHIBIT B

VERIFICATION AND CERTIFICATION

I, Cindy Butler, declare under penalty of perjury that I am the Executive Director of the West Virginia State Rail Authority (“WVRA”), that I have read the foregoing Verified Notice of Exemption (“Notice”) and know the facts asserted therein, and that the foregoing is true and correct. Further, I certify that I am qualified and authorized to cause the foregoing Notice to be filed with the Surface Transportation Board.

I hereby certify that WVRA’s projected revenues as a result of the transaction will not result in WVRA becoming a Class I or Class II rail carrier, and that WVRA’s projected revenues following the transaction will not exceed \$5 million per year. I further certify that WVRA’s acquisition of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

Executed on November 14, 2020.



Lucinda K. Butler, Executive Director
West Virginia State Rail Authority
120 Water Plant Drive
Moorefield, WV 26836

EXHIBIT C
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB Finance Docket No. 36458

WEST VIRGINIA STATE RAIL AUTHORITY
– ACQUISITION AND OPERATION EXEMPTION –
THE ELK RIVER RAILROAD, INC.

The West Virginia State Rail Authority (“WVRA”), a Class III rail carrier, has filed a Verified Notice of Exemption (the “Notice”) to acquire by purchase from The Elk River Railroad, Inc. (“TERRI”) and operate 18.0 miles of rail line known as the Buffalo Creek and Gauley Railroad (“BC&G” or the “Line”) extending between Dundon (Milepost (MP) 0.0)) and Widen (MP 18.0) in Clay County, WV.

The transaction is scheduled to be consummated on or after December 14, 2020.

Comments must be filed with the Surface Transportation Board and served on WVRA’s representative, Ms. Lucinda K. Butler, WVRA Executive Director, 120 Water Plant Drive, Moorefield, WV 26836, (304) 538-2305 ext. 66842, Cindy.K.Butler@wv.gov.

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: November __, 2020

By the Board