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THOMAS F. McFARLAND

April 12, 2019

247491

By UPS overnight mail
(Monday delivery)

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
April 15, 2019
Part of
Public Record



Re: Finance Docket No. 36292, *Chicago, Rock Island & Pacific Railroad, LLC --
Alternative Rail Service -- C&J Railroad Company*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Petition For Prescription Of
Alternative Rail Service Under 49 U.S.C. § 11123(a) And 49 C.F.R. § 1146.1 for filing with the
Board in the above referenced matter.

Also enclosed is a check in the amount of \$300 for the filing fee.

Very truly yours,

Thomas F. McFarland
Attorney for Petitioner

FILED
April 15, 2019
SURFACETRANSPORTATION BOARD

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FEE RECEIVED
April 15, 2019
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



CHICAGO, ROCK ISLAND & PACIFIC)
RAILROAD, LLC -- ALTERNATIVE) FINANCE DOCKET
RAIL SERVICE -- C&J RAILROAD) NO. 36292
COMPANY)

**PETITION FOR PRESCRIPTION OF ALTERNATIVE RAIL SERVICE
UNDER 49 U.S.C. § 11123(a) AND 49 C.F.R. § 1146.1**

CHICAGO, ROCK ISLAND & PACIFIC
RAILROAD, LLC
165 West South Street, Suite 210
P.O. Box 601
Hernando, MS 38632

Petitioner

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
(312) 236-0204 (office)
mcfarland@aol.com

Attorney for Petitioner

DATE FILED: April 15, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

CHICAGO, ROCK ISLAND & PACIFIC	)	
RAILROAD, LLC -- ALTERNATIVE	)	FINANCE DOCKET
RAIL SERVICE -- C&J RAILROAD	)	NO. 36292
COMPANY	)	



**PETITION FOR PRESCRIPTION OF ALTERNATIVE RAIL SERVICE
UNDER 49 U.S.C. § 11123(a) AND 49 C.F.R. § 1146.1**

Pursuant to 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1, CHICAGO, ROCK ISLAND & PACIFIC RAILROAD, LLC (CRIP), hereby petitions for prescription of Alternative Rail Service over 1,320 feet (0.25-mile) of rail line that extends between point of connection to Illinois Central Railroad Company (IC) at or near Swan Lake, MS, (Milepost 104.0)^{1/} and Milepost 103.75 ("the Segment"). The Segment is part of a rail line that extends approximately 50 miles between Swan Lake and terminus at Lula, MS ("the Rail Line").^{2/} A map of the Rail Line in red coloring is attached to this Petition as Appendix 1.

The Respondent, C&J Railroad Company (C&J), has authority from the Board to operate over the Segment. *See C&J Railroad Company -- Acquisition and Operation Exemption -- in Tallahatchie County, MS, 2005 WL 1060882 (STB Finance Docket No. 34673, served May 6,*

^{1/} Interchange occurs at Milepost 105.35. C&J Railroad Company operated over IC's track between Milepost Nos. 105.35 and 104.0 solely for the purpose of that interchange.

^{2/} A rail line beyond Lula to Jonestown, MS is privately owned by Delta Oil Mill. That line is not involved in this Petition.

2005). C&J operated over the remainder of the Rail Line as a contract rail carrier pursuant to a lease of the Line from Coahoma County, Mississippi (the County).

C&J's lease of the Rail Line was terminated for cause, effective on February 8, 2019. Inasmuch as C&J did not have Board authority for its operation of the Rail Line (except for the Segment), and because lease of the Rail Line no longer provided it with a State law property right for such operation, C&J became legally disabled from providing needed rail service to shippers located on the Rail Line as of February 8, 2019.

The County has recently leased the Rail Line to CRIP to provide common carrier service to shippers on the Rail Line. However, CRIP has been unable to do so because the shippers' traffic is required to be transported over the Segment to reach the Rail Line's sole point of interchange with IC at Swan Lake, and C&J refuses to permit CRIP to operate over the Segment.

As of February 8, 2019, C&J cannot serve the shippers itself and it will not permit CRIP to serve those shippers. That is a textbook example of lack of rail service for which Alternative Rail Service under 49 C.F.R. § 1146.1 is the appropriate remedy.

BACKGROUND

The Rail Line has been fully abandoned. The County consummated abandonment of the Rail Line in Docket No. AB-579X, decision served July 25, 2001. Gulf & Ohio Railways, Inc. d.b.a. Mississippi Delta Railroad, consummated discontinuance of service over the Rail Line in Docket No. AB-580X, decision served July 12, 2001.

On July 1, 2001, the County leased the Rail Line to C&J. C&J's lease and operation were not filed at the Board for exemption because C&J operated the Rail Line as a contract carrier.

Nearly four years later, on April 7, 2005, C&J filed a Notice of Exemption in STB Finance Docket No. 34673 for authority to operate the Segment (but not the Rail Line). A copy of that Notice is attached to this Petition as Appendix 2. C&J did not attempt to explain why nearly four years had passed since C&J leased the Rail Line from the County. Neither did C&J attempt to explain why it sought Board authority for the Segment.

C&J's Notice referred the Segment as "terminal and switching tracks" (Appendix 2 at 1), and as "lead, yard, and switching tracks without assigned mile posts" (*id* at 3). The map attached to C&J's Notice shows at least three tracks in addition to the main track at the location marked "Terminal & Switching Tracks to be Operated by MSD".^{3/} CRIP has spoken to a number of long-time residents of the area shown by the map, all of whom state that there were no switching or yard tracks in the area in 2005, nor in any year before or after that year. Attached to this Petition as Appendix 3 is a photograph recently taken that shows no multiple tracks at the involved location, and no evidence of multiple tracks at that location at any time in the past. It thus appears that the sole reason that C&J obtained Board authority to operate the Segment was to use that authority to block any other rail carrier from providing service over the Rail Line.

If this Petition for Prescription of Alternative Rail Service is granted, CRIP intends to restore common carrier rail service over the entire Rail Line. In that event, CRIP would abide by all legal requirements for reinstitution of common carrier rail service.

Under the mistaken impression that C&J had agreed to an orderly change of operators over the Rail Line, CRIP filed a Verified Notice of Exemption in STB Finance Docket No. 36273 on February 14, 2019 for an exemption for a change of operators. On February 28, 2019,

^{3/} MSD refers to Mississippi Delta Railroad, which is a division of C&J.

C&J filed a reply to that Notice in which C&J stated that it does not agree to the proposed change of operators. On March 1, 2019, IC filed a reply to that Notice in which it pointed out several defects in the Notice. On March 5, 2019, CRIP voluntarily withdrew that Notice without prejudice to refiling. CRIP has endeavored to remedy the defects in that Notice in this Petition.

Attached to this Petition as Appendix 4 is a Verified Statement of Mr. Robert Riley, CEO of CRIP, which provides factual support for this Petition.

ARGUMENT

NATURE OF RELIEF REQUIRED

CRIP seeks a Board order prescribing Alternative Rail Service permitting it to operate over the Segment. When CRIP receives that relief, it will seek an exemption for its operation over the Rail Line. If that exemption were to be granted, CRIP would begin to provide the needed service immediately.

CRIP recognizes that an order prescribing Alternative Rail Service over the Segment would be limited initially to a 30-day period that could be extended for an additional 240 days. 49 U.S.C. § 11123(a) and (c)(1). The combined total of 270 days should be sufficient for CRIP and/or the County to obtain permanent relief by adversely discontinuing C&J's authority to operate over the Segment under 49 U.S.C. § 10903(d).^{4/} At that point, C&J would have neither a State law property or contractual right to operate over the Segment, nor federal authority to so

^{4/} It appears to CRIP that an appropriate avenue for permanent relief in the circumstances of this case would be adverse discontinuance of service under 49 U.S.C. § 10903(d). An alternative may be an order requiring C&J to permit CRIP to use C&J's terminal facilities (i.e., the Segment) under 49 U.S.C. § 11102(a). Either alternative would be acceptable to CRIP.

operate. That would permit CRIP to petition to provide common carrier authority over the Rail Line, including the Segment, without being impeded by C&J.

GENERAL PRINCIPLES

The Board determines whether to prescribe Alternative Rail Service on a case-by-case basis, under flexible general rules. *Expedited Relief for Service Inadequacies*, 3 STB 968, 975 (1998). In addition to determining whether there has been “a substantial measurable deterioration of rail service” warranting prescription of Alternative Rail Service, that relief can also be granted to remedy “other demonstrated inadequacy in rail service provided by the incumbent carrier”. (*Id* at 975).

The present case is much like *Denver Rock Island RR -- Alternative Rail Service*, 4 STB 264 (1999). There, needed service was not being provided at all, and “no service is inadequate service” (at 267). The Board added (*id*):

DRI has complied with the other requirements of section 1146. It indicates that it has negotiated with KSW on the use of the subject line, including the terms of compensation and liability. Because KSW is not operating, DRI’s operations will not conflict with KSW’s. The service should also not interfere with the other operations of KSW.

CRIP’s COMPLIANCE WITH 49 C.F.R. § 1146.1

I. From February 8, 2019 To The Present, The Incumbent Rail Carrier Has Been Unable To Provide Needed Rail Service

The incumbent carrier, C&J, was providing contract rail service over the Rail Line by means of a lease from the County until that lease was terminated for cause, effective on February 8, 2019. As of that date, C&J did not have a property right under Mississippi law to operate over the Rail Line, nor did it have a federal right to operate by means of authority from the Board. In sum, C&J was totally disabled from providing needed service to shippers. C&J retained Board

authority to operate over the Segment, but that authority did not enable it to provide the needed rail service. Instead, that authority served only to block CRIP from operating over the Rail Line to provide the needed rail service. As in *Denver Rock Island RR -- Alternative Rail Service*, *supra*, 4 STB 2d at 267, no service is inadequate service.

Based on the foregoing, the Board should find that over an identified period of time, there has been a demonstrated inadequacy in rail service provided by C&J.

II. Discussions With Incumbent Carrier; Incumbent Carrier's Inability To Restore Adequate Service

There were several telephone discussions between counsel for CRIP and the principal of C&J in an unsuccessful attempt to obtain agreement for CRIP's operation over the Segment, and several attempts to resolve that matter by means of correspondence between counsel for CRIP and both the principal of C&J and its counsel. CRIP is convinced that it is unlikely that the matter can be resolved by continuing negotiations.

III. CRIP Is Committed To Provide The Needed Rail Service

CRIP is ready, willing, and able to provide the needed rail service under Alternative Rail Service. See Appendix 4 of this Petition that provides ample support for that statement.

CRIP does not need an agreement with a third-party rail operator because it is willing to provide the needed service itself, and has a signed lease from the County to do so.

As explained in the foregoing, inasmuch as C&J lacks the ability to provide service, CRIP's service would not degrade any C&J service, nor interfere with any service being provided by C&J.

IV. Service of Petition

In accordance with 49 C.F.R. § 1146.1(b)(1)(iv), CRIP hereby certifies that its Petition is being served on those listed below in the manner stated:

B. Lyle Robinson, Esq.
Attorney for C&J Railroad Company
by e-mail to lrobinson@twpdlaw.com
and by overnight mail to
100 Webster Circle, Suite 104
Madison, MS 39110

Reggie Howell
CEO of C&J Railroad Company
by e-mail to cjrr565@aol.com
and by overnight mail to
111 Quarter Master Court
Jeffersonville, IN 47130

Robert Riley
Proposed Alternative Carrier
by e-mail to robert.riley@rockislandrail.com
and by overnight mail to
165 West South Street, Suite 210
Hernando, MS 38632

Federal Railroad Administration
by overnight mail to
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Attention: Office of the Chief Counsel



Thomas F. McFarland

Respectfully submitted,

CHICAGO, ROCK ISLAND & PACIFIC
RAILROAD, LLC
165 West South Street, Suite 210
P.O. Box 601
Hernando, MS 38632

Petitioner

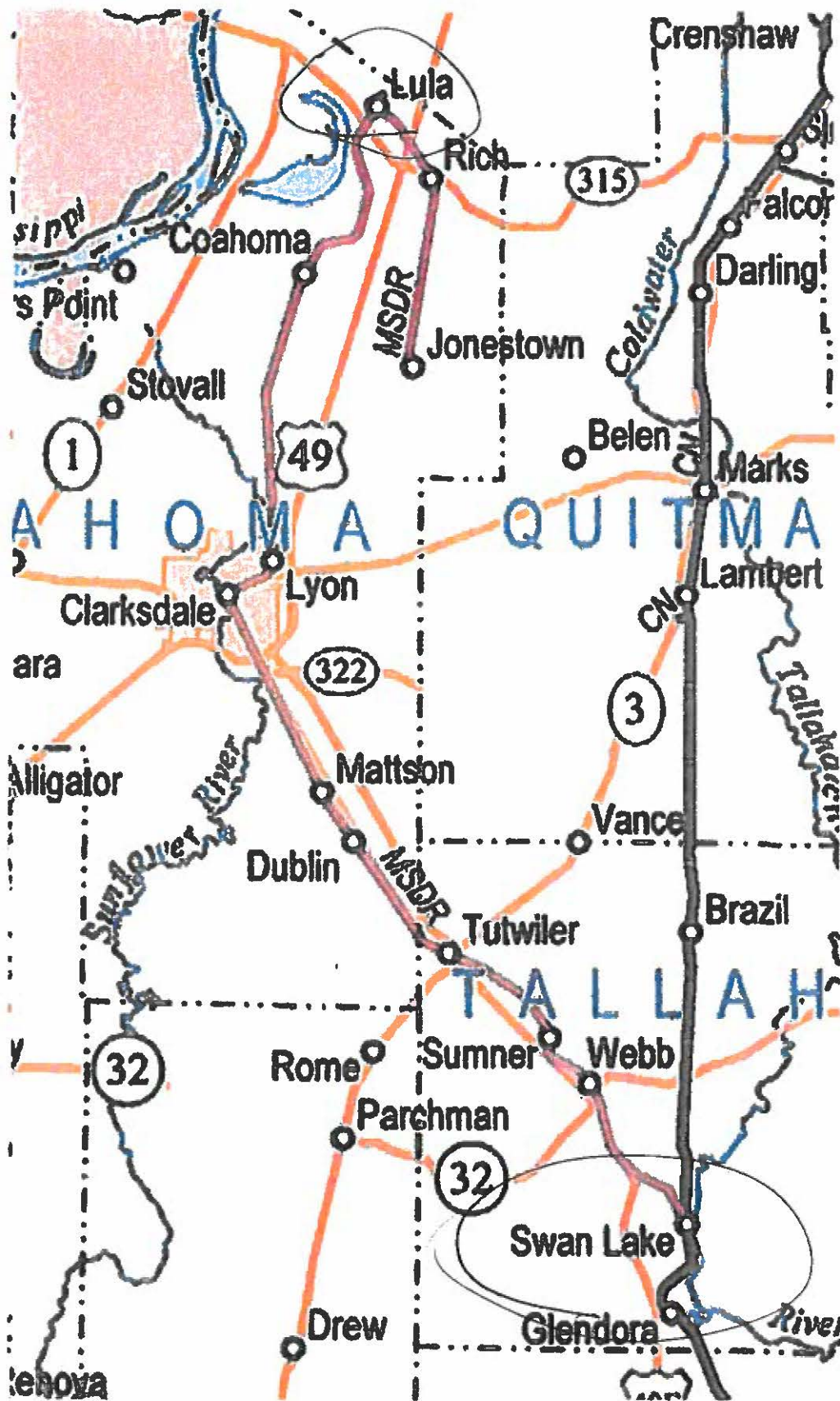
Thomas F. McFarland

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mcfarland@aol.com

Attorney for Petitioner

DATE FILED: April 15, 2019

Appendix 1



2/3713

BEFORE THE
SURFACE TRANSPORTATION BOARD



FILED

APR - 7 2005

TRANSPORTATION

FINANCE DOCKET NO. 34673

C&J RAILROAD COMPANY d.b.a.
MISSISSIPPI DELTA RAILROAD
ACQUISITION AND OPERATION EXEMPTION
RAIL LINE IN TALLAHATCHIE COUNTY, MISSISSIPPI

ENTERED
Office of Proceedings
APR - 7 2005
Part of
Public Record

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. Sec 1150.31

FILED
APR - 7 2005
SURFACE
TRANSPORTATION

C&J RAILROAD COMPANY
d.b.a. MISSISSIPPI DELTA RAILROAD
1710-L East Tenth Street
Jeffersonville, Indiana 47130
(812) 282-8165

Applicant

DATE FILED: April 4, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34673



C&J RAILROAD COMPANY d.b.a.
MISSISSIPPI DELTA RAILROAD
ACQUISITION AND OPERATION EXEMPTION
RAIL LINE IN TALLAHATCHIE COUNTY, MISSISSIPPI

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. Sec 1150.31**

Pursuant to 49 C.F.R. Sec 1150.31, C&J RAILROAD COMPANY d.b.a.
MISSISSIPPI DELTA RAILROAD (MSD), a non carrier, provides notice of exemption
from 49 U.S.C. Sec 10901 for operation of a rail line in Tallahatchie County, Mississippi.
The total length of track to be operated is 1,320 feet, or 0.25 miles. The tracks to be
operated are terminal and switching tracks beyond CN/IC's Mile Post 104 depicted on a
map attached hereto as Appendix 1.

NOTICE

In accordance with 49 C.F.R. Sec 1150.33, C&J Railroad Company d.b.a. Mississippi Delta Railroad (MSD) hereby states as follows:

(a) The full name and address of the applicant are:

C&J Railroad Company d.b.a. Mississippi Delta Railroad
1710-L East Tenth Street
Jeffersonville, Indiana 47130

(b) The name, address and telephone number of the representative of C&J Railroad who should receive correspondence are:

Reggie Howell, President
C&J Railroad Company
1710-L East Tenth Street
Jeffersonville, Indiana 47130
(812) 282-8165

(c) C&J Railroad Company has leased the rail line since July 1, 2001, but has not Commenced operations.

(d) The operator of the rail line will be MSD.

(e) Brief Summary of the Proposed Transaction:

On or after the effective date of this exemption, MSD will conduct rail operations on 0.25 miles of terminal and switching tracks beyond CN/IC's Mile Post 104 as depicted on the Map at Appendix 1. C&J Railroad Company assumed the right to the name "Mississippi Delta Railroad" via a licensing agreement dated July 1, 2001. C&J Railroad Company d.b.a. Mississippi Delta Railroad is not related in any way to the former carrier with that name. MSD anticipates that, upon commencement of operations over the rail line, it will transport a variety of commodities, including aggregates, cottonseed,

cottonseed products, fertilizers, steel, and manufactured items. The interchange of this traffic will be effected between MSD and Canadian National.

- (1) C&J Railroad Company is already the lessee of the rail line.
- (2) MSD expects to commence rail operations on or after the seventh day following the filing of this notice.
- (3) The rail line is shown on Appendix 1, and is comprised of 0.25 miles of lead, yard, and switching tracks without assigned mile posts.
- (4) Total track miles to be operated is approximately 0.25 miles.
- (f) Attached as Appendix 1 to this Notice of Exemption is a map of the rail line.
- (g) MSD certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier and will not exceed \$5,000,000 per year.

Environmental and Historic Reports

Pursuant to 49 C.F.R. Sec 1105.6(c)(2), no environmental documentation is required because this proceeding involves authority for an acquisition under 49 C.F.R. Sec 10901 for continued operations that will not exceed the thresholds established in 49 C.F.R. Sec 1105.7(e)(4) or (5).

No historic report under 49 C.F.R. Sec 1105.8(b)(1) is required because the transaction merely involves an acquisition for continued rail operations, and further Board approval is required to discontinue or abandon any service. MSD has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old.

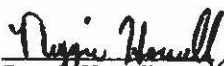
Labor Protection

Pursuant to 49 U.S.C. Sec 10901(e), approval of this transaction may not be subjected to labor protection conditions.

Caption Summary

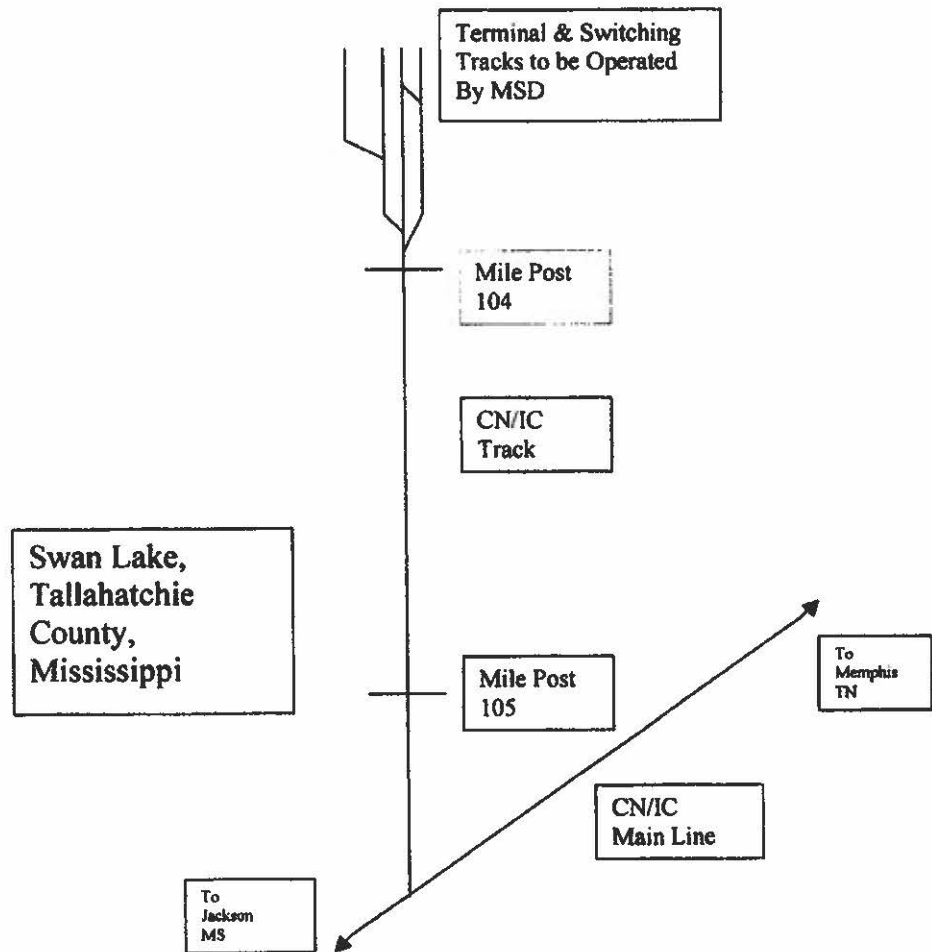
Attached hereto as Appendix 2 is the caption summary required by 49 C.F.R. Sec 1150.34.

Respectfully submitted,

By: 
Reggie Howell
President
C&J Railroad Company
1710-L East Tenth Street
Jeffersonville, IN 47130
(812) 282-8165

Dated: April 4, 2005

Appendix 1
Map of Rail Line



Appendix 2
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34673

C&J RAILROAD COMPANY d.b.a.
MISSISSIPPI DELTA RAILROAD
-ACQUISITION AND OPERATION EXEMPTION-
TALLAHATCHIE COUNTY, MISSISSIPPI

C&J Railroad Company d.b.a. Mississippi Delta Railroad (MSD), a non-carrier, has filed a Notice of Exemption to exempt from regulation under 49 U.S.C. Sec 10901, its acquisition and operation of certain lines of railroad (the "Rail Lines") in Tallahatchie County, Mississippi. The rail line consists of 0.25 miles of track including yard, lead and switching tracks without assigned mile posts north of CN/IC's Mile Post 104.

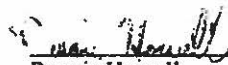
Comments must be filed with the Board and served on MSD representative, Reggie Howell, President, C&J Railroad Company, 1710-L East Tenth Street, Jeffersonville, IN 47130.

This Notice is filed under 49 C.F.R. Sec 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. Sec 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

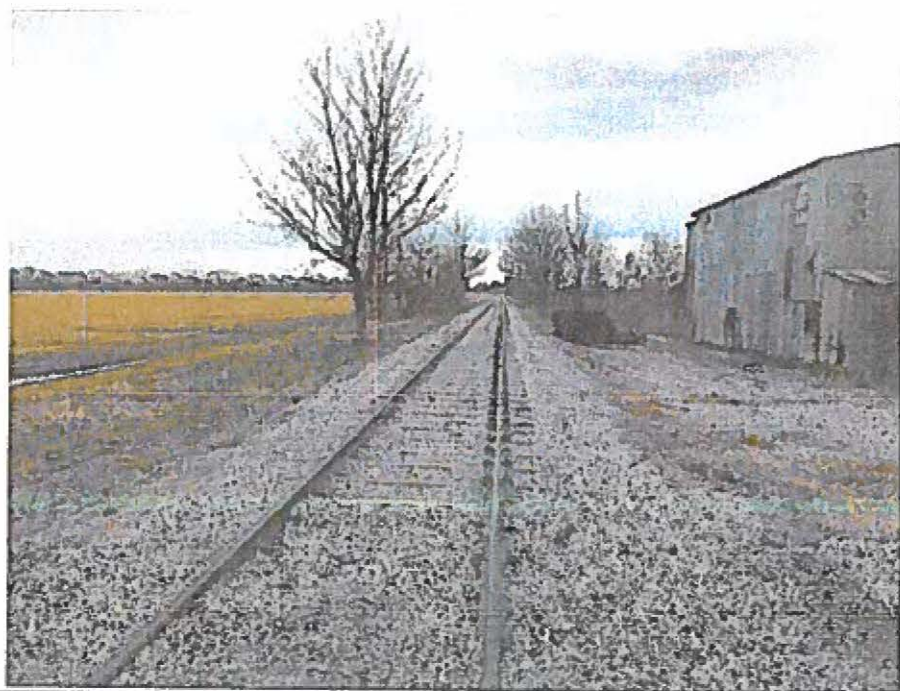
VERIFICATION

I, Reggie Howell, President of C&J Railroad Company, verify under perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on April 4, 2005.


Reggie Howell

Appendix 3



VERIFIED STATEMENT OF ROBERT RILEY

My name is Robert Riley. I am CEO of Chicago, Rock Island & Pacific (CRIP). CRIP is not a rail carrier at present, but it seeks to become a rail carrier by operation as a common carrier between Lula and Swan Lake, MS. This Statement is submitted in support of CRIP's Petition for Prescription of Alternative Rail Service between those points.

The following are customers on the Lula-Swan Lake Rail Line.

Pinnacle Ag Services, Agricultural Products
Orica Mining, Fertilizer/Chemicals
CF Industries, Fertilizer/Chemicals
Nelson Brothers, Fertilizer/Chemicals
Jones-Hamilton, Industrial Chemicals, Hydrochloric Acid
Browner Turnout, Railcar Leasing
Infinity Transportation/ARC Rail, Railcar Leasing
Wells Fargo Rail, Railcar Leasing
RIRS, Railcar Repair

As a result of C&J Railroad (C&J) refusing to relinquish their operating authority, the listed customers have been without rail service since February 8th, 2019. On October 1st, 2016 C&J Railroad signed a lease agreement for the operation of the Lula-Swan Lake Rail Line with Coahoma County MS (the County) with the understanding that at the expiration of the lease term or termination for cause, it would leave the railroad in an orderly fashion and release control back to the County. After two months, C&J has not fulfilled its contractual obligation and has refused to allow the operating authority on the first 1/4 mile of the line to transfer to CRIP as an attempt to block service to the lines' customers solely out of spite. This is neither in the public's best interest nor is it ethical to intentionally harm the line's customers and/or owners. As a result of C&J not fulfilling its contractual obligations and having to be removed

from the railroad is not adequate reasoning to block the incoming operator from fulfilling the service obligations to the customers on the Line. I am requesting that the Board take this under consideration and not allow a disgruntled, former operator to cause such a barrier thereby blocking all bona fide efforts to fulfill the service obligations to all the current and long-standing online customers.

Each of the businesses listed is suffering from the actions of the disgruntled operator, C&J. It is obvious that this situation is being caused by C&J being disgruntled that it lost its contract for failing to live up to its requirements. Now, 60 days later, a dire service emergency exists as none of the customers can get their cars to the proper locations for transportation of their products. As a result, manufacturers cannot get their product to market. Users of the agricultural chemicals transported in these trapped railcars can't get the chemicals required by these farmers all across the United States during the busiest time in the agricultural business, PLANTING SEASON.

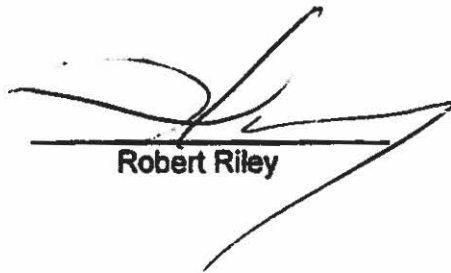
The Board should take into consideration the dire need for this traffic to be able to flow. It is imperative that a one-man crusade of a disgruntled former operator not be allowed to be more important than the thousands of farmers throughout the United States that cannot get the needed chemicals for their planting. This hold-up could certainly create a far-reaching and lasting effect on agricultural commodities markets.

CRIP has locomotives, equipment, manpower, resources, and legal physical possession of the Lula-Swan Lake Rail Line via a signed lease agreement with the County and is standing by to fulfill the needs of these customers. CRIP is readily complying with the law. It is imperative

that emergency temporary relief be granted for us to operate this Rail Line while a more permanent solution is sought.

In accordance with 29 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct.

Signed on April 10, 2019.



Robert Riley