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May 15, 2024
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May 15, 2024

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

Re: San Joaquin Valley Railroad Co.
– Lease and Operation Exemption – Including Interchange Commitment
BNSF Railway Company
Surface Transportation Board Finance Docket 36765

Dear Ms. Brown:

Enclosed for e-filing on behalf of San Joaquin Valley Railroad Co. ("SJVR") is a Notice of Exemption being filed under 49 USC 10902 and 49 CFR 1150.41. This Notice of Exemption includes an interchange commitment and as such, also enclosed is a confidential appendix governed by 1104.14(a). In addition, SJVR is submitting a request for waiver of the labor notice requirements of 49 C.F.R. §1150.42(e).

The filing fee of was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,



Justin J. Marks
Counsel for San Joaquin Valley Railroad Co.

Enclosure

FEE RECEIVED
May 15, 2024
Surface
Transportation Board

FILED
May 15, 2024
Surface
Transportation Board

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36765

SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for San Joaquin Valley Railroad
Co.*

Dated: May 15, 2024

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36765

SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

San Joaquin Valley Railroad Co. (“SJVR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, SJVR’s entry into a lease amendment to extend the term of, and to make other minor changes to, its lease of the Landco spur line between the Porterville Subdivision, MP 111 + 4029 feet, near Oil Junction, California, and milepost 113 + 3717 feet at or near Bakersfield, California, a distance of approximately 2.0 +/- miles (the “Leased Line”), as shown on the map attached as Exhibit A. The original lease (the “Original Lease”) was part of a broader agreement entered into between the predecessor of SJVR, Tulare Valley Railroad Company (“Tulare Valley”), and the predecessor of BNSF Railway Company (“BNSF”), The Atchison, Topeka and Santa Fe Railway Company (“ATSF”) dated as of November 24, 1992.

Notice

In accordance with 49 C.F.R. §1150.43, SJVR hereby provides the following information:

- (a) The full name and address of Applicant: San Joaquin Valley Railroad Co., 221 North F Street, P.O. Box 937, Exeter, CA 93221.
- (b) Applicant’s Representatives:

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- (c) SJVR and BNSF are entering into a Thirteenth Amendment to extend the term of the lease.
- (d) The current operator of the Leased Line is SJVR, and SJVR will continue to be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: In 1992, Tulare Valley entered into an agreement with ATSF under which it acquired various branch and spur lines of railroad, and as relevant here, leased the Leased Line pursuant to the Original Lease. *Tulare Valley Railroad Co. – Acquisition and Operation Exemption – the Atchison, Topeka & Santa Fe Railway Co.*, ICC Finance Docket No. 32215 (served January 13, 1993) [58 FR 4184]. The lease was for a period of five years, and was renewable for consecutive five-year terms. BNSF succeeded to the rights of ATSF as a result of the merger of Burlington Northern Railroad Company and ATSF in 1995. *See generally Burlington Northern Inc. and Burlington Northern Railroad Company – Control and Merger – Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, ICC Finance Docket No. 32549, Decision 38 (served August 23, 1995). SJVR

acquired the leasehold rights of Tulare Valley in 1999. *San Joaquin Valley Railroad Company – Acquisition and Operation Exemption – Tulare Valley Railroad Company*, STB Finance Docket No. 33723 (served March 30, 1999; corrected as to other line segments served May 12, 1999).

The lease continued to renew for five year terms through December 31, 2007, when the parties entered into an amendment to amend the interchange commitment and extend the term until December 31, 2012. In 2015, SJVR and BNSF extended the term of the lease through December 31, 2022. *San Joaquin Valley Railroad Co. – Lease Amendment and Operation Exemption Including Interchange Commitment – BNSF Railway Company*, STB Finance Docket No. 35772 (served May 15, 2015). SJVR and BNSF have now agreed to amend the agreement to further extend the term of the lease.

- i. The name and address of the company leasing the Leased Line is BNSF Railway Company, 2650 Lou Menk Drive, Fort Worth, TX 76131-2830.
 - ii. The Lease will be effective upon the effective date of this Notice of Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver).
SJVR is currently operating the Leased Line under the terms of the Original Lease and will continue to do so until the Lease becomes effective.
 - iii. The mileposts of the Leased Line are between the Porterville Subdivision, MP 111 + 4029 feet, near Oil Junction, California, and milepost 113 + 3717 feet at or near Bakersfield, California. The Leased Line is located in Kern County, California.
 - iv. The total route miles to be leased and operated is approximately 2.0 +/- miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Leased Line.

- (g) SJVR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) SJVR certifies that the lease which is being amended includes an existing interchange commitment. In this transaction, the Original Lease contained an interchange commitment that potentially affects interchange with carriers other than ATSF (now BNSF). The interchange commitment was amended in 2007 by the Fifth Amendment. The following additional information is provided by SJVR with respect to the interchange commitment:
- i. As noted above, the Original Lease contains an interchange commitment that affects interchange with carriers other than ATSF (now BNSF) at the indirect interchange points shown on the map attached as Exhibit A. The interchange commitment was amended in 2007 by the Fifth Amendment.
 - ii. A confidential version of the Lease is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).
 - iii. A list of the shippers who currently use or who have used the Leased Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
 - iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.
 - v. SJVR hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a

copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.

- vi. BNSF physically interchanges with the Leased Line and Union Pacific Railroad Company has an indirect connection with the Leased Line.
- vii. SJVR does not have the information to estimate the difference between the rent with and without the interchange agreement. Moreover, in connection with the current amendment and extension of the lease there was no discussion or negotiation of the lease with and without the commitment. Accordingly, SJVR requested an estimate of the difference from BNSF as permitted by the Board.

Information Required in Notices and Petitions Containing Interchange

Commitments, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-

6. A copy of the BNSF response is included in the Confidential Appendix.

- viii. The caption of this proceeding reflects the existence of the interchange commitment.
- (i) In addition to the information set forth above, SJVR certifies that its revenues currently exceed \$5,000,000. However, since SJVR will continue to be the operator of the Leased Line both before and after the transaction, SJVR is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

SJVR is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since SJVR is

already the operator of the Leased Line, there will be no employees adversely affected by the lease arrangements.

Environmental and Historic Reports

This is an extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for SJVR to discontinue (or for BNSF to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, SJVR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), SJVR would be required to give sixty days' notice to employees working on the Leased Line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of Proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for

waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, SJVR should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Leased Line. SJVR already leases the rail facilities, and it or its predecessor have been the sole common carrier operator of the Leased Line since 1999. The Lease extends the term of the Original Lease and SJVR will continue to be the sole common carrier operator of the Leased Line. No employees of the transferring carrier, BNSF or its predecessor, have worked on the line since 1992, and there are no employees of BNSF who will be affected or have to make any career choices as a result of the sale. Posting notices on the Leased Line would not provide notice to any BNSF employees since none work on the Leased Line. Further, there will be no operational changes and no employees of SJVR will be affected. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting SJVR a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend a lease it was previously leasing and will remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment –*

The Kansas City Southern Railway Company, STB Docket No. FD 35983 (served February 18, 2016).

SJVR asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, SJVR requests that the Board issue a notice allowing the Lease to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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jmarks@clarkhill.com

Attorneys for San Joaquin Valley Railroad Co.

Dated: May 15, 2024

VERIFICATION

I, David Franklin, President of San Joaquin Valley Railroad Co., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on May 15, 2024

A handwritten signature in black ink, appearing to read 'David Franklin', is written over a horizontal line.

David Franklin, President

EXHIBIT A

MAP

San Joaquin Valley RR Co. FD 36765

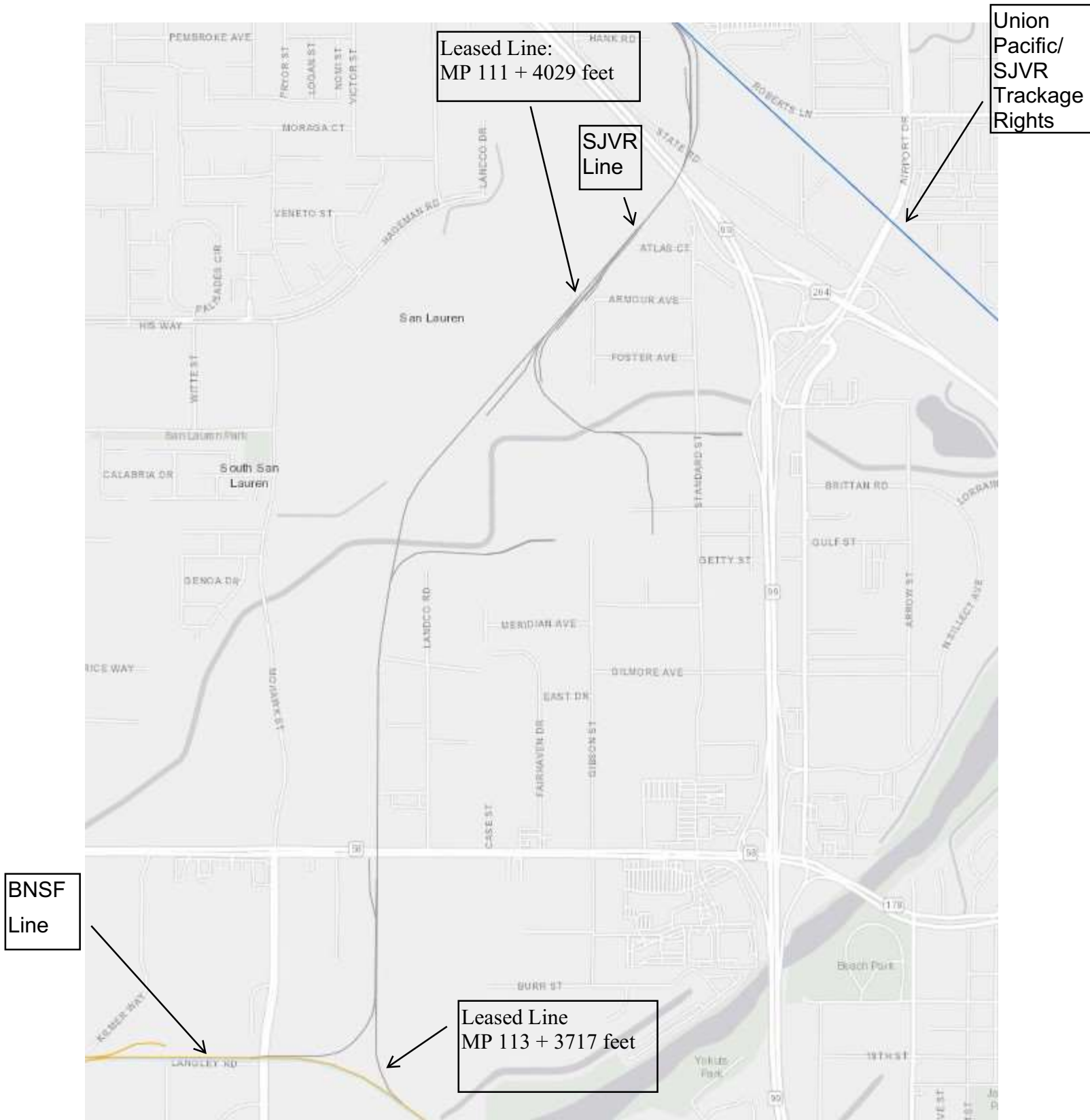


EXHIBIT B

LIST OF SHIPPERS

Asbury Transportation
2144 Parker Lane
Bakersfield, CA 93308

Kiva United Energy Inc.
4937 Standard Street
Bakersfield, CA 93308

San Joaquin Refining Co.
3129 Standard Street
Bakersfield, CA 93308

EXHIBIT C

CAPTION SUMMARY

**Before the
SURFACE TRANSPORTATION BOARD
STB Docket No. FD 36765**

**SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

San Joaquin Valley Railroad Co. (“SJVR”) has filed a Notice of Exemption to exempt its entry into a lease amendment to extend the term of, and to make other minor changes to, its lease of the Landco spur line between the Porterville Subdivision, MP 111 + 4029 feet, near Oil Junction, California, and milepost 113 + 3717 feet at or near Bakersfield, California, a distance of approximately 2.0 +/- miles (the “Leased Line”). The Leased Line is located in Kern County, California. SJVR is the current operator of the Leased Line.

Comments must be filed with the Board and served on SJVR’s representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

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: _____, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email or U.S. first class mail, postage pre-paid on the following national representative of SJVR employees working on the Leased Line:

United Transportation Union/
International Association of Sheet Metal, Air, Rail and
Transportation Workers ("SMART") – Transportation Division
go887smart-td@utugc887.com
Ruben Lomas
Vice General Chairperson
SMART-TD GO887

The International Association of Machinists
and Aerospace Workers
Juan Estrada
Assistant President/Directing General Chairman
District 19, IAMAW
jestrada@districtlodge19.com

and on the shippers shown on Exhibit B.



Justin J. Marks

Dated: May 15, 2024