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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36848

MICHAEL W. WILLIAMS
– CONTROL EXEMPTION –
McCLOUD RAILWAY COMPANY; OZARK VALLEY
RAILROAD, INC.; AND WASHINGTON & IDAHO RAILWAY, INC.

VERIFIED PETITION FOR EXEMPTION OF MICHAEL W. WILLIAMS

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Pursuant to 49 U.S.C. § 10502 and the corresponding regulations of 49 C.F.R. § 1121, Michael W. Williams (“Mr. Williams”) hereby files this Verified Petition for Exemption (the “Petition”) in the above-captioned proceeding¹ to secure after-the-fact authority to control three Class III rail common carriers: McCloud Railway Company (“MCR”); Ozark Valley Railroad, Inc. (“OVR”); and Washington & Idaho Railway, Inc. (“WIR”). For purposes of this filing, the control arrangements encompassed by this Petition are referred to as the “Transaction.”

SUMMARY

Mr. Williams seeks through this Petition to address and resolve certain regulatory compliance matters the Board identified in *Michael Williams – Control Exemption – S&S Shortline Leasing LLC*, FD 36460, *et al.* (STB served Sep. 29,

¹ The proceeding initiated hereby is presented as a single matter in keeping with the Board’s filing (and filing fee) requirements at 49 C.F.C. § 1002.2(f)(39) providing for the filing of a petition for exemption under 49 U.S.C. § 10502 for authorization for “a non-carrier *to acquire control of two or more carriers* through ownership of stock or otherwise” as is the case with this Petition.

2021) (“*S&S Shortline*”), and that the undersigned counsel discovered in the course of this project. Mr. Williams and his staff are to be credited for their forthcoming cooperation with this thorough assessment of Mr. Williams’ railroad holdings. This project entailed a review of Mr. Williams’s compliance (or past lack of compliance) with the Board’s advance approval procedures associated with his control of certain railroad common carriers. Mr. Williams recognizes that, under the assistance of past regulatory counsel, he has supplied inconsistent, and sometimes incomplete, information about his various railroad interests in previous Board filings. Counsel has worked with Mr. Williams so that he may be fully compliant with the Board’s regulations and processes going forward. Mr. Williams hopes that his remedial efforts here would entitle him, once again, to be able (as needed) to invoke the Board’s class exemption authorization procedures where, but for *S&S Shortline*, they would apply.

In this Petition, Mr. Williams seeks after-the-fact authority to control OVR and MCR – the two rail carriers discussed in *S&S Shortline* as being under Mr. Williams’ control – albeit absent appropriate authorization. Mr. Williams also seeks after-the-fact authority to control WIR, a third (and long-inactive) rail carrier not addressed in *S&S Shortline*. As the Board ordered in *S&S Shortline*, Mr. Williams may not invoke the class exemption procedures that would have been available to him to authorize his control of OVR, MCR and WIR, had he acted in

each case in timely fashion.² Rather, the Board has ordered that Mr. Williams must seek to correct his past regulatory oversights by filing a formal application or an individual petition for exemption, either of which would afford the Board the opportunity to engage in a more thoroughgoing analysis of the Transactions, thereby ensuring that Mr. Williams has fully complied with the Board's statutory and regulatory requirements.³

As shown below, Mr. Williams qualifies for an individual exemption from the formal approval requirements of 49 U.S.C. § 11323 for the Transaction, because the control arrangements do not require regulation to carry out the transportation policy of 49 U.S.C. § 10101, are limited in scope, and do not threaten any abuse of market power. 49 U.S.C. § 10502(a). and 49 C.F.R. § 1002.2(f)(39).

BACKGROUND

A. The Petitioner

The Petitioner throughout is Michael W. Williams, an individual with a business address at 10100 North Ambassador Drive, Suite 105, Kansas City, Missouri 64153.⁴

² *S&S Shortline* at 4. As is discussed further below, none of the rail carriers controlled by Mr. Williams connect with each other, or have ever so interconnected in the past. Had Mr. Williams timely sought regulatory approval for his control or continuance in control of each of the subject rail carriers, the control transactions would have satisfied the "nonconnecting carrier" and other class exemption criteria of 49 C.F.R. § 1180.2(d)(2).

³ *S&S Shortline* at 4-5.

⁴ Certain prior filings have suggested that Mr. Williams' spouse, Tammy Williams, might jointly control certain of the carriers controlled by Mr. Williams. *E.g., Michael Williams – Control Exemption – SDR Holding Company*, FD 35957

B. Rail Carriers and Transactions Relevant to this Petition

Mr. Williams controls seven Class III rail common carriers: BG & CM Railroad Inc.; Ozark Valley Railroad, Inc.; Washington & Idaho Railway, Inc.; St. Maries River Railroad, Inc.; McCloud Railway Co.; Boot Hill & Western Railway Holding Company, Inc.; and Dakota Southern Railway Company. Maps of each of these railroads are attached as Exhibit A. Certain of these railroads are marketed under the auspices of Midwest Pacific Rail Net & Logistics Co. (“Midwest Pacific”), a non-carrier entity wholly-owned by Mr. Williams. Midwest Pacific, however, does not itself hold ownership of any of the Williams rail carriers, all which are directly or indirectly controlled by Mr. Williams.

The seven Williams railroads are reviewed below in roughly the chronological order in which each came under Mr. Williams’ control as rail common carriers subject to the Board’s jurisdiction. Also discussed below is S & S Shortline Leasing, LLC (“S&S”), an entity owned by Mr. Williams that is no longer a rail carrier, as well as other rail carriers in which Mr. Williams holds or held non-controlling interests.

(STB served Dec. 10, 2015). Mr. Williams clarifies that he alone possesses the controlling interest in the rail carriers that are the subject of these proceedings, and that he has an exclusive controlling interest in each of the other rail carriers that Mr. Williams controls pursuant to appropriate prior Board authorization. Mr. Williams’ past filings suggesting joint or common control of any entity with Tammy Williams appear upon closer examination to reflect a misplaced understanding of community property concepts under state law.

BG & CM Railroad Inc. (BG&CM) – 2005

Mr. Williams incorporated BG&CM on October 23, 2002, and initially, it conducted unregulated operations as a contract carrier over a rail line approved for abandonment in Idaho.⁵ BG&CM became a Class III rail common carrier in 2005, when it acquired rail lines in Idaho pursuant to Board authorization.⁶ Mr. Williams did not own or control any other rail carriers at that time, and thus he did not require Board authorization to continue in control of BG&CM once it became a rail carrier subject to 49 U.S.C. Subtitle IV.⁷

Ozark Valley Railroad, Inc. (OVR) – 2007

Mr. Williams incorporated OVR as a non-carrier in early 2007 to acquire from The Kansas City Southern Railway Company and operate approximately 25 miles of rail line between Mexico and Fulton, Missouri (the “O

⁵ See *BG & CM Railroad, Inc. – Exemption From 49 U.S.C. Subtitle IV*, FD 34399 (STB served Oct. 17, 2003), *clarified, Camas Prairie Railnet, Inc. – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID (Between Spaulding and Grangeville, ID)*, AB-564 (STB served May 3, 2004).

⁶ *BG & CM Railroad Inc. – Acquisition and Operation Exemption – Great Northwest Railroad, Inc.*, FD 34713 (STB served July 6, 2005). This notice confirmed (at 1, n.1) BG&CM’s then-existing status as a contract carrier.

⁷ 49 U.S.C. § 11323(a)(5); *S&S Shortline* at 2, n.3; see, e.g., *Guilford Transp. Industries, Inc. – Control – B&M Corp.*, 366 I.C.C. 294, 326 (1982) (“We do not have jurisdiction over the acquisition by a noncarrier of control of a single carrier.”), *aff’d sub nom. Lamoille Valley R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Lines”). OVR secured exemption authority to acquire and operate the O Lines,⁸ and closed on the covered transaction on June 29, 2007. Because Mr. Williams already controlled BG&CM, a Class III rail carrier, he was required to obtain Board authorization to continue in control of OVR upon consummation of the O Lines transaction.⁹ But Mr. Williams did not seek OVR continuance in control authorization at that time or at any time thereafter (until now).

Mr. Williams had no reason purposely to withhold information regarding his existing control of BG&CM at the time of the *OVR Acquisition* transaction. Particularly given the availability of the non-connecting carrier class exemption of 49 C.F.R. § 1180.2(d)(2), there would have been little benefit to Mr. Williams from evading the Board’s control authorization procedures. There is no discernible evidence that Mr. Williams intended any such evasion.¹⁰ An investigation into the facts and circumstances (admittedly performed roughly 18 years after the fact) indicates that Mr. Williams – (a) was personally unaware of the

⁸ *Ozark Valley Railroad – Acquisition and Operation Exemption – The Kansas City Southern Railway Company*, FD 34989 (STB served June 8, 2007) (“*OVR Acquisition*”).

⁹ Because BG&CM’s and OVR’s lines do not connect, Mr. Williams’ continued control of OVR would have qualified for the 49 C.F.R. § 1180.2(d)(2) class exemption and could have been the subject of a notice of exemption under the procedures at 49 C.F.R. § 1180.4(g).

¹⁰ Indeed, as noted below, Mr. Williams’ control of OVR was disclosed in several subsequent filings that Mr. Williams made concerning later rail carrier control transactions. While never acknowledging, or seeking to correct, the failure to obtain control authority for OVR, those later filings undercut any presumption that Mr. Williams intended to conceal his OVR ownership from the Board.

need to secure contemporaneous control authorization stemming from the *OVR Acquisition* transaction; and (b) had depended upon counsel presumed competent to provide thorough guidance on Board regulatory matters. This appears to have been a case where Mr. Williams and his previous counsel overlooked applicable agency procedures, thereafter missing repeated opportunities at other intervals (that is, in subsequent control transactions) to explicitly rectify such oversight.

Through this consolidated Petition, Mr. Williams now seeks after-the-fact authority to continue in control of OVR.

St. Maries River Railroad, Inc. (SMRR) – 2010

SMRR is a Class III rail carrier that was created in 1980 as a subsidiary of Potlatch Corporation to acquire approximately 71 miles of track in Idaho from the trustee of the bankrupt Chicago, Milwaukee, St. Paul & Pacific Railroad Company.¹¹ Williams Group, Inc., a company wholly-owned by Mr. Williams, acquired the stock of SMRR from a subsidiary of Potlatch in 2010.¹² Mr. Williams obtained appropriate Board authorization for his control of SMRR at that time pursuant to the non-connecting carrier control class exemption of 49 C.F.R.

¹¹ See *St. Maries River Railroad Company – Operation of Lines of Railroad from Bovill to St. Maries, ID and from St. Maries to Plummer, ID*, FD 29428, 45 Fed. Reg. 53253 (Aug. 11, 1980); *Burlington Northern, Inc. – Pur. – Chicago, M., St. P.*, 363 I.C.C. 298, 310 (1980).

¹² Williams Group, Inc. does not hold any of the other rail carriers controlled by Mr. Williams, and thus is not itself in control of multiple rail carriers.

§ 1180.2(d)(2).¹³ As reflected in the Board’s notice, Mr. Williams’ counsel disclosed at that time Mr. Williams’ existing controlling interest in BG&CM and OVR.¹⁴

McCloud Railway Company (MCR) – 2011

MCR was incorporated in 1992 and became a Class III rail carrier that year upon acquiring rail assets from the former McCloud River Railroad Co. in northern California.¹⁵ After seeking abandonment authority in 2005 for most of its lines, MCR now holds 19.6 miles of largely inactive (but un-abandoned) rail line as well as the residual right to reactivate service on approximately 80 miles of rail line approved for abandonment that are railbanked under a notice of interim trail use.¹⁶

Mr. Williams acquired MCR’s stock in 2011. Because of Mr. Williams’ control of BG&CM, OVR, and SMRR, his acquisition of control of MCR required Board authorization. Although the non-connecting carrier control class exemption

¹³ *Michael Williams – Control Exemption – St. Maries River Railroad, Inc.*, FD 35365 (STB served Apr. 28, 2010) (“*SMRR Control*”). SMRR did not – and still does not – connect to any other railroad under Mr. Williams’ control.

¹⁴ *SMRR Control* at 1. Mr. Williams’ filing also said he planned to seek Board authorization for his acquisition of a controlling interest in another short line carrier – Dakota Southern Railway Company. *Id.* at 1, n.3. He did, but only much later.

¹⁵ *McCloud Railway Co. – Acquisition and Operation Exemption – McCloud River Railroad Co.*, FD 32069 (ICC served Jun. 4, 1992).

¹⁶ *See McCloud Railway Company – Abandonment and Discontinuance of Service Exemption – In Siskiyou, Shasta, and Modoc Counties, CA*, AB-914X (STB served Oct. 14, 2005 and Apr. 29, 2016).

at Section 1180.2(d)(2) was available,¹⁷ Mr. Williams did not seek or obtain such control authority. Review of available information indicates that there may have been some confusion concerning whether MCR was still a common carrier, given the circumstances surrounding its inactive lines.¹⁸ But the subsequent 2015 DSR control proceeding (discussed below) addressed any such confusion, and indicated that Mr. Williams' counsel at that time would "undertake appropriate filings at the Board in connection with acquisition of [MCR] that may be triggered by the un-abandoned common carrier obligation."¹⁹ Until now, no such corrective filing was ever tendered.

Mr. Williams' subsequent control filings specifically disclosed his ownership of MCR, and the Board reported on that control relationship in the decisions and notices issued in those proceedings. But in none of those subsequent proceedings did the Board seize upon the fact that Mr. Williams had failed at any time to secure MCR control authority. Through this Petition, Mr. Williams seeks after-the-fact authority to control of MCR.

¹⁷ MCR did not – and still does not – connect to any other railroad under Mr. Williams's control.

¹⁸ MCR had initially intended in 2005 to seek abandonment of all of its rail lines, and had scaled back those plans only after initiating the abandonment process. *See MCR Abandonment*, AB-914X (STB served Oct. 14, 2005) at 1, n.1.

¹⁹ FD 35957, *Michael Williams – Control Exemption – SDR Holding Company*, Supplemental Information and Amendment to Notice of Exemption, filed November 3, 2015, at 4, n.1.

Boot Hill & Western Railway Holding Company, Inc. (BHWH) – 2015

Mr. Williams incorporated BHWH as a non-carrier in April of 2015 to acquire from Boot Hill & Western Railway Co. LC (“BHWR”) and operate approximately 10.2 miles of rail line between Dodge City and Wilroads, Kansas (the “BHW Line”).²⁰ Mr. Williams arranged for BHWH to secure appropriate Board exemption authority to acquire and operate the BHW Line.²¹ Mr. Williams also sought and obtained an exemption under Section 1180.2(d)(2) to continue in control of BHWH once it became a rail carrier.²²

The FD 35925 control filing specifically disclosed Mr. Williams’ existing ownership of BG&CM, OVR, MCR and DSR.²³ The Board-issued notice of exemption, in turn, noted those existing control relationships without comment.

²⁰ Despite the presence of the word “Holding” in its name, BHWH is a short line railroad and is not a holding company, but it became a Class III rail carrier upon acquiring the BHW Line.

²¹ *Boot Hill & Western Railway Holding Company, Inc. – Acquisition and Operation Exemption – Boot Hill & Western Railway Co., LC*, FD 35924 (STB served May 8, 2015) (“*BHW Acquisition*”). *BHW Acquisition* also included the residual right to reactivate rail service on approximately 15.8 miles of railbanked line previously authorized for abandonment and for which BHWR had been issued a notice of interim trail use. Concurrent with *BHW Acquisition*, BHWH was substituted for BHWR as the interim trail sponsor on the railbanked line and was issued a replacement NITU. *Boot Hill & Western Railway Co., L.C – Abandonment Exemption – In Ford County, Kan.*, AB-927X (STB served June 23, 2015).

²² *Michael Williams – Continuance in Control Exemption – Boot Hill & Western Railway Holding Co., Inc.*, FD 35925 (STB served June 3, 2015) (“*BHWH Control*”).

²³ Mr. Williams, for reasons unknown, did not disclose his control of SMRR at that time, even though he had properly obtained Board authority for his control of SMRR in 2010. At the time of the BHWH control filing in 2015, on the other hand, Mr.

Washington & Idaho Railway, Inc. (WIR) – 2015

WIR was incorporated in 2006 and initially undertook contract operations on behalf of Palouse River and Coulee City Railroad, Inc. (“PCC”) on rail lines in eastern Washington (the “P&L Branch”). In mid-2007, however, the Washington State Department of Transportation (“WSDOT”) acquired the P&L Branch from PCC and formally leased the lines to WIR for purposes of WIR’s provision of common carrier rail service going forward. WIR sought and obtained appropriate Board authorization to lease and operate the lines, and, upon consummation of the Board-authorized transaction, became a Class III rail carrier.²⁴ From WIR’s initiation of common carrier operations until 2015, Mr. Williams held a non-controlling, minority stake in WIR. However, in April 2015, Mr. Williams obtained to a controlling stake in the railroad, albeit one not authorized by any corresponding control proceeding.

WIR’s lease of the P&L Branch expired in 2019, at which time WSDOT engaged another entity, the Spokane, Spangle & Palouse Railway, LLC (“SS&P”), with the intent of replacing WIR as the lessee/common carrier service-provider. SS&P duly obtained Board authority for its lease and operation of the P&L Branch,

Williams did not have control authority for OVR, MCR or DSR, although a control filing for DSR would be forthcoming several months later.

²⁴ *Washington & Idaho Railway, Inc. – Lease and Operation Exemption – Washington State Department of Transportation*, FD 35028 (STB served May 25, 2007 and May 30, 2007). Both of these decisions referenced WIR’s existing operations over the lines as a contract carrier for PCC. May 25th Notice at 2, n.3; May 30, 2007 Decision at 2, n.2.

but it did so pursuant to the general non-carrier acquisition and operation provisions of 49 C.F.R. part 1150, subpart D, inexplicably (and very unfortunately) without invoking the Board's change in operator exemption procedures at 49 C.F.R. § 1150.31(a)(3).²⁵ As a result, WIR's common carrier status on the P&L Branch remains despite the expiration of its leasehold interest and its voluntary departure from the WSDOT-owned premises. WIR thus, technically (and evidently due to SS&P regulatory oversight), remains a rail common carrier – albeit an inactive one bereft of any contract rights to conduct railroad operations for over five years.²⁶

Mr. Williams should have secured Board authorization to acquire control of WIR in 2015 when he moved from being a minority stakeholder in the railroad to assuming a controlling stake, given his pre-existing control of other, non-connecting U.S. Class III railroads. As with MCR, he did not.²⁷ Under the

²⁵ *Spokane, Spangle, & Palouse Railway, LLC – Lease and Operation Exemption – Washington State Department of Transportation*, FD 36325 (STB served July 26, 2019 and Aug. 2, 2019).

²⁶ WIR intends – at such time as it has satisfied the Board that it has, by way of the present Petition processes, remedied its past non-compliance with applicable statutory authorization requirements for a non-carrier's control of multiple rail carriers – to examine its options for obtaining entire-system discontinuance authority on the P&L Branch – an undertaking that appears to have become be more taxing and costly than before in the aftermath of *Austin Area Terminal Railroad, Inc. – Discontinuance of Service Exemption – In Bastrop, Burnet, Lee, Llano, Travis, and Williamson Counties, Texas*, AB 578X (STB served Nov. 3, 2023).

²⁷ Also similar to MCR, because the P&L Branch did not connect with the lines of any other railroads then under Mr. Williams' control, his 2015 acquisition of control of WIR would have qualified for the Section 1180.2(d)(2) class exemption filed pursuant to the procedures of 49 C.F.R. § 1180.4(g). Unlike in other cases discussed above, Mr. Williams' subsequent control filings did not reference his control of WIR.

circumstances, Mr. Williams seeks after-the-fact authorization here to control WIR, both to comply with applicable federal law and so that he may pursue authority for WIR's discontinuance of its remaining, residual common carrier obligation on the P&L Branch.

Dakota Southern Railway Company (DSR) – 2009 (Resolved 2015)

DSR was formed in 1985. Over its existence, DSR has operated various rail lines owned by the State of South Dakota. Today, it is authorized to operate pursuant to a modified certificate of public convenience and necessity over approximately 20.9 miles of State-owned line between Napa Junction and Tyndall, South Dakota.²⁸ DSR's prior modified certificate operation between Mitchell and Kadoka, South Dakota was terminated when that State-owned line was sold to another rail carrier.²⁹ The lines currently and previously operated by DSR have never connected to the lines of any other rail carrier controlled by Mr. Williams.

²⁸ See *Dakota Southern Railway Company – Modified Certificate of Public Convenience and Necessity – Yankton, Bon Homme, and Charles Mix Counties, S.D.*, FD 36086 (STB served Jan. 25, 2017); *State of South Dakota Acting by and through its Department of Transportation – Petition for Declaratory Order*, FD 36697 (STB served Aug. 21, 2023) (terminating DSR modified certificate between Tyndall and Ravinia, South Dakota).

²⁹ See *Ringneck & Western Railroad, L.L.C. – Acquisition and Operation Exemption – Railroad Line in Davison, Aurora, Brule, Lyman, Jones, Jackson and Pennington Counties, S.D.*, FD 36494 (STB served Apr. 30, 2021); *Dakota Southern Railway Company – Modified Rail Certificate*, FD 36291, DSR Notice of Intent to Terminate Service, filed Mar. 23, 2021.

On September 30, 2009, SDR Holding Company (“SDR”), a non-carrier holding company owned by Mr. Williams acquired DSR’s stock.³⁰ While Mr. Williams had indicated in the 2010 *SMRR Control* proceeding that a control filing for DSR would be forthcoming, it wasn’t until September of 2015 that Mr. Williams sought such class exemption authorization. That filing specifically disclosed that Mr. Williams already controlled BG&CM, OVR, SMRR and MCR, but it did not mention BHWH, which had been the subject of the *BHWH Control* proceeding several months earlier.³¹ In a decision served on October 14, 2015, the Board held the notice of exemption in abeyance and directed Mr. Williams to file supplemental information. Among other things, Mr. Williams was directed to amend his control notice of exemption to include BHWH and “any other holding companies or railroads that may have been omitted.”³²

In his subsequent supplemental filing, Mr. Williams identified BHWH, BG&CM, OVR, SMRR and MCR as rail carriers under his control.³³ The filing did not acknowledge that Mr. Williams lacked control authority for OVR or MCR,

³⁰ Along with SMRR, this is the other example of a Williams railroad that is held by Mr. Williams through an intermediate entity, rather than by directly Mr. Williams himself. SDR does not control any other rail carriers.

³¹ FD 35957, *Michael Williams – Control Exemption – SDR Holding Company*, Verified Notice of Exemption of Michael Williams, filed Sep. 15, 2015, at 3-4.

³² *Michael Williams – Control Exemption – SDR Holding Company*, FD 35957 (STB served Oct. 14, 2015) at 2.

³³ FD 35957, *Michael Williams – Control Exemption – SDR Holding Company*, Supplemental Information and Amendment to Notice of Exemption, filed Nov. 3, 2015 (“Williams Supplement”), at 3, 5-6.

although a somewhat confusing footnote appeared to reflect uncertainty over MCR's common carrier status.³⁴ The same footnote also referenced, for the first time, S&S Shortline Leasing, LLC ("S&S").³⁵ WIR was not mentioned.³⁶

The Board subsequently removed the FD 35957 proceeding from abeyance and separately published the notice of exemption for Mr. Williams' control of DSR.³⁷ In both cases, the Board referred to Mr. Williams' existing control of BG&CM, OVR, SMRR, MCR and BHWH, and noted the absence of control authority for OVR and MCR.

Other Williams Holdings

Beyond the regulated rail carriers discussed above, Mr. Williams holds interests in several other railroad entities. He continues to own S&S, which was the subject of a series of Board decisions culminating in *S&S Shortline*. S&S is no longer a Board-authorized common carrier, having been replaced in that capacity by a new common carrier service provider over all of the lines over which S&S

³⁴ Williams Supplement at 4, n.1.

³⁵ Williams Supplement at 5, n.1. *See* further discussion below.

³⁶ A subsequent modified certificate filing with respect to the Mitchell-Kadoka line, however, indicated that Mr. Williams "holds an interest in [WIR]." *Dakota Southern Railway Company – Modified Rail Certificate*, FD 36291, DSR Notice of Modified Certificate of Public Convenience and Necessity, filed Apr. 17, 2019, at 3. As indicated above, DSR's modified certificate operations on the Mitchell-Kadoka line have since been terminated.

³⁷ *Michael Williams – Control Exemption – SDR Holding Company*, FD 35957 (STB served Dec. 10, 2015 and Dec. 15, 2015).

previously held operating rights. S&S obtained Board authorization in 2009 to operate as a common carrier over about 127.9 miles of railroad line (the “S Line”) owned by the City of Ely, Nevada (the “City”) and the White Pine Historical Railroad Foundation (the “Foundation”).³⁸ Mr. Williams subsequently acquired control of S&S in 2011, and there later arose a dispute concerning S&S’ common carrier status.³⁹ In *S&S Shortline*, the Board rejected, respectively, S&S’ acquisition and Mr. Williams’ control notices of exemption, with the Board instructing each to file petitions for exemption or applications if S&S wished to acquire a rail line or “enter into any other transaction that would require Board authority,” and if Mr. Williams wished “to continue in control of S&S upon its becoming a rail carrier.”⁴⁰

Williams did not seek remedial control authority for S&S and circumstances have mooted the need for any such remedial effort, because S&S’s prior operating authority has been extinguished pursuant to two interrelated, Board-authorized (and cooperative) change in operator transactions with the Great Basin and Northern Railroad (“GBNR”) that took place in 2020 and 2022. In the first such transaction in 2020, GBNR assumed common carrier status over the

³⁸ *S&S Shortline Leasing, LLC – Operation Exemption – City of Ely, NV and White Pine Historical Railroad Foundation*, FD 35284 (STB served Aug. 14, 2009) (“*S&S Exemption*”).

³⁹ *S&S Shortline* at 2-3 & n.2.

⁴⁰ *S&S Shortline* at 4-5.

southernmost 0.9-mile portion of the S Line from S&S.⁴¹ At the same time in 2020, S&S filed for Board authorization to assume ownership of the balance of the S Line (the “Northern Segment,” which, at the time, S&S operated under a non-ownership operating agreement) pursuant to *S&S Exemption*. Mr. Williams also at that time sought an exemption to continue in control of S&S. These are the exemption notices that the Board rejected in *S&S Shortline*.

Thereafter, in 2022, Mr. Williams reached terms with the City and the Foundation for S&S to – (a) vacate the Northern Segment; (b) relinquish its claims in the Northern Segment; and (c) cooperate in an arrangement whereby GBNR would replace S&S as possessing common carrier rights and obligations over the Northern Segment through appropriate change of operator procedures. And, indeed, GBNR replaced S&S as the authorized rail carrier on the remainder of the S Line.⁴² As a result of the 2020 and 2022 change of operator transactions, S&S has no common carrier status, and it has no current plans or intentions to become one. Accordingly, Mr. Williams does not seek any control authority for S&S, now long a non-carrier entity.

Mr. Williams also holds a non-controlling, minority interest in MB Rail IB, LLC (“MBR-IB”), which until fairly recently controlled via ownership four non-

⁴¹ *Great Basin and Northern Railroad – Change in Operators Exemption – City of Ely and Nevada Northern Railway Foundation*, FD 36459 (STB served Nov. 27, 2020).

⁴² *Great Basin and Northern Railroad – Change in Operators Exemption – In Elko and White Pine Counties, Nev.*, FD 36601 (STB served Apr. 14, 2022) at 1 (identifying agreement with S&S).

connecting Class III rail carriers.⁴³ Three of those four carriers were sold in 2023 to another owner.⁴⁴ A separate entity, Midwest & Bluegrass Rail, LLC (“MB Rail”), managed the day-to-day affairs of the for MBR-IB railroads through a management agreement and accordingly also held STB control authority for the four railroads,⁴⁵ and it still, today, holds management control over one of them – Youngstown & Southeastern Railroad, LLC. Mr. Williams does not have any ownership interest in MB Rail. A minority, non-controlling interest in MB Rail is held by Ivory Beggs, who is Mr. Williams’ daughter.⁴⁶

Finally, Mr. Williams owned Fremont Northern LLC (“FN” – formerly Fremont Northern Railroad, Inc.), which owned an abandoned rail line right-of-way

⁴³ See *MB Rail IB, LLC – Acquisition and Continuance in Control Exemption – Chesapeake & Indiana Railroad, Vermilion Valley Railroad, Camp Chase Rail, LLC and Youngstown & Southeastern Railroad, LLC*, FD 36413 (STB served July 1, 2020).

⁴⁴ See *Macquarie Infrastructure Partners V GP, LLC – Control Exemption – Camp Chase Rail, LLC, Chesapeake and Indiana Railroad Company, Inc., and Vermilion Valley Railroad Company, Inc.*, FD 36685 (STB served Apr. 7, 2023).

⁴⁵ *Midwest & Bluegrass Rail, LLC – Control Exemption – Vermilion Valley Railway Company, Inc., Camp Chase Rail, LLC, Youngstown & Southeastern Rail, LLC, and Chesapeake & Indiana Railroad Company*, FD 36413 (Sub-No. 1) (STB served Sep. 10, 2021).

⁴⁶ MB Rail also manages and holds Board-issued control authority for TransKentucky Transportation Railroad, Inc. (“TTI”). See *Midwest & Bluegrass Rail, LLC – Control Exemption – TransKentucky Transportation Railroad, Inc.*, FD 36530 (STB served Sep. 10, 2021). TTI is owned by MB Rail TTI, LLC (“MBRT”), a non-carrier holding company which does not control any other rail carriers, and in which Ms. Beggs holds a non-controlling, minority interest. Mr. Williams does not have any ownership interest in MBRT. Like Mr. Williams, Ms. Beggs also holds a non-controlling, minority interest in MBR-IB.

in Nebraska.⁴⁷ The FN right-of-way has been sold to Nebraska Trails Foundation, Inc. for use as a recreational trail. FN never operated as a rail carrier, and never sought or received any form of regulatory authority from the Board. No such regulatory authority was needed, given the pre-existing non-jurisdictional (abandoned) status of the corridor.

DISCUSSION

A. Jurisdiction and Statutory Standards

Pursuant to 49 U.S.C. § 11323(a)(5), acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires Board approval. Because Mr. Williams' proposed after-the-fact control of MCR, OVR and WIR does not involve two or more Class I railroads, the Board must approve each transaction presented here unless: (1) the transaction in question would likely to result in a substantial lessening of competition; and (2) the anticompetitive effects of the transaction in question would outweigh the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Sections 11323-11325) if the Board were to find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2)

⁴⁷ See *Chicago & North Western Transportation Company – Abandonment Exemption – In Dodge, Cuming, Stanton and Madison Counties, Neb.*, AB-1 (Sub-No. 180X) (ICC served May 10, 1985).

either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress stated its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,⁴⁸ which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

After-the-fact exemptions from the requirements of Sections 11323-11325 for Mr. Williams' control of MCR, OVR and WIR would be consistent with Section 10502's standards. Further detailed scrutiny of the Transaction, through a formal application for review and approval under Section 11323, is unnecessary to carry out the relevant provisions of the rail transportation policy of 49 U.S.C.

⁴⁸ Pub. L. No. 104-88, 109 Stat. 803 (1995).

§ 10101 (the “RTP”). In fact, exemption from such review and approval would further many of the objectives established in the RTP. Moreover, the Transaction is of limited scope and will not result in any abuse of market power.

To be sure, the Transaction presented here differs from an ordinary exemption proceeding given the after-the-fact nature of the relief that Mr. Williams seeks and the unfortunate history of regulatory filings, both made and unmade, that have led to the current unauthorized control situations involving MCR, OVR and WIR. Yet the agency’s precedent is clear that “an entity that unlawfully acquires control of a rail carrier without obtaining Board approval may remedy its non-compliance . . . through Board approval of the transaction.”⁴⁹ In those instances, “[t]o rectify improperly acquired control, the [agency] must impose remedies that are ‘corrective, not punitive,’ and, while giving effect to the statutory violations, cause ‘as little injury as possible to the interests of private parties or the general public.’”⁵⁰ Here, where – (a) Mr. Williams has endeavored in good faith to fully present and explicate all of his rail holdings; and (b) the longstanding oversight can be properly and adequately addressed through the exemption process, it is appropriate to consider the Transaction under Section 10502.

⁴⁹ *Western Coal Traffic League – Petition for Declaratory Order*, FD 35506 (STB served July 25, 2013) at 27.

⁵⁰ *Ass’n of P&C Dock Longshoremen v. Pitts. & C. Dock Co.*, 8 I.C.C.2d 280, 295 (1992) (quoting *Gilbertville Trucking Co. v. U.S.*, 371 U.S. 115, 129-130 (1962)).

B. Exemption Criteria

1. Regulation is Not Necessary to Carry Out the Rail Transportation Policy of 49 U.S.C. § 10101.

In determining whether regulation of a transaction proposed for exemption under 49 U.S.C. § 10502 is necessary to carry out the RTP, the agency “generally focuses on the criteria relating to the underlying statute from which exemption is sought,” and thus “[w]e need not extend our analysis beyond what we would address in an application proceeding itself.”⁵¹ Because the governing consideration here under 49 U.S.C. § 11344(d) would be “whether a transaction will have a substantial adverse impact on competition . . . our analysis in the exemption context need not be broadened beyond consideration of those aspects of the RTP that deal with competition.”⁵² The proposed Transaction here plainly satisfies the RTP elements related to competition and a number of other RTP interests.

Pertinent (if not directly applicable) in this context is the class exemption under 49 C.F.R. § 1180.2(d)(2) covering control transactions where the lines of the relevant carriers do not connect and a Class I rail carrier is not involved.⁵³ As is discussed above, that is the factual circumstance for this

⁵¹ *Indiana R. Co. – Acq. & Oper. – Illinois Central R. Co.*, 6 I.C.C.2d 1004, 1006-1007 (1990) (“*Indiana R.*”), *aff’d sub nom. Village of Palestine v. ICC*, 936 F.2d 1335, 1338-1340 (D.C. Cir. 1991).

⁵² *Indiana R.*, 6 I.C.C.2d at 1007.

⁵³ *Railroad Consolidation Procedures*, 363 I.C.C. 200, 216 (1980) (identifying transactions described in former 49 C.F.R. § 1111.5(c) [now 49 C.F.R. § 1180.2(d)] as ripe for exemption consistent with the RTP).

Transaction for which Mr. Williams seeks after-the-fact control authority. While, under the directive of *S&S Shortline*, the *procedure* for such exempt transactions is unavailable, the Transaction nevertheless meets the *substantive criteria* the Board established at 49 C.F.R. § 1180.2(d)(2) pursuant to the 49 U.S.C. § 10502(a) class exemption standards. Common control of these non-connecting Class III rail carriers in various part of the country, in combination with the railroads for which Mr. Williams already has secured appropriate control authorization, would have no impact on the competitive landscape.⁵⁴ As such, regulation is not necessary to carry out those elements of the RTP related to competition (*see* 49 U.S.C. § 10101(1), (4)-(6) and (12)), and granting this Petition will accommodate the Congressional purpose of exempting transactions to the “maximum extent.”⁵⁵

Furthermore, an exemption here would minimize the need for federal regulatory oversight, encourage a sound rail transportation system by allowing economies of scale in the management and overhead costs of rail carriers under common control, reduce regulatory barriers to entry, and expedite proceedings. 49 U.S.C. § 10101 (2)-(4), (7) and (15).

In particular, requiring an application to protect the integrity of the Board’s regulatory processes and oversight is unnecessary. Unlike prior, comparable instances, Mr. Williams’s Petition is candid and seeks to be as thorough

⁵⁴ *Railroad Consolidation Procedures*, 363 I.C.C. at 206 (“The exemptions we proposed are of limited scope . . . competitively.”)

⁵⁵ 49 U.S.C. § 10502.

as possible – exemplified most distinctly in its disclosure and treatment of WIR.⁵⁶ Granting this consolidated Petition for exemption would reflect favorably on that candor and thereby encourage the “honest and efficient management of railroads.” 49 U.S.C. § 10101(9). No other elements of the RTP would be adversely affected by an after-the-fact exemption for the Transaction.

2. **Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power.**

Mr. Williams’ control of MCR, OVR and WIR has had and will have no adverse impact on competition. None of those carriers connect with each other, or with any of the other railroads controlled by Mr. Williams. Indeed, these railroads are widely scattered across the western United States – in California, Missouri and Washington, respectively, for MCR, OVR and WIR, and in Idaho (BG&CM and SMRR⁵⁷), Kansas (BHWH) and South Dakota (DSR). Given this disconnect among markets, origin, destinations, and intermediate routes, no shipper facility is commonly served by more than one Williams-controlled railroad, and the Transaction would be ineffectual to any carrier’s market power.⁵⁸ In turn, there is no need for regulation to address any discernible shipper competitive concerns.

⁵⁶ *Compare Adrian & Blissfield Rail Road Company – Continuance in Control – Charlotte Southern Railroad Company et al.*, FD 35498 (STB served Aug. 19, 2011) at 3, n.6.

⁵⁷ BG&CM and SMRR do not connect in Idaho.

⁵⁸ *Montana Rail Link, Inc. — Discontinuance of Service Exemption — In Yellowstone, Stillwater et. al Counties and Spokane County, Wash.*, AB 575 (Sub–No. 2X) (STB served Mar. 8, 2023), 5 (finding no market power abuse concern where

As discussed above, the agency of course recognized this reality when it adopted the class exemption for control transactions involving non-connecting, non-Class I rail carriers, codified at 49 C.F.R. 1180.2(d)(2), which would have governed Mr. Williams control of MCR, OVR and WIR, had Mr. Williams timely sought regulatory approval for each. While that class exemption is not available here by Board directive, it is clear that the Transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

3. **The Transaction Is Limited In Scope.**

Because regulation is not necessary to protect shippers from an abuse of market power, it is not necessary to demonstrate that the Transaction is of limited scope. 49 U.S.C. § 10502(a)(2); *Finger Lakes Railway Corp. – Control Exemption – Ontario Central Railroad Corp.*, FD 35062 (STB served Oct. 5, 2007) at 2. But it is clear that Mr. Williams’ control of MCR, OVR and WIR satisfies this criterion as well. The combined active trackage of the three rail carriers subject to this consolidated Petition is about 45 miles in two separate states.⁵⁹ The annual

“... no shipper will lose service or experience a reduction in the number of carriers with access to the shipper’s facilities.”).

⁵⁹ This excludes the residual common carrier obligation that WIR holds on the 87-mile P&L Branch in Washington (now operated by another rail carrier). Even counting that 87 miles of track, however, the Transaction is well within the lengths that the agency has previously found to be “limited in scope.” *See, e.g., David Monte Verde et al. – Continuance in Control Exemption – Mohawk & Adirondack Railroad Co., Inc.*, FD 31843 (STB served Mar. 22, 1991) [1991 WL 45236 at *2] (“The transaction is limited in scope. It involves the common control of three Class III shortline carriers, one with approximately 107.7 miles of railroad, one with

operating revenues of *all seven* of Mr. Williams' railroads, if combined, still would not exceed those of a Class III carrier. Accordingly, the Board should find that the Transactions are of limited scope within the meaning of Section 10502(a)(2)(A).

B. Interchange Commitments

The provisions of 49 C.F.R. § 1121.3(d), concerning interchange commitment disclosure, are generally inapplicable to control transactions (as opposed acquisition or operation transactions) where the control arrangement does not itself impose an interchange commitment.⁶⁰ The present Transaction does not involve or include any provision that would limit future interchange with a third-party connecting carrier of MCR, OVR or WIR.

C. Labor Protection

MCR, OVR and WIR, as well as the remainder of the rail carriers controlled by Mr. Williams, are all Class III railroads. Because the Transaction involves only Class III carriers, no labor protective conditions may be imposed.⁶¹

approximately 10 miles of railroad, and the third with approximately 3 miles of railroad, all located in New York.”).

⁶⁰ *See Macquarie Infrastructure Partners V GP, LLC – Acquisition of Control Exemption – Grenada Railroad, LLC and Florida, Gulf & Atlantic Railroad, LLC*, FD 36566 (STB served Apr. 7, 2022), at 7 & n.13 (construing companion provision at 49 C.F.R. § 1180.4(g)(3)).

⁶¹ 49 U.S.C. § 11326(c); *see, e.g., Cathcart Rail, LLC – Continuance in Control Exemption – Belpre Industrial Parkersburg Railroad, LLC*, FD 36421 (STB served Aug. 7, 2020), at 2 (“Because this transaction involves Class III rail carriers only, the Board . . . may not impose labor protective conditions”).

D. Environmental and Historic Preservation Matters

49 C.F.R. § 1121.3(b) provides that a petition for exemption should comply with the environmental and historic reporting and notice requirements of 49 C.F.R. § 1105 as applicable. Here, under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the Transaction is exempt from environmental reporting requirements. Mr. Williams's control of MCR, OVR and WIR will not result (and has not resulted) in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the Transaction also is exempt from historic preservation reporting requirements. The Transaction will not change (and has not changed) the level of maintenance of any railroad property.

CONCLUSION

Mr. Williams has endeavored with the aid of new counsel both to – (1) resolve prior missteps for which the Board admonished his former counsel; and (2) show why exempting the Transaction is appropriate. He recognizes the admonition and hopes that the candor in this Petition serves the public interest and the Board's supervision of a competitive rail marketplace in compliance with applicable regulatory schemes. Moreover, with an appreciation that class exemptions are salutary for rail carriers and their controlling interests, and that Board resources and latitude should not be taken for granted, Mr. Williams does not intend to allow circumstances to arise again where he is required to individually petition for relief which is otherwise subject to categorical exemption. Indeed, Mr. Williams

anticipates that he may encounter circumstances where he may wish in the near future to invoke the Board's class exemption procedures, where applicable, for himself, for one of his railroad holdings, or for a new non-carrier entity seeking to become a carrier. We hope that, by way of this remedial individual exemption process, Mr. Williams may restore his standing before the Board, and, in so doing, move forward under a fresh start with this agency.

Respectfully submitted,

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ATTORNEYS FOR MICHAEL W. WILLIAMS

Dated: March 27, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

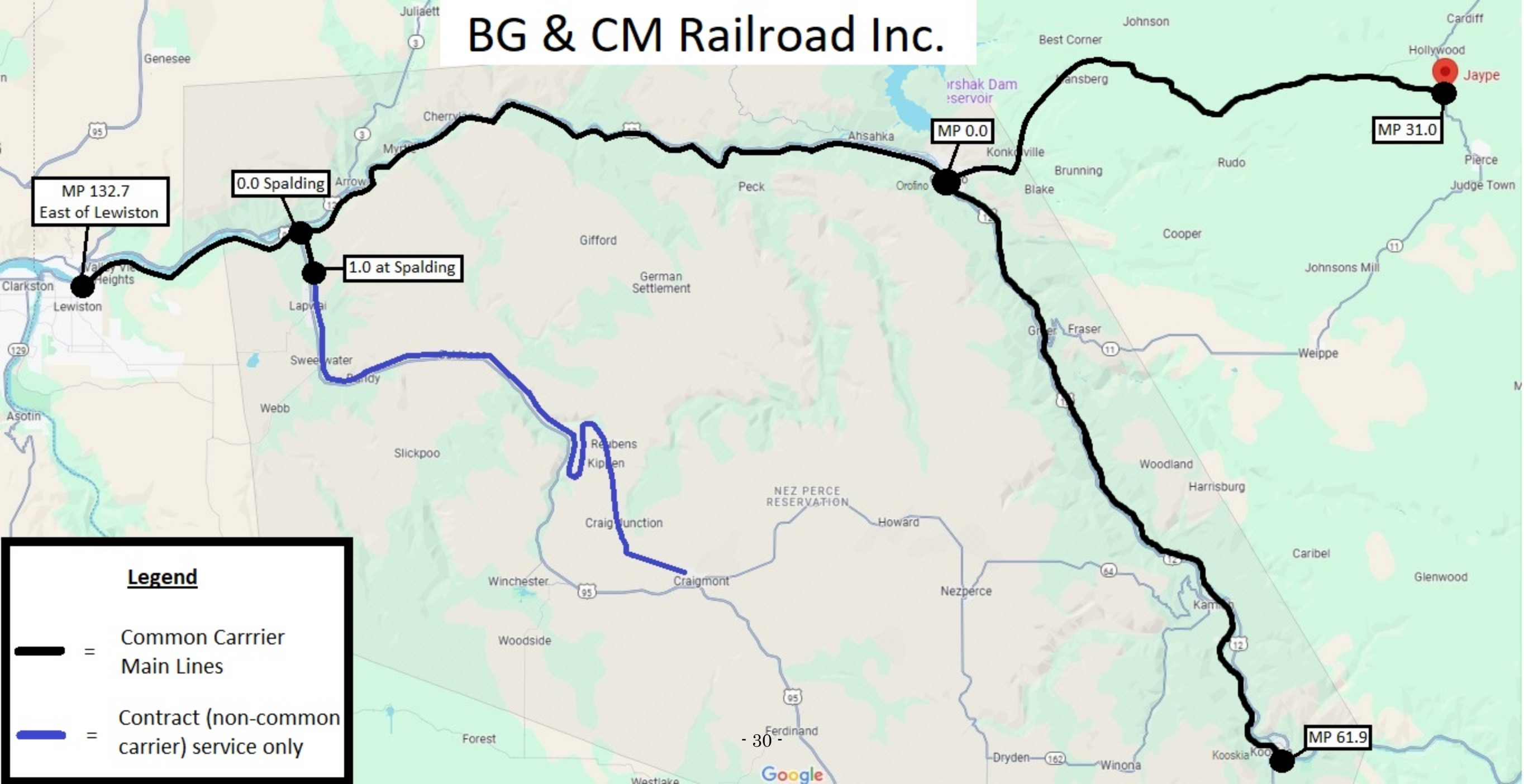
FD 36848

MICHAEL W. WILLIAMS
– CONTROL EXEMPTION –
McCLOUD RAILWAY COMPANY, OZARK VALLEY
RAILROAD, INC., AND WASHINGTON & IDAHO RAILWAY, INC.

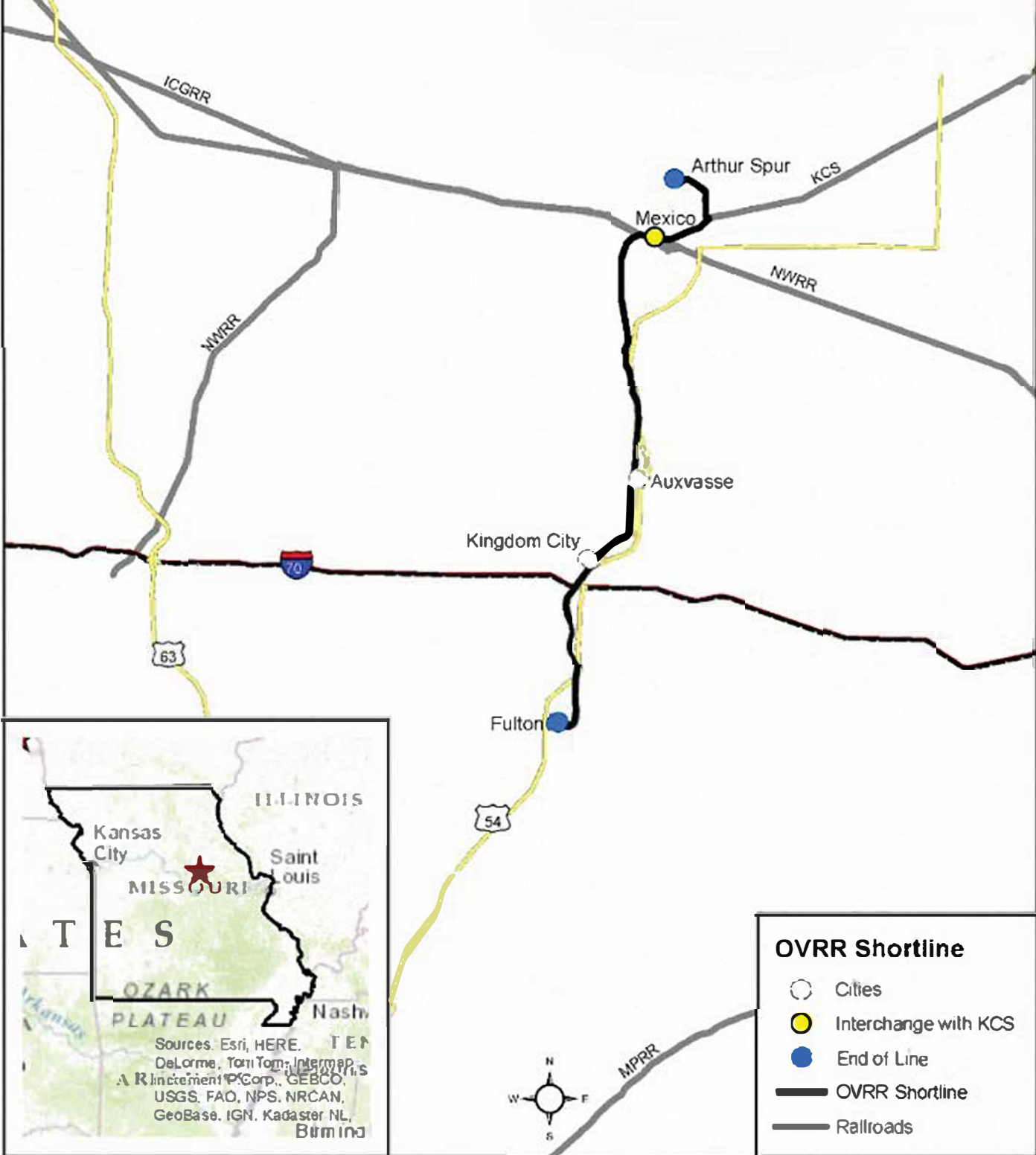
EXHIBIT A

RAIL CARRIER MAPS

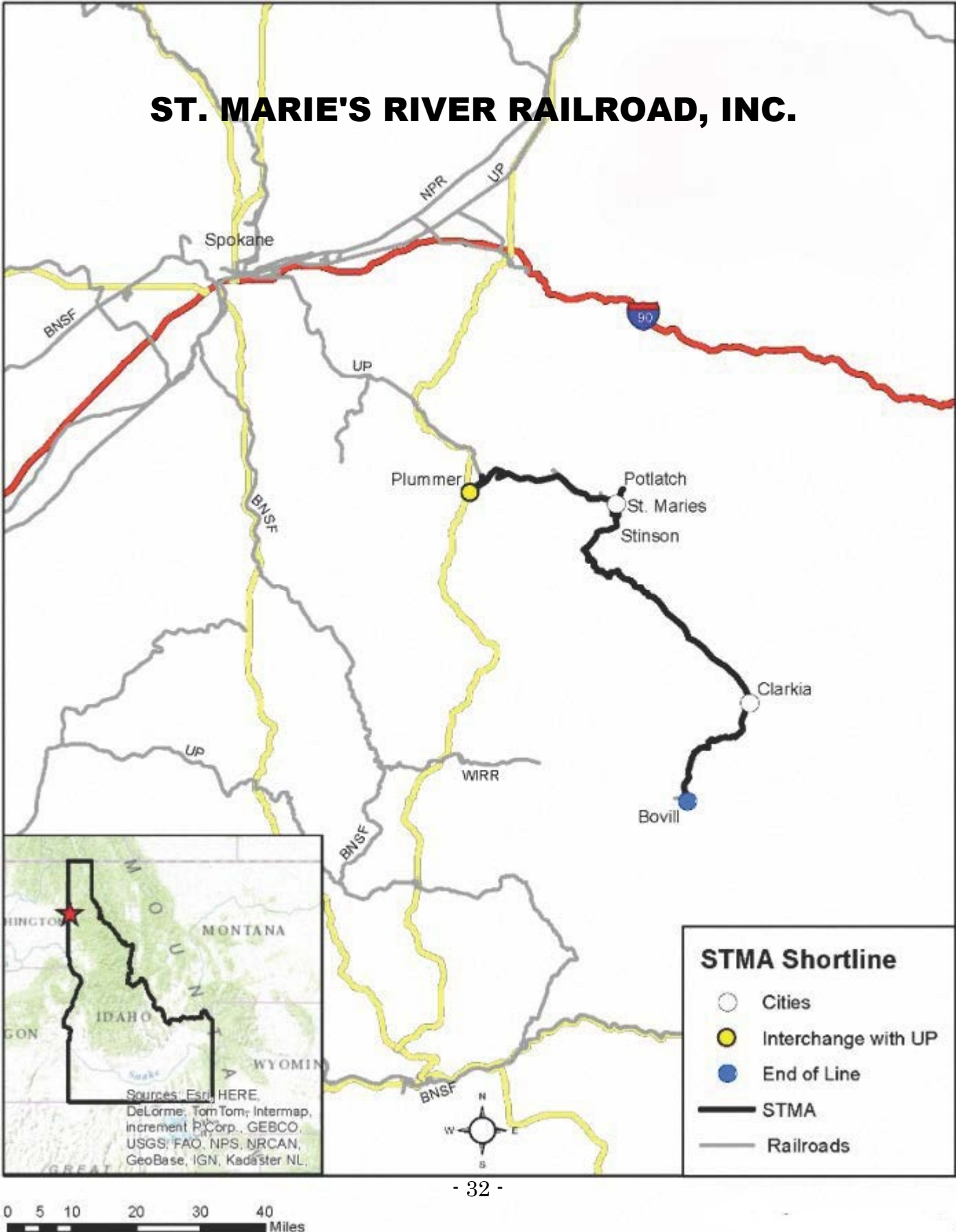
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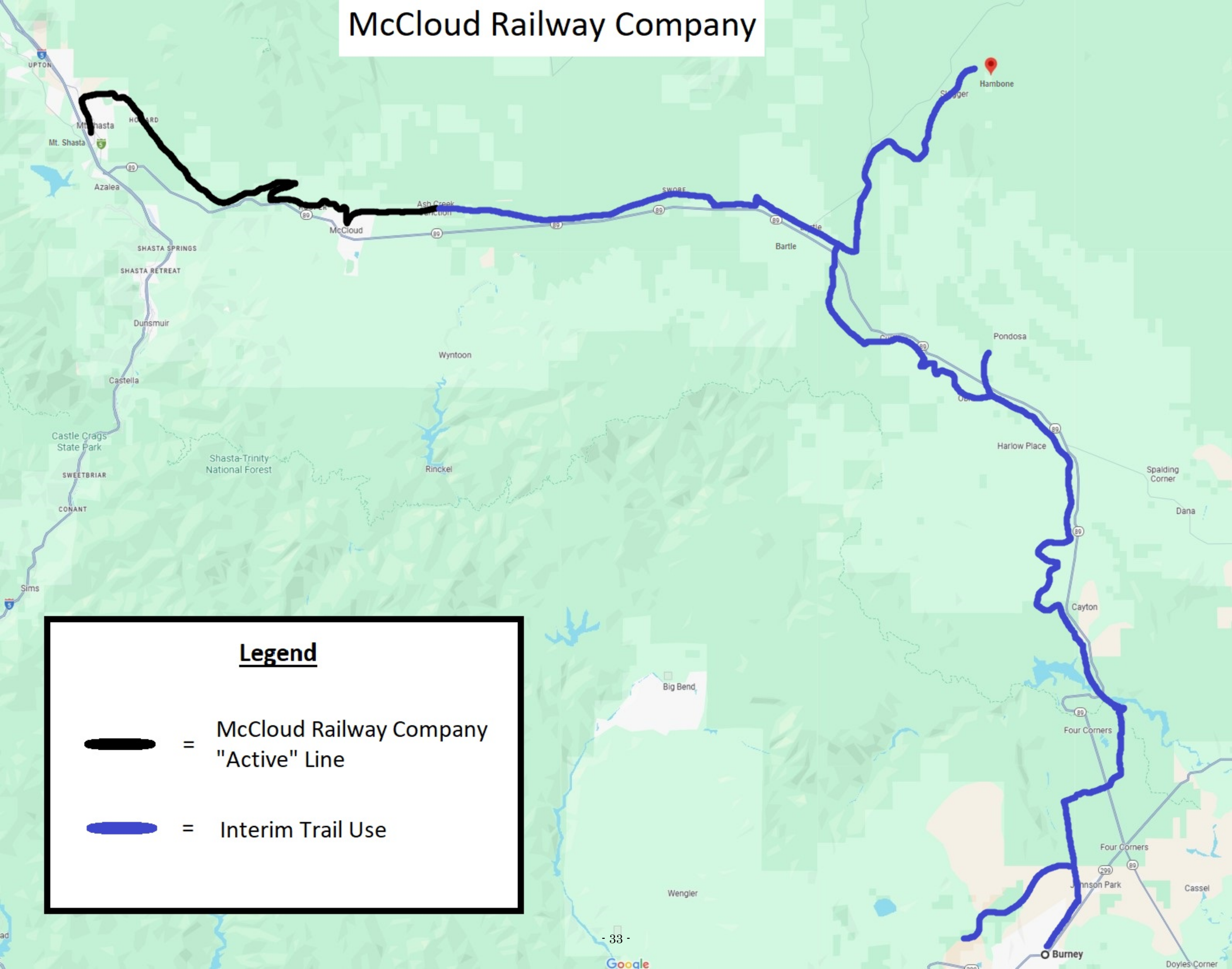
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ST. MARIE'S RIVER RAILROAD, INC.



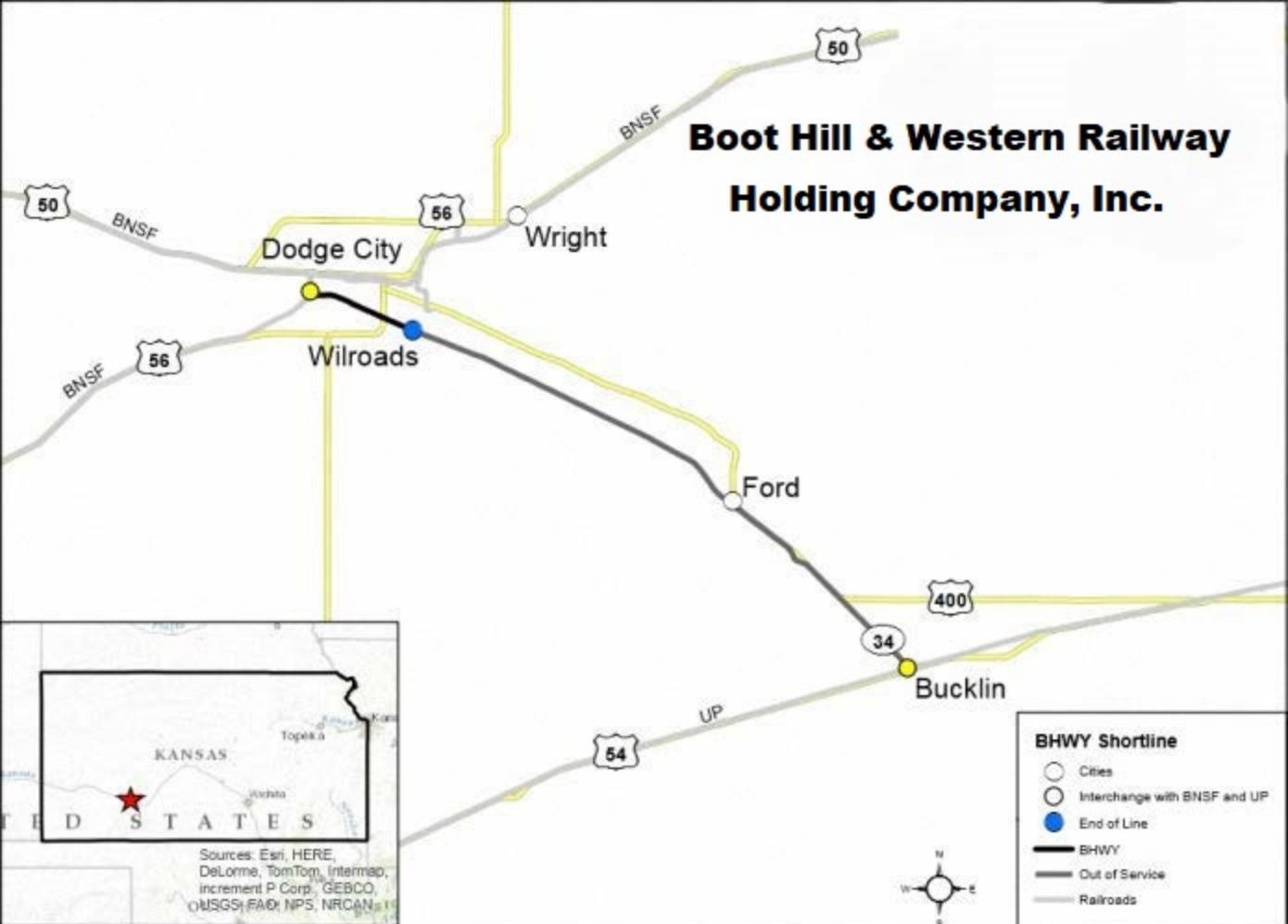
McCloud Railway Company



Legend

-  = McCloud Railway Company "Active" Line
-  = Interim Trail Use

Boot Hill & Western Railway Holding Company, Inc.



WASHINGTON & IDAHO RAILWAY, INC.



Dakota Southern Railway Company



BEFORE THE
SURFACE TRANSPORTATION BOARD

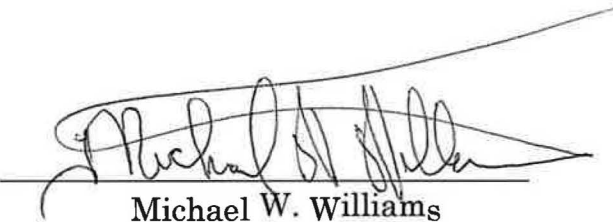
FD 36848

MICHAEL W. WILLIAMS
– CONTROL EXEMPTION –
McCLOUD RAILWAY COMPANY, OZARK VALLEY
RAILROAD, INC., AND WASHINGTON & IDAHO RAILWAY, INC.

**VERIFICATION OF
MICHAEL W. WILLIAMS**

VERIFICATION

I, Michael W. Williams, verify under penalty of perjury that I have read the foregoing Petition for Exemption and know the facts asserted therein, and that the same are true and correct as stated to the best of my knowledge, information, and belief.



Michael W. Williams

Dated: March 27, 2025