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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-441 (Sub-No. 4X)
SAN PEDRO RAILROAD COMPANY, LLC-ABANDONMENT EXEMPTION-IN
COCHISE COUNTY, AZ**

**VERIFIED OPPOSITION OF SONORA-ARIZONA INTERNATIONAL, LLC
TO SAN PEDRO RAILROAD OPERATING COMPANY, LLC's
PETITION FOR EXEMPTION**

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Dated: August 1, 2005

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OPERATING COMPANY, LLC'S
PETITION FOR EXEMPTION**

The Sonora-Arizona International, LLC, an Arizona Limited Liability Corporation ("Sonora"), pursuant to the Surface Transportation Board's ("Board") order dated July 28, 2005 hereby submits this Statement in Opposition to a Petition for Exemption of Abandonment ("Petition") filed by San Pedro Railroad Operating Company, LLC ("San Pedro") on June 6, 2005. The reasons for Sonora's opposition are set forth below.

I. Introduction

Sonora opposes this abandonment because it has pursued, developed and is in the process of implementing significant business ventures including expending financial resources ("Sonora Rail Ventures") in an effort to bring traffic to the 76.2 miles of railroad in Cochise, Arizona at issue in this matter ("Mexico/Arizona Rail Line"). As a result the Sonora Rail Ventures are directly dependent upon the continuation of rail service on the Mexico/Arizona Rail Line. Moreover, not only has Sonora invested in reliance on the continued existence of the Mexico/Arizona Rail Line, the communities served by the line will benefit once the fruits of these investments are realized. In light of the public benefits that the continued existence of the

Mexico/Arizona Rail Line creates, San Pedro has not demonstrated that the costs it incurs in preserving this line outweigh these benefits to the community.

Sonora is an Arizona Limited Liability Corporation organized by Charles M. Sotelo ("Sotelo"), who is the principal owner. Mr. Sotelo has associated himself with investors in his efforts to pursue the Sonora Rail Ventures earmarked to bring traffic to the Mexico/Arizona Rail.

Among those investors is Lee H. Brandenburg, who has been an active participant in the real estate industry for nearly 50 years. In the mid to late 1950's, he began developing custom home and multi-family subdivisions in Santa Clara County, California. During the 1960's and early 1970's, Mr. Brandenburg expanded into developing commercial centers, office buildings and shopping centers in the rapidly growing Santa Clara County and what became known as Silicon Valley. In 1967, Mr. Brandenburg and his partners at Brandenburg, Staedler & Moore ("BS&M") began developing mobile home communities and as of today continue to own and manage 14 of those original 17 mobile home communities, consisting of approximately 3,500 spaces.

BS&M has developed numerous mixed use sites in California and elsewhere in the western and southwestern states. In the late 1970's, Mr. Brandenburg teamed up with his son Eric to form Brandenburg Properties. Brandenburg Properties, through its affiliated entities, owns land and leased commercial properties in Northern and Southern California, Georgia, South Carolina, Texas and Louisiana, including golf – residential communities in California and Georgia.

Mr. Sotelo has been aggressively pursuing development of intermodal traffic and supporting facilities in the vicinity of Bisbee and the Naco border crossing for many years. He currently owns 50 acres of property adjacent to the Mexico/Arizona Rail Line that is zoned for

light industrial (33 acres) and commercial (17 acres) use. In addition, he has acquired an option to purchase an additional 333 acres of property contiguous to the 50 acres currently owned, all with the purpose of establishing, using the extensive development and related skills of his fellow investors, an intermodal transfer facility adjacent to the Mexico/Arizona Rail Line. Mr. Sotelo has been in the commercial real estate business since the early 1980's. He began his career with Merrill Lynch Real Estate, establishing Valle Realty in 1985.

Sonora's investors have made substantial progress to implement the Sonora Rail Ventures that will bring substantial traffic to the Mexico/Arizona Rail Line. Sonora, acting through its Mexican affiliate, Sonora-Arizona International S.A. de C.V., (hereinafter "Sonora" or "SAI") has met with and presented to the Port Director of Guaymas, Mexico a letter of intent and the requisite financial deposit to submit a bid relating to a deep sea port project that would from Sonora's perspective, require an active Mexico/Arizona Rail Line. The deep sea project covers approximately 40 acres and has potentially three docking areas for ships that can hold 2,500 to 3,500 containers.

Sonora, with the assistance of its consultants Eduardo Desentis Reyes and Carlos Pasquinelli Vellon, also filed a letter with the Secretary of Communications and Transportation in Mexico City asking it to initiate the "bid process" *vis a vis* the deep sea port and has paid all associated fees necessary to initiate the bid process. Sonora's letter to the Secretary of Communications and Transportation was accepted in June 2005. Thereafter, in July 2005 Sonora, via SAI, entered the second stage of the application process to qualify as interested parties in the bid process. Sonora, once again paid the associated and necessary fees to participate in the process. Currently the process is ongoing as there are four stages of the application process which can take 90 to 180 days. All of this investment of time and funds to

develop the connection to Guaymas is premised on the continued availability of the rail line that is the subject of this proceeding.

Sotelo has met with Ferromex CEO, Dr. Eduardo Casar, and explained the plan to connect the Mexican railroad with the Mexico/Arizona Rail Line and allow for the international transportation of goods between Guaymas, Mexico and Naco, Arizona for further movement either by truck or on the U.S. rail network. Dr. Casar indicated that he supports the plan contingent upon a lack of an objection from Union Pacific Railroad ("UP"). Sonora has contacted officials at UP who have demonstrated interest in the plan and have asked to be kept apprised of the project. As stated by Chemical Lime, a shipper on this line, while San Pedro asserts that it was not able to persuade Ferromex to restore the connection of the Mexican rail system at Guaymas, Mexico to Naco, Arizona that does not mean that an agreement cannot be reached to restore that necessary service. *See Statement of Chemical Lime Company in Opposition to San Pedro Railroad Operating Company, LLC's Petition for Exemption at p. 9.*

Successful completion of this project at the port of Guaymas that will entail movement of traffic via the Mexican rail system to the American rail system at Naco, Arizona will create competition for the overburdened California ports for their 2,500 to 3,500 container ship traffic that have to wait in line for the larger ships to be off-loaded. In the California ports the waiting time can be up to and more than a week. Guaymas, Mexico is closer to the shipping routes used by China, Pacific Rim, Central and South America than the California ports. Furthermore, the Panama Cannel is getting more costly to use so Guaymas, Mexico proves to be a better economic alternative. SAI has spoken with Superintendent of Phelps Dodge Queen Mine in Bisbee, Arizona, Tom Weiskopf and he stated Phelps Dodge related traffic from Japan could benefit

from a Guaymas, Mexico to Naco, Arizona connection and that he would be interested in the progress of Sonora in implementing the plan for a change in the point of entry at Naco.

Contrary to the negative experience of San Pedro, other traffic opportunities exist for this line. For example, the Ford Motor Company in Hermosillo, Mexico has doubled its production of automobiles from 150,000 units to 300,000 per year. Currently, if those cars were to be moved by rail they would move through the Nogales rail port of entry to Tucson, Arizona's Union Pacific Intermodal facility. In April 2005, SAI project manager Bruce Brogan met with Hector Sanabria, Head of Economic Promotions for Hermosillo State Capital. At that time Mr. Brogan advised Mr. Sanabria of the plan to change the point of entry for this line and to improve the connection from Mexico through Naco. Mr. Sanabria indicated that he was interested in scheduling a meeting with Ford Motor Company, representatives from Hermosillo and SAI to explore the use of rail service over the Mexico/Arizona Rail Line and the implementation of the plan for moving automobiles. The rationale behind exploring the Mexico/Arizona Rail Line and the plan as an option in this context is based, in part, on the enormous congestion on the existing route. Assistant Port Director for Nogales Celia De La Ossa stated that in the fiscal year 2003 about 4000 rail cars carrying new Fords from Hermosillo and a total of 42,719 rail cars crossed into the United States at the Nogales Port. *See Hermosillo Plant To Grow*, Arizona Daily Star, October 7, 2003. The article went on to state that increasing trade has caused steady growth in the length of trains that pass through Nogales according to Scott Davis, director of the Nogales CyberPort project at the University of Arizona's Office of Economic Development. *Id.* For example from 1996 to 2001 the average length of trains passing through Nogales grew from 48 cars to 92 cars according to Mr. Davis. *Id.* Another factor that mitigates in favor of the Mexico/Arizona Rail Line and the plan to relocate the point of entry as an option in this context

is that the cost of moving Ford's automobiles by tractor trailer to Tucson, Arizona's Union Pacific Intermodal facility would be extremely expensive. The line that is the subject of this proceeding is a key to having those autos moved by rail rather than truck.

SAI has also spoken with Grupo Mexico, Inc. which stated that Grupo Mexico Mines in Cananea and Nacozari could realize cost savings if the rail connection was re-opened at Naco, Arizona into the United States and that Grupo Mexico was presently shipping 200,000 tons of copper cathodes and 400,000 tons of sulfuric acid by tractor trailer that could be moved by rail more efficiently. Sonora and its affiliates have done extensive work developing traffic potential for this line. All these factors once again demonstrate that abandonment of the Mexico/Arizona Rail Line does not serve or advance the public convenience and necessity.

II. Argument

SAN PEDRO HAS NOT DEMONSTRATED THAT THIS PROCEEDING IS AN APPROPRIATE ONE FOR USE OF THE BOARD'S EXEMPTION PROCESS OR THAT THE PUBLIC CONVENIENCE AND NECESSITY PERMIT ABANDONMENT OF THIS LINE

San Pedro bears the burden of showing that keeping Mexico/Arizona Rail Line in service would impose a burden that outweighs the harm that would befall the shipping public and the adverse impacts on rural and community development. San Pedro has failed to meet this burden.¹ The abandonment should not occur because the harm to the shipping public and community development that would accrue due, among other causes, to elimination of a

¹ Sonora joins with the Chemical Coast Lime Company, a shipper on the line, in Opposition to San Pedro's abandonment request. Sonora adopts and incorporates by reference the arguments made by the Chemical Coast Line Company in its *Statement of Chemical Lime Company In Opposition to San Pedro Railroad Operating Company, LLC's Petition for Exemption* dated July 14, 2005.

potential connection via the Mexican rail system from the port of Guaymas, Mexico to the American rail system at Naco, Arizona, outweighs any burden that is being placed on San Pedro. Moreover, the presence of opposition to the abandonment from both Chemical Lime and Sonora indicates that the Exemption process used by Petitioner here is not appropriate for this line.

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval of the Board. *Wyoming and Colorado Railroad Company, Inc.--Abandonment Exemption--In Carbon County, Wy.*, STB Docket No. AB-307 (Sub-No. 5X), 2004 STB LEXIS 710, 7-10 (Service Date: November 10, 2004) ("*WYCO Abandonment*"). Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from otherwise applicable regulatory requirements or procedures when it finds that: (1) those requirements or procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. *Id.*

The exemption process is designed to minimize regulatory burdens and therefore an exemption is only appropriate when the Board has sufficient information to reach an informed decision. *Id.* The types of abandonment and discontinuance proposals that are authorized through the exemption process are those where shippers do not contest the abandonment or, if they do contest it, the revenue from the traffic on the line is clearly marginal compared to the cost of operating the line. *Id.* See also, *Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 75X) *et al.*, slip op. at 5 (STB served Dec. 31, 1996); *Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X), slip op. at 8 (STB served Feb. 21, 1997); *San Joaquin Valley Railroad Company--*

Abandonment Exemption--In Kings and Fresno Counties, CA, STB Docket No. AB-398 (Sub-No. 4X), slip op. at 4 (STB served May 23, 1997), *aff'd* (STB served Mar. 5, 1999). To that end, "where there is an inadequate record on which to grant a petition for abandonment exemption, the petition will be denied." See *Boston and Maine*, slip op. at 6. The Board will allow an abandonment through the exemption process even where there is opposition, but only where "... petitioners have offered uncontested evidence indicating that ... the cost of owning and operating the line has far exceeded the revenues generated by the line" and where the evidence offered by opponents, unlike the arguments and statements submitted by both Chemical Lime and Sonora in this proceeding, is merely speculative. STB Docket No. AB-512X, STB Docket No. AB-880X, *Sierra Pacific Industries--Abandonment Exemption--In Amador County, Ca; Sierrapine--Discontinuance Exemption--In Amador County, CA*, Service Date February 25, 2005.

In any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. *WYCO Abandonment*, *id.* at 7-10. Specifically, the petitioner bears the burden of showing that keeping the line in service would impose a burden on it that outweighs the harm that would befall the shipping public, along with the adverse impacts on rural and community development, if the rail line were abandoned. *Id.* citing *Gauley River Railroad, LLC --Abandonment and Discontinuance of Service--In Webster and Nicholas Counties, WV*, STB Docket No. AB-559 (Sub-No. 1X) et al., slip op. at 7 (STB served June 16, 1999).

Petitioner here has not met that burden. The existing shipper on the line has demonstrated the legitimate reasons that it opposes the abandonment sought here. Sonora has demonstrated the investments it has made to develop additional traffic on this line, for the benefit of the communities served by the line. Both Chemical Lime and Sonora have demonstrated that

their objections to the abandonment are substantial, different from the showings in *Sierra Pacific* that “the petitioners [would] need to incur serious expenses to rehabilitate the line, ... [and] the predominant shipper has decided to transport its goods by truck and protestants' suggestions that rail service is otherwise required are generalized, speculative, and unsupported.” *Id.* at 10. Here, the current shipper on the line has incurred substantial expense to improve its facilities for rail transportation, and Sonora has made investments in land and has commenced the process that will lead ultimately to the creation of a link between the port of Guaymas, Mexico and the Naco, Arizona, for transportation of traffic destined for movement by rail over the lines of UP or for transfer to intermodal at the facility to be constructed on the land adjacent to the line already owned by Mr. Sotelo.

San Pedro attempts to rely on the history of this line that has included several proceedings in recent years that have involved approval for abandonment, followed by approval of trail use, followed by acquisition of the line by its current owners, as evidence that all hope for movement of traffic over the line has been extinguished. Petitioner postulated that there would be no opposition to its Petition. That has not occurred. The two protests filed here suggest that the Petitioner's conclusory assertions in support of use of the exemption process are equally inaccurate. The Petition for Exemption should be denied, and San Pedro should be required to submit a full application if it chooses to proceed with this abandonment, to provide an opportunity for this Board to decide the matter based on a full record.

III. Conclusion

This proceeding is not an appropriate candidate for use of the Board's exemption process. While the Petition states in four places that no opposition is expected, both the primary shipper on the line and an investor who has made substantial investments and attracted other investors to

the project, oppose the plan. Moreover, San Pedro has shown that it might incur expenses but has not demonstrated that its expenses outweigh its revenues, or that those expenses justify abandonment in the face of opposition from shippers and the persons who have made substantial investments in reliance on the existence of this rail service.

WHEREFORE, the Sonora-Arizona International, LLC, an Arizona Limited Liability Corporation respectfully requests the Board deny San Pedro Railroad Operating Company, LLC's Abandonment Exemption.

Respectfully submitted,

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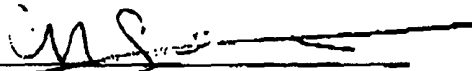
Dated: August 1, 2005

Counsel for SONORA-ARIZONA
INTERNATIONAL, LLC

VERIFICATION

City of Bisbee)
)
State of Arizona)

I, Charles M. Sotello, President and Chief Executive Officer of Sonora-Arizona International, LLC hereby verify that I have knowledge of the facts stated in the foregoing Verified Statement of Sonora-Arizona International, LLC in Opposition to San Pedro Railroad Operating Company LLC's Petition for Exemption, and that the same are true as stated.


Charles M. Sotello

Subscribed and sworn to
before me this 1st day of
August 2005.


Notary Public

My Commission Expires: 2-14-2008



CERTIFICATE OF SERVICE

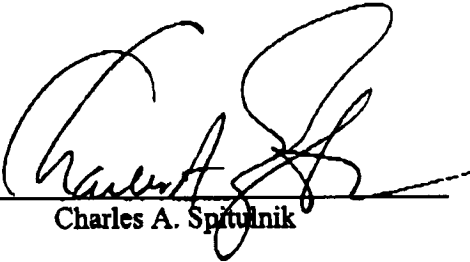
I hereby certify that on this 1st day of August, 2005, a copy of the foregoing STATEMENT OF SONORA-ARIZONA INTERNATIONAL, LLC IN OPPOSITION TO SAN PEDRO RAILROAD OPERATING COMPANY, LLC's PETITION FOR EXEMPTION was served by first class mail, postage prepaid, upon:

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