

245547

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
April 23, 2018
Part of
Public Record

FINANCE DOCKET NO. 36180

HGS RAILWAY HOLDINGS, INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
HGS-FCR, LLC AND HGS-ATN, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(2)

REPLY

KARL MORELL
KARL MORELL & ASSOCIATES
Suite 440
440 1ST Street, N.W.
Washington, D.C. 20001
(202) 595-9045

Attorney for: HGS RAILWAY
HOLDINGS, INC.

Dated: April 23, 2018

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SURFACE TRANSPORTATION BOARD

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HGS Railway Holdings, Inc. ("HGS Holdings"), hereby responds to the Surface Transportation Board's ("Board") decision in this proceeding, served April 13, 2018 (April 13th Decision), holding this proceeding in abeyance and directing HGS Holdings to file supplemental information.¹ Specifically, the Board seeks clarification of the HGS Holdings corporate family, as well as the relationship between HGS Holdings and OmniTrax Holdings Combined, Inc ("OmniTRAX").

The definition of "control" in 49 U.S.C. 10102(3) includes "actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust or a holding or investment company, or (B) any other means." Control of a carrier for which Board authorization is required embraces the power or authority to manage, direct superintend, restrict, regulate, govern administer or oversee the day-to-day affairs of that carrier. See STB Finance Docket No. 33350, *Soo Line Railroad Company – Petition for Declaratory Order* (not printed), served February 4, 1998 *slip op at 8*, citing *Colletti – Control – Comet*

¹ The April 13th Decision also held in abeyance the Verified Notices of Exemption in FD Nos. 36173, 36174, 36175, and 36176.

Freight Lines, 38 M.C.C. 95, 97 (1942); STB Finance Docket No. 35063, *Michigan Central Railway, LLC – Acquisition and Operation Exemption -- Lines of Norfolk Southern Railway Company* (not printed) served December 10, 2007. The chief objective of a control consideration is to determine whether two companies are so closely intertwined as to be considered a single entity. STB Finance Docket No. 34177, *Iowa, Chicago & Eastern Railroad Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link* (not printed), served January 21, 2003.

In the April 13th Decision, the Board noted that HGS Holdings and OmniTRAX share the same address and also the same chief executive officer. It appears that there are a few additional individuals who are officials or officers at both HGS Holdings and OmniTRAX. Clearly, these individuals are involved in the operations and management of the subsidiaries of HGS Holdings and OmniTRAX. Under these circumstances, HGS Holdings will supplement its Notice of Exemption to reflect the fact that HGS Holdings and OmniTRAX are under joint managerial or operational control since the individual officers are able to direct the day-to-day operations of the railroad subsidiaries. Attached as Exhibit A is a revised Notice of Exemption.

Respectfully submitted,



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Attorney for:
HGS Railway Holdings, Inc.

Dated: April 23, 2018

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36180

HGS RAILWAY HOLDINGS, INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
HGS-FCR, LLC AND HGS-ATN, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(2)

HGS Railway Holdings, Inc. ("HGS Holdings"), files this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), for HGS Holdings to continue in control of HGS-ATN, LLC ("HGS-ATN"), and HGS-FCR, LLC ("HGS-FCR") both non-carriers, upon HGS-ATN and HGS-FCR becoming Class III railroads. In support of this Notice of Exemption, HGS Holdings submits the following information as required by 49 C.F.R. § 1180.4(g):

Section 1180.6(a)

- (1) A description of the proposed transaction.
 - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.

HGS Holdings, a non-carrier, owns 100 percent of the issued and outstanding stock of HGS-ATN and HGS-FCR, two limited liability companies and non-carriers that were formed for the purpose of acquiring certain rail lines from CSX Transportation, Inc. ("CSX") See Finance Docket No. 36175, *HGS-ATN, LLC – Acquisition Exemption – CSX Transportation, Inc.* and

Finance Docket No. 36176, *HGS-FCR, LLC – Acquisition Exemption – CSX Transportation, Inc.*

HGS-ATN is acquiring 121 miles of rail lines located in Alabama. Those rail lines will be leased to Alabama & Tennessee River Railway, LLC, which will continue to be the operator of those lines. HGS-FCR is acquiring 55 miles of rail lines located in Atlanta, Georgia. Those lines will be leased to Fulton County Railway, LLC which will continue to be the operator of the lines in Atlanta. Upon consummation of the transactions in Finance Docket Nos. 36175 and 36176, HGS-ATN and HGS-FCR will become Class III carriers.

The rail lines owned by OmniTRAX Holdings Combined, Inc., (OmniTRAX) a non-carrier that controls 18 Class III railroads, are as follows and operate in the identified States:

Alabama & Tennessee River Railway, LLC: Alabama

Brownsville & Rio Grande International Railway, LLC: Texas

Chicago Rail Link, LLC: Illinois

Fulton County Railway, LLC: Georgia

Georgia & Florida Railway, LLC: Georgia, Florida

Georgia Woodlands Railroad, LLC: Georgia

Great Western Railway of Colorado, LLC: Colorado

Illinois Railway, LLC: Illinois

Kettle Falls International Railway, LLC: Washington

Manufacturers' Junction Railway, LLC: Illinois

Nebraska, Kansas & Colorado Railway, LLC: Nebraska, Kansas, Colorado

Newburgh & South Shore Railroad, LLC: Ohio

Northern Ohio & Western Railway, LLC: Ohio

Panhandle Northern Railway, LLC: Texas

Peru Industrial Railroad, LLC: Illinois

Sand Springs Railway Company: Oklahoma

Stockton Terminal and Eastern Railroad: California

Central Texas & Colorado River Railway LLC

The rail lines to be owned by HGS-ATN are located in Alabama and the rail lines to be owned by HGS-FCR are located in Atlanta, Georgia. Also, the involved transaction is not part of a series of anticipated transactions that would connect the rail lines to be owned by HGS-ATN, HGS-FCR and the 18 railroads in the OmniTRAX family. Finally, HGS-ATN, HGS-FCR and the 18 railroads in the OmniTRAX family are not Class I rail carriers. Accordingly, this transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2), and exempt from prior approval by the Surface Transportation Board.

The name and business address of Applicants are as follows:

HGS Railway Holdings, Inc.
252 Clayton Street
Fourth Floor
Denver, CO 80206

HGS-ATN, LLC
252 Clayton Street
Fourth Floor
Denver, CO 80206

HGS-FCR, LLC
252 Clayton Street
Fourth Floor
Denver, CO 80206

Applicants' representative:
Karl Morell
Karl Morell & Associates
440 1st Street, N.W.
Suite 440

Washington, D.C. 20001
(202) 595-9045

- (ii) The proposed time schedule for consummation of the proposed transaction.

HGS Holdings intends to consummate this transaction on or shortly after the effective date of this notice of exemption.

- (iii) The purpose sought to be accomplished by the proposed transaction.

HGS Holdings intends to reduce overhead expenses and coordinate personnel policies and practices of its two rail carrier subsidiaries.

- (5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

HGS-ATN's rail lines will be located in Alabama.

HGS-FCR's rail lines will be located in Georgia.

- (6) Map.

Maps illustrating the rail lines to be owned by HGS-ATN, HGS-FCR and the 18 OmniTRAX railroads are attached as Exhibit 1.

- (7)(ii) Agreement.

HGS Holdings will not enter into any agreement, or sign any written instrument, to continue in control of HGS-ATN and HGS-FCR.

HGS-ATN and HGS-FCR will become Class III carriers and all of the OmniTRAX railroads are Class III carriers. Because the transaction involves the control of one or more Class III rail carriers the transaction is not subject to the labor protective requirements of 49 U.S.C. § 11326.

ENVIRONMENTAL AND HISTORIC IMPACTS

HGS Holdings will continue to control HGS-ATN and HGS-FCR for the purpose of continued rail operations where further Board approval is required to abandon any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

HGS Holdings' continuance in control of HGS-ATN and HGS-FCR will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. This transaction will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, this transaction does not contemplate the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in dark ink, reading "Karl Morell". The signature is written in a cursive style with a horizontal line underneath the name.

KARL MORELL
KARL MORELL & ASSOCIATES
440 1st Street, N.W.
Suite 440
Washington, D.C. 20001
(202) 595-9045

Attorney for:
HGS Railway Holdings, Inc.

Dated: April 23, 2018

VERIFICATION

STATE OF COLORADO)
) ss.
City and County of Denver)

I, Kevin Shuba, being first duly sworn, depose and state that I am President and CEO of HGS Railway Holdings, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Kevin Shuba

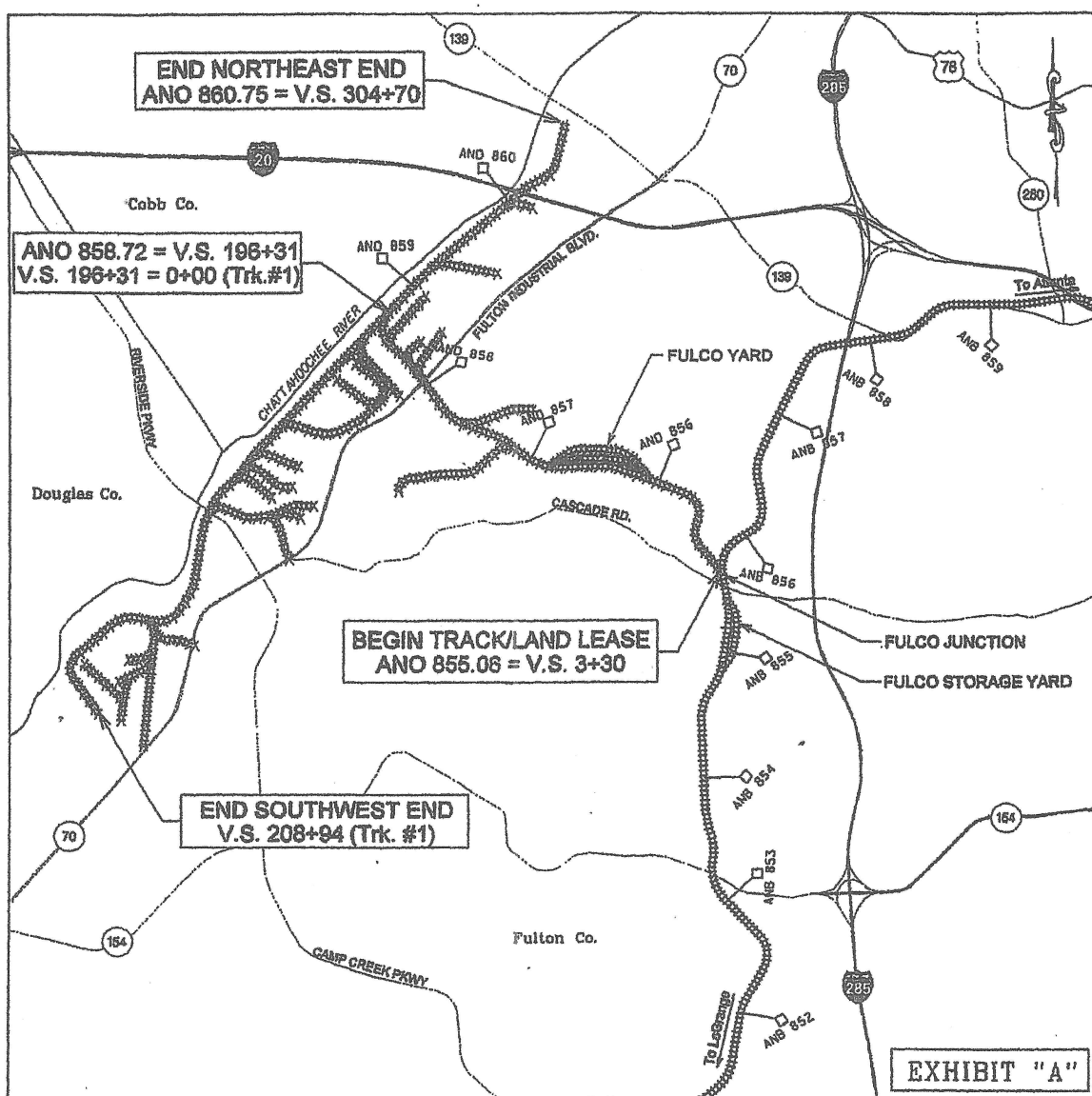
SUBSCRIBED AND SWORN TO before me this 20th day of April, 2018, in the City and County of Denver, State of Colorado.

My Commission Expires: 2.6.2020

SANDRA REMY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084004056
MY COMMISSION EXPIRES FEBRUARY 6, 2020

Notary Public

EXHIBIT 1



LEGEND
PROPOSED LEASE
284 Acres (---) and
55 Miles of Track (---)
SOUTHERN REGION
ATLANTA DIVISION
FULCO BRANCH
3319' NORTH OF ANB 855
330' NW. FROM P.S. w/"ANB" LINE

S:\P\GA\152A\121-121-0211\152A-121-0211\000\FULCO COLOR EXHIBIT\FULCO.DGN

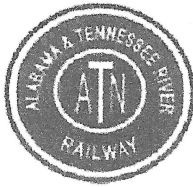
CSX TRANSPORTATION

PROPOSED LEASE OF
FULCO BRANCH
TO FULTON COUNTY RAILWAY L.L.C.

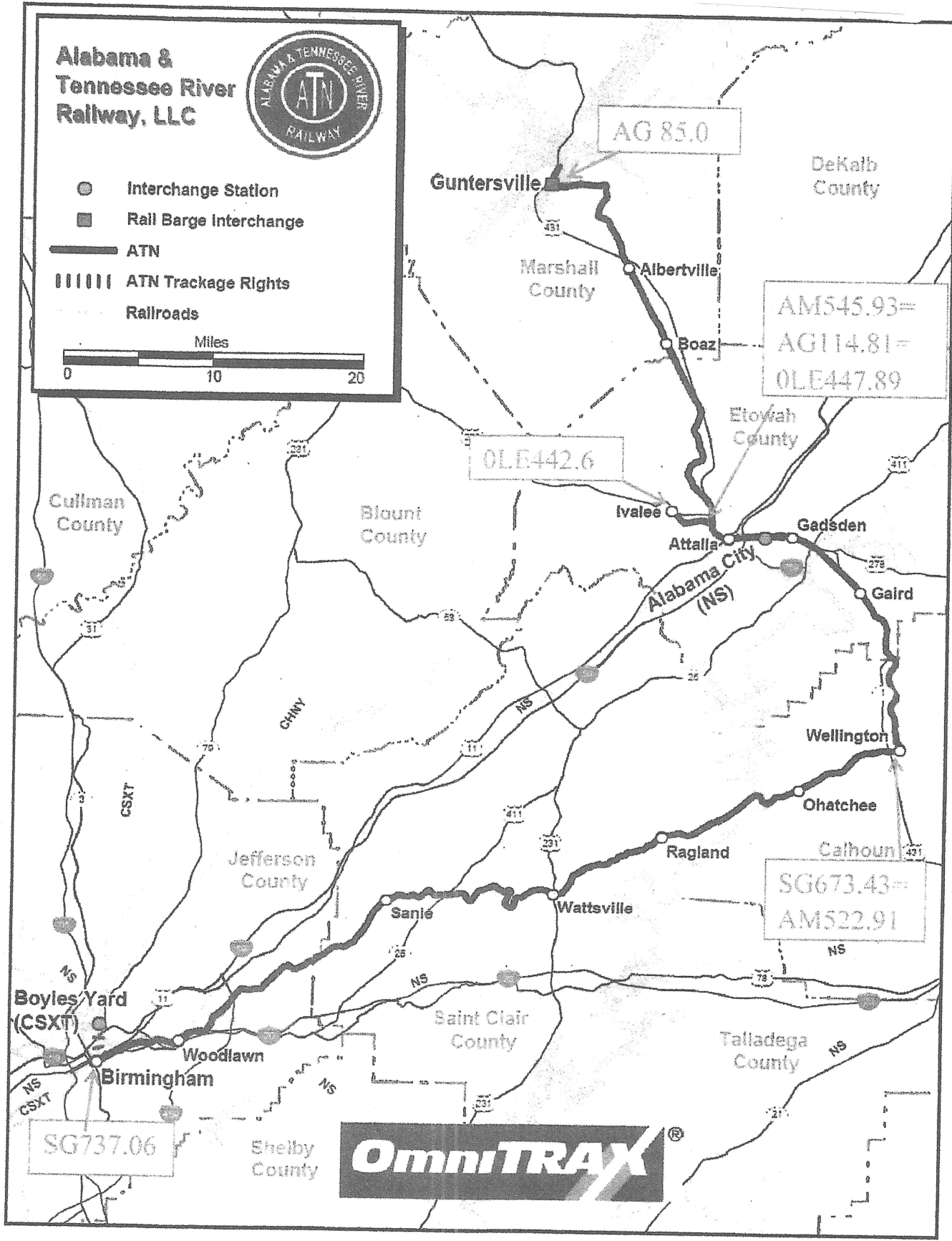
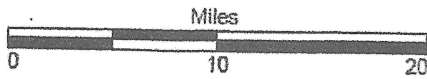
City: Atlanta
County: Fulton
State: GA
Fips: 13-121-0211
Site ID: GA-121-0994800

VAL: V8GA/17-A,B,C
GIS: 07031 - 07033
Scale: 1" = 1 Mile
Date: 9/15/04
Drawn By: LF

Alabama & Tennessee River Railway, LLC

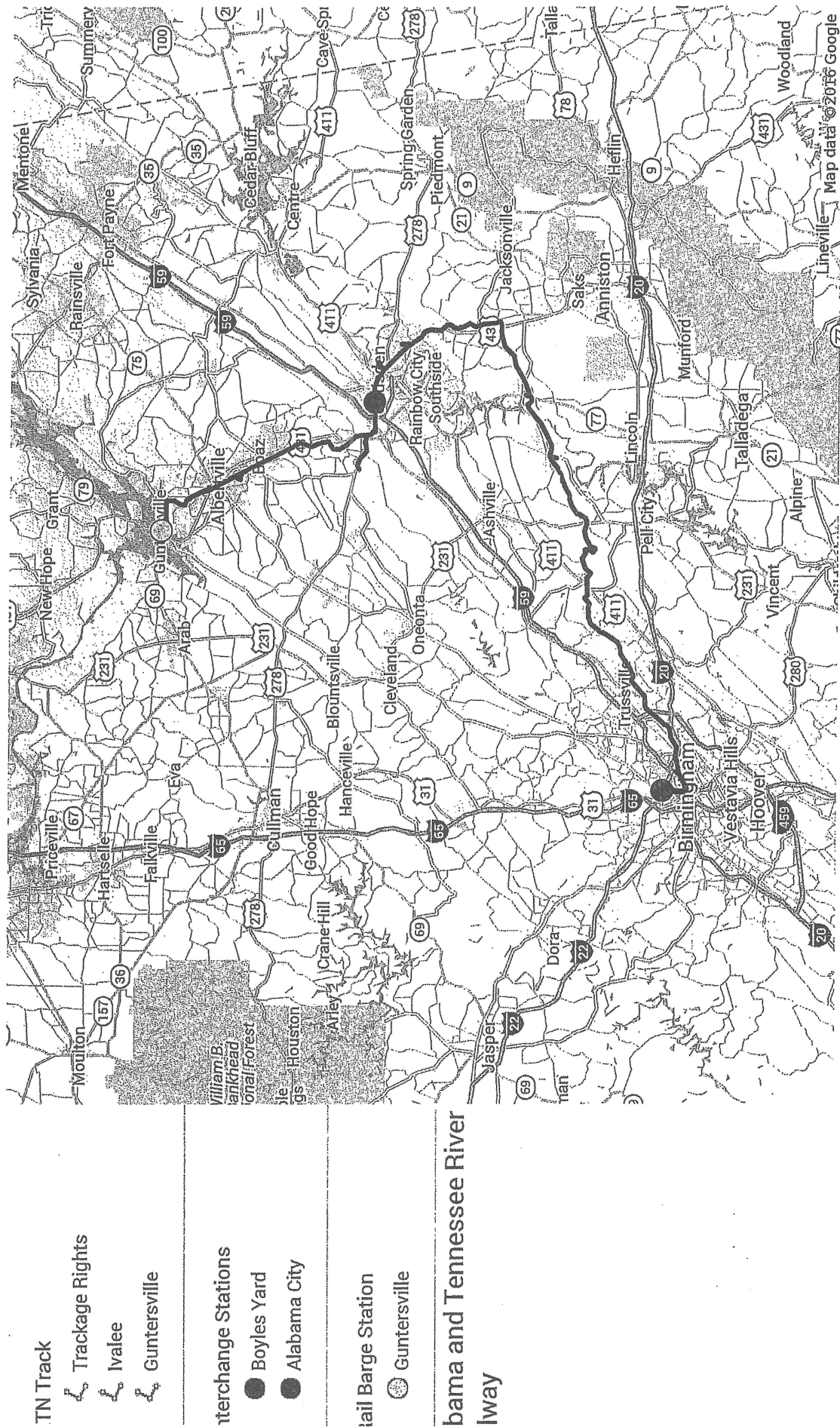


- Interchange Station
- Rail Barge Interchange
- ATN
- ||||| ATN Trackage Rights
- - - Railroads

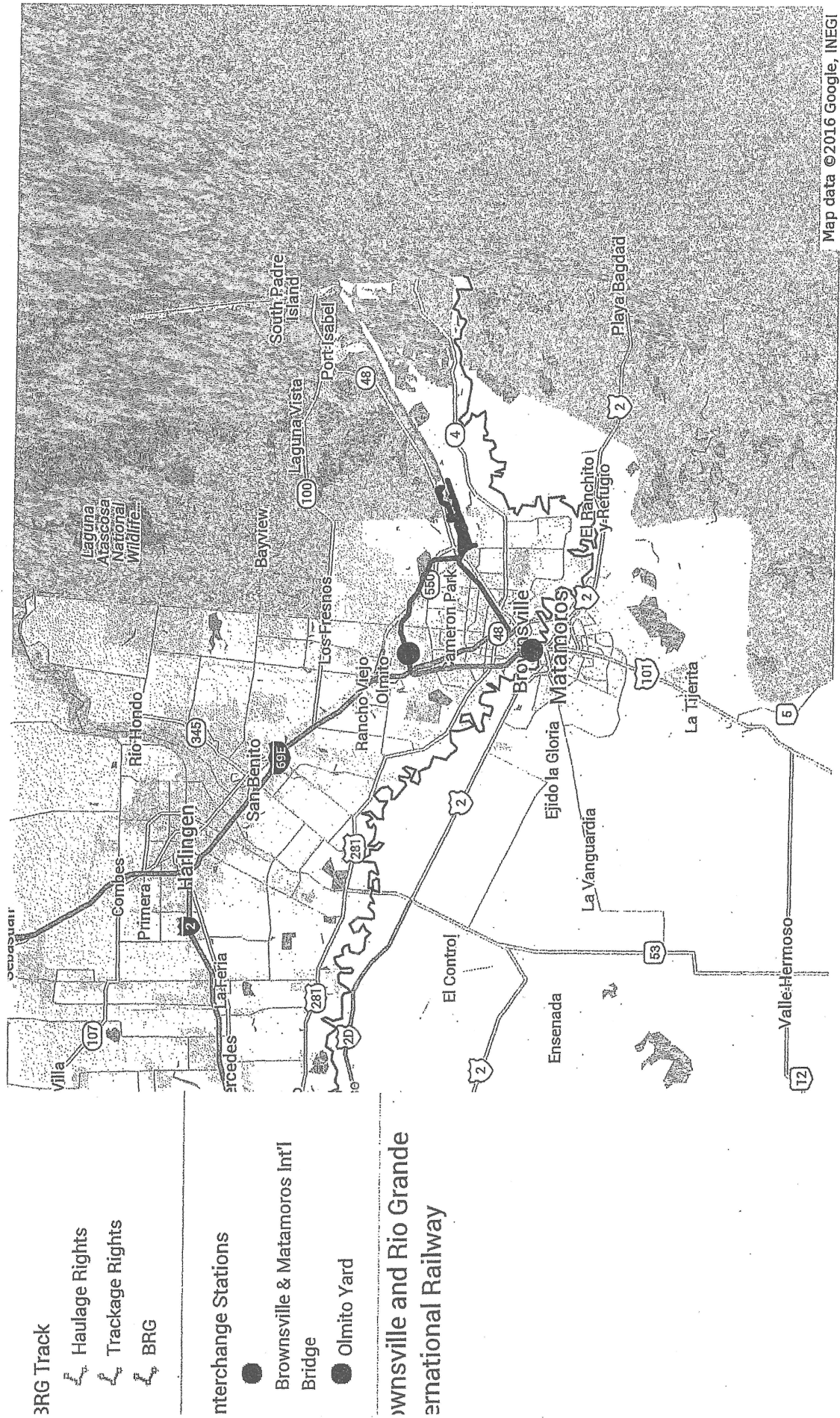


OmniTRAX®

TN Track, Interchange Stations and Rail Barge Station



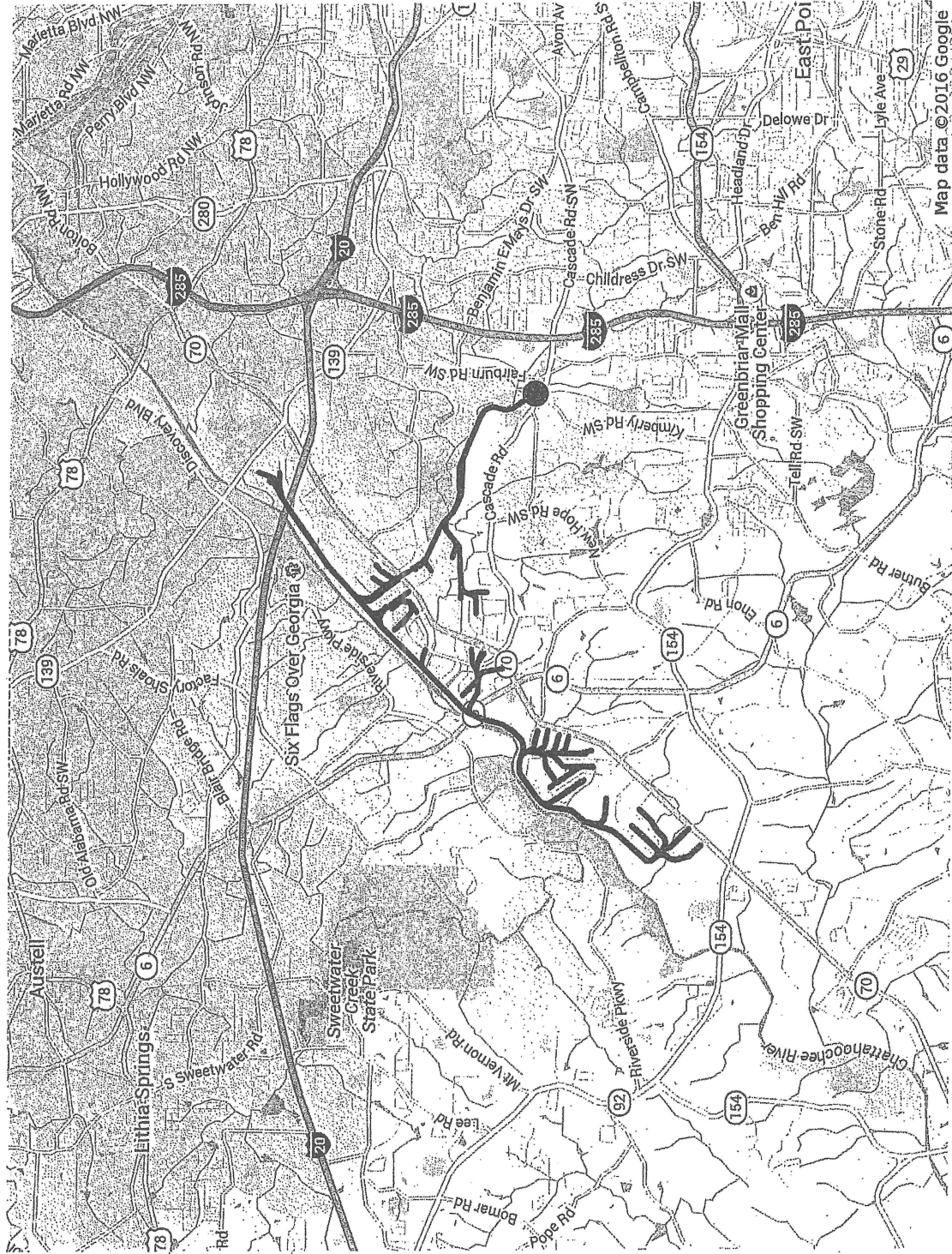
RG Track and Interchange Stations



RL Track and Interchange Stations



CR Track and Interchange Station



-CR Track

Westgate

FCR

Interchange Station

Fulco Jct

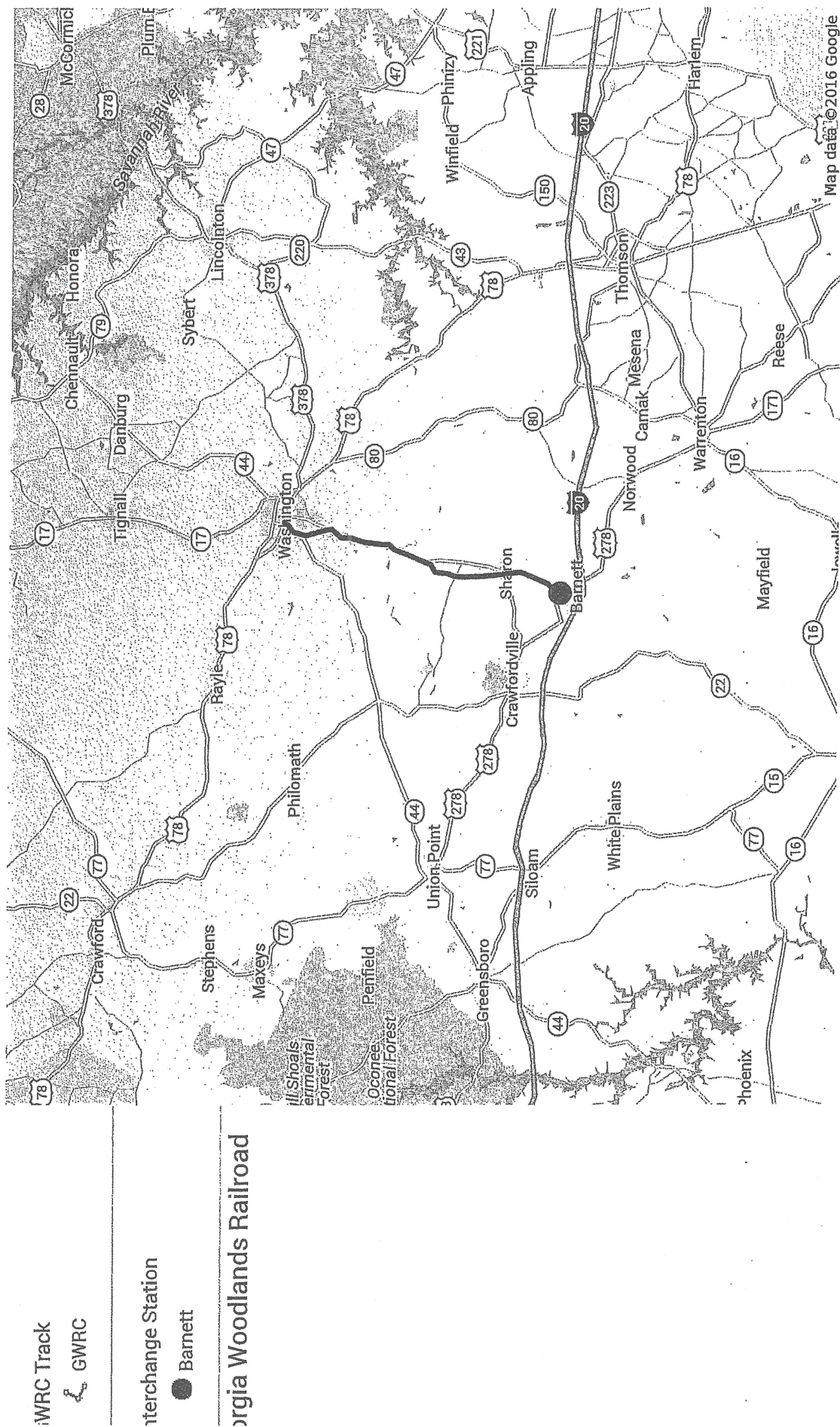
Iton County Railway

Trackage Rights

Thomasville

Map data ©2016 Google, INEGI

WRC Track and Interchange Station



WR Track, Interchange Stations and the Great Western Industrial Park

WR Track

- Anheuser-Busch
Black Hollow

Great Western Industrial Park

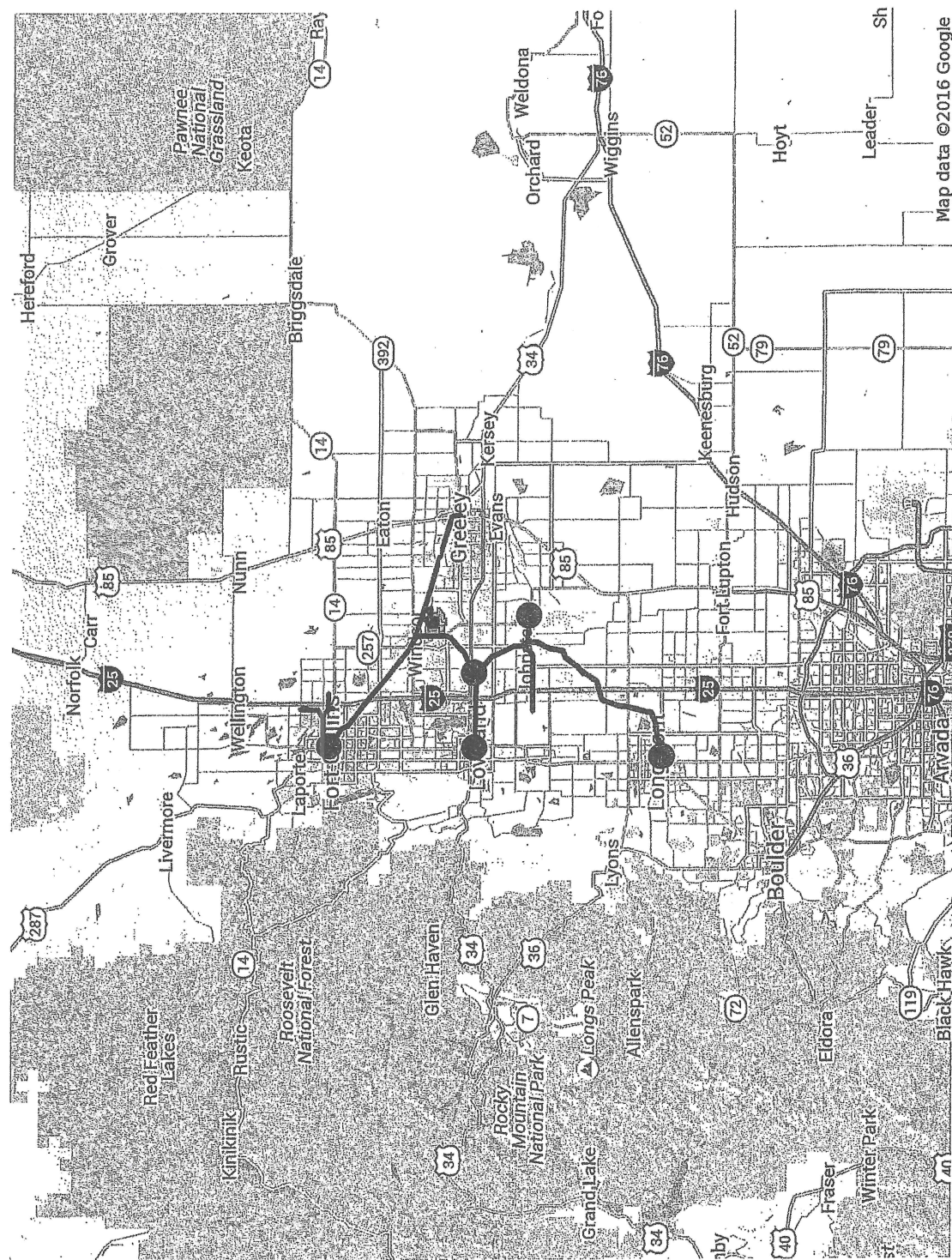
-  Greeley
 Longmont
 Loveland
 Milliken
 North Yard
 Welty

Interchange Stations

- Longmont
- Fort Collins
- Loveland
- Milliken
- Kelim

Great Western Industrial Park

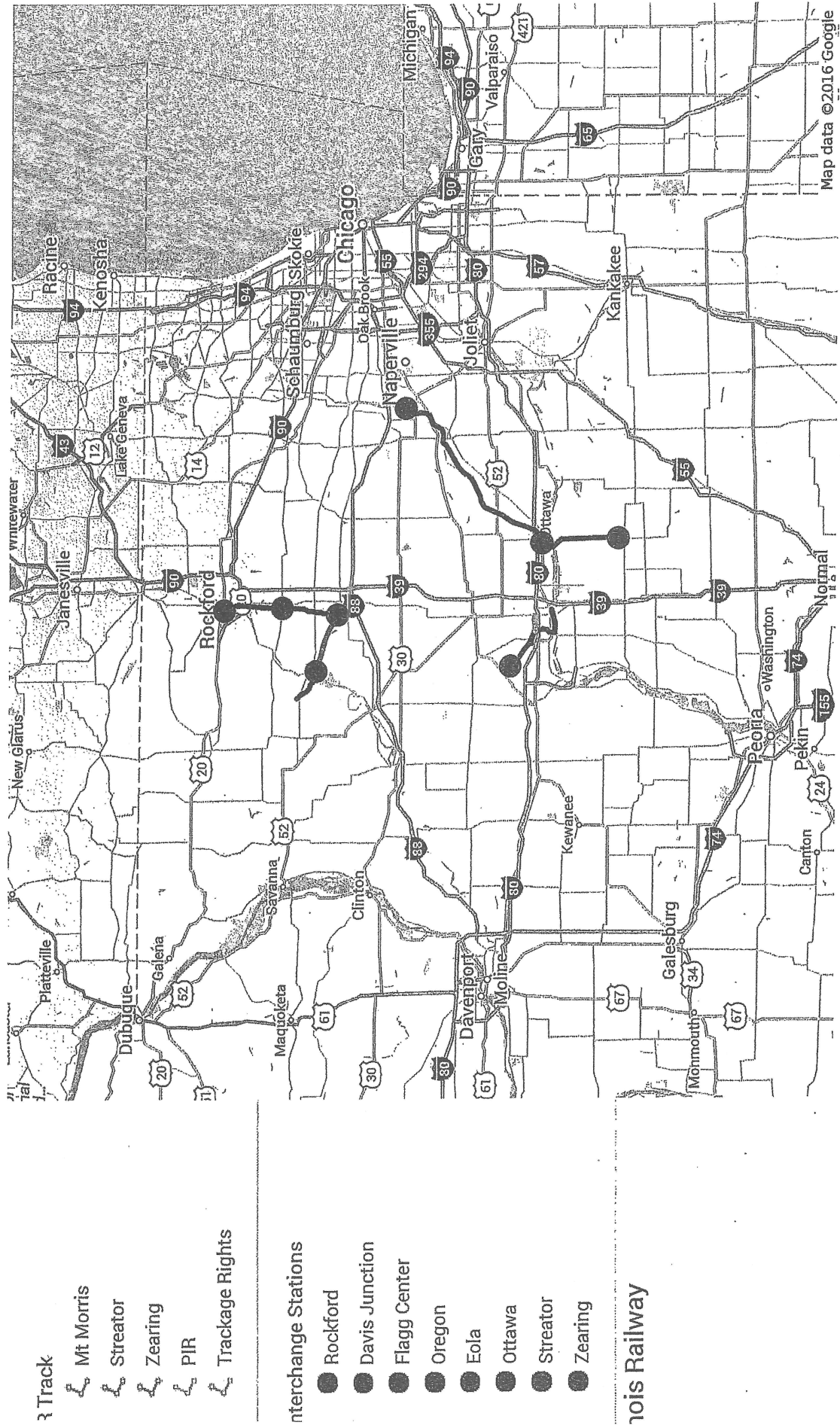
-  Great Western Industrial Park -
West



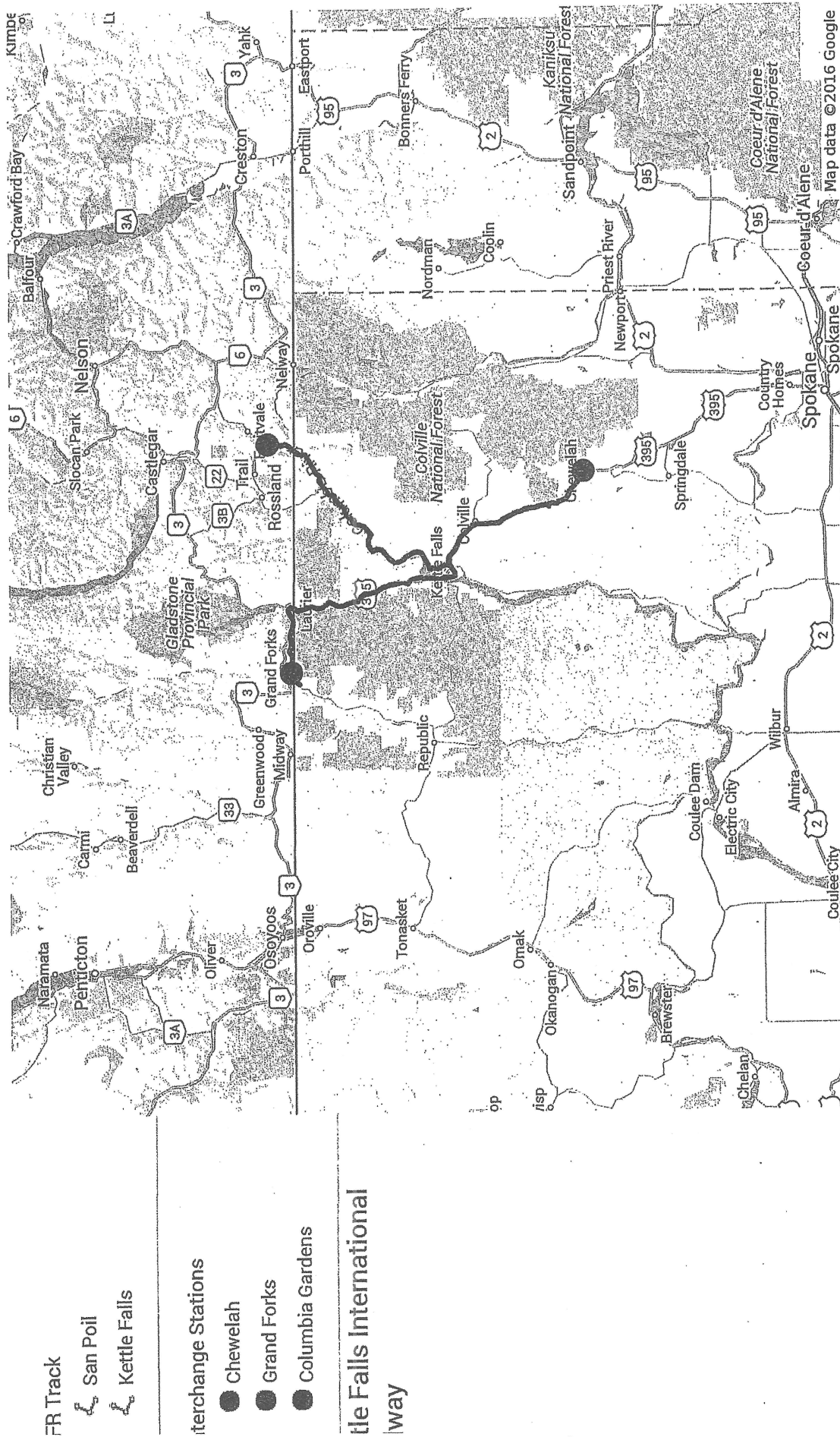
Map data ©2016 Google

Great Western Railway of Colorado

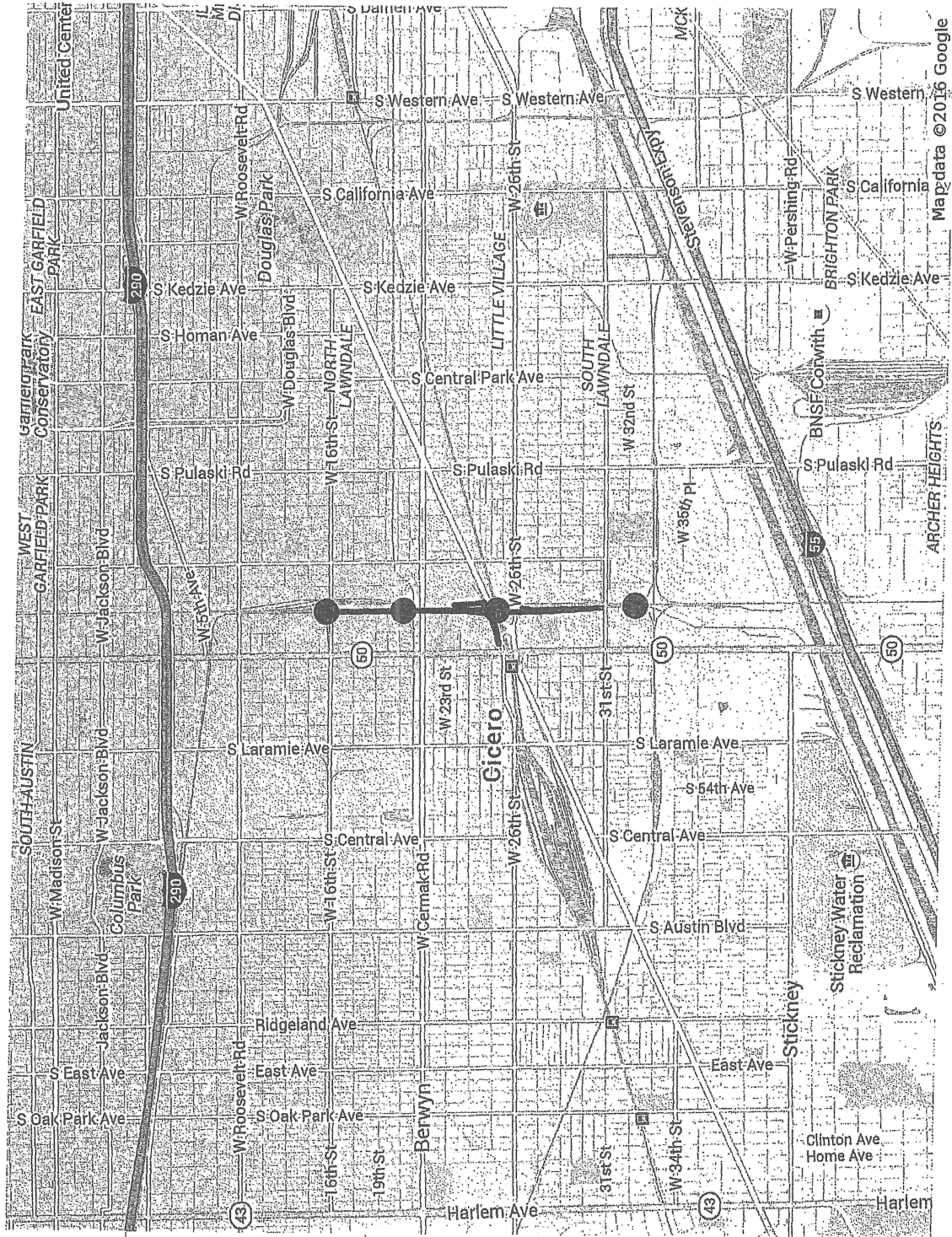
Track and Interchange Stations



±R Track and Interchange Stations



J Track and Interchange Stations



IJ Track

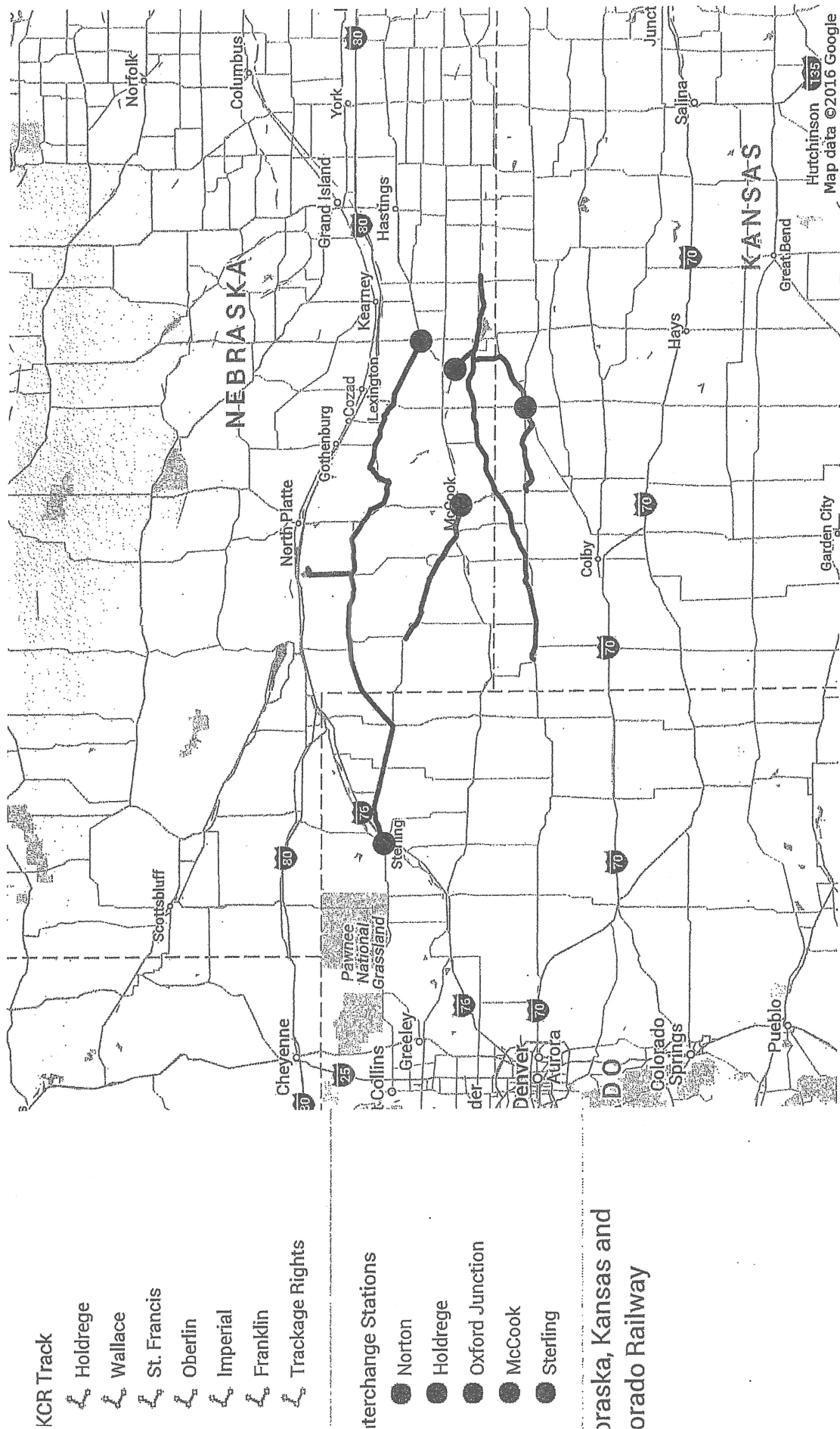


Interchange Stations

- BNSF
- BRC
- CN
- CSXT

Manufacturers' Junction
way

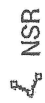
KCR Track and Interchange Stations



SR Track and Interchange Stations

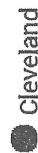


ISR Track



NSR

Interchange Stations



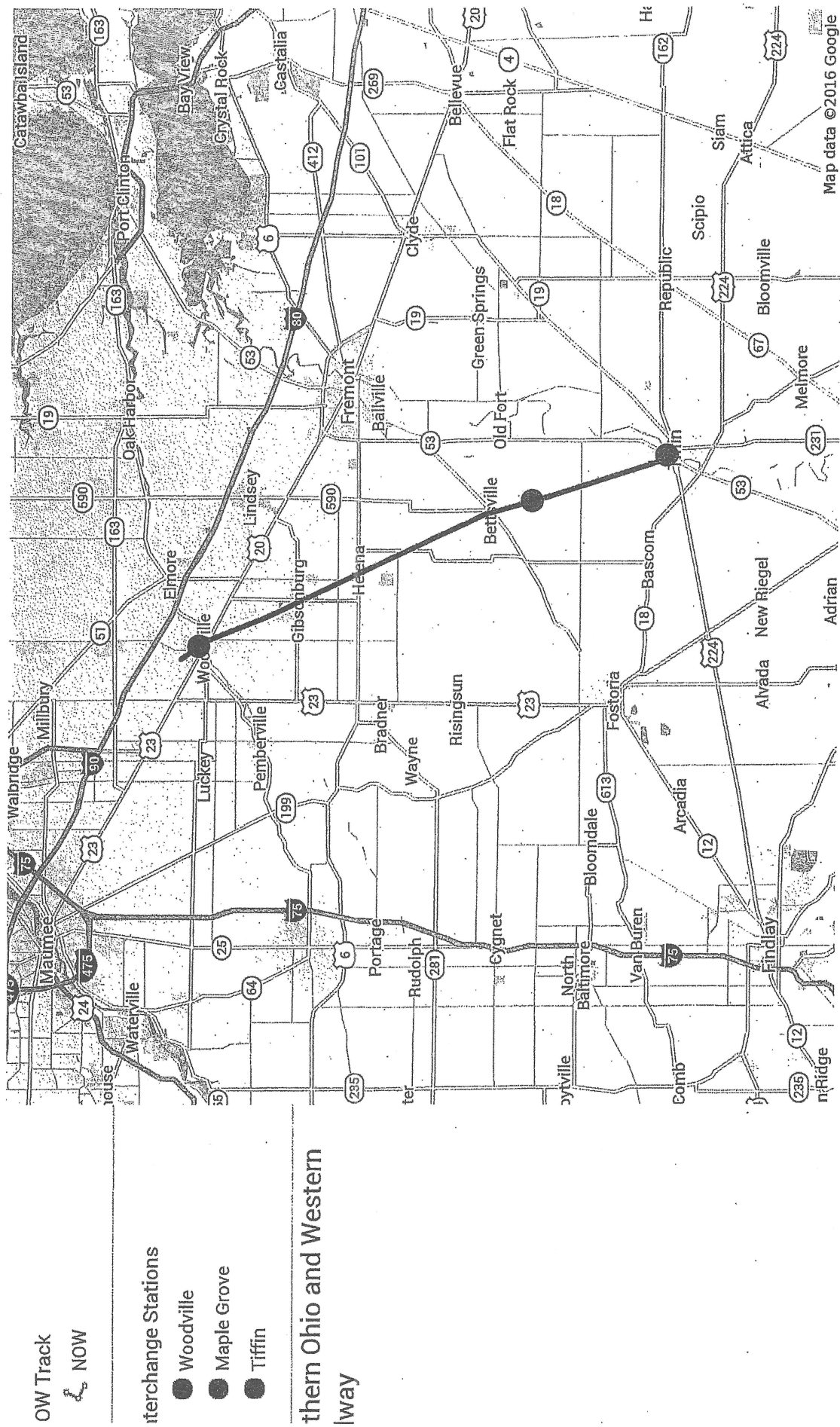
Cleveland



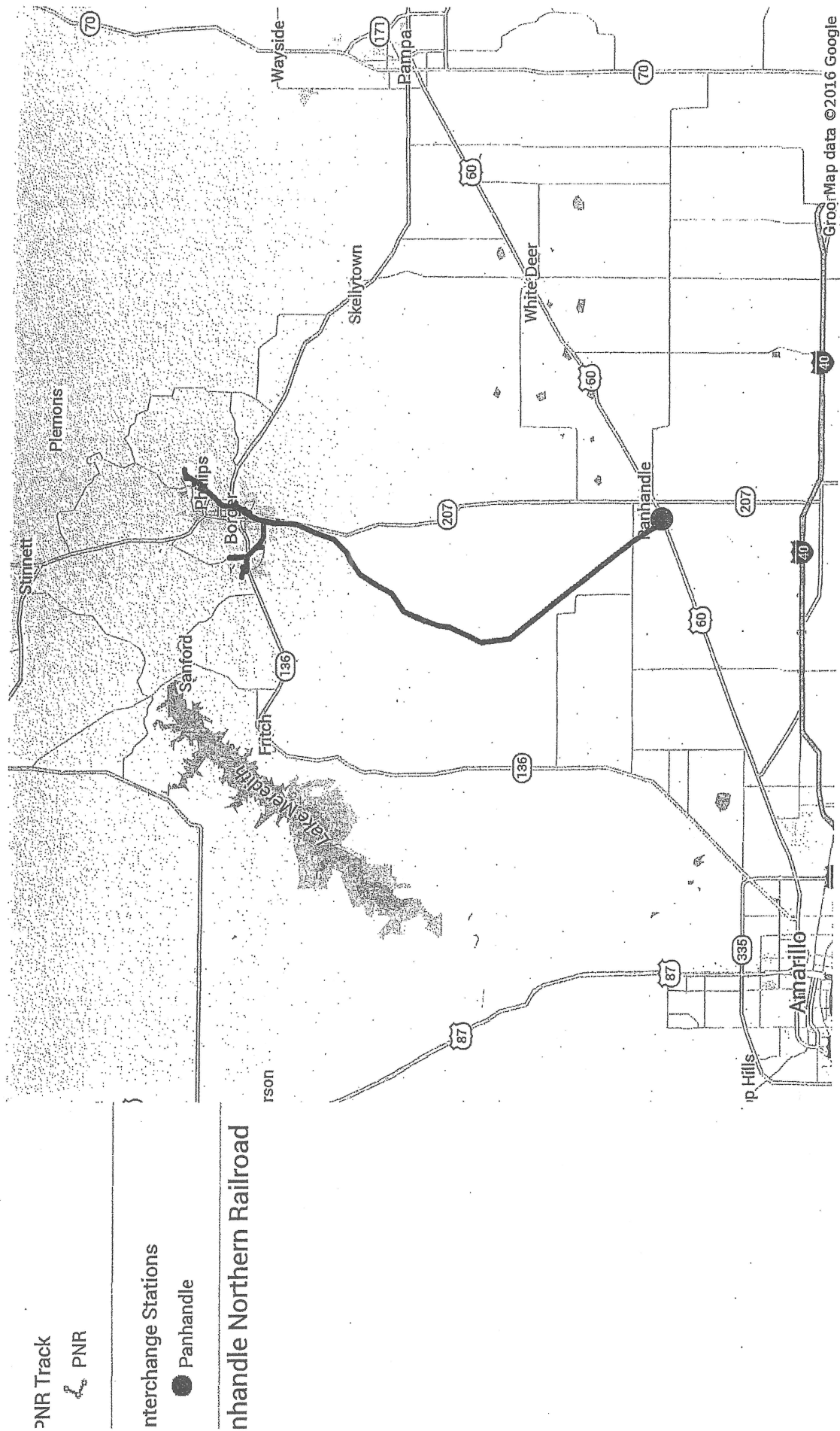
Marcelline Yard

Newburgh and South Shore
Broadview Road

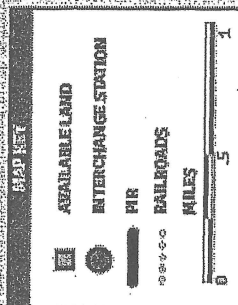
OW Track and Interchange Stations



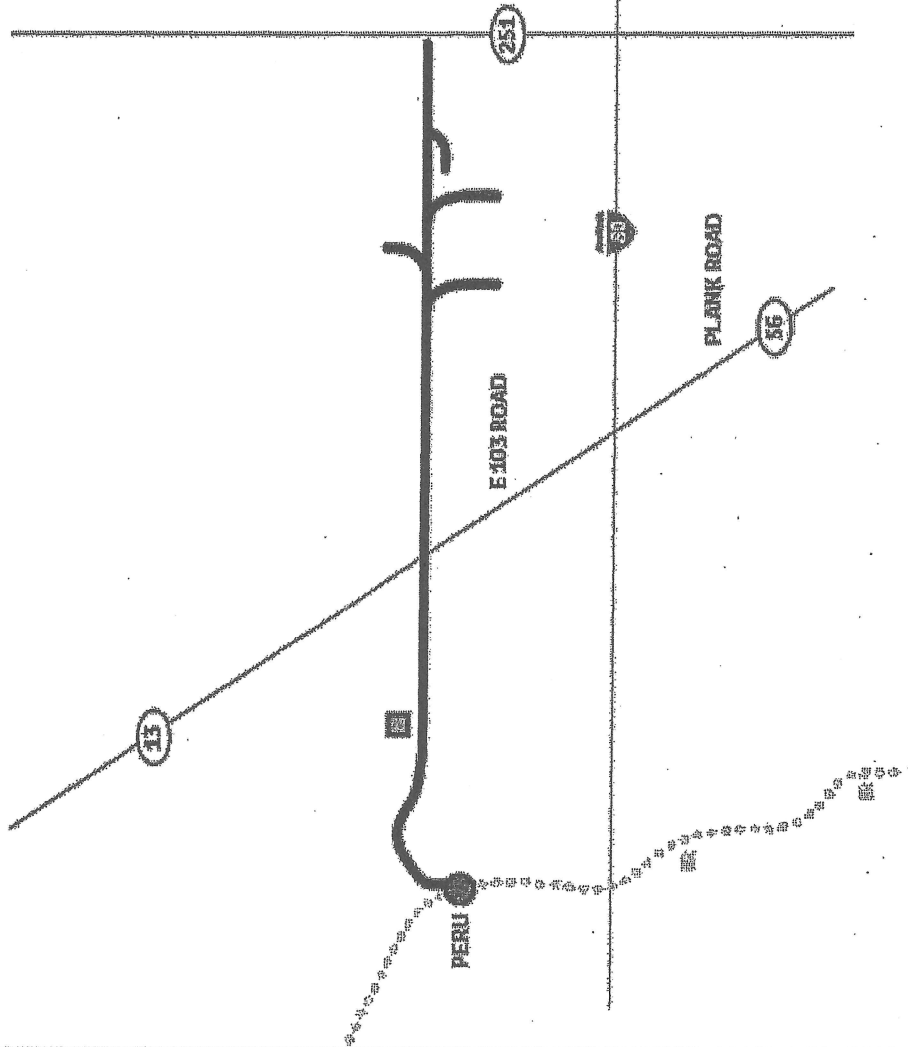
NR Track and Interchange Station



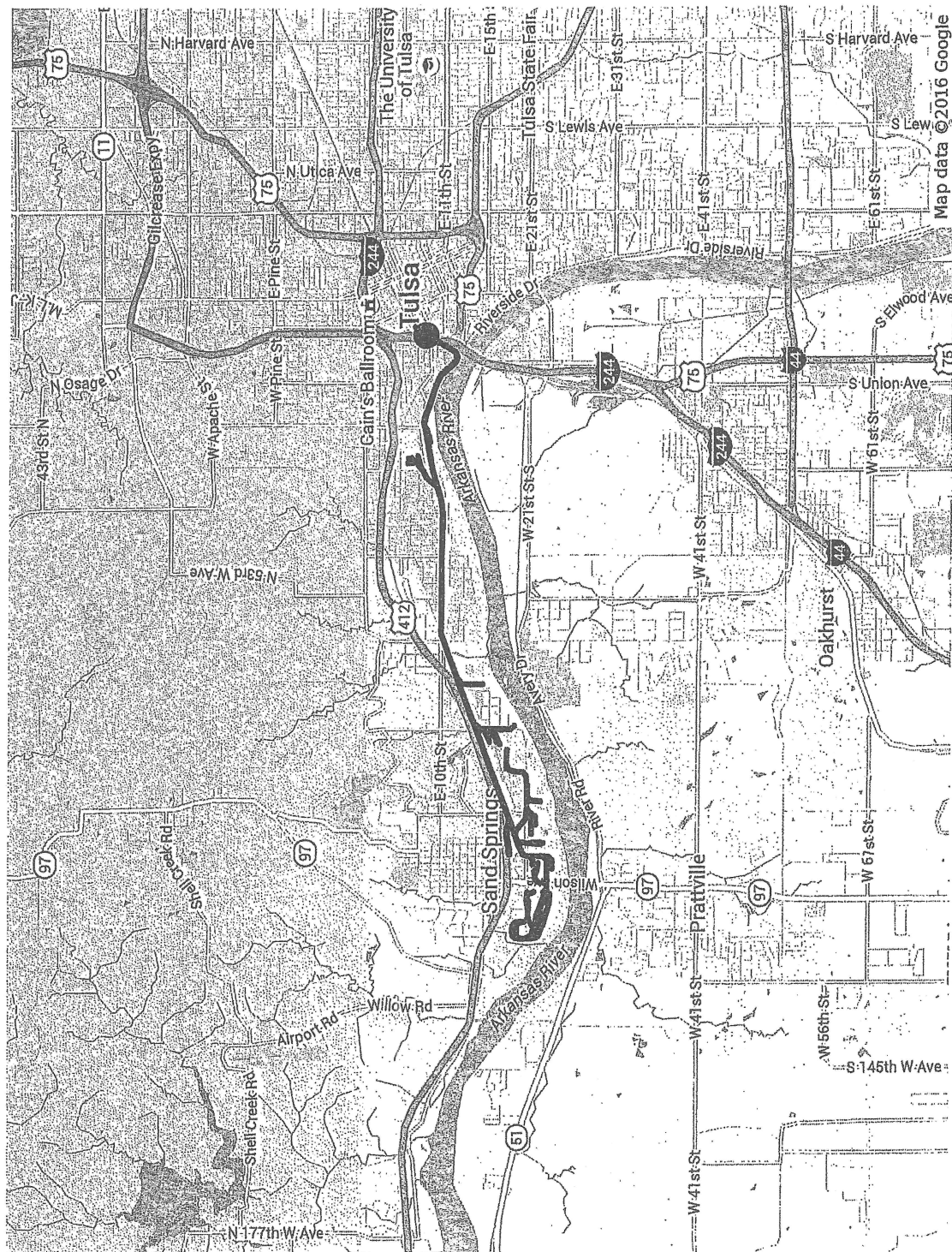
**PERU INDUSTRIAL
RAILROAD, LLC**
PERU, ILLINOIS



[VIEW GOOGLE MAP](#)



S Track and Interchange Station



Map data ©2016 Google

5 Track

SS
 100

terchange Station

Tulsa

Company
d Springs Railway

TE Track and Interchange Stations

