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ENTERED
Office of Proceedings
April 30, 2019
Part of
Public Record

Phone: (312) 252-1500
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April 29, 2019

**VIA FEDERAL EXPRESS**

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

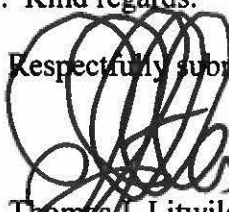
Re: **Docket No. FD 36266**
San Francisco Bay Railway, LLC -- Acquisition and
Operation Exemption -- San Francisco Bay Railroad, Inc.

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of San Francisco Bay Railway, LLC Pursuant to 49 C.F.R. § 1150.32**, dated April 29, 2019. A check in the amount of \$2,000, representing the appropriate fee for this filing, is attached.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,


Thomas J. Litwiler
Attorney for San Francisco
Bay Railway, LLC

TJL:tl

Enclosures

FILED
April 30, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 30, 2019
SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36266

SAN FRANCISCO BAY RAILWAY, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
SAN FRANCISCO BAY RAILROAD, INC.



**VERIFIED NOTICE OF EXEMPTION
OF
SAN FRANCISCO BAY RAILWAY, LLC
PURSUANT TO 49 C.F.R. § 1150.32**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR SAN FRANCISCO
BAY RAILWAY, LLC**

Dated: April 29, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36266

SAN FRANCISCO BAY RAILWAY, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
SAN FRANCISCO BAY RAILROAD, INC.



**VERIFIED NOTICE OF EXEMPTION
OF
SAN FRANCISCO BAY RAILWAY, LLC
PURSUANT TO 49 C.F.R. § 1150.32**

Pursuant to 49 C.F.R. §§ 1150.31, et seq., San Francisco Bay Railway, LLC (“SFB Railway”), a non-carrier, hereby files this Verified Notice of Exemption for its acquisition by assignment from San Francisco Bay Railroad, Inc. (“SFBR”) of SFBR’s lease of and license to operate trackage of the San Francisco Port Commission (“the Port”) at the Intermodal Container Transfer Facility and Piers 92, 94 and 96 at the Port of San Francisco, California (“the Lines”). A map of the Lines is attached hereto as Exhibit A. Based on projected revenues for the Lines, SFB Railway expects to become a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.33, SFB Railway submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

San Francisco Bay Railway, LLC
Attn: General Counsel
18500 North Allied Way
Phoenix, AZ 85054
(480) 627-2700

Applicant's Representative: 49 C.F.R. § 1150.33(b)

SFB Railway's representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

SFB Railway and SFBR have executed an Asset Purchase Agreement dated as of April 10, 2019 providing for, *inter alia*, the assignment to SFB Railway of SFBR's interest in the following agreements with the Port (the "Lease/Rail Agreements"): Amended and Restated Lease No. L-14397, dated as of January 10, 2017, as amended by the First Amendment to Amended and Restated Lease No. L-14397, dated as of December 12, 2018; and Amended and Restated Rail Agreement No. 14503, dated as of December 13, 2018. The parties have sought the consent of the Port to the assignment of the Lease/Rail Agreements to SFB Railway, as contemplated by those agreements.

Operation of the Property: 49 C.F.R. § 1150.33(d)

Upon consummation of the proposed transaction, SFB Railway will provide rail freight service on the Lines.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

SFB Railway is a newly-formed, non-carrier subsidiary of Republic Services, Inc. SFBR is a Class III rail carrier which has leased and operated rail trackage in the vicinity of the Intermodal Container Transfer Facility at the Port of San Francisco since 2000. *LB Railco, Inc. -- Lease and Operation Exemption -- San Francisco Port Commission*, Docket No. FD

33985 (STB served Jan. 8, 2001);¹ *San Francisco Bay Railroad, Inc. -- Lease and Operation Exemption -- San Francisco Port Commission*, Docket No. FD 36265 (STB served Feb. 15, 2019). Rail service on that trackage had previously been provided by the San Francisco Belt Railroad and then by Union Pacific Railroad Company ("UP"). See *San Francisco Belt Railroad -- Petition for Exemption -- Abandonment*, Docket No. FD 30884 (ICC served Feb. 12, 1987).

Pursuant to the Asset Purchase Agreement between SFB Railway and SFBR, SFB Railway will acquire, via assignment of the Lease/Rail Agreements, SFBR's lease and license to operate the Port's rail trackage from a connection with UP near the intersection of Amador Street and Cargo Way through the Intermodal Container Transfer Facility and to Piers 92, 94 and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, California. The subject rail trackage does not have mileposts. The Lease/Rail Agreements provide for the lease and operation of the Lines until December 31, 2033, with a mutual five-year extension option to December 31, 2038.

The complete name and address of the entity conveying the lease of and license to operate the Lines to SFB Railway, via assignment, is as follows:

San Francisco Bay Railroad, Inc.
100 Cargo Way
San Francisco, CA 94124

The complete name and address of the underlying lessor/owner of the Lines being conveyed to SFB Railway via lease/license assignment is as follows:

City and County of San Francisco
operating by and through the
San Francisco Port Commission
Pier 1, The Embarcadero
San Francisco, CA 94111

¹ LB Railco, Inc. changed its name to San Francisco Bay Railroad, Inc. on February 20, 2008.

SFB Railway intends to consummate the proposed transaction on or shortly after May 31, 2019, but in no event prior to the Port's pending issuance of consent to the assignment of the Lease/Rail Agreements to SFB Railway.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Lines is attached as Exhibit A to this notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) stating that SFB Railway's projected annual revenues will not result in the creation of a Class I or II rail carrier is attached as Exhibit B to this Notice.

Interchange Commitments: 49 C.F.R. § 1150.33(h)(1)

The proposed transaction does not involve a limitation on SFB Railway's interchange with a third-party connecting carrier. UP is the only such connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual rail revenue of SFB Railway does not exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result 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)(1), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed acquisition is for the purpose of continuing rail operations. Additional Board approval would be required to discontinue or

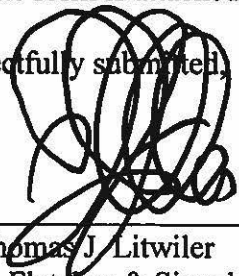
abandon SFB Railway's rail service. Moreover, there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: _____

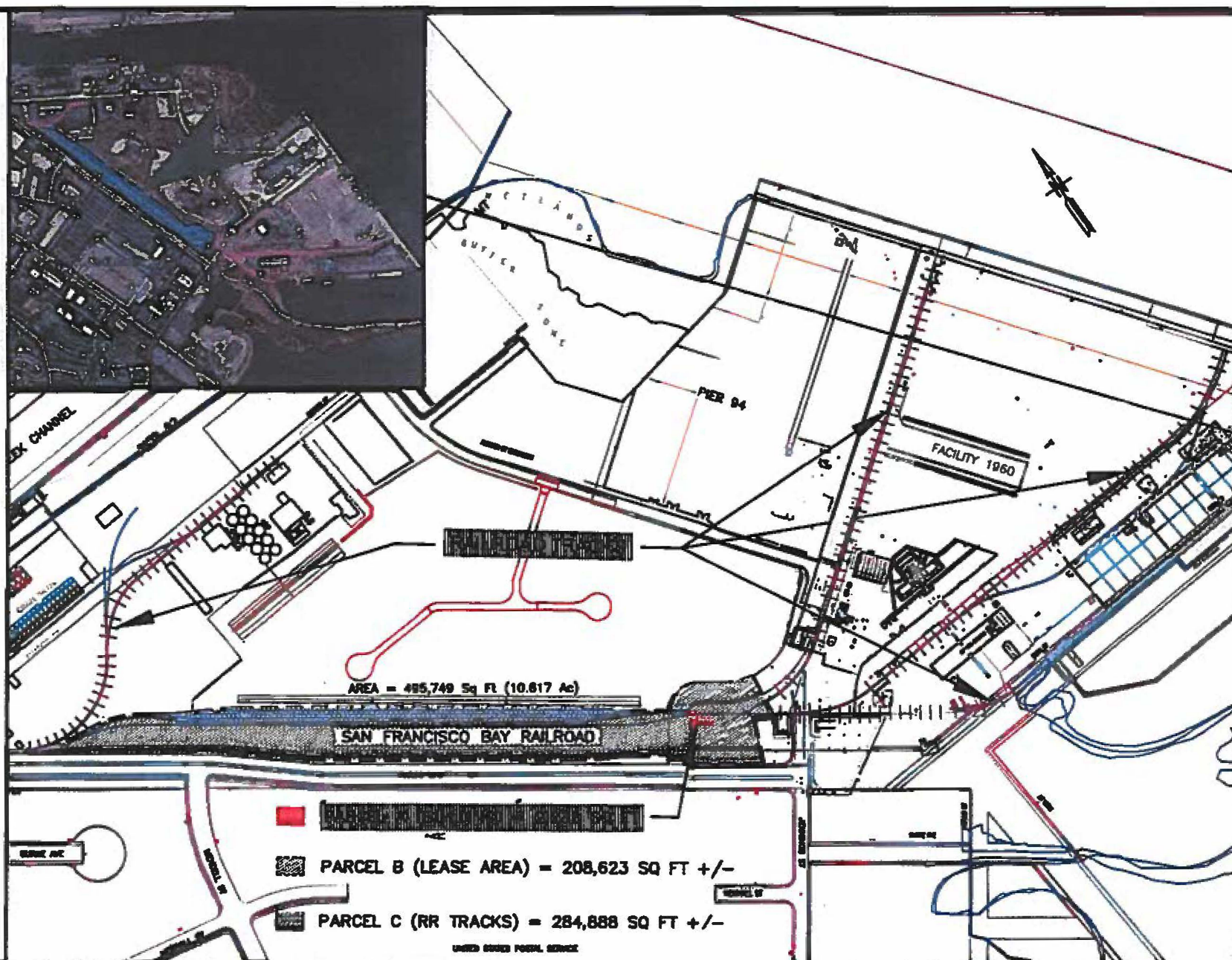

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Fletcher & Sippel LLC
29 North Wacker Drive
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Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR SAN FRANCISCO
BAY RAILWAY, LLC**

Dated: April 29, 2019

DATE:

EXHIBIT A



14503



SAI
PORT

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

RAIL AGREEMENT

2020-00

OF SHEETS

EXHIBIT A

CERTIFICATION

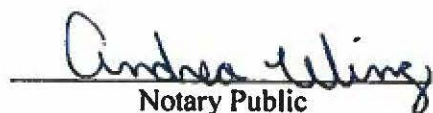
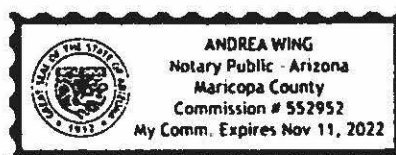
State of Arizona)
)
County of Maricopa) SS:

Adrienne W. Wilhoit, being duly sworn, hereby certifies that the projected annual rail revenue of San Francisco Bay Railway, LLC does not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Adrienne W. Wilhoit
Vice President

SUBSCRIBED AND SWORN TO
before me this 21st day
of April, 2019.


Notary Public

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36266

**SAN FRANCISCO BAY RAILWAY, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
SAN FRANCISCO BAY RAILROAD, INC.**

San Francisco Bay Railway, LLC ("SFB Railway"), a non-carrier, has filed a Notice of Exemption under 49 C.F.R. § 1150.31 et seq. to acquire by assignment from San Francisco Bay Railroad, Inc. ("SFBR") SFBR's existing lease of and license to operate trackage of the San Francisco Port Commission ("the Port") extending from a connection with Union Pacific Railroad Company near the intersection of Amador Street and Cargo Way through the Intermodal Container Transfer Facility and to Piers 92, 94 and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, California. The subject rail trackage does not have mileposts.

SFB Railway expects to consummate the proposed acquisition transaction on or shortly after May 31, 2019, but in no event prior to the Port's pending issuance of consent to the assignment of SFBR's lease/license rights to SFB Railway.

Comments must be filed with the Board and served on:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this 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.

Dated: May __ 2019.

By the Board

VERIFICATION

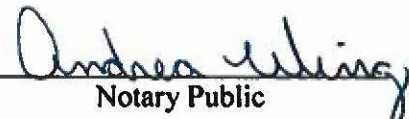
State of Arizona)
) ss:
County of Maricopa)

Adrienne W. Wilhoit, being duly sworn, deposes and says that she is Vice President of San Francisco Bay Railway, LLC, that she has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Adrienne W. Wilhoit

SUBSCRIBED AND SWORN TO
before me this 21st day
of April, 2019.



Notary Public

My Commission expires: 11/11/22

