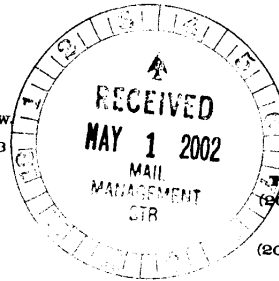


WILLIAM L. SLOVER
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SLOVER & LOFTUS
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1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

DID 0101936001

May 1, 2002



TELEPHONE:
(202) 347-7170
FAX:
(202) 347-3619

WRITER'S E-MAIL:

205289

jhl@sloverandloftus.com

VIA TELECOPIER

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Suite 700
1925 K Street, NW
Washington, DC. 20423-0001

FILED
MAY 1 2002

TRANSPORTATION BOARD

Re: Finance Docket No. 32607 (Sub-No. 3)
KIAMICHI RAILROAD L.L.C. -- TRACKAGE
RIGHTS EXEMPTION -- WFEC RAILROAD COMPANY

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an executed original and ten (10) copies of a Verified Notice of Exemption for Trackage Rights. Also enclosed are twenty (20) additional copies of Exhibit 1, the map showing the line in question, and a check for the requisite filing fee.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for
WFEC Railroad Company

JHL:cef
Enclosure

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MAY 1 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD



KIAMICHI RAILROAD L.L.C. --
TRACKAGE RIGHTS EXEMPTION-- WFEC
RAILROAD COMPANY

Finance Docket No. 32607
(Sub-No. 3)

VERIFIED NOTICE OF EXEMPTION FOR TRACKAGE RIGHTS

WFEC Railroad Company ("WFECR") files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. §§ 11323, et seq., pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), to permit it to grant, and the Kiamichi Railroad L.L.C. ("KRR") to accept and operate, trackage rights over approximately 14 miles of rail line owned by WFECR.

a. Summary of the Transaction
(49 C.F.R. 1180.6(a)(1)(i))

The 14 mile WFECR line runs between Western Farmers Electric Cooperative, Inc.'s ("Western Farmers") Hugo electric generating station and the line of a nearby shortline railroad, the Texas, Oklahoma & Eastern Railroad Company.¹ KRR also serves the Hugo Station via its own line and KRR can access the WFECR line at the Hugo Station. WFECR and KRR have entered into a trackage rights agreement under which KRR will conduct actual

¹The STB issued a final exemption decision authorizing WFECR to build and operate this line in February of 1996. See WFEC Railroad Company -- Construction and Operation Exemption -- Choctaw and McCurtain Counties, OK, Finance Docket No. 32607 (Decision served Feb. 23, 1996).

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train operations over the WFECR line to serve Western Farmer's generating station.²

KRR's trackage rights are overhead rights only; KRR will have no authority to serve any other shippers that might locate on the line. WFECR retains the authority and responsibility for serving any such shippers.

Questions regarding this transaction may be addressed to WFECR's counsel as follows:

John H. LeSeur, Esq.
Slover & Loftus
1224 Seventeenth Street, NW
Washington, DC 20036
(202) 347-7170

b. Proposed Time Schedule (49 C.F.R.
§ 1180.6(a)(1)(ii))

KRR and WFECR expect to begin trackage rights operations in accordance with this Notice on or after its effective date: May 8, 2002.

c. Purpose of the Transaction (49 C.F.R.
§ 1180.6(a)(1)(iii))

The purpose of this transaction is to perfect new commercial arrangements between KRR, WFECR and Western Farmers by permitting KRR to utilize the WFECR line to provide train service,

²WFECR previously granted bridge trackage rights to two other carriers to use the WFECR line. See DeQueen & Eastern Railroad Company and Texas, Oklahoma & Eastern Railroad Company -- Trackage Rights Exemption -- WFECR Railroad Company, STB Finance Docket No. 32607 (Sub-No. 2) (Notice served April 17, 1997). KRR use of the WFECR line is now necessary to perfect new commercial arrangements among KRR, WFECR and Western Farmers. These new operations will not increase the level of maintenance on the WFECR line.

as needed, over the WFECR line, including movement of empty rail cars stored on the WFECR line to Western Farmer's Hugo station.

- d. List of State in Which Applicant's Property Is Situated (49 C.F.R. § 1180.6(a)(5))

Oklahoma

- e. Map (49 C.F.R. § 1180.6(a)(6))

See Exhibit 1.

- f. Agreement (49 C.F.R. § 1180.6(a)(7))

See Exhibit 2.

- g. Labor Protection

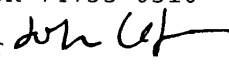
Inasmuch as only Class III carriers are involved in this transaction, no labor protection is applicable.

Respectfully submitted,

WFEC RAILROAD COMPANY
P.O. Box 310
Fort Towson, OK 74735-0310

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW
Washington, DC 20036

By: John H. LeSeur 
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: May 1, 2002

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Finance Docket No. 32607 (Sub-No. 3)

KIAMICHI RAILROAD L.L.C. -- TRACKAGE
RIGHTS EXEMPTION -- WFEC RAILROAD COMPANY

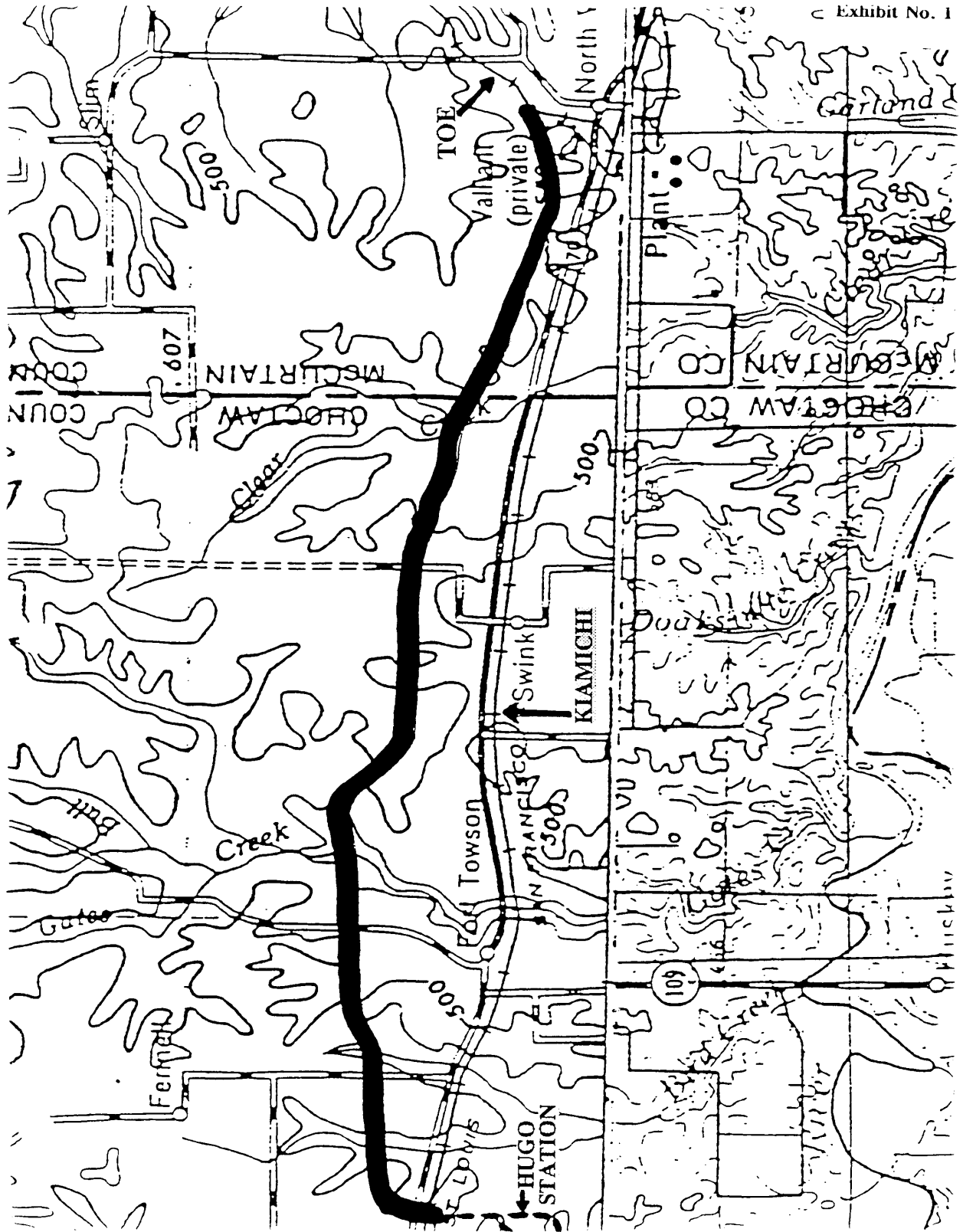
WFEC Railroad Company has agreed to grant overhead
trackage rights to the Kiamichi Railroad L.L.C. over its entire
line of railroad in Choctaw and McCurtain Counties, Oklahoma.
The trackage rights will be effective on May 8, 2002.

This notice is filed under 49 C.F.R. § 1180.2(d)(7).
Petitions to revoke this exemption under 49 U.S.C. § 10502 may be
filed at any time. The filing of a petition to revoke will not
stay the transaction.

Dated:

By the Commission.

Vernon A. Williams,
Secretary



JOINT FACILITY AGREEMENT

By and Between

WFEC RAILROAD COMPANY

and

KIAMICHI RAILROAD L.L.C.

JOINT FACILITY AGREEMENT

THIS AGREEMENT is made and effective this 30th day of April, 2002, by and between WFEC Railroad Company, an Oklahoma corporation (hereinafter referred to as "WFEC R.R.") and KIAMICHI RAILROAD L.L.C. ("KRR"), a Delaware limited liability corporation, with its principal place of business at 800 Martin Luther King Drive, Hugo, Oklahoma 74743.

WITNESSETH:

WHEREAS, WFEC R.R. has built a certain line of railroad in the vicinity of Western Farmers Electric Cooperative's Hugo Station near Fort Towson, Oklahoma, and

WHEREAS, KRR wishes to acquire certain rights in this railway line and WFEC R.R. is willing to grant such rights.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Description of Line of Railroad.

A. The property and facilities covered by this Agreement are herein referred to as the "Joint Facility," and are fully described in the narrative and the diagram appearing as Exhibit A, attached hereto. The use of the Joint Facility hereby granted to KRR shall include use of all appurtenances

thereto of the Joint Facility, including, but not necessarily limited to, rail and fastenings, switches and frogs complete, ties, ballast, roadbed, embankments, signals, bridges, trestles, culverts, drainage facilities and any other structures or things necessary for the support of the Joint Facility and entering into the construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, crossing protection facilities, and any and all work required by lawful authority in connection with the construction, renewals, maintenance and operation of said track structures and all appurtenances thereof.

B. The Joint Facility shall be understood to include facilities to form interconnections including, but not limited to, all necessary and required land, signals, switches, track, etc. for the provision of adequate and efficient unit coal train service between the Joint Facility and the lines of KRR and other carriers.

2. Grant.

A. WFEC R.R. hereby grants to KRR until April 10,

2007, and subject to the provisions of this Agreement, the right to use the Joint Facility (hereinafter referred to as "Run-Through Rights") for the purposes of rail transportation between or among the Hugo Generating Station and other Western Farmers facilities now or hereafter located on or adjacent to the Joint Facility.

B. The Run-Through rights herein granted by WFEC R.R. to KRR are bridge rights only and KRR is not permitted to accept from or deliver freight to any industry other than Western Farmers' facilities located or hereafter located on or adjacent to the Joint Facility.

3. Payments.

All costs of maintaining the Joint Facility will be borne by WFEC R.R. under its separate arrangements with Western Farmers. KRR shall not bear any such maintenance costs, except to the extent required under Section 10.

4. Management and Control.

A. WFEC R.R. shall have exclusive control with respect to management, maintenance and operation of the Joint Facility. Nothing in this Agreement shall limit the right of

WFEC R.R. to use the Joint Facility or the right of WFEC R.R. to admit other companies to the use of the trackage or any part thereof on such terms and conditions satisfactory to WFEC R.R. However, such admission shall not materially impair the use herein contemplated by KRR.

B. KRR may engage in transportation over the Joint Facility subject to this Agreement and to such rules, regulations, and orders of WFEC R.R. as are applicable to the Joint Facility. All such rules, regulations, and orders shall be reasonable and fair. KRR shall arrange to obtain legal authority, if any, required to provide transportation service on the Joint Facility.

5. Devices on Equipment.

KRR, at its expense, shall install and maintain upon its engines and cars such equipment or devices as now, or in the future, may be necessary or appropriate, in the reasonable judgment of WFEC R.R., for operation of trains upon the Joint Facility.

6. Additions and Betterments.

WFEC R.R. shall make any changes, additions and/or

betterments to the Joint Facility, at the sole cost and expense of the party desiring or requesting same.

7. Picking Up Wrecks.

If any engine, car or other equipment shall be wrecked or derailed upon the Joint Facility, the same shall, without unnecessary delay, be picked up or rerailed by the party whose engine, car or other equipment is wrecked or derailed.

8. Train Supplies.

WFEC R.R. shall not be required to furnish any fuel or other supplies for the operation of KRR's locomotives or trains over the Joint Facility. In the event WFEC R.R. should, nevertheless, furnish such supplies to KRR, KRR shall promptly, upon receipt of billing therefor, reimburse WFEC R.R. for its cost thereof, plus customary additives.

9. Observance of Laws,
Public Rules and Regulations.

Each party, with respect to the use of the Joint Facility and the operation of equipment thereon and thereover, shall comply with all applicable laws, rules, regulations and

orders promulgated by any governmental entity having jurisdiction in the matter for the protection of persons or otherwise, and if any failure on the part of either party so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the party so failing shall promptly reimburse and indemnify such other party for or on account of such fine, penalty, cost or charge and for all expenses and attorneys' fees incurred in defending any action which may be brought against such other party on account thereof, and shall, upon notice thereof being given to it by the other party, defend any such action free of cost, charge and expense to the other party.

10. Liability.

A. WFEC R.R. and KRR each shall assume all liability for injury to or death of any person, and for loss of, damage to, or destruction of any property, arising out of the operation of motive power, cars, or equipment over the Joint Facility by their respective employees; provided, however, that if any such injury, death, loss, damage, or destruction arises out of an occurrence in which motive power, cars, or equipment operated by employees of both WFEC R.R. and KRR are involved, WFEC R.R. and

KRR shall each be liable for injuries to or death of their own employees, and for loss of, damage to, or destruction of property belonging to or in the custody, possession, or control of each of their own employees (other than the Joint Facility itself), and WFEC R.R. and KRR each shall bear only one-half of the liability for injuries to or death of third parties, and for loss of, damage to, or destruction of the property of third parties or of the Joint Facility.

B. Except as otherwise provided in Section 10.A., above, liability for injuries to or death of any persons and for loss of, damage to, or destruction of any property, arising out of WFEC R.R.'s and KRR's activities on or related to the Joint Facility, shall be determined under applicable law. Section 10.A. allocates certain risks of liability between WFEC R.R. and KRR, and shall not be construed as conferring any rights on any other parties.

C. Each party hereto shall pay promptly damages for which such party shall be liable under the provisions of this Section 10, and shall indemnify the other party against such damages including attorneys' fees and costs.

D. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which

party shall be liable under the provisions of this Section 10 and to defend or cause to be defended all suits for the recovery of any such damage.

E. In the event the parties hereto may be liable under the provisions of this Section 10 for any damages and the same is settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, a release from liability shall be obtained in the names of the parties so liable; however, no such settlement in excess of Twenty Thousand Dollars (\$20,000) shall be made by or for either party without the authority of the other party, but any settlement made by either party in consideration of said sum or less sum shall be binding upon the other party.

F. In case a suit shall be commenced against either party for or on account of damages for which the other party is solely or jointly liable under the provisions of this Section 10, the party so sued shall give notice in writing to the other party of the pendency of said suit, and thereupon the other party shall assume or join in the defense of such suit.

G. No other party shall be bound by any judgment against the other party, unless such party shall have had reasonable notice requiring it to defend any reasonable

opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be bound by the judgment as to all matters which could have been or were litigated in such suits.

11. Maintenance.

WFEC R.R. shall at all times during the term of this Agreement maintain the Joint Facility in a state of reasonable repair and reasonably suitable for the requirements of the parties and in particular for unit coal train service in trains of at least one hundred and thirty-five (135) cars.

12. Assignment and Succession.

All of the obligations and covenants herein imposed, as well as all of the benefits herein conferred, shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns. Any sale or other disposition of the Joint Facility by WFEC R.R. during the term of this Agreement shall be on condition that this Agreement shall be assumed, honored and otherwise continued in full force and effect by any prospective purchaser from or successor in interest to WFEC R.R.

13. Nonwaiver of Rights.

The failure of either party hereto, in any one or more than one instance, to insist upon the performance of any of the terms of this Agreement, or to exercise any rights hereunder, or the waiver by any party hereto of any breach of the terms of this Agreement will not be construed thereafter as waiving any such terms or rights, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

14. Choice of Law.

This Agreement shall be deemed a contract made in the State of Oklahoma and will be governed by and construed according to the laws of that state, except that matters related to common carrier obligations and loss and damage to lading shall be construed and interpreted consistent with relevant statutes and court decisions establishing the obligations of carriers providing interstate common carriage by rail.

15. Entire Agreement.

This Agreement and the Exhibit A hereto comprise the

entire agreement between the parties, and supersede all prior understandings and representations between the parties concerning the subject matter or in consideration thereof.

16. Notices.

All notices required hereunder will be in writing unless otherwise provided and will be deemed properly given when delivered in person to the authorized representative of the party designated below or when sent by mail, telegram, telecopy or telex addressed as follows:

To WFEC R.R.:

P.O. Box 310
Fort Towson, OK 74735

To KRR:

General Manager
800 Martin Luther King Drive
Hugo, Oklahoma 74743

Each party may change the address and authorized representative by following this notice provision.

17. Arbitration.

In case any question arises under this Agreement or concerning the subject matter hereof, upon which the parties cannot agree, such question shall be settled by a disinterested arbitrator selected by mutual consent of the parties. If the

parties cannot agree on an arbitrator, then each party shall select an arbitrator, and the two selected shall jointly select a third. The decision and award of the arbitrator or arbitrators in the matter shall be final and conclusive on the parties and judgment may be entered thereon in any court of competent jurisdiction. The expense of arbitration shall be borne jointly by the parties.

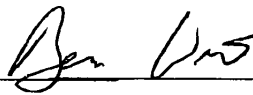
18. Performance of Other Party's Obligations.

If either party hereto (the "Obligated Party") shall fail to comply with any of its covenants or obligations under this Agreement, the other party hereto (the "Performing Party"), after notice to the Obligated Party, may, but shall not be required to, make advances to perform said obligation, perform said obligation itself, or take all such actions as may be necessary to obtain such performance; provided, however, that any payment so made or any action so taken by the Performing Party shall not be deemed to cure the default of the Obligated Party, nor shall it prevent exercise against the Obligated Party of any remedies for such default available to the Performing Party. Any such payment so made by the Performing Party, and all costs and expenses (including, without limitation,

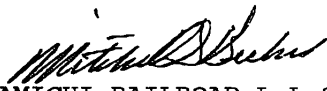
reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Obligated Party to the Performing Party upon demand.

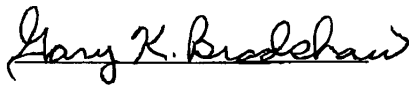
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


WFEC RAILROAD COMPANY

Witness: 
By: _____

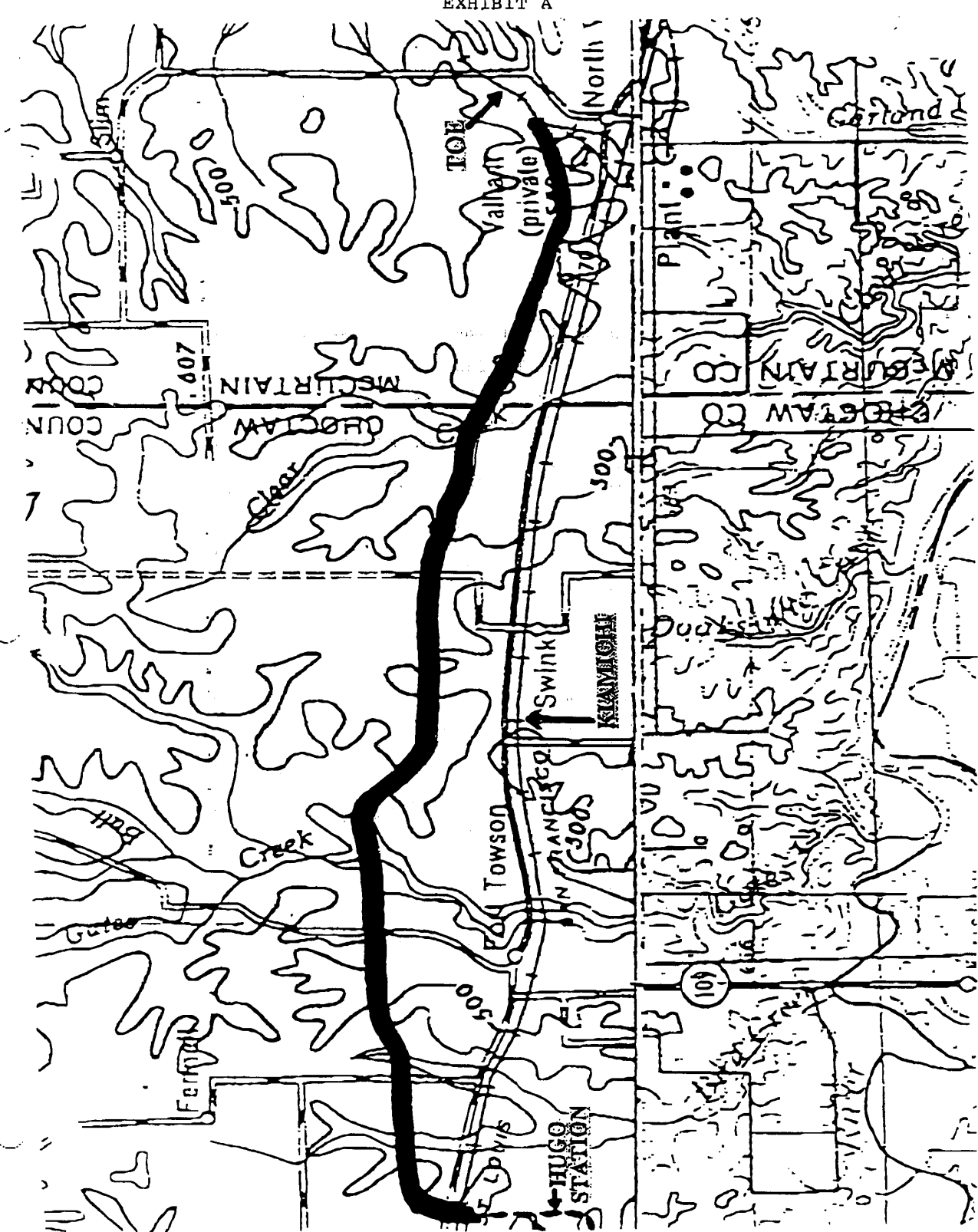
Its: _____


KIAMICHI RAILROAD L.L.C.

Witness: 
By: _____

Its: _____

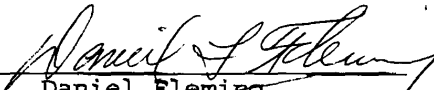
• **Supervisors**



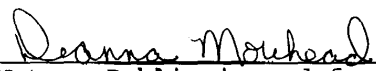
VERIFICATION

STATE OF OKLAHOMA) ss:
COUNTY OF CHOCTAW)

DANIEL FLEMING, being duly sworn, deposes and says that he has read the foregoing Verified Notice of Exemption for Trackage Rights, knows the contents thereof, and that the same are true as stated.


Daniel Fleming

Subscribed and sworn to before
me this 29th day of April, 2002


Notary Public in and for the
State of Oklahoma

My Commission Expires 12-11-05