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January 17, 2017

242468

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings
January 17, 2017
Part of
Public Record

Re: David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and
Saratoga Railroad, LLC – Corporate Family Transaction, FD 36091

Dear Ms. Brown:

Enclosed for filing are an original and eleven copies of a Verified Notice of Exemption under 49 C.F.R. §1180.2(d)(3) for a Corporate Family Transaction involving David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC. Please acknowledge receipt and filing of the Notice by date-stamping the enclosed extra copy and returning it to the courier to return to me.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(38)(iv), I have enclosed is a filing fee check in the amount of \$1,800.00. If there are any questions about this matter, please contact me directly or Crystal M. Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,



William A. Mullins
Attorney for David L. Durbano, Wyoming and
Colorado Railroad Company, Inc., and Saratoga
Railroad, LLC

cc: Stuart A. Fredman

FEE RECEIVED
January 17, 2017
SURFACE
TRANSPORTATION BOARD

FILED
January 17, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36091

**DAVID L. DURBANO, WYOMING AND COLORADO RAILROAD COMPANY, INC.,
AND SARATOGA RAILROAD, LLC
– CORPORATE FAMILY TRANSACTION –**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

**Attorneys for David L. Durbano, Wyoming
and Colorado Railroad Company, Inc., and
Saratoga Railroad, LLC**

January 17, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36091

**DAVID L. DURBANO, WYOMING AND COLORADO RAILROAD COMPANY, INC.,
AND SARATOGA RAILROAD, LLC
– CORPORATE FAMILY TRANSACTION –**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

David L. Durbano (“Durbano”), Saratoga Railroad, LLC (“Saratoga”), a non-carrier corporation wholly owned by Durbano, and Wyoming and Colorado Railroad Company, Inc. (“WYCO”), a Class III carrier wholly owned by Durbano,¹ (collectively, the “Parties”) hereby submit this notice, pursuant to 49 C.F.R. §1180.2(d)(3), for an exemption from the prior approval and authorization requirements of the Surface Transportation Board (“STB” or “Board”) for a transaction within the Durbano corporate family. The transaction subject to this Notice of Exemption involves Saratoga’s acquisition and operation of WYCO’s approximately 23.71-mile rail line between milepost 0.57 (at Walcott, WY) and milepost 24.28 (at Saratoga, WY) in Carbon County, Wyoming

¹ Durbano has controlled WYCO since WYCO acquired a 131.52 mile rail line from Union Pacific Railroad Company (“UP”) in 1987. See Wyoming and Colorado Railroad Company, Inc. – Acquisition and Operation Exemption – Certain Lines of Union Pacific Railroad Company, FD 31140 (ICC served Nov. 30, 1987) (“1987 Acquisition”). The line being acquired by Saratoga as part of this Notice of Exemption was part of the 1987 Acquisition and is known as Encampment Branch or the “EB Line.” The remainder of the former UP line acquired in the 1987 Acquisition have either been abandoned or sold through a series of proceedings. See Wyoming and Colorado Railroad Co., Inc.; Abandonment Exemption in Jackson County, CO, AB-307 (Sub-No. 1X), 55 FR 25898 (ICC served June 25, 1990); Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – Jackson County, CO, AB-307 (Sub-No. 2X), 60 FR 26901 (ICC served May 19, 1995 and Sept. 15, 1995); Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Albany County, WY, AB-307 (Sub-No. 3x) (STB served September 16, 1996 as modified by the Board’s subsequent decisions served May 16, 2003 and December 31, 2003); Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Albany County, WY, AB-307 (Sub-No. 4x) (STB served October 10, 2003, as modified by the Board’s subsequent decisions served Nov. 10, 2003 and February 27, 2009).

(referred to herein as the “EB Line”), and Durbano’s continuance in control of Saratoga upon Saratoga becoming a carrier while remaining in control of WYCO and three other Class III STB regulated carriers currently owned and controlled by Durbano: Southwestern Railroad, Inc. (“SWRR”); Cimarron Valley Railroad, L.C. (“CVR”); and Clarkdale Arizona Central Railroad, L.C. (“CACR”).²

In support of this Notice of Exemption and in compliance with 49 C.F.R. §1180.4(g), the Parties state the following:

49 C.F.R. §1180.6(a)(1)(i) –Brief Summary of Proposed Transaction, Description of Applicants, Address for Applicants, and Counsel for Applicants:

Brief Summary of Proposed Transaction

This transaction involves the transfer of ownership of the EB Line from WYCO to Saratoga, and Durbano’s continuance in control of Saratoga when it becomes a carrier (upon acquiring the EB Line) while remaining in control of SWRR, CVR, and CAGR. The proposed transaction qualifies for an exemption under 49 C.F.R. §1180.2(d)(3) because the proposed transaction is within a corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Operational changes, if any, would be de minimis.

Applicants

Durbano (individually and through his control and ownership of Western Group and Snowy Range Cattle Company, both non-carrier holding companies) currently owns and controls four Class III carriers subject to the STB’s jurisdiction: WYCO, SWRR, CVR, and CACR. Durbano’s STB regulated rail carrier subsidiaries are located as follows: WYCO operates in Oregon and owns, but

² Mr. Durbano also owns and Western Group manages Verde Canyon Railroad, LLC, an intrastate passenger excursion railroad not subject to the Board’s jurisdiction.

does not operate, the EB Line in Wyoming; SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; and CACR operates in Arizona.

WYCO operates in Oregon as the Oregon Eastern Railroad (“OERR”) over an approximately 25-mile line extending from milepost 1.88 (at Ontario) to milepost 26.88 (near Celatom) in Oregon. The OERR line is the remaining portion of a line that WYCO acquired from Union Pacific Railroad Company via a feeder line application.³ WYCO owns, but does not operate, the EB Line. The EB Line is a non-operating carrier. The EB Line was authorized for abandonment in 2006⁴ and the tracks, ties, and other track materials were salvaged. For a variety of reasons, WYCO never fully consummated the abandonment of the EB Line and never filed a notice of consummation. As a result, WYCO’s abandonment authority expired and the corridor remains a line of railroad subject to the STB’s jurisdiction.⁵ WYCO is selling the EB Line to its newly created non-carrier sister company, Saratoga LLC. A map of the EB Line that is being sold within the corporate family is attached hereto as Exhibit A.

Saratoga is wholly-owned non-carrier formed by Durbano. Saratoga will become a common carrier railroad subject to the Board’s jurisdiction upon consummation of this corporate family transaction and its acquisition of the EB Line from WYCO. Saratoga certifies that its annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. More specifically, Saratoga certifies that annual revenues on the EB Line will not exceed \$5 million.

³ Wyoming Colorado Railroad, Inc. – Feeder Line Acquisition – Union Pacific Railroad Company Line Between Ontario And Burns, Oregon, FD 31377 (ICC served March 28, 1989). The Ontario-Celatom portion is the only remaining portion of the line owned and operated by WYCO.

⁴ See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB-307 (Sub-No. 6X) (STB served May 31, 2006).

⁵ Abandonment And Discontinuance Of Rail Lines And Rail Transportation Under 49 U.S.C. 10903, 1 S.T.B. 894, 1996 STB LEXIS 352 (1996).

Names, Addresses, and Phone Numbers of Involved Parties.

David Durbano	Wyoming and Colorado Railroad	Saratoga Railroad, LLC
P.O. Box 1544	Company, Inc.	3819 Airport Road
Ogden, Utah 84402	P.O. Box 1544	N714
	Ogden, Utah 84402	Ogden, UT 84405

Name of Counsel to Whom Questions Can Be Addressed.

Correspondence on this Verified Notice of Exemption should be addressed to:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

49 C.F.R. §1180.6(a)(1)(ii) --Consummation Schedule.

The Parties propose to consummate the proposed transaction on or about February 16, 2017 (30 days after filing this Verified Notice of Exemption), or upon the effective date of this exemption, if later.

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

The purpose sought to be accomplished through this transaction is to undertake a corporate reorganization for the eventual purpose of selling certain assets and stock of various Durbano controlled railroad companies, except for Saratoga.

49 C.F.R. §1180.6(a)(5) -- List of States in Which the Parties' Property is Located.

Durbano's rail carrier subsidiaries are located as follows:

<u>Carrier:</u>	<u>State:</u>
Wyoming and Colorado Railroad Company, Inc.	Wyoming and Oregon
Southwestern Railroad, Inc.	New Mexico
Cimarron Valley Railroad, L.C.	Kansas, Oklahoma, and Colorado
Clarkdale Arizona Central Railroad, L.C.	Arizona

The Line to be transferred from WYCO to Saratoga is located in Wyoming.

49 C.F.R. §1180.6(a)(6) -- Maps Exhibit.

Attached to this Notice as Exhibit A are two maps:

- (1) The first map shows the location of the other railroads controlled and owned by Durbano.
- (2) The second map shows the EB Line.

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

Because Durbano owns and controls all of the entities involved in this transaction, Durbano has not entered into any agreements or written instruments to undertake the proposed transactions.

49 C.F.R. §1180.4(g)(1)(i) -- Level of Labor Protection.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

49 C.F.R. §1105.6 through 1105.8--Environmental Report.

The proceeding is exempt from environmental review under 49 CFR §1105.6(c)(2)(ii) because the proposed action will not cause any significant changes in carrier operations. In fact, operational changes, if any, would be de minimis.

In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b)(2) because the transaction involves the sale, lease, or transfer of property between corporate affiliates with no significant changes in operations.

Certification of Annual Revenues upon Consummation of Transaction.

The Applicant certifies that the projected annual revenue on the EB Line subject to this transaction is less than \$5 Million.

Caption Summary.

While not required by the regulations, attached to this Notice as Exhibit B is a proposed caption summary.

Respectfully submitted,



**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

January 17, 2017

**Attorneys for David L. Durbano, Wyoming and
Colorado Railroad Company, Inc., and Saratoga
Railroad, LLC**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36091

**DAVID L. DURBANO, WYOMING AND COLORADO RAILROAD COMPANY, INC.,
AND SARATOGA RAILROAD, LLC
– CORPORATE FAMILY TRANSACTION –**

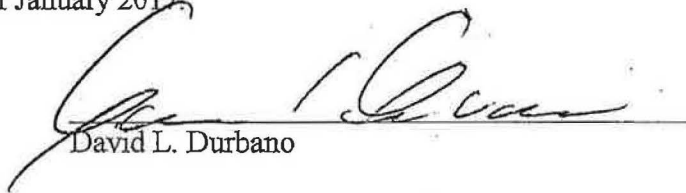
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

VERIFICATION

VERIFICATION

I, David L. Durbano, hereby verify under penalty of perjury on behalf of myself, Wyoming and Colorado Railroad Company, Inc. ("WYCO"), and Saratoga Railroad, LLC ("Saratoga") that to the best of my knowledge the foregoing notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of myself, WYCO, and Saratoga in connection with this proceeding before the Surface Transportation Board.

Executed this 17 day of January 2017,



David L. Durbano

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36091

**DAVID L. DURBANO, WYOMING AND COLORADO RAILROAD COMPANY, INC.,
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– CORPORATE FAMILY TRANSACTION –**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

EXHIBIT A

MAPS

Exhibit A: All Lines

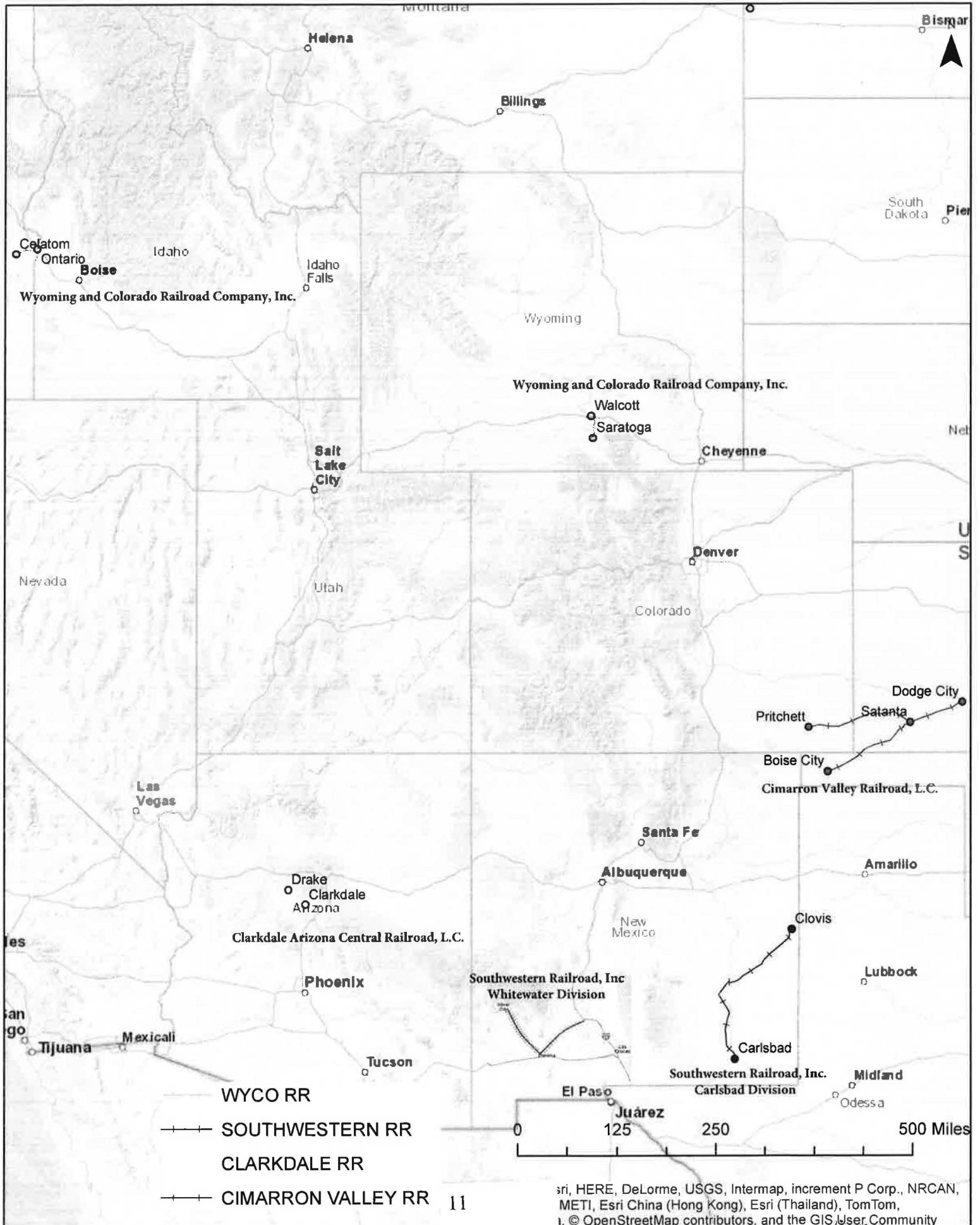
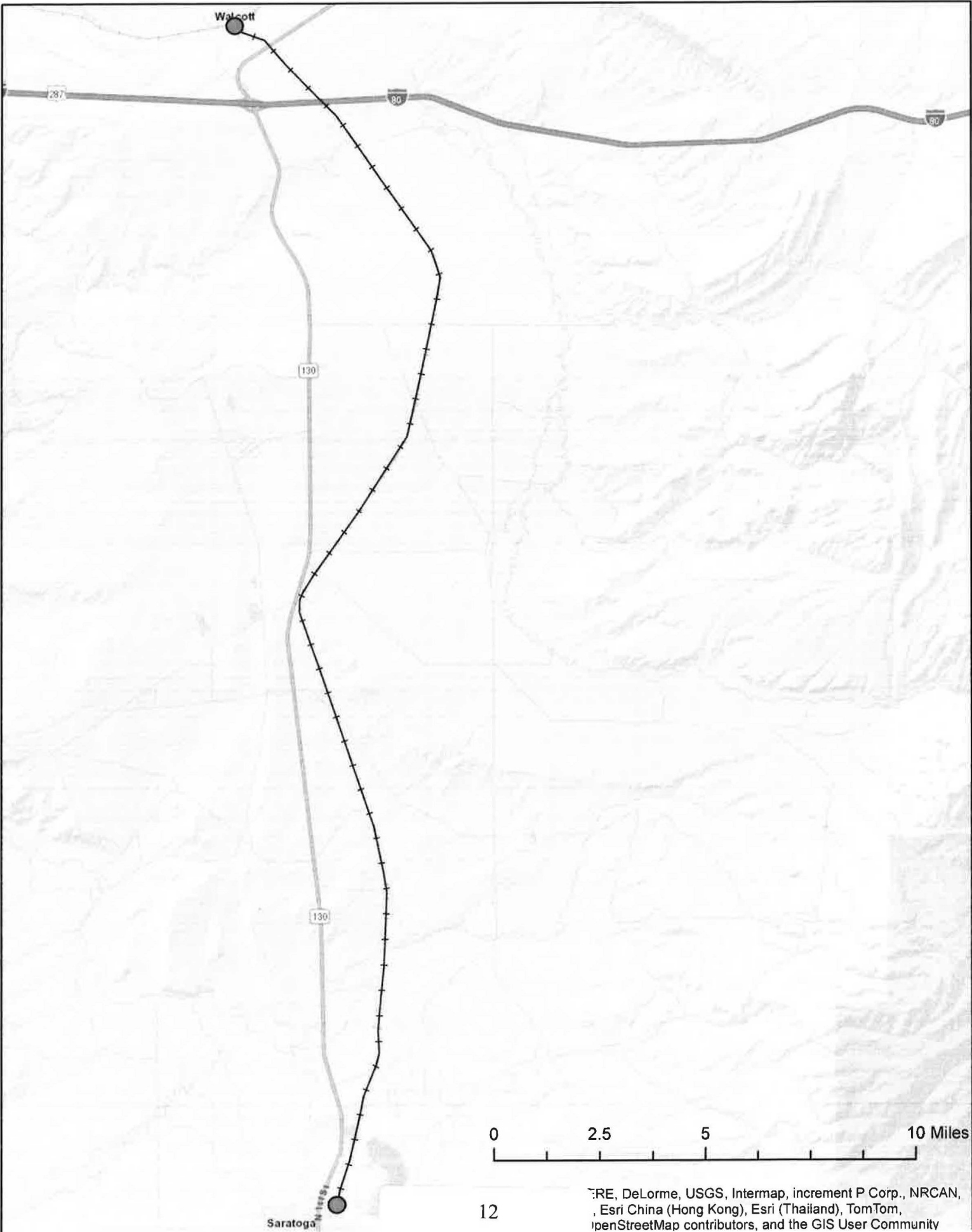


Exhibit A2: EB Line



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EXHIBIT B

CAPTION SUMMARY

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD NOTICE OF EXEMPTION

(Finance Docket No. 36091)

DAVID L. DURBANO, WYOMING AND COLORADO RAILROAD COMPANY, INC., AND SARATOGA RAILROAD, LLC – CORPORATE FAMILY TRANSACTION –

David L. Durbano (“Durbano”), Saratoga Railroad, LLC (“Saratoga”), a non-carrier corporation wholly owned by Durbano, and Wyoming and Colorado Railroad Company, Inc. (“WYCO”), a Class III carrier wholly owned by Durbano,¹ (collectively, the “Parties”) hereby submit this notice, pursuant to 49 C.F.R. §1180.2(d)(3), for an exemption from the prior approval and authorization requirements of the Surface Transportation Board (“STB” or “Board”) for a transaction within the Durbano corporate family. The transaction subject to this Notice of Exemption involves Saratoga’s acquisition and operation of WYCO’s approximately 23.71-mile rail line between milepost 0.57 (at Walcott, WY) and milepost 24.28 (at Saratoga, WY) in Carbon County, Wyoming (referred to as the “EB Line”), and Durbano’s continuance in control of Saratoga upon Saratoga becoming a carrier while remaining in control of WYCO and three other Class III STB regulated

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carriers currently owned and controlled by Durbano: Southwestern Railroad, Inc. (“SWRR”); Cimarron Valley Railroad, L.C. (“CVR”); and Clarkdale Arizona Central Railroad, L.C. (“CACR”).

Durbano, Saratoga, and WYCO intend to consummate this transaction on or after the effective date set by the Board for Saratoga’s acquisition of the EB Line.

Durbano, through Western Group and Snowy Range Cattle Company, both non-carrier holding companies owned and controlled by Durbano, currently directly and indirectly controls four Class III rail carriers subject to the STB’s jurisdiction: WYCO, SWRR, CVR, and CACR.²

Durbano’s rail carrier subsidiaries are located as follows: WYCO operates in Oregon doing business as the Oregon Eastern Railroad; SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; and CACR operates in Arizona. WYCO owns, but does not operate, the EB Line that is involved in this Notice of Exemption.³

If the Notice of Exemption contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) can be filed at any time. The filing of a Petition to Revoke will not automatically stay the proposed transaction. Any petitions to revoke must be filed with the Board and served on CEI’s representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820.

Decided: _____

By the Board

² Mr. Durbano also owns and Western Group manages Verde Canyon Railroad, LLC, an intrastate passenger excursion railroad not subject to the Board’s jurisdiction.

³ The EB Line was authorized for abandonment in 2006 and the tracks, ties, and other track materials were salvaged. See Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon County, WY, AB-307 (Sub-No. 6X) (STB served May 31, 2006). For a variety of reasons, WYCO never fully consummated the abandonment of the EB Line and never filed a notice of consummation. As a result, WYCO’s abandonment authority expired and the corridor remains a line of railroad subject to the STB’s jurisdiction.