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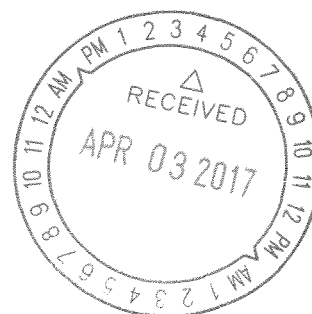
ENTERED
Office of Proceedings
April 3, 2017
Part of
Public Record

William A. Mullins
E-Mail: wmullins@bakerandmiller.com

(202) 663-7823 (Direct Dial)

April 3, 2017

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



Re: Texas & Eastern Railroad, LLC – Change in Operators Exemption – Texas State Railroad Authority, FD 36110

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and eleven copies of a Verified Notice of Exemption (“Notice”) under 49 C.F.R. §1150.31, et seq. filed on behalf of Texas & Eastern Railroad, LLC.

Please acknowledge receipt and filing of the Notice by date-stamping the enclosed eleventh copy and returning it to the courier to return to me. This submission also includes an electronic copy of the entire filing and a separate electronic copy of a draft Federal Register notice.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(11)(ii), I have enclosed a filing fee check in the amount of \$1,900.00. 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 Texas & Eastern Railroad, LLC

cc: Stuart A. Fredman
Bruce Carswell

FILED
April 3, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 3, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

**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**

April 3, 2017

**Attorneys for Texas & Eastern Railroad,
LLC**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC - CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §1150.31, et. seq., Texas & Eastern Railroad, LLC (“T&ER”),¹ a non-carrier, hereby files this Verified Notice of Exemption (“Notice”) to permit T&ER to assume operations over approximately 27 miles of railroad line (the “Line”)² between Rusk and Palestine, TX. The Line is currently owned by the Texas Parks and Wildlife Authority and leased to the Texas State Railroad Authority (“TSRA”). In 2012, TSRA leased the Line to Rusk, Palestine & Pacific Railroad, LLC (“RP&P”).³ Upon the effective date of this Notice, T&ER will become a carrier and replace RP&P as the Line’s exclusive lessee and operator. RP&P is

¹ David L. Durbano, who owns 100% of T&ER’s parent company, Snowy Range Cattle Company, Inc. (“SRCC”), is filing a related proceeding to continue in control of T&ER upon it becoming a carrier while remaining in control of other existing Durbano owned and controlled Class III STB regulated carriers. See David L. Durbano – Continuance in Control – Texas & Eastern Railroad, LLC, FD 36111 (filed concurrently).

² There are currently no mileposts on the Line.

³ Rusk, Palestine & Pacific Railroad, LLC – Operation Exemption – Texas State Railroad Authority, FD 35669 (STB served September 14, 2012). In order to facilitate interchange between RP&P and Union Pacific Railroad Company (“UP”), RP&P and UP have an existing agreement that allows RP&P to operate over approximately 1.3 miles of track owned and operated by the UP between a point where the Line connects with UP and UP’s yard located in Palestine, TX. T&ER will either take assignment of this existing interchange agreement or enter into a new agreement.

aware that TSRA plans to change operators over the Line. The Line is located in Anderson and Cherokee Counties in Texas.

REQUIRED INFORMATION

In support of the Notice, T&ER submits the following information as required by 49 C.F.R. § 1150.32-1150.34:

(a) **Full name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

Texas & Eastern Railroad, LLC
3819 Airport Road, N714
Ogden, UT 84405-1532

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

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
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(c) **Statement Concerning Agreement: 49 C.F.R. §1150.33(c)**

T&ER has reached an agreement in principle with TSRA to replace RP&P as the exclusive lessee and operator of the Line upon the effective date established by the Board ("Agreement"). A final version of the Agreement is expected to be executed shortly.

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

T&ER will replace RP&P as the exclusive operator of the Line pursuant to a lease. Upon T&ER's assumption of operations, RP&P will have no further common carrier obligation on the Line.

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

T&ER, a non-carrier, is filing this Notice to replace RP&P as the exclusive lessee and freight operator of the Line.

(1) Name and address of railroad transferring the subject property:

Texas State Railroad Authority
c/o City of Palestine, Texas
504 N Queen St
Palestine, TX 75801

(2) Proposed time schedule for consummation:

The transaction is expected to be consummated on or after May 3, 2017
(30 days after filing of the Notice).

(3) Mileposts of the subject property:

There are currently no mileposts on the Line. The Line is located in
Anderson and Cherokee Counties in Texas

(4) Route miles being acquired:

The Line that T&ER seeks to lease and operate totals approximately 27
miles.

(f) **Map: 49 C.F.R. § 1150.33(f)**

A map of the Line being is attached as Exhibit A.

(g) **Certification of Revenues: 49 C.F.R. § 1150.33(g)**

T&ER hereby certifies that its projected annual revenues resulting from the transaction will not exceed those that would qualify it as a Class III carrier. See certification attached as Exhibit B.

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

T&ER hereby certifies that the underlying lease and operation agreement does not contain any provision or agreement that would limit future interchange with a third-party connecting carrier.

ENVIRONMENTAL AND HISTORIC IMPACTS

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is exempt from environmental reporting requirements because 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).

Also, under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval would be required for T&ER to discontinue or TSRA to abandon service. There are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

CAPTION SUMMARY

A caption summary in the appropriate form (49 C.F.R. § 1150.34) is attached as Exhibit C to the Notice.

SHIPPER NOTICE

Pursuant to 49 C.F.R. § 1150.32(b), T&ER hereby certifies that it has contemporaneously with this filing, furnished all known shippers on the Line with notice of the proposed change in operators exemption. See Exhibit D to the Notice.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'William A. Mullins', is written over a horizontal line.

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

April 3, 2017

Attorneys for Texas & Eastern Railroad, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

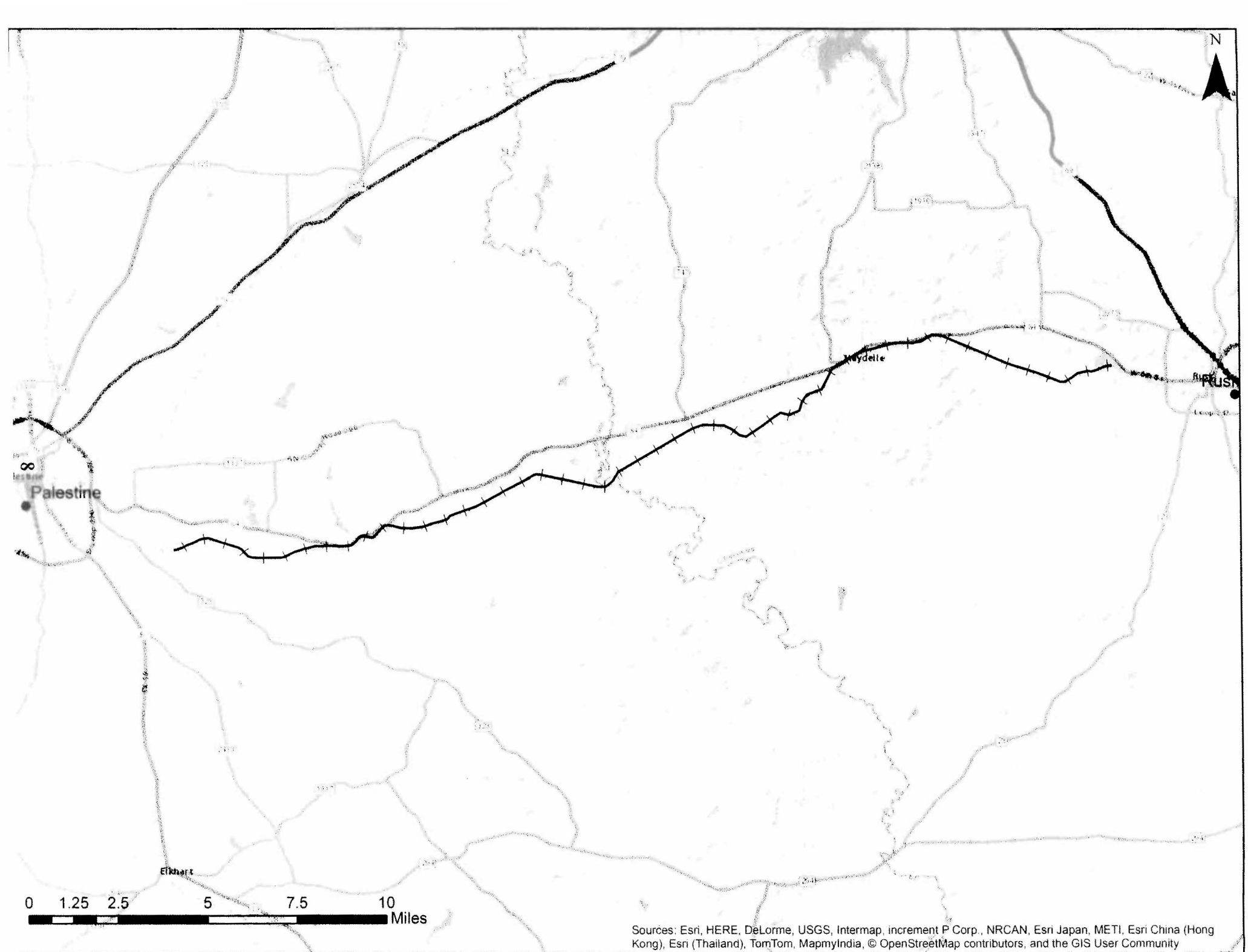
FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT B

**TEXAS & EASTERN RAILROAD, LLC
CERTIFICATION OF REVENUES 49 C.F.R. § 1150.33(g)**

CERTIFICATION OF REVENUES

The State of Texas)
) SS:
County of Lubbock)

I, Bruce Carswell, Chief Operating Officer, The Western Group,⁴ hereby certify that the projected annual rail revenues of the Texas & Eastern Railroad, LLC (“T&ER”) will not as a consequence of the transaction result in T&ER becoming a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 C.F.R. §1150.35.

Executed this 31st day of March 2017

Bruce Carswell
The Western Group

⁴ The Western Group manages the various short line railroads and railroad related companies owned and controlled by Mr. Dave Durbano, including the Texas & Eastern Railroad, LLC.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS
EXEMPTION – TEXAS STATE RAILROAD AUTHORITY**

Texas & Eastern Railroad, LLC (“T&ER”), non-carrier, has filed a verified notice of exemption to assume operations over approximately 27 miles of railroad (the “Line”) between Rusk and Palestine, TX, currently owned by the Texas Parks and Wildlife Authority and leased to the Texas State Railroad Authority (“TSRA”).¹ In 2012, TSRA leased the Line to Rusk, Palestine & Pacific Railroad, LLC (“RP&P”). Upon exemption of the instant transaction, T&ER will become a carrier and replace RP&P as the Line’s exclusive lessee and operator. T&ER expects to consummate this transaction and commence operation of the Line on or after the effective date of this notice of exemption.

Comments must be filed with the Board and served on T&ER’s representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820. This notice is filed under 49 C.F.R. § 1150.31, et. seq. If the 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.

Decided: _____

By the Board

¹ There are currently no mileposts on the Line.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT D

**CERTIFICATE OF COMPLIANCE WITH
49 C.F.R § 1150.32(b)
SERVICE REQUIREMENTS**

CERTIFICATION OF SERVICE

I hereby certify that, in compliance with the notice requirements of 49 C.F.R. § 1150.32(b), I have served a true copy of the foregoing change of operator notice of exemption by first-class mail, postage prepaid, or by a more expeditious manner, this 3rd day of April, 2017, on all known shippers on the railroad line that is the subject of the FD 36110 proceeding.

A handwritten signature in black ink, appearing to read 'William A. Mullins', written over a horizontal line.

William A. Mullins
Attorney for Texas & Eastern Railroad, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT E

VERIFICATION

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36110

**TEXAS & EASTERN RAILROAD, LLC – CHANGE IN OPERATORS EXEMPTION –
TEXAS STATE RAILROAD AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Bruce Carswell, Chief Operating Officer, The Western Group, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Texas & Eastern Railroad, LLC and the foregoing verified notice of exemption is true and correct to the best of my knowledge and belief.

Executed this 31st day of March 2017



Bruce Carswell
The Western Group