

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36717

307115

ENTERED
Office of Proceedings
September 13, 2023
Part of
Public Record

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— OPERATION EXEMPTION —
RAILROAD LINE OF WEST VIRGINIA STATE RAIL AUTHORITY IN
HAMPSHIRE, HARDY AND GRANT COUNTIES, WV

**VERIFIED AMENDED NOTICE OF EXEMPTION OF
OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

**ATTORNEY FOR OMNITRAX SBVR, LLC
d/b/a SOUTH BRANCH VALLEY RAILROAD**

Dated: September 13, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36717

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— OPERATION EXEMPTION —
RAILROAD LINE OF WEST VIRGINIA STATE RAIL AUTHORITY IN
HAMPSHIRE, HARDY AND GRANT COUNTIES, WV

**VERIFIED AMENDED NOTICE OF EXEMPTION OF
OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”), a non-carrier controlled by short line holding company OmniTRAX Holdings Combined, Inc. (“OmniTRAX”),¹ hereby files this amended notice of exemption under 49 C.F.R. part 1150, subpart D, to assume common carrier operations over a railroad line (the “Line”) located in Hampshire, Hardy, and Grant Counties, West Virginia, that is currently owned and operated by the West Virginia State Rail Authority (the “Rail Authority” – formerly known as the West Virginia Railroad Maintenance Authority – also doing business since 1978 as the South Branch Valley Rail Road).²

¹ OmniTRAX Holdings Combined (“OmniTRAX”) and HGS Railway Holdings, Inc. (“HGS”) have invoked the Board’s class exemption procedures at 49 C.F.R. § 1180.2(d)(2) to continue in control of OSL, along with all of the existing railroad common carriers currently controlled in common by OmniTRAX and HGS, once OSL becomes a railroad common carrier. *See OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. – Continuance in Control Exemption – OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad*, FD 36716 (filed August 14, 2023).

² OSL tenders the present verified amended notice of exemption pursuant to an order or the Director of the Office of Proceedings (the “Director”) served on September 8, 2023 (the “Director’s Order”). The Director’s Order has questioned the propriety of OSL’s invocation of the change of operator class exemption procedures in OSL’s original August 14 exemption

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

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

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

OmniTRAX SBVR, LLC
d/b/a South Branch Valley Railroad
252 Clayton Street
Denver, CO 80206

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

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

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1504

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

OSL and the Rail Authority have reached terms under which OSL will assume possession of, and the right to provide common carrier service over, the Rail Authority-owned

filing. As OSL understands it, the Director's Order has taken issue with the proposition that OSL's commencement of common carrier operations over the Line in place of the Rail Authority would serve to relieve the Rail Authority of a residual common carrier obligation. See Director's Order, 2. OSL has amended its exemption notice as directed, acknowledging here that OSL cannot demonstrate that invoking the change of operator class exemption procedures was appropriate under the circumstances. Furthermore, having considered agency regulations and precedent (including that offered in the Director's Order), OSL is persuaded, and hereby acknowledges, that the Rail Authority, as a state agency owner of the Line, would retain a residual common carrier obligation post-transaction. Accordingly, OSL has amended its notice of exemption to re-title the proceeding, and to otherwise clarify the record as it has been directed (and generously has been permitted) to do.

Line. In keeping with the terms of its agreement with the Rail Authority, OSL hereby seeks Board authorization to undertake the proposed transaction.

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

OSL will offer common carrier service over the Line on or after the effective date of this exemption.

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

The Line is a former branch of the Baltimore & Ohio Railroad Co. (“B&O”) extending from milepost 0.0 at Green Spring, West Virginia (the current point of interchange with CSX Transportation, Inc. – “CSXT”), to milepost 52.4 at Petersburg, West Virginia, a total of approximately 52.4 route miles. In 1978, the Rail Authority obtained Interstate Commerce Commission (“ICC”) authority to acquire the Line from B&O, which had secured authorization to abandon the Line. *See West Virginia Railroad Maintenance Authority d/b/a South Branch Valley Rail Road*, FD 28778, 43 *Fed. Reg.* 30642 (July 17, 1978) (which also discusses B&O’s abandonment authorization for the Line pursuant to ICC docket number AB-19 (Sub-No. 32)).

The Rail Authority, a subdivision of the State of West Virginia,³ will retain ownership of the Line. On or after the effective date of the subject class exemption, OSL intends to commence common carrier service over the Line.⁴

³ West Virginia State Rail Authority
120 Water Plant Drive
Moorefield, WV 26836

⁴ Under the terms of its agreement with the Rail Authority, OSL has committed to assume operation of the Line *by no later than November 1, 2023*. For this reason, OSL appeals to the Board to process this exemption notice in the ordinary fashion to permit closing on or before that date in keeping with the wishes and transition plans of the Rail Authority.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and indicating the area served is attached as Exhibit A.

Certification: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B.

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

OSL is not contractually limited in its ability to interchange of traffic with any third-party connecting carrier. See Exhibit B. As matters currently stand, OSL's only interline connection is CSXT.

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

OSL's projected annual revenue is not expected to 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.

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

Under 49 C.F.R. § 1105.6(c)(2), the proposed operation of the Line is exempt from environmental reporting requirements. OSL's proposed common carrier operations 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), OSL's proposed operation of the Line also is exempt from historic preservation reporting requirements, as the proposed change of operators is not expected to impact historic structures along the Line that are 50 years old or older.

Caption Summary: 49 C.F.R. § 1150.34

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

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

**ATTORNEY FOR OMNITRAX SBVR, LLC d/b/a
SOUTH BRANCH VALLEY RAILROAD**

Dated: September 13, 2023

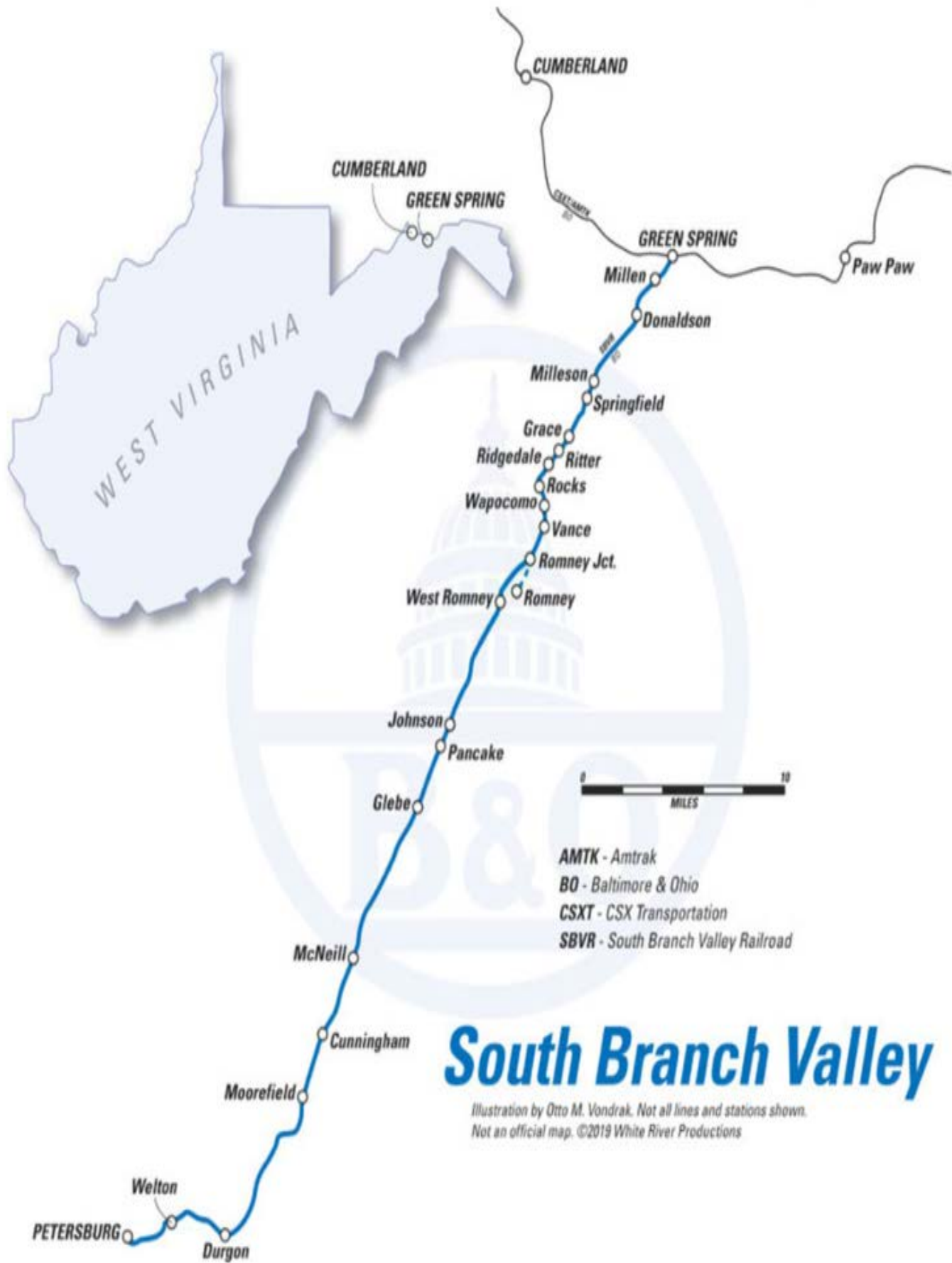
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36717

**OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— OPERATION EXEMPTION —
RAILROAD LINE OF WEST VIRGINIA STATE RAIL AUTHORITY IN
HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36717

**OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— OPERATION EXEMPTION —
RAILROAD LINE OF WEST VIRGINIA STATE RAIL AUTHORITY IN
HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT B

CERTIFICATION

CERTIFICATION

I, John G. Spieglerman, hereby certify that the annual rail revenue of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad ("OSL") is not projected to 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). I further certify that OSL is not contractually limited in its ability to interchange of traffic with any third-party connecting carrier.

John G. Spieglerman
Chief Legal Officer and General Counsel of
OmniTRAX Holdings Combined on behalf of
OmniTRAX SBVR, LLC d/b/a South Branch
Valley Railroad

September 13, 2023

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— OPERATION EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WV**

EXHIBIT C

FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36717

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD
— OPERATION EXEMPTION —
RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT COUNTIES, WVOMNI RIVER

OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”), a non-carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, et seq., to initiate common carrier operations over a roughly 52.4-mile line of railroad (the “Line”) owned by the West Virginia State Rail Authority and located in Hampshire, Hardy, and Grant Counties, West Virginia, extending from milepost 0.0 at Green Spring, West Virginia (the current point of interchange with CSX Transportation, Inc. – “CSXT”), to milepost 52.4 at Petersburg, West Virginia.

OSL expects to commence common carrier operations over the Track on or after the effective date of this exemption.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite
800 Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(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: September __, 2023

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

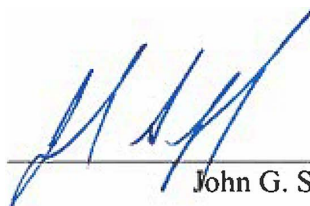
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VERIFICATION

VERIFICATION

I, John G. Spiegleman, hereby verify under penalty of perjury that – (a) I am the Chief Legal Officer and General Counsel of OmniTRAX Holdings Combined, parent company of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (“OSL”); (b) I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information, and belief; and (c) I am authorized to make this verification on behalf of OSL.



John G. Spiegleman

September 13, 2023