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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

ENTERED
Office of Proceedings
August 30, 2022
Part of
Public Record

Phone: (312) 252-1500
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ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

August 30, 2022

VIA ELECTRONIC FILING

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: **FD 36640**
Midland Railroad LLC — Acquisition and Change in
Operator Exemption — Midland Railway Historical Association

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Change in Operator Notice of Exemption of the Midland Railroad LLC** filed under 49 C.F.R. Part 1150, subpart D. Payment of the filing fee has been tendered via Pay.gov.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Midland Railroad LLC

Attachment

FEE RECEIVED
August 30, 2022
SURFACE
TRANSPORTATION BOARD

FILED
August 30, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36640

MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

**VERIFIED NOTICE OF EXEMPTION OF
MIDLAND RAILROAD LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

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

**ATTORNEYS FOR MIDLAND
RAILROAD LLC**

Dated: August 30, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36640

MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

**VERIFIED NOTICE OF EXEMPTION OF
MIDLAND RAILROAD LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Midland Railroad LLC (“MRR”), currently a non-carrier, files this Verified Notice of Exemption (“Notice”) under 49 C.F.R. part 1150, subpart D, to acquire, and to operate as a common carrier over, approximately 11.09 miles of railroad track (the “Line”) owned by the Midland Historical Railway Association (“MHRA”), also a non-carrier.¹ Under the proposed transaction, MRR will replace Leavenworth, Lawrence & Galveston Railroad (doing business as the Baldwin City & Southern Railroad Company – “BC&S”) as the common carrier service provider on the Line.² MRR is controlled by a consortium of individuals that, separately or collectively, do not possess a controlling interest in any other U.S. railroad common carrier.

¹ *Leavenworth, Lawrence & Galveston Railroad d/b/a Baldwin City & Southern Railroad Company — Operation Exemption — Midland Railway Company*, FD 36300 (STB served Aug. 21, 2019) (“*BC&S - Exemption*”). MRR notes the discrepancy between the given non-carrier owner of the Line here, compared to the non-carrier entity identified as the Line owner in *BC&S – Exemption*. MRR has reason to believe that the exemption filing tendered in *BC&S Exemption* was in error. MRR has found no record of a “Midland Railway Company” as an owner of the Line (or even as a distinct corporate entity). MRR’s investigation into the matter indicates that the owner of the Line at the time of the *BC&S – Exemption* filing was MHRA, and not “Midland Railway Company.” It is possible, however, that MHRA may have at one time used “Midland Railway Company” as a business name.

² *Id.*

Under the requirements of 49 C.F.R. § 1150.33, MRR 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:

Midland Railroad LLC
1515 High Street
Baldwin City, KS 66006

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

Correspondence on this transaction should be sent to:

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

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

MRR and MHRA have reached an agreement pursuant to which MRR will acquire the Line and will, upon consummation of the acquisition transaction, replace BC&S as railroad common carrier service provider on the Line. MRR understands that MHRA controls BC&S, the incumbent carrier, and that, under the circumstances, BC&S does not object to the proposed transaction by which it would be replaced on the Line by MRR.

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

MRR will operate and provide all rail common carrier service to shippers on the Line in place of BC&S.

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

This transaction involves MRR's proposed purchase of, and commencement of

common carrier service (in place of BC&S) over, approximately 11.09 route miles of MHRA-owned railroad track (the Line) extending between milepost 14.95 near Baldwin City, Kansas, and milepost 26.04 at Ottawa, Kansas, where the Line connects with a line of BNSF Railway Company (“BNSF”) at BNSF milepost 55.8. Attached as Exhibit A is a map of the Line.

MHRA purchased the track from BNSF predecessor Atchison Topeka & Santa Fe Railway Company (the “Santa Fe”) after Santa Fe abandoned the Line sometime after 1988.³ In 2019, BC&S obtained authorization to provide common carrier service over the Line pursuant to *BC&S - Exemption*. MRR has reached an agreement with MHRA to acquire the Line and, in so doing, replace MHRA-controlled BC&S as a common carrier operator.

MRR plans to consummate its acquisition of, and to commence common carrier operations over, the Line in place of BC&S on or after the anticipated September 29, 2022 effective date of this notice.

The name and address of the transferor entity is as follows:

Midland Historical Railway Association
1515 High Street
Baldwin City, KS 66006

Map: 49 C.F.R. § 1150.33(f)

Attached as Exhibit A.

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

The proposed transaction will not cause MRR revenues to meet or exceed the Class I or II thresholds. See attached Certification and Verification.

³ See *gen., BC&S - Exemption* (STB filings of May 3 and June 19, 2019).

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

The agreement governing this transaction does not include any provision that may limit future interchange with a third-party connecting carrier. See attached Certification and Verification.

Shipper Notice: 49 C.F.R. § 1150.32(b)

The Board's rules require the proponent of a change in operator notice of exemption to notify customers of the proposed transaction. There are no customers currently located on the Line, and accordingly, there is no one to which to supply notice of the transaction.

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

MRR does not anticipate its annual revenues will exceed \$5 million. Accordingly, no labor notice is required.

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

Under 49 C.F.R. § 1105.6(c)(1), a change in operator transaction such as this one 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)(3), the proposed change in operator transaction is also exempt from historic preservation reporting requirements. The proposed transaction is intended to facilitate common carrier rail service over the Line; it will not substantially change the maintenance of rail property. Additionally, a common carrier operator requires further Board approval to discontinue service, and 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. § 1150.32(a)

A Caption Summary is attached as Exhibit B.

Respectfully submitted,

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

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR MIDLAND
RAILROAD LLC**

Dated: August 30, 2022

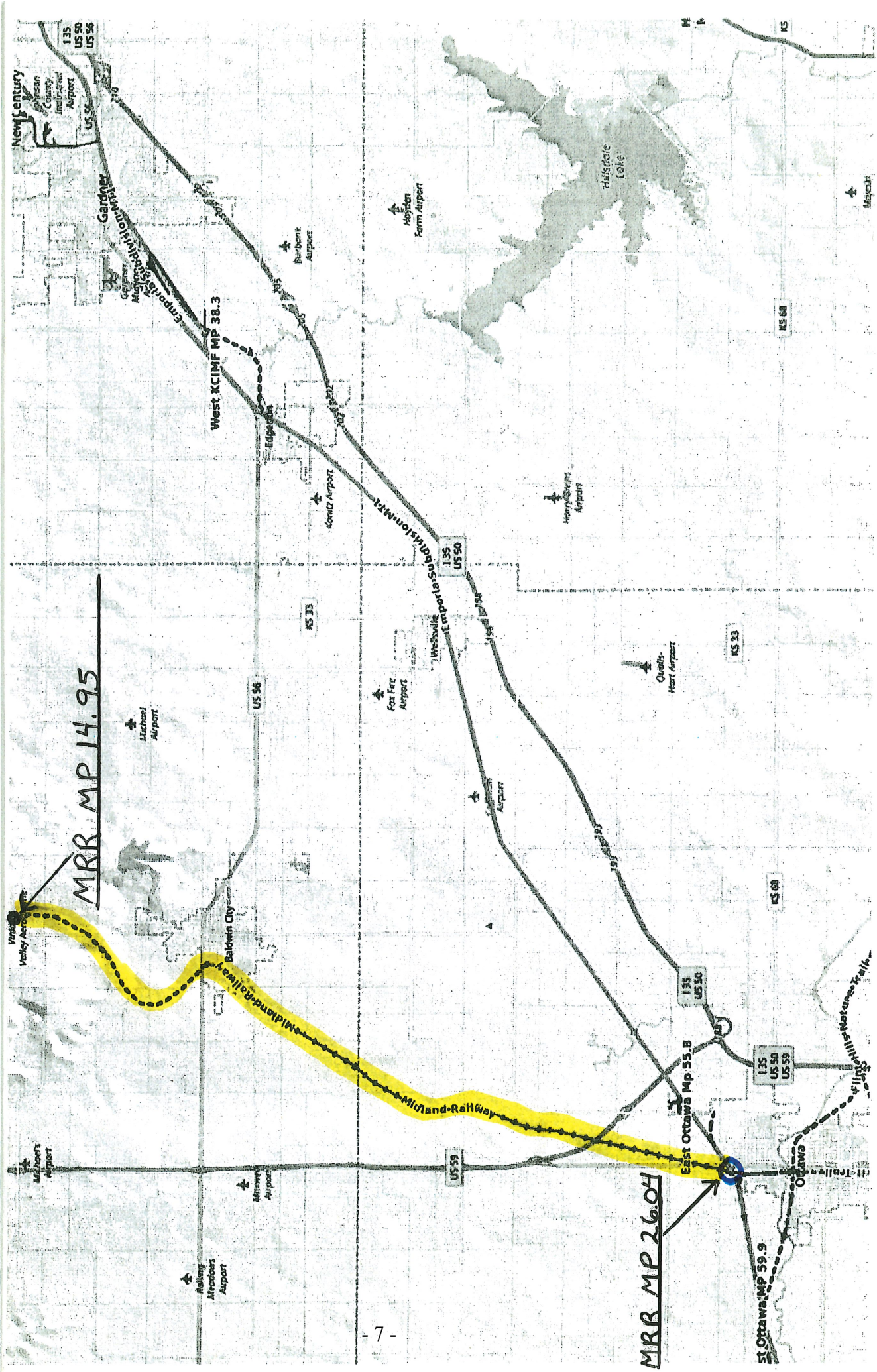
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36640

**MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36640

**MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36640

MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

Midland Railroad LLC (“MRR”), a non-carrier, has filed a notice of exemption (“Notice”) to operate approximately 11.09 route miles of railroad track (the “Line”) owned by Midland Historical Railway Association (also a non-carrier) extending between milepost 14.95 near Baldwin City, Kansas, and milepost 26.04 at Ottawa, Kansas. By way of the proposed transaction, MRR will replace Leavenworth, Lawrence & Galveston Railroad (doing business as the Baldwin City & Southern Railroad Company) as the common carrier service provider on the Line.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606
(312) 252-1500

The notice is filed under 49 C.F.R. § 1150.31. 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.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36640

**MIDLAND RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

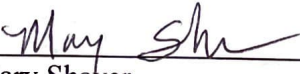
CERTIFICATION AND VERIFICATION

VERIFICATION AND CERTIFICATION

Mary Shaver, being duly sworn, states as follows:

1. I am the Chief Operating Officer of the Midland Railroad LLC ("MRR").
2. I certify that MRR's expected annual revenues will not exceed \$5 million, and, thus, will not result in MRR becoming Class I or II rail carrier under the applicable thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I certify that the agreement governing the proposed transaction does not have an interchange commitment.
4. I am qualified and authorized to tender this Verification and Certification.
5. I have read the foregoing Notice of Exemption and know that the facts stated herein are true and correct to the best of my information and belief.

Dated: August 29, 2022



Mary Shaver