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BY HAND

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January 12, 2012

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Ms. Cynthia A. Brown
Chief of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

231673

**RE: FD 35585, Iowa Pacific Holdings, LLC And
Permian Basin Railways, Inc.—Continuance In Control—
Southern San Luis Valley Railroad, LLC**

FILED

**FD 35586 Southern San Luis Valley Railroad, LLC
—Acquisition And Operation Exemption**

JAN 12 2012

**SURFACE
TRANSPORTATION BOARD**

Dear Ms. Brown:

On behalf of Iowa Pacific Holdings, LLC, and Permian Basin Railways, Inc., I am enclosing for filing in FD 35585, an original and ten copies of its Verified Petition for Exemption under 49 U.S.C. §10502 and 49 U.S.C. §11323 to continue in control of Southern San Luis Valley Railroad, a recently organized noncarrier. Additionally, on behalf of Southern Luis Valley Railroad I am submitting for filing in FD 35586 an original and ten copies of its Verified Notice of Exemption under 49 U.S.C. §10901 and 49 CFR §11150.31 to acquire and operate a line of railroad.

Please date stamp and return one copy of this letter along with a copy of each filing. I am enclosing with this letter a copy of each filing on a computer disk as well as two filing fee checks for \$9300 and \$1800, respectively.

Respectfully submitted,


John Heffner

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JAN 12 2012

Enclosures

TRANSPORTATION BOARD

Strasburger & Price, LLP

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

231673

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FD 35585

**IOWA PACIFIC HOLDINGS, LLC,
AND PERMIAN BASIN RAILWAYS, INC.
-- CONTINUANCE IN CONTROL --
SOUTHERN SAN LUIS VALLEY RAILROAD, LLC**

**VERIFIED PETITION FOR EXEMPTION
UNDER 49 U.S.C. §10502
FROM 49 U.S.C. §11323**

**ENTERED
Office of Proceedings**

JAN 12 2012

**Part of
Public Record**

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Counsel for Petitioners
Iowa Pacific Holdings, LLC
Permian Basin Railways, Inc.

Dated: January 12, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35585

**IOWA PACIFIC HOLDINGS, LLC,
AND PERMIAN BASIN RAILWAYS, INC.
-- CONTINUANCE IN CONTROL --
SOUTHERN SAN LUIS VALLEY RAILROAD, LLC**

**VERIFIED PETITION FOR EXEMPTION
UNDER 49 U.S.C. §10502
FROM 49 U.S.C. §11323**

INTRODUCTION

Pursuant to 49 U.S.C. §10502, Iowa Pacific Holdings, LLC (“IPH”), a short line railroad holding company, and Permian Basin Railways, Inc. (“PBR”),¹ its wholly owned subsidiary and another short line railroad holding company, petition the Surface Transportation Board (“the Board”) for an exemption from 49 U.S.C. §11323 permitting them to continue in control through stock ownership and management of the Southern San Luis Valley Railroad, LLC (“SSLV”) upon that noncarrier entity’s becoming a common carrier by railroad. By verified notice of

¹ Collectively “Petitioners.”

exemption filed with the Board under 49 U.S.C. §10901 and 49 CFR §1150.31 concurrently with this Petition,² SSLV seeks to restore to common carrier operation about 1.53 miles of dormant but unabandoned railroad track (“the Line”) extending between MP 0.0 at Blanca, CO, and the Line’s terminus at MP 1.53 at McClintock, CO. The Line connects at Blanca with the line of the San Luis & Rio Grande Railroad (“SLRG”), another short line railroad controlled by PBR and indirectly by IPH. A map depicting the Line is attached as Exhibit A to this Petition.

II.

FACTUAL BACKGROUND

IPH is a short line railroad holding company that owns 100% of the stock of PBR, a noncarrier short line railroad holding company that in turn owns six class I common carrier short line railroads operating in the United States and subject to the Board’s jurisdiction.³ IPH and PBR recently established SSLV as a limited liability company and noncarrier for the purpose of acquiring and operating the Line.

As noted above, the Line connects at Blanca with IPH’s and PBR’s subsidiary SLRG that owns and operates approximately 149 miles of track located

² Docketed as FD 35586.

³ Aside from SLRG, PBR owns the following common carrier railroads operating in the United States: Chicago Terminal Railroad, Mt. Hood Railroad, Saratoga & North Creek Railway, Texas-New Mexico Railroad, and West Texas & Lubbock Railway.

in southern Colorado. As relevant, SLRG's mainline extends between its interchange with both BNSF Railway and Union Pacific Railroad Company at Walsenburg and the railroad's western terminus at Derrick, CO. SLRG owns and operates an additional branch extending from a junction with its main line at Alamosa due south to Antonito, CO.⁴ SLRG was originally established as a class III short line railroad in 2003 by short line railroad holding company RailAmerica, Inc., for the purpose of purchasing Union Pacific Railroad's lines between Walsenburg and Derrick and Alamosa and Antonito. PBR purchased 100% stock ownership of SLRG from RailAmerica, Inc., in 2006⁵ and has controlled, managed, and operated SLRG ever since.

The Line is the last surviving remnant of a now defunct short line railroad company, the Southern San Luis Valley Railroad Company ("old SSLV"), that originally ran from a junction with Union Pacific Railroad's predecessor-in-interest (the Denver & Rio Grande Western Railroad) at Blanca to its terminus in Jarosa, CO, a distance of about 31 miles.⁶ As SSLV further explains in detail in its Notice

⁴ At Derrick SLRG connects with a line of railroad owned by the Denver & Rio Grande Historical Railroad Foundation.

⁵ Permian Basin Railways, Inc.—Acquisition of Control Exemption—San Luis & Rio Grande Railroad Company, Inc., FD 34799, STB served Jan. 12, 2006.

⁶ As SSLV relates in its Notice of Exemption, the old SSLV appears to have been abandoned in stages with the result that the Line was eventually cut back to the northern-most 1.53 miles. The old SSLV finally suspended operations on that segment in 1996. There is no

of Exemption, IPH acquired the right of way comprising the Line in 2007 without realizing that the Line had not been abandoned. It was only during the preparation of filings for submission to the Board that IPH learned that the Line had never been abandoned and that the 2007 acquisition was therefore subject to Board jurisdiction and approval. Accordingly, SSLV seeks belated approval of its acquisition of the Line through that exemption without the need to “unscramble” the 2007 transaction.

The purpose of the acquisition transaction is to allow SSLV to purchase the Line’s real estate from IPH and the track materials from the Line’s former owner, Richard Vrondock, and restore it to common carrier operation. While no new construction will be required, SSLV intends to substantially rebuild the railroad right of way and track structure to handle modern railroad equipment and meet contemporary shipper requirements.⁷ Once that work is completed, the Line will be capable of handling 286,000 lb. rail cars and heavy freight locomotives. Rather

evidence to indicate that the old SSLV obtained authority from the Interstate Commerce Commission or the Board to terminate service. While much of the railroad south of the surviving 1.53 mile segment was salvaged in stages, the right of way remains physically intact. The track and right of way are still intact on the 1.53 mile segment that is the subject of that proceeding.

⁷ Under Board precedent no authority is required for a railroad to rehabilitate and/or improve trackage and facilities that it owns. City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff’d sub nom. Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); City of Stafford, Texas v. Southern Pac. Transp. Co., FD 32395 (ICC served Nov. 8, 1994), aff’d, 69 F.3d 535 (5th Cir. 1995) cited in Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, FD 35508, STB served Sept. 14, 1999, slip op. at 8, footnote 13.

than transfer ownership and operations of the Line to SLRG, IPH has established SSLV as a separate limited liability company and a wholly owned subsidiary in order to insulate SLRG, IPH, and PBR from the business risks usually associated with start up enterprises. Upon consummation and rehabilitation, SSLV will begin serving one customer which will be shipping outbound steel scrap. Other commodities likely to move over the Line in the future will include construction aggregates, agricultural commodities, logs, and fertilizer.

III.

INFORMATION REQUIRED BY 49 CFR §1180.6(a) (1) (i)-(iii), (a) (5)-(6), and (a) (7) ii), and level of labor protection applicable

So that the Board may expeditiously process its request, SLRG provides the following additional information about the transaction:

- (1) A brief summary of the proposed transaction:

To obtain Board authorization by means of an individual exemption to allow IPH and PBR to continue in control of SSLV upon that entity's becoming a rail carrier. As explained below, an individual exemption is necessary here because SSLV will connect directly with SLRG.

- (2) The full names and address of the Petitioners:

Iowa Pacific Holdings, LLC
Permian Basin Railways, Inc.
118 South Clinton Street, Suite 400
Chicago, IL 60661
(312) 466-0900

- (3) The name, address, and telephone number of the Petitioners'

representative to receive correspondence:

John D. Heffner
Strasburger & Price
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
202-742-8607
john.heffner@strasburger.com

- (4) Proposed time schedule: upon a grant of this petition, preferably within 90 days' of its filing
- (5) Purpose sought to be accomplished:

To form a separate new company to insulate IPH, PBR, and SLRG from the risks associated with any new business enterprise; to allow SSLV and SLRG to develop certain new traffic, much of it agriculturally related, that would provide outbound business for SLRG.

- (6) State(s) to be served: Colorado
- (7) Map: attached as Exhibit A.
- (8) Agreement: N.A. None exists.
- (9) Labor protection: N.A. labor protection does not apply to transactions under 49 U.S.C. §11323 involving class III rail carriers. 49 U.S.C. §11326(c).

IV.

ARGUMENT

PETITIONERS' CONTINUANCE IN CONTROL OF SSLV SHOULD BE EXEMPTED

Petitioners seek an exemption under 49 U.S.C. §10502 from 49 U.S.C.

§11323 to enable them to continue in control of a newly established company, SSLV, at the time that SSLV consummates its acquisition and operation of the Line. Petitioners believe that their request is appropriate for exemption from the formal approval requirements of §11323 applicable to all control transactions. Section 10502 directs the Board to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the transportation policy of §10101(a) and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power. Indeed, the legislative history behind §10505 (the predecessor section to the current §10502) makes clear Congress' intent that the Interstate Commerce Commission (and now the Board) use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation.

In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that,

consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation--Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed transaction from §11323 is exactly the type of minor transaction Congress contemplated when it enacted §10502. Requiring Petitioners to submit a formal application is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. A grant of the exemption will further several goals of the I.C.C. Termination Act including §10101a(2) and (7), minimizing federal control over transportation and reducing regulatory barriers to entry. A grant will also facilitate the goals of §10101a(4), (5), and (9) providing for sound economic conditions in the transportation industry, competition amongst railroads and between railroads and other modes, and honest and efficient management of railroads. Restoration of service over the SSLV will provide shippers with an alternative to truck transportation, will give shippers access to either of two competing class I railroads at Walsenburg, and will provide SLRG with additional incremental revenue enhancing its viability.

Granting Petitioners' request also satisfies both the limited scope and the no

abuse of captive shippers tests of the § 10502 exemption provision. The total length of the Line is barely over 1.5 miles long. The anticipated traffic would be modest in amount, perhaps one to two trips per week, but would add incremental traffic and revenue interchanged to SLRG. Initially, there would be just one customer and eventually several. Clearly this transaction is “limited” in scope. From a competitive perspective, this transaction would complement rather than compete in any way with SLRG and its traffic base as it would feed SLRG. The alternative to establishing SSLV would have been for SLRG to operate the Line in its own right but Petitioners’ management would prefer to limit SLRG’s risk through establishing a new affiliate. Moreover, customers on SSLV would enjoy competitive rail service as they would have access to both BNSF Railway and Union Pacific Railroad at Walsenburg.

Usually a short line railroad holding company adding another carrier subsidiary to its family of railroads is able to avail itself of the expedited class exemption procedures of 49 CFR §1180.2(d)(2). Under that procedure, the applicants merely file a Verified Notice of Exemption under that regulation and wait 30 days before consummating the transaction. However, that provision is not available here as its use is restricted just to the acquisition or continuance in control of *nonconnecting* short lines. Here SSLV and SLRG would connect at Blanca.

Nevertheless, the Board has routinely approved transactions involving the acquisition or continuance in control of short line railroads that do *connect* by granting individual petitions for exemption as Petitioners have submitted here. See, RailAmerica, Inc.—Control Exemption—Kiamichi Holdings Inc. and Kiamichi Railroad LLC, FD 34130, STB served January 23, 2002, slip op. at 1-2 (where the Board stated “RailAmerica indicates that, with regard to this transaction, the Texas Northeastern Railroad, a division of Mid-Michigan Railroad, Inc. (TNER), a RailAmerica subsidiary, connects with Kiamichi at Paris, TX. For this reason, the class exemption at 49 CFR 1180.2(d)(2) is not available”).

Nevertheless, the Board granted RailAmerica’s individual petition for an exemption to control these carriers. Similar cases include Douglas M. Head, Kent P. Shoemaker and Charles H. Clay—Continuance in Control Exemption—Rutland Line, Inc., FD 33501, STB served January 7, 1998, and David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch—Control Exemption—Clarendon & Pittsford Railroad Company, Green Mountain Railroad Corporation, and Vermont Railway, Inc., FD 33607, STB served Aug. 20, 1998 (involving the control contiguous short line railroads much greater in length than SSLV or, in the case FD 33501, than SLRG itself).

V.

ENVIRONMENTAL AND HISTORIC IMPACTS

UNDER 49 CFR §1105

Environmental and Historic Preservation Data **49 CFR §1105**

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). More specifically, the amount of traffic anticipated will be in the range of one to two roundtrips per week, well below the Board's environmental threshold of four roundtrips per day in an attainment area or three roundtrips per day in a nonattainment area.

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1) insofar as rail operations will continue (they will be restored) and there are no plans to abandon the Line or to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:



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Counsel for Petitioners
Iowa Pacific Holdings, LLC
Permian Basin Railways, Inc.

Dated: January 12, 2012

EXHIBIT A

San Luis & Rio Grande Railroad

-  SLRG / San Luis & Rio Grande Railroad / RGSR Rio Grande Scenic Railroad
-  SLRG San Luis & Rio Grande Railroad
-  SLRG Trackage Rights
-  BNSF BNSF Railway
-  SLC San Luis Central
-  UP Union Pacific



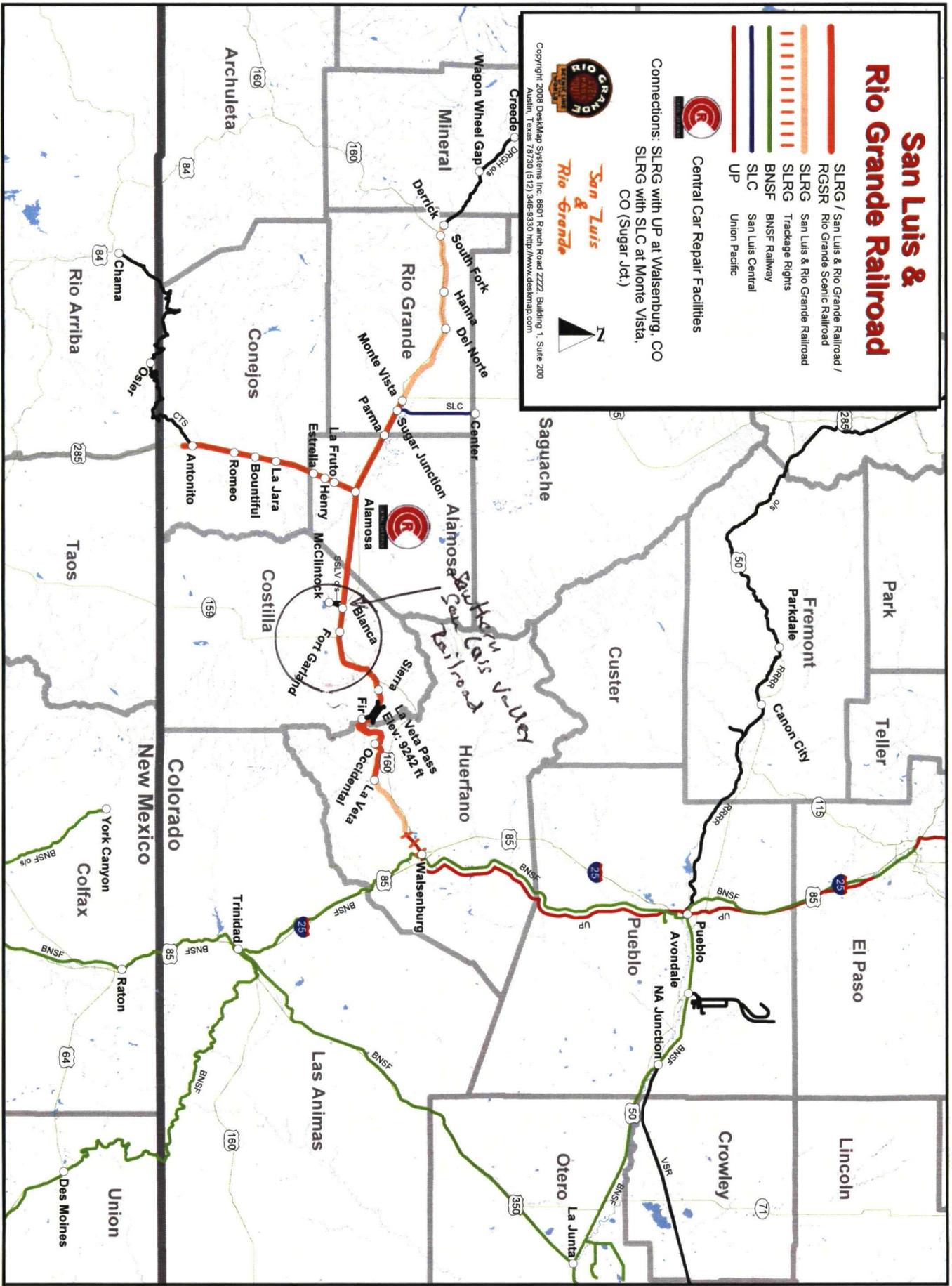
Central Car Repair Facilities

Connections: SLRG with UP at Walsenburg, CO
 SLRG with SLC at Monte Vista, CO (Sugar Jct.)



San Luis & Rio Grande

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 Austin, Texas 78730 (512) 346-9330 <http://www.deekmap.com>



VERIFICATION

STATE OF Illinois)
CITY OF Chicago) ss

Edwin E. Ellis, being duly sworn according to law, hereby deposes and states that (s)he holds the position of President with applicant/petitioner (respondent), is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her) his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois, this 11th day of January, 2012.


Notary Public

My commission expires: Jan 13, 2013

