



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

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FILED

JUL 17 2013

**SURFACE
TRANSPORTATION BOARD**

July 17, 2013

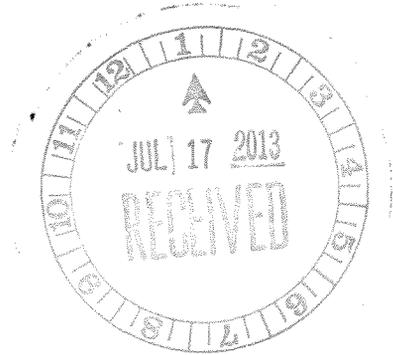
Karl Morell
Of Counsel

kmorell@balljanik.com

234549

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423



Re: Finance Docket No. 35742, Clarkdale Arizona Central
Railroad, L.C. -- Trackage Rights Exemption – Drake Cement,
LLC

Dear Ms. Brown:

Attached for filing with the Surface Transportation Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7). Enclosed is a check in the amount of \$1,200 to cover the filing fee. Also attached is a CD containing the Notice of Exemption.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely,

Karl Morell

Karl Morell
Of Counsel

FILE RECEIVED

JUL 17 2013

**SURFACE
TRANSPORTATION BOARD**

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Office of Proceedings

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Part of
Public Record

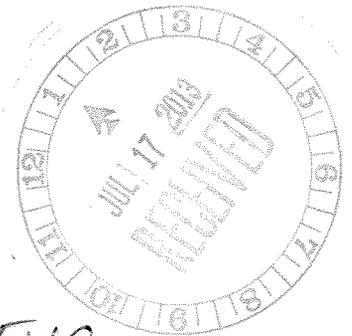
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35742

CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.
-- TRACKAGE RIGHTS EXEMPTION --
DRAKE CEMENT, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

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Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
CLARKDALE ARIZONA CENTRAL
RAILROAD, L.C.

Dated: July 17, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35742

CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.
-- TRACKAGE RIGHTS EXEMPTION --
DRAKE CEMENT, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

Clarkdale Arizona Central Railroad, L.C. ("CACR"), submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), for trackage rights over certain rail lines owned by Drake Cement, LLC ("Drake").

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The parties have entered into a Trackage Rights Agreement ("Agreement"). A redacted copy of the Agreement is attached as Exhibit 1. Un-redacted copies of the Agreement are being filed under seal simultaneously with this Notice. Also, the trackage rights are not being sought in a responsive application in a rail consolidation proceeding. Under these circumstances, the Section 1180.2(d)(7) class exemption is applicable.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), CACR submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The Agreement between CACR and Drake grants CACR overhead rights over Track Nos. 3907, 3924, 3921 and 3904 located in Drake, AZ for the sole purpose of interchanging traffic with BNSF Railway Company (“BNSF”) on a rail line located between milepost 0 +15 feet and milepost 0 + 3000 feet which is owned by Drake but over which BNSF retained an easement. The Agreement also grants CACR the right to operate over Track Nos. 3922 and 3923 in order to provide switching operations for Drake.

Name and address of tenant railroad:

Clarkdale Arizona Central Railroad, L.C.
300 N. Broadway
Clarkdale, AZ 86324

Questions regarding this transaction are to be addressed to CACR's counsel:

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 638-3307

(a)(1)(ii) Consummation Date

The trackage rights will be consummated after the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The trackage rights are intended to permit CACR to interchange traffic with BNSF and switch traffic moving to and from Drake.

(a)(5) List of States in which the Party's Property is Situated

The involved trackage rights are located in the State of Arizona.

(a)(6) Map

A map illustrating the trackage rights is attached as Exhibit 2.

(a)(7)(ii) Agreement

A redacted copy of the Agreement is attached as Exhibit 1. Un-redacted copies of the Agreement are being filed under seal simultaneously with this Notice.

Labor Protection

CACR is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historic Matters

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R §§ 1105.6(c)(4) and 1105.8(b)(3).

Respectfully submitted,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above the typed name and contact information.

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
CLARKDALE ARIZONA CENTRAL
RAILROAD, L.C.

Dated: July 17, 2013

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35742

CLARKDALE ARIZONA CENTRAL RAILROAD, L.C.
-- TRACKAGE RIGHTS EXEMPTION --
DRAKE CEMENT, LLC

Drake Cement ("Drake") has agreed to grant overhead trackage rights to Clarkdale Arizona Central Railroad, L.C. ("CACR"), over Track Nos. 3907, 3924, 3921 and 3904 located in Drake, AZ for the sole purpose of interchanging traffic with BNSF Railway Company ("BNSF") on a rail line located between milepost 0 +15 feet and milepost 0 + 3000 feet which is owned by Drake but over which BNSF retained an easement. Drake has also agreed to grant CACR the right to operate over Track Nos. 3922 and 3923 in order to provide switching operations for Drake.

The trackage rights will be consummated on or after July ____, 2013.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board,

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement") made this 11 day of May, 2012, by and between DRAKE CEMENT, LLC, a Delaware limited liability company ("Owner"), and CLARKDALE ARIZONA CENTRAL RAILROAD, L.C., a Utah limited liability corporation ("User").

WITNESSETH:

WHEREAS, Owner owns approximately 4.12 miles of railroad trackage at Drake, AZ, as illustrated in Appendix 1 attached to this Agreement; and

WHEREAS, by virtue of an easement retained by BNSF Railway Company ("BNSF") and conveyed to User, User has the right to operate over a portion of Owner's Track Nos. 3924, 3907, 3921, and 3904 (the "BNSF Easement Tracks"), as shown in red and blue dashes, and ending at a point marked "End of BNSF Easement," in Appendix 1; and

WHEREAS, User desires to operate over a portion of Owner's Track Nos. 3924, 3907, 3904 and 3921 (the "Operating Tracks"), as shown in solid blue in Appendix 1, in order to interchange traffic directly with BNSF; and

WHEREAS, Owner may request User to switch Owner's traffic to or from Owner's Track Nos. 3922 and 3923 (the "Switching Tracks"), as shown in solid blue in Appendix 1; and

WHEREAS, Owner is willing to grant User trackage rights over the Operating Tracks in order to access BNSF, but only in accordance with the terms and conditions contained in this Agreement; and

WHEREAS, User is willing to agree to such a grant of trackage rights in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. User's Rights:

1.1 Subject to the terms and conditions contained herein, Owner hereby grants to User the nonexclusive right to use the Operating Tracks for the sole purpose of interchanging traffic with BNSF. Owner hereby also grants User the nonexclusive right to use the Switching Tracks to switch cars for Owner. The parties understand and agree that User shall not have the right to: (i) switch industries or transload on the Operating Tracks and Switching Tracks, other than switching Owner cars; (ii) serve any industry, team or house track, transload, intermodal or auto facility now existing or hereafter located along the Operating Tracks or Switching Tracks; or (iii) permit or admit any third party to use all or any portion of the Operating Tracks or Switching Tracks.

1.2 User accepts the Operating Tracks in "**AS IS, WHERE IS**" **CONDITION AND WITHOUT WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY.** User hereby acknowledges that Owner has made no representations to User concerning the condition of the Operating Tracks or Switching Tracks.

1.3 User agrees to perform its safe operations and handle its equipment and the trains in a manner that will not unreasonably interfere with or impair the use of the Operating Tracks and Switching Tracks by other parties.

1.4 User may not enter into any industry track agreements along the Operating Track or Switching Track except with Owner for Owner's traffic.

1. 5 During the term of this Agreement, User shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations governing rail freight operations on the Operating Tracks and Switching Tracks, including the certification of all qualified User personnel over the Operating Tracks and Switching Tracks.

1.6 User shall not dispose of any wastes of any kind, whether hazardous or not, on the Operating Tracks or Switching Tracks.

1.7 User will utilize Track Nos. 3907, 3924, 3921, and 3904 only for interchanging traffic with BNSF Railway and Track Nos. 3922 and 3923 only for switching Owner's traffic.

1.8 This agreement shall not allow User to store cars on the Operating Tracks or the Switching Tracks, including the BNSF easement. Any storage requirements, including tracks, charges and other terms relating to such storage are to be contained in a separate agreement between Owner and User. Owner and User agree to prepare and sign such separate agreement without delay.

2. Maintenance

During the term of this Agreement, Owner shall be responsible at its own cost and expense for performing routine maintenance and making such repairs to the Operating Tracks and Switching Tracks as necessary to permit safe operations over the Operating Tracks and Switching Tracks and to comply with all applicable Federal Railroad Administration ("FRA") regulations relating to the operation, maintenance, and repair of the Operating Tracks and Switching Tracks. Owner's maintenance and repair obligations under this Agreement shall include but not be limited to rail, ties, signal protection devices, culverts and other structures, and sub-roadbed on the Operating Tracks and Switching Tracks. Owner shall pay all fines or

penalties imposed by the FRA for violations of any applicable regulatory standards arising out of Owner's maintenance, repair, and operation of the Operating Tracks and Switching Tracks.

3. Compensation

3.1 For use of the Operating Tracks, User shall pay Owner :

3.2 Owner will not be liable to User for any charges assessed by User for car-hire, switching or car storage.

4. Other Costs and Expenses

If an act or omission of User on the Operating Tracks or Switching Tracks results in the assessment of a fine or other penalty, User shall be solely responsible for such fine and penalty.

5. Representations and Warranties

5.1 User represents and warrants to Owner that:

(i) User is a corporation duly organized, validly existing, and in good standing in the State of Arizona.

(ii) User has all the requisite corporate authority to enter into this Agreement, to conduct rail freight transportation business on the Operating Tracks and Switching Tracks, and to perform all of User's obligations under this Agreement.

(iii) User will obtain all legal authority that is necessary to conduct rail freight transportation operations over the Operating Tracks and Switching Tracks.

(iv) User will enter tracks of the Owner only with FRA qualified Conductors and Engineers.

(v) User will be responsible for their own equipment, which includes both cars and locomotives.

(vi) User and any owner and affiliate of User have not filed a petition for bankruptcy, reorganization or arrangement pursuant to the Bankruptcy Reform Act or any similar proceeding, nor has there been any involuntary bankruptcy, receivership or arrangement proceeding been filed involving User or any owner or affiliate of User. User further represents and warrants that it is solvent.

(vii) No representation or warranty by User in this Agreement contains any untrue statement of material fact or omits any material fact that is necessary to prevent that representation of warranty from being materially misleading.

5.2 Owner represents and warrant to User that:

(i) Owner is a Delaware limited liability company.

(ii) Owner is the owner of the Operating Tracks and Switching Tracks and has the power and authority to enter into this Agreement and carry out its obligations under this Agreement.

6. Liability and Insurance

6.1 User assumes the risk of loss of and agrees to indemnify, defend, and hold Owner harmless against and from any claims, costs, liabilities, expenses (including without limitation court costs and reasonable attorneys' fees) or demands of whatsoever nature or source arising from (i) any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, on the Operating Tracks and Switching Tracks; (ii) any personal injury or death of persons whomsoever (including without limitation, employees, agents or contractors of Owner); or (iii) any property damage or destruction of whatsoever nature (including without limitation,

property of Owner or User or property in its or their care, custody or control and third party property), where such contamination, Environmental Problems, injury, death or damage arise out of acts or omissions by User occurring in connection with User's operations over the Operating Tracks and Switching Tracks.

6.2 "Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended), the Resource and Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Act, 33 U.S.C. § 1201 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., and any other federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources or the environment and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatsoever nature which arise from any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum or any fraction of petroleum or of any other chemical, substance or material listed or identified in or regulated by any environmental law.

6.3 During the term of this Agreement, User shall maintain insurance coverage regarding general public liability insurance as provided in this subsection. The policy shall provide bodily injury, including death, personal injury, and property damage coverage with a combined single limit of Two Million Dollars (\$2,000,000) per occurrence or claim and an aggregate limit of not less than Five Million Dollars (\$5,000,000). All such insurance shall name Owner as an additional insured.

6.4 User and its insurer(s) shall waive their rights of subrogation against Owner for damages arising from any risk covered by the required insurance policies or any other

insurance coverage maintained by User. User's insurance shall be primary respecting to any insurance carried by Owner and Owner's insurance shall be excess and non-contributory with User's insurance.

6.5 User shall furnish to Owner certificate(s) of insurance evidencing the required coverage and endorsements prior to commencement of operations over the Operating Tracks and Switching Tracks and, upon request, a certified duplicate original of any policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Owner in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

6.6 If User fails to procure and maintain insurance as required, Owner may elect to do so at the cost of User.

7. **Term**

Unless terminated earlier in accordance with Section 8 of this Agreement, this

8. **Termination**

8.1 This Agreement may be terminated by User as follows:

(i) Upon 30-days written notice to Owner, in the event all freight traffic ceases to move on the contiguous rail line owned by User; or

(ii) Upon 6-months written notice to Owner if for any reason User no longer desires to utilize the Operating Tracks to interchange with BNSF.

8.2 This Agreement may be terminated by Owner as follows:

Upon 30-days written notice to User, in the event User is in material breach of its obligations under this Agreement and User fails to rectify the breach within 30 days of notice from Owner.

8.3 Termination of this Agreement shall not relieve or release any party from any obligation assumed or from any liability which may have arisen or been incurred by any party under the terms of this Agreement prior to the termination.

9. Assignment

9.1 User shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder to any person, firm, entity, or corporation without obtaining the prior written consent of Owner, which consent shall not be unreasonably withheld.

9.2 Owner shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder to any person, firm, entity or corporation without obtaining the prior written consent of User, which consent shall not be unreasonably withheld.

10. Notices

All notices to be given by any party to another shall be in writing and addressed as follows:

If to Owner:

Carlos Freire
Drake Cement, LLC
5001 E. Drake Road
Paulden, AZ 86334
Fax: (928) 636-9431

If to User:

Eddie Hale
300 N. Broadway
Clarkdale, AZ 86324
Fax: (801) 393-7733

11. Arbitration

11.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single arbitrator agreed upon by the parties within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person with at least five years of exposure to the concepts of administration, interpretation, and application of Subject facility contracts or agreements. If the parties cannot agree on a single arbitrator, the party demanding such arbitration (the "Demanding Party") shall notify the other party (the "Noticed Party") in writing of such demand, stating the question or questions to be submitted for decision and nominating one similarly qualified arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint a similarly qualified arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select an arbitrator for the Noticed Party, and if the Noticed Party does not agree to the arbitrator so selected, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the Operating Tracks are located upon application by either party after ten (10) days' written notice to the other parties. The arbitrators so chosen shall select one similarly qualified additional arbitrator, to complete the

board. If they fail to agree upon an additional arbitrator, the same shall, upon application of either party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by the parties to the arbitration.

11.2 The books and papers of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

12. Governmental Approval

12.1 User shall, at its own cost and expense, initiate by appropriate application, Petition or Notice and thereafter diligently prosecute proceeding for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application, Petition or Notice and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority. Upon the procurement of all consents, approvals, permits and authority, User shall maintain throughout the term of this Agreement all such consents, approvals, permits and authority which are necessary and appropriate for the operations of the User on the Operating Tracks and Switching Tracks.

12.2 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Operating Tracks or Switching Tracks by giving 30 days' prior written notice to User of its intention so to do. The Agreement shall terminate as to the section of the Operating Tracks or Switching Tracks so abandoned upon the effective date of such approval by governmental authority.

13. Section Headings

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14. Governing Law

This Agreement shall be governed by and interpreted under the laws of the State of Arizona.

15. Entire Agreement

This Agreement constitutes the entire agreement among the parties and shall supersede all prior agreements and understandings, oral or written, between the parties hereto concerning the subject matter of this Agreement.

16. Operations

16.1 User agrees to pick up interchange cars within 24 hours of notification to User that cars are available for pickup. User also agrees to notify BNSF of delivery of cars for interchange back to BNSF so cars outbound will not accumulate unnecessarily.

16.2 Should User change service or operations, User agrees to notify Owner 48 hours of any changes that effect the use of the specified tracks.

16.3 Should an accident, injury or derailment occur on Owner's tracks caused by User, User agrees to take prompt action to return Owner's tracks to their customary operation. For any derailments that may occur on Owner's Track, User agrees to pick up such derailment within 48 hours of occurrence.

16.4 User agrees to not fill the tracks to capacity at any time.

17. Force Majeure

Force Majeure occurs if either party is unable to meet its obligations under this Contract as a result of Acts of God, war, insurrection, strike, lockout, embargoes, derailments, acts of government or government agency, or any other similar cause beyond its reasonable control. Once Force Majeure occurs, the obligations of the parties (other than payment for services

rendered) shall be suspended for the duration of the Force Majeure; provided, however, that the parties shall make all commercially reasonable efforts to continue to meet their obligations during the duration of the Force Majeure condition. In order for the Force Majeure to be effective, the party declaring Force Majeure shall promptly notify the other party by telephone and confirmed in writing as to the nature of the Force Majeure, when it began and its projected duration. Such party shall also promptly notify the other party by telephone and confirmed in writing of the cessation of the Force Majeure. The suspension of any obligation as a result of Force Majeure shall neither cause the term of this Contract to be extended nor affect any rights accrued under this Contract prior to or following the occurrence of the Force Majeure.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the day and year first above written.

DRAKE CEMENT, LLC

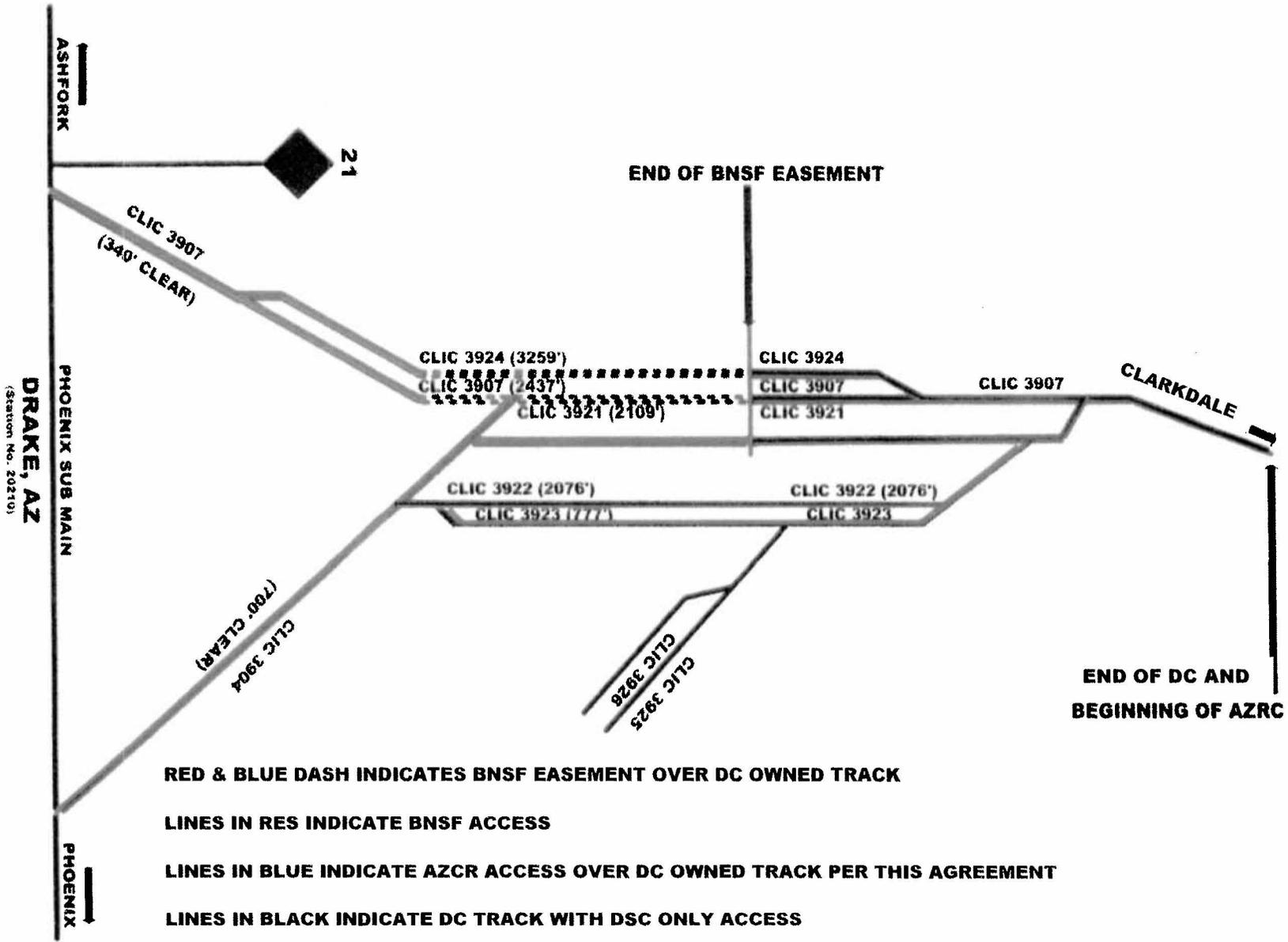
By: _____

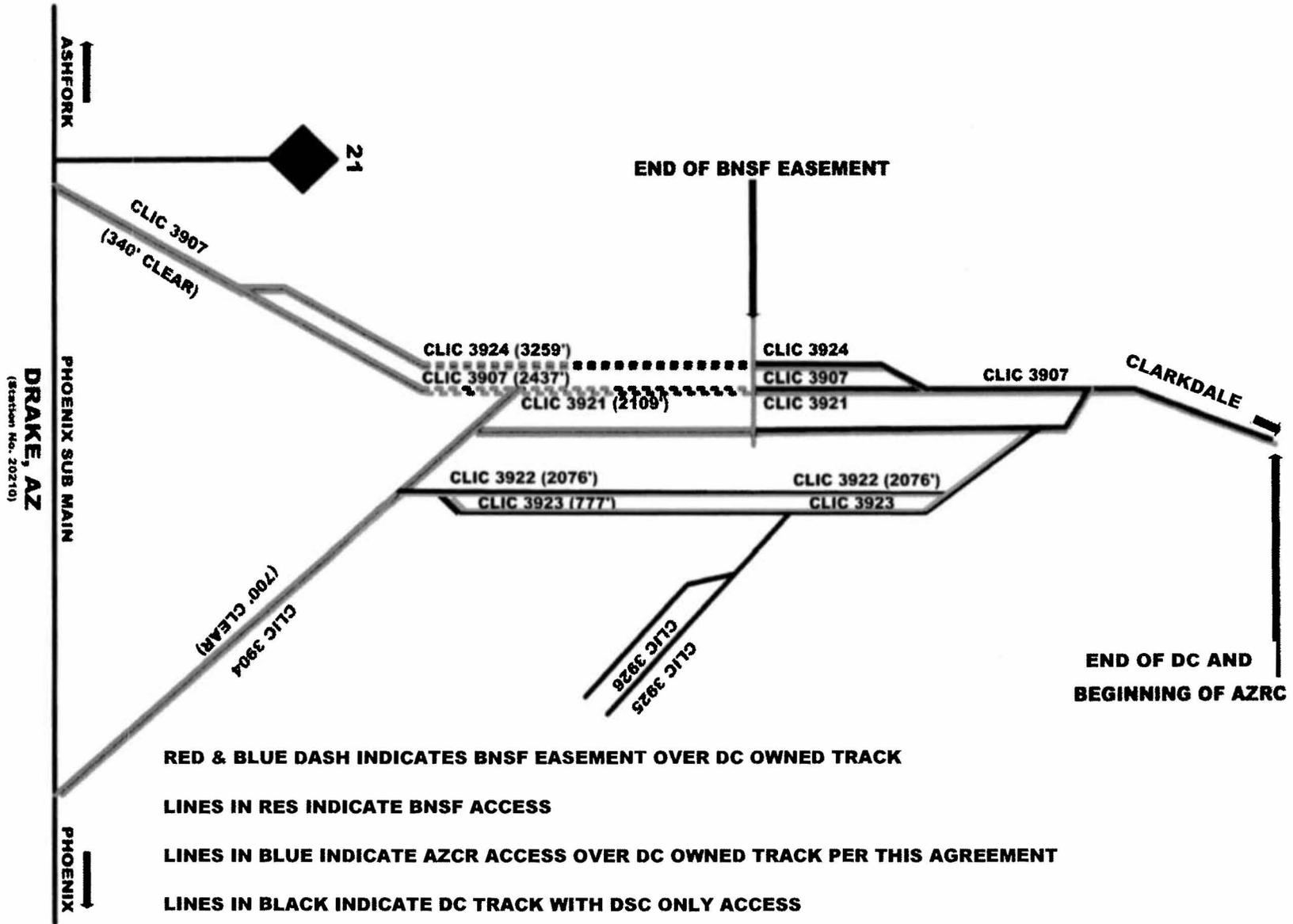
Title: _____

CLARKDALE ARIZONA CENTRAL RAILROAD, LC

By: _____

Title: _____

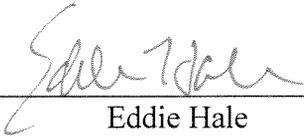




VERIFICATION

STATE OF UTAH)
)
COUNTY OF WEBER) SS.

I, Eddie Hale, being duly sworn depose and state that I am Vice President Operations of the Clarkdale Arizona Central Railroad, L.C., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.



Eddie Hale

SUBSCRIBED AND SWORN TO before me this 11 day of July __, 2013, in the County of Weber, State of Utah.

