

August 3, 2012

RECEIVED
AUG 3 2012
MANAGEMENT
STB

JOHN D. HEFFNER
Direct Fax 202-742-8697
Direct Phone 202-742-8607
Email: john.heffner@strasburger.com

VIA COURIER

ENTERED
Office of Proceedings

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

AUG 03 2012
Part of
Public Record

**RE: FD 35659, Santa Cruz and Monterey Bay Railway Company –
Acquisition and Operation Exemption – Union Pacific Railroad
Company**

Dear Ms. Brown:

On behalf of the Santa Cruz and Monterey Bay Railway Company, I am submitting an original and ten copies of a verified notice of exemption under 49 CFR §1150.31 for the acquisition of and operation over a permanent and exclusive railroad operating easement and common carrier obligation on a line of railroad currently owned by the Union Pacific Railroad Company.

I am enclosing a CD containing this document in an electronic form as well as a check payable to the Board for \$1800 to cover the applicable filing fee. Please date stamp and return to me one copy of each.

FILED

AUG 03 2012

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

AUG 03 2012

**SURFACE
TRANSPORTATION BOARD**

Sincerely yours,



John D. Heffner

Strasburger & Price, LLP

Ms. Cynthia A. Brown

August 3, 2012

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Enclosures

cc: Mr. Ed Ellis
Eric Hocky, Esq.
Mack H. Shumate, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FD 35659

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY**

ENTERED
Office of Proceedings

AUG 03 2012

Part of
Public Record

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: August 3, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35659

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Santa Cruz and Monterey Bay Railway Company (“SCMB”), files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) seeking authorization for the acquisition of and operation over a permanent and exclusive railroad operating easement and common carrier obligation currently owned and to be retained by the Union Pacific Railroad Company (“UP”). The line known as the Santa Cruz Branch (identified here as “the Line”) extends between milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, CA, to milepost 31.39 at the end of the line near Davenport, CA. It includes the interconnection with the Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 at

Santa Cruz, CA, and various associated siding and spur tracks. The total length of the Line is approximately 31.0 miles long and there are an additional 3.6 miles of sidings and spurs.

INFORMATION REQUIRED BY 49 CFR §1150.31

Name and Address of Applicant **49 CFR §1150.33(a)**
Santa Cruz and Monterey Bay Railway Company
c/o Iowa Pacific Holdings, LLC
118 South Clinton Street,
Suite 400
Chicago, IL 60661

Applicant's Representative **49 CFR §1150.33(b)**
John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Statement of Agreement **49 CFR §1150.33(c)**

SCMB anticipates entering into an agreement with UP in the near future for the acquisition from UP of the permanent and exclusive railroad operating easement and associated common carrier obligation over the Line that UP will be retaining in connection with the sale of the assets comprising the Line to the Santa Cruz County Regional Transportation Commission (“SCCRTC”). SCMB will also be entering into an Administration, Coordination and License Agreement with SCCRTC.

Operator of the Property

49 CFR §1150.33(d)

As noted above, SCMB will provide all common carrier rail operations over the Line. As described below, SCMB expects to be the operator of the Line at the time this notice becomes effective.

Brief Summary of Transaction

49 CFR §1150.33(e)

SCMB is a noncarrier and newly formed subsidiary of short line holding company Iowa Pacific Holdings, LLC, and its wholly-owned subsidiary Permian Basin Railways,¹ established by them for the purpose of restoring common carrier freight service over the Line.

Back in 2009 UP had originally intended to enter into a *State of Maine*² transaction with a public agency, the SCCRTC, to purchase the physical assets of the railroad. The SCCRTC selected another short line railroad, Sierra Northern Railway (“Sierra”), to serve as its operator. In order to initiate operations

¹ “IPH” and “PBR” respectively.

² *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 I.C.C. 835 (1991)

promptly, Sierra and UP entered into a one year lease and Sierra filed a class exemption notice for that lease with the Board in 2009.³

Meanwhile, in April 2011 the SCCRTC petitioned the Board for a ruling that its proposed acquisition of the physical assets constituting the rail line would not represent a transaction subject to Board approval jurisdiction under *State of Maine*. Sierra then filed another class exemption notice to acquire from UP the perpetual and exclusive railroad operating easement and common carrier obligation that UP had reserved from the sale of the Line to SCCRTC.⁴ After some initial difficulties that were resolved with the Board's regulatory and administrative guidance, the Board eventually granted SCCRTC's petition paving the way for that transaction to proceed.⁵ Sierra evaluated its business plan and decided to withdraw from the acquisition and wanted to be relieved of its lease and operation obligation for the

³ *Sierra Northern Railway—Lease and Operation Exemption—Union Pacific Railroad Company*, FD 35331, STB served Dec. 17, 2009. Although the lease term is over, it continues on a month-to-month basis according to its terms.

⁴ The Board published the notice accepting Sierra's easement acquisition filing in *Sierra Northern Railway—Acquisition and Operation Exemption—Union Pacific Railroad Company*, FD 35490, STB served April 21, 2011.

⁵ *Santa Cruz Regional Transportation Commission Petition for Declaratory Order*, FD 35491, STB served Dec. 15, 2011.

Line.⁶ Without an authorized operator, SCCRTC placed acquisition of the physical railroad assets on hold until a new qualified operator was chosen.

Accordingly, the SCCRTC published a notice soliciting new operating proposals and chose the bid submitted by SCMB's corporate parent, IPH/PBR. SCCRTC has now filed a new Petition for Declaratory Order.⁷ That new Petition seeks a ruling for a substantially identical transaction, one where SCCRTC will acquire UP's physical railroad assets, but not UP's permanent and exclusive operating easement and common carrier obligation. Such acquisition would not constitute a transaction subject to Board approval jurisdiction under *State of Maine*. The new Petition indicates that SCMB will be the operating carrier in lieu of Sierra.

Inasmuch as Sierra desires to discontinue its service under the UP lease transaction as soon as possible and UP desires for another short line to "step into Sierra's shoes" during the Board's consideration of SCCRTC's new Petition and eventual consummation of that acquisition, SCMB filed a class exemption notice on August 1, 2012, for the assignment to it of Sierra's interest as a lessee under the

⁶ Sierra never consummated its easement acquisition. On Dec. 22, 2011, Sierra notified the Board that it wanted to withdraw its acquisition exemption notice. The board granted that request in a decision served on Feb. 16, 2012, in FD 35490.

⁷ Filed on July 24, 2012, and docketed as FD 35653, *Santa Cruz Regional Transportation Commission – Petition for Declaratory Order*

existing lease between UP and Sierra. Acceptance of that notice will ensure continuation of service on an interim basis. SCMB files this class exemption notice for permanent authority covering its acquisition of and operation over the permanent and exclusive railroad operating easement and common carrier obligation that UP is reserving from that new SCCRTC acquisition transaction.

Other information required

(1) The name and address of the party transferring the subject property:

No physical property will be transferred as a result of this filing; rather it entails the acquisition of a permanent and exclusive railroad operating easement and common carrier obligation

The name and address of the transferor is:

Union Pacific Railroad Company
1400 Douglas Street
Mailstop 1350
Omaha, NE 68179

(2) The proposed time schedule for consummation of the transaction:

SCRM intends to consummate this transaction at least 30 days from the effective date of this notice, probably on or about September __, 2012.

The mileposts of the subject property, including any branch lines:

The Line extends between milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, CA, to milepost 31.39 at the end of the Line near Davenport, CA. It includes the interconnection with the Santa Cruz, Big Trees &

Pacific Railway Company at milepost 20.4 at Santa Cruz, CA, and various associated siding and spur tracks.

The total route miles to be operated:

About 31.0 miles and 3.6 miles of sidings and spurs.

Map **49 CFR §1150.33(f)**

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification **49 §CFR 1150.33(g)**

SCMB certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR §1150.33(h)**

Not applicable. There are no agreements applicable to the Line containing any provision that may limit future interchange with a third-party carrier.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10901.

Caption Summary **49 CFR §1150.34**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Related transactions

On August 1, 2012, SCMB's corporate parents, IPH and PBR, filed a verified Notice of Exemption for their continuance-in-control of SCMB and SCMB filed a verified Notice of Exemption covering the assignment to it of the lease and operation exemption from Sierra. Those notices have been docketed as FD 35632 and FD 35633, respectively. Additionally, in FD 35653, SCCRTC has petitioned the Board for a new declaratory order that its acquisition of the physical railroad assets constituting the Line does not represent a transaction subject to Board approval jurisdiction.

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).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:

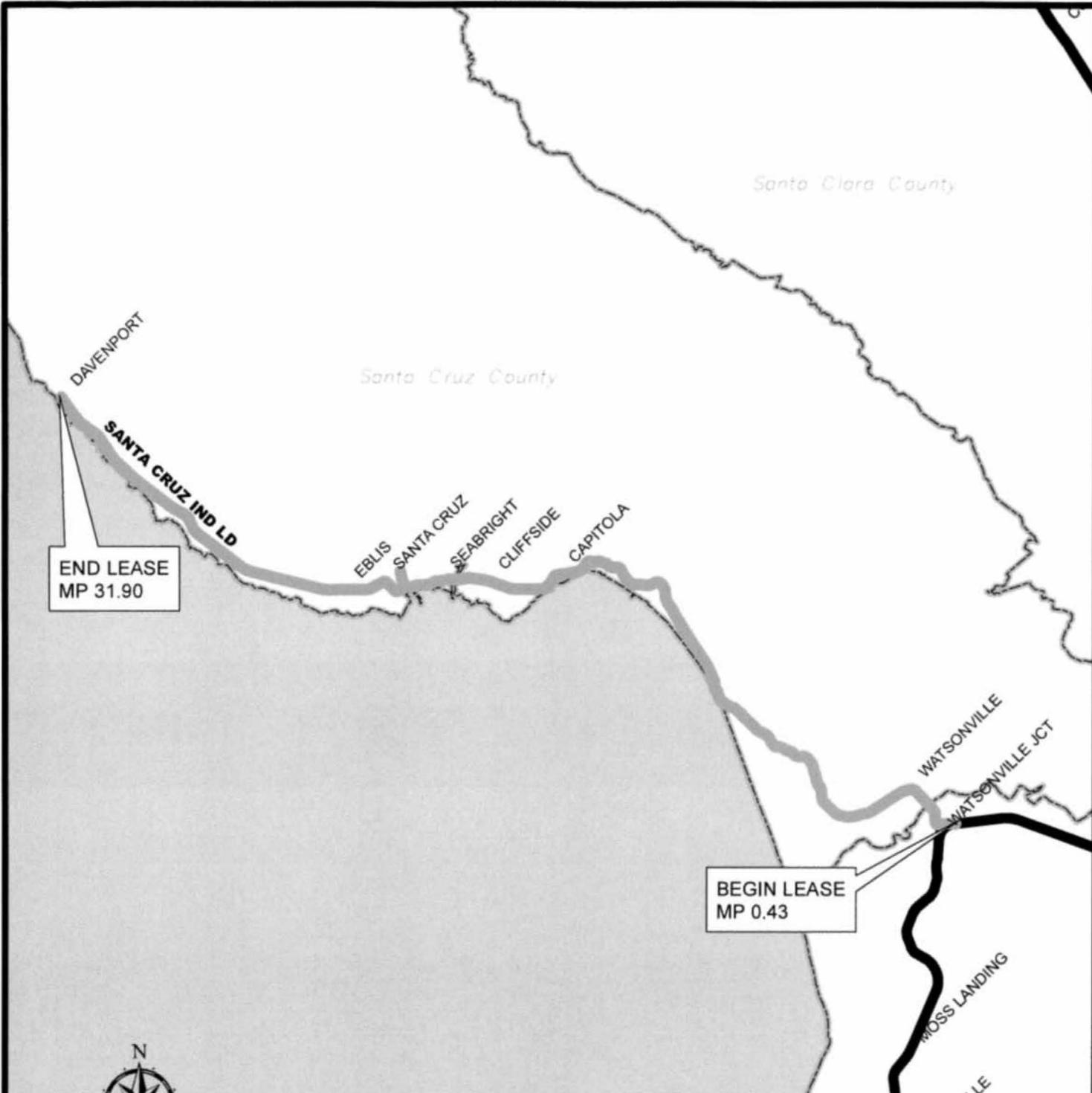


John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: August 3, 2012

EXHIBIT A



Legend

-  LEASED BY UPRR TO SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
-  OTHER UPRR LINES

SANTA CRUZ INDUSTRIAL LEAD

MP 0.43 TO MP 31.90
 TOTAL OF 31.47 MILES
 IN SANTA CRUZ COUNTY, CALIFORNIA

**Union Pacific Santa Cruz Industrial Lead
 (SANTA CRUZ AND MONTEREY BAY
 RAILWAY COMPANY Lessee)
 Milepost 0.43 to Milepost 31.90**

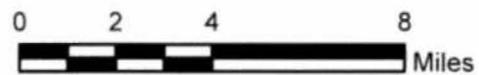


Exhibit B

Certification

I, Kevin W. Busath, certify that I am vice president – strategic planning of Santa Cruz and Monterey Bay Railway Co. and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: August 1, 2012

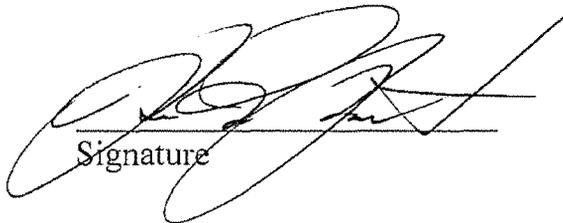

Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35659

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

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Railway Company at milepost 20.4 at Santa Cruz, CA, and various associated siding and spur tracks. The total length of the Line is approximately 31.0 miles long and there are an additional 3.6 miles of sidings and spurs.

SCMB certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

This transaction is related to three other matters. On August 1, 2012, SCMB's corporate parents, Iowa Pacific Holdings, LLC and its wholly owned subsidiary Permian Basin Railways, filed a verified Notice of Exemption for their continuance-in-control of SCMB. Also SCMB filed a verified Notice of Exemption covering the assignment of the lease and operation exemption to it from the current operator of the Line, Sierra Northern Railway. Those notices have been docketed as FD 35632 and FD 35633, respectively. Additionally, in FD 35653, the Santa Cruz County Regional Transportation Commission, a local public agency, petitioned the Board on July 24, 2012, for a declaratory order that its acquisition of the underlying physical railroad assets constituting the Line does not represent a transaction subject to Board approval jurisdiction.

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than August __, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35659, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607, counsel for SCMB.

Board decisions and notices are available on our website at
WWW.STB.DOT.GOV.

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

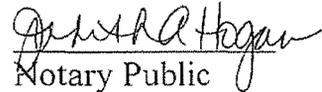
VERIFICATION

STATE OF ILLINOIS)
)
CITY OF CHICAGO) SS

Kevin W. Busath, being duly sworn according to law, hereby deposes and states that he holds the position of vice president – strategic planning 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 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 1 day of August, 2012.


Notary Public

My commission expires: *Jan 13 2013*

