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Office of Proceedings
May 17, 2012
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**Comment on Docket No. EP 699,
Assessment of Mediation and Arbitration Procedures**

**DEPARTMENT OF TRANSPORTATION
Surface Transportation Board
49 CFR Parts 1002, 1011, 1108, 1109, 1111, and 1115**

From Montana Grain Growers Association

The Montana Grain Growers Association (MGGA) applauds the board of the STB for expansion and promotion of its mediation and arbitration mechanisms. We are the trade/commodity organization representing wheat and barley farmers in Montana, and have a long history of taking keen interest in rail transportation policy. Along with our partner, Montana Farm Bureau Federation (MFBF), we have a legal agreement with our primary carrier, BNSF Railway, for Alternative Dispute Resolution (ADR), as well as an ongoing, robust process of informal mediation. While we directly represent the majority of Montana grain production, we have also structured our ADR to cover any non-members, giving access to all MT wheat and barley producers.

With this experience, we realize the primary importance of mediation. From our vantage point outside the STB, it appears that many cases before you are borne of misunderstanding of the economics which drive the needs of both shipper and carrier. We have found mediation to be as much a mutual education process, as it is a negotiation.

Our outside perception is of a second category of unnecessary formal STB cases, those being cases with underlying motives of political posturing or the justification of ongoing legal representation. We have found these to be an impediment to true resolution of rail freight issues. Mediation, by nature, tends to expose the true motives of the parties, allowing simple resolution.

Speaking specifically to your proposed mediation and arbitration procedures, we realize that you need to be initially cautious in your reach. The voluntary status of arbitration is

fair, as is the right to appeal arbitrator decisions, but these do detract from the effectiveness of arbitration. Your proposal seems to allow appeal only in cases of alleged malpractice on the part of the arbitrator, and this lends strength if that line can be held. There is a bit of a stick for the Class 1 railroads, in that they are presumed to be on board unless they very publicly opt out—it would be good to find a carrot for them as well.

Your language keeping arbitration resolutions confidential and nonprecedential is good, promoting honest engagement and practical solution. We do believe the \$200,000 cap on arbitration judgments is too restrictive, and hope that this could be closer to \$500,000 sometime in the future, after the industries become more comfortable with the process. There are many relatively small businesses in narrow-margin industries with larger rail service and freight footprints. Additionally, we hope that prospective relief, including for freight rates, can be added to your rules, rather than limiting this process to retrospect. We do note your language to remove these restrictions if voluntarily agreed by all parties. This clause appears to open the way for origin/destination rate cases. If so, this is further movement in the right direction. A panel of arbitrators would be better than the sole arbitrator you propose. We suggest that, upon agreement by both parties, the Board appoint its arbitrator, and each party pay the expense of, and choose, one additional arbitrator each. In this event, all arbitrators should be from the Board's list. In the alternative, your proposed "strike mechanism" makes sense, and is one way to encourage a single-arbitrator format to succeed.

We feel your arbitration time frame/deadlines are appropriate.

Commenting on your language for the mediation portion of this, we have little to say. We like what we see, and section 1109.3 is very thoughtfully written, indicating to us that the STB holds the requisite insight to make this work. In our experience, the defining element to success will be the intellectual honesty and motives of the parties to the mediation.

In summary, MGGA feels this is a good expansion of your RCPA program and your previous efforts to promote mediation. Our experience has been that mediation is the most valuable portion in all of this, including your formal cases, but only sincere parties need apply.