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May 5, 2016

VIA FEDEX

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

240611

ENTERED
Office of Proceedings
May 5, 2016
Part of
Public Record

Re: **Docket No. FD 36032,
OmniTRAX Holdings Combined, Inc. – Acquisition of Control
Petition for Exemption**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Acquisition of Control Petition for Exemption OmniTRAX Holdings Combined, Inc.**, dated May 5, 2016. A check in the amount of \$10,000, representing the appropriate fee for this filing, and a compact disk containing the text of the Petition in MS Word format also are enclosed.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for OmniTRAX Holdings Combined, Inc.

RAW:ekf

Enclosures

FEE RECEIVED
May 5, 2016
SURFACE
TRANSPORTATION BOARD

FILED
May 5, 2016
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36032

OMNITRAX HOLDINGS COMBINED, INC. --
ACQUISITION OF CONTROL PETITION FOR EXEMPTION

**PETITION FOR EXEMPTION OF
OMNITRAX HOLDINGS COMBINED, INC.**

William C. Sippel
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**ATTORNEYS FOR OMNITRAX HOLDINGS
COMBINED, INC.**

Dated: May 5, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36032

OMNITRAX HOLDINGS COMBINED, INC. --
ACQUISITION OF CONTROL PETITION FOR EXEMPTION

**PETITION FOR EXEMPTION OF
OMNITRAX HOLDINGS COMBINED, INC.**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. § 1121, OmniTRAX Holdings Combined, Inc. (“OmniTRAX”) submits this petition for an exemption from the requirements of 49 U.S.C. §§ 11324 and 11325 to authorize OmniTRAX to control 18 Class III railroad carriers (listed below). As discussed herein, the subject petition is intended to address and remedy a very-recently-discovered and inadvertent regulatory oversight.

In support of this petition, OmniTRAX submits the following:

I. BACKGROUND

A. Identification of Parties

Petitioner OmniTRAX is non-carrier holding company recently established to control short line railroads. It currently controls, subject to the subject petitioned-for Board authorization, the following 18 Class III railroads in the U.S.¹ (the state or states in which each railroad operates also is provided below):

¹ OmniTRAX recently has filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Central Texas & Colorado River Railway, LLC at such time as that entity becomes an STB-regulated rail common carrier. See OmniTRAX Holdings Combined, Inc. – Continuance in Control Exemption – Central Texas & Colorado River Railway, LLC, Docket No. FD 36019; and Central Texas & Colorado River Railway, LLC – Acquisition and

Alabama & Tennessee River Railway, LLC: Alabama
Alliance Terminal Railroad, LLC: Texas²
Brownsville & Rio Grande International Railway, LLC: Texas
Chicago Rail Link, LLC: Illinois
Fulton County Railway, LLC: Georgia
Georgia & Florida Railway, LLC: Georgia, Florida
Georgia Woodlands Railroad, LLC: Georgia
Great Western Railway of Colorado, LLC: Colorado
Illinois Railway, LLC: Illinois
Kettle Falls International Railway, LLC: Washington (and British Columbia, Canada)
Manufacturers' Junction Railway, LLC: Illinois
Nebraska, Kansas & Colorado Railway, LLC: Nebraska, Kansas, Colorado
Newburgh & South Shore Railroad, LLC: Ohio
Northern Ohio & Western Railway, LLC: Ohio
Panhandle Northern Railroad, LLC: Texas
Peru Industrial Railroad, LLC: Illinois
Sand Springs Railway Company: Oklahoma
Stockton Terminal and Eastern Railroad: California

A map of each of the above-listed railroads is supplied herewith as Exhibit A.

The complete name and address of petitioner OmniTRAX is:

OmniTRAX Holdings Combined, Inc.
252 Clayton Street
Fourth Floor
Denver, CO 80206

B. The Transaction

Before December 31, 2015, 17 of the above-referenced short line railroads – Alabama & Tennessee River Railway, LLC; Alliance Terminal Railroad, LLC; Brownsville & Rio Grande International Railway, LLC; Chicago Rail Link, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, LLC; Great Western Railway of Colorado, LLC; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers'

Operation Exemption – Line of Heart of Texas Railroad, L.P., Docket No. FD 36018 (both filed on April 27, 2016). In fact, it was in the preparation of these two notices of exemption that the regulatory oversight that the subject petition is intended to address was discovered.

² Alliance Terminal Railroad, LLC is not currently in operation.

Junction Railway, LLC; Nebraska, Kansas and Colorado Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, LLC; Panhandle Northern Railroad, LLC; Sand Springs Railway Company; and Stockton Terminal and Eastern Railroad (collectively, the “Broe Railroads”) – were under the indirect control of Patrick D. Broe. Mr. Broe controlled 12 of the OmniTRAX Railroads – Chicago Rail Link, LLC; Georgia Woodlands Railroad, LLC; Great Western Railway of Colorado, LLC; Manufacturers’ Junction Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, LLC; Panhandle Northern Railroad, LLC; Alliance Terminal Railroad, LLC; Fulton County Railway, LLC; Alabama & Tennessee River Railway, LLC; Kettle Falls International Railway, LLC; and Brownsville & Rio Grande International Railway, LLC – indirectly via his direct control of OmniTRAX, Inc. (“OTI”), which, in turn, controlled OmniTRAX Holdings, LLC (“OTH”), which controlled these 12 railroads directly. Through other corporate arrangements not involving OTI or OTH, Mr. Broe, until December 31, 2015, also controlled indirectly 5 other railroads – Nebraska, Kansas and Colorado Railway, LLC; Illinois Railway, LLC; and Georgia & Florida Railway, LLC; Terminal and Eastern Railroad; and Sand Springs Railway Company.³ Finally, until December 31, 2015, Mr. Broe also held a non-controlling interest in Peru Industrial Railroad, LLC (“PIR”), an independent short line previously operating as Peru Land Acquisition 2, LLC.⁴ Two of the involved railroads, Illinois Railway, LLC (“IRL”) and PIR, which came under common OmniTRAX control on December 31, 2015, connect with one another, which

³ See Patrick D. Broe, OmniTRAX, Inc. and OmniTRAX Holdings, LLC – Continuance in Control Exemption – Brownsville & Rio Grande International Railway, LLC, Docket No. FD 35837 (STB served July 25, 2014) (“Broe – Brownsville”), which accounts for the most recent Board-regulated transaction within this corporate family prior to December 31, 2015.

⁴ See Peru Land Acquisition 2, LLC – Acquisition Exemption – Rail Line of The City of Peru, Ill., Docket No. FD 35885 (Dec. 24, 2014).

means that the subject acquisition of control transaction cannot be presented under the otherwise applicable class exemption at 49 C.F.R. § 1180.2(d)(2).

On December 31, 2015, newly-established OmniTRAX acquired direct and exclusive control of both the Broe Railroads and PIR (collectively the “OmniTRAX Railroads”). As a result of the steps undertaken on that date, Mr. Broe no longer has a controlling interest, direct or indirect, in any railroad. Additionally, ownership of OmniTRAX is allocated among three separate corporations, none of which possess a controlling interest in OmniTRAX, and each of which is independent of the other, such that OmniTRAX has direct and exclusive control of the OmniTRAX Railroads. In short, no individual or corporate entity possesses a direct or indirect controlling interest in OmniTRAX at this time, and OmniTRAX acknowledges that, if any individual or entity were subsequently sought to acquire control of OmniTRAX (and thereby control, indirectly, the OmniTRAX Railroads under its control), that individual or entity would need advance Board authority to do so. OmniTRAX’s acquisition of control of the OmniTRAX Railroads, all of which are Class III “short line” railroads, shall be referred to herein as the “Transaction” for which OmniTRAX now seeks Board authorization after the fact.

II. PROCEDURAL AND OTHER MATTERS

The aforementioned Transaction took place roughly 4 months ago absent advance Board approval. The oversight was unintentional and inadvertent; the PIR element of the Transaction, for example, was overlooked in part because of Mr. Broe’s preexisting, non-controlling interest in that railroad. OmniTRAX recognizes that it is appropriate for it to correct this regulatory oversight promptly, as it is now seeking to do.

OmniTRAX submits that the following considerations are relevant to the individual petition for exemption process that it has invoked:

1. IR and PIR, which were not under common control prior to the Transaction, connect with one another. Consequently, OmniTRAX cannot secure control authority under the otherwise-applicable class exemption procedures at 49 C.F.R. § 1180.2(d).
2. OmniTRAX seeks after-the-fact Board authorization for a Transaction within the Board's jurisdiction and regulatory authority.⁵ Accordingly, invocation of the more exacting individual petition for exemption procedures,⁶ will afford the Board and any interested parties with a full and fair opportunity to address and comment upon elements of the Transaction.⁷

III. JURISDICTION AND STATUTORY STANDARDS

Pursuant to 49 U.S.C. § 1323(a)(4), the Board shall authorize a non-carrier holding company such as OmniTRAX to assume control of 2 or more railroad common carriers – the OmniTRAX Railroads in this case – when the Board finds that the proposed acquisition of control is consistent with the public interest. 49 U.S.C. § 1324(c). Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Section 11323, et seq.) if the Board finds that: (1) regulation

⁵ Although not favored, the Board has proven willing in the context of similar transactions to permit parties to those transactions to seek and obtain appropriate authority after the fact (via the appropriate exemption procedures) to engage in a given transaction where the parties have inadvertently failed to secure that authority in advance. See, e.g., Michael Williams – Control Exemption – SDR Holding Company, Docket No. FD 35957 (STB served Dec. 10, 2015); Metropolitan Transit Authority of Harris County, Tex. – Acquisition Exemption – Union Pacific Railroad Company (Right to Restore Rail Service Over a Railbanked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex.), Docket No. FD 35846 (STB served Aug. 14, 2014); V&S Railway, LLC – Petition for Declaratory Order – Operations in Hutchinson, Kan., Docket No. FD 35459 (STB served Jul. 12, 2012) (wherein the STB explained that if a certain entity had acquired all of the property interests in a given parcel, including an ownership interest in a line of railroad traversing that parcel, then that entity “must obtain Board authority for that acquisition after the fact”).

⁶ From a filing fee perspective, not counting the increased costs associated with the preparation of a petition, OmniTRAX's presentation of this Transaction under the individual petition for exemption procedures is roughly seven times more costly (\$10,000) than it would have been if OmniTRAX would have been able to proceed under the class exemption (\$1,400).

⁷ See, e.g., Michigan Central Railway, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern Railway Company, Docket No. 35063 (STB served Aug. 2, 2007); RailAmerica, Inc. – Control Exemption – RailTex, Inc., Docket No. 33813 (STB served Nov. 16, 1999).

is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

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 exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the procedural requirements of 49 U.S.C. § 11325 for OmniTRAX to acquire direct and exclusive control of the OmniTRAX Railroads would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 11325, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market

power. Indeed, were it not for the fact that the transaction brings two connecting short lines – IR and PIR – under common control for the first time, OmniTRAX arguably could have invoked (or may have been required to invoke) the acquisition of control class exemption procedures at 49 C.F.R. 1180.2(d), et seq, as indicated above.

III. EXEMPTION CRITERIA

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101

The Board should exempt from regulation the above-described Transaction in keeping with the rail transportation policy outlined in 49 U.S.C. § 10101. The transaction will place all of the OmniTRAX Railroads, including PIR, under the oversight of established short-line management, thereby continuing to assure the viability of the rail service provided by each of the OmniTRAX railroads. As such, granting the requested exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). OmniTRAX's common control of the OmniTRAX Railroads will facilitate coordination of the railroads' various – and, in the case of PIR and IRL, connecting – operations, enhancing effective rail management and yielding economic benefits of improved service. Thus, this Transaction also will promote efficiency, coordination among rail carriers and competition with other transport modes. See 49 U.S.C. §§ 10101(5) and (9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a

proceeding under Sections 11323-11325. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. E.g., Livonia, Avon & Lakeville Railroad Corporation – Acquisition and Operation Exemption – Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996) at 4. Other aspects of the rail transportation policy will not be adversely affected.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

OmniTRAX's acquisition of control of the OmniTRAX railroads will have no adverse impact on competition. No shipper will lose access to rail service as a result of the transaction, operations conducted by the various OmniTRAX Railroads will continue as they did before OmniTRAX assumed control. All of the involved short line railroads under the control and oversight of experienced OmniTRAX management are, and will remain, well-positioned to respond to the service needs of customers.

The relevant agreements providing for OmniTRAX's acquisition of control of the OmniTRAX Railroads contain no provision that would limit any of the OmniTRAX Railroads' future interchange of traffic to or from third-party connecting carriers. See 49 C.F.R. § 1121.3(d). Because approval of the subject transaction will not lessen competition or transportation options for any potentially affected shippers, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

C. The Transaction Is Limited in Scope

Because regulation of the Transaction is not necessary to protect shippers from an abuse of market power, OmniTRAX does not need to demonstrate that it is of limited scope, also. 49 U.S.C. § 10502(a)(2); Fort Worth & Western Railroad Company, Inc. – Lease

Exemption – St. Louis Southwestern Railway Company, Finance Docket No. 32955 (STB served September 5, 1996) at 3. Nevertheless, it is clear that the Transaction satisfies this criterion as well. The Transaction involves a shift in control of 18 short line railroads (the OmniTRAX Railroads), all but one of which have been under common corporate control for years.⁸ Accordingly, the Board should find that the Transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for this Transaction, which falls under 49 U.S.C. §§ 11324 and 11325, because the Transactions involves only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here.

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(b). Under 49 C.F.R. § 1105.6(c)(2), however, the subject Transaction is exempt from environmental reporting requirements. Specifically, the Transaction has not and will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(2) and (3), the Transaction also is exempt from historic impact reporting requirements. The Transaction has not and will not produce any significant operating changes among the OmniTRAX Railroads or on PIR, nor will it result in any substantial changes in the level of railroad property maintenance on any of the

⁸ See Broe – Brownsville, FD 35837

aforementioned railroads. Further Board approval would be required as a prerequisite to any abandonment by any of the involved railroad carriers, and there are no plans in connection with this Transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

WHEREFORE, OmniTRAX respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. §§ 11324 and 11325 permitting OmniTRAX to acquire control of the OmniTRAX Railroads.

Respectfully submitted,

By: 

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**ATTORNEYS FOR OMNITRAX HOLDINGS
COMBINED, INC.**

Dated: May 5, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

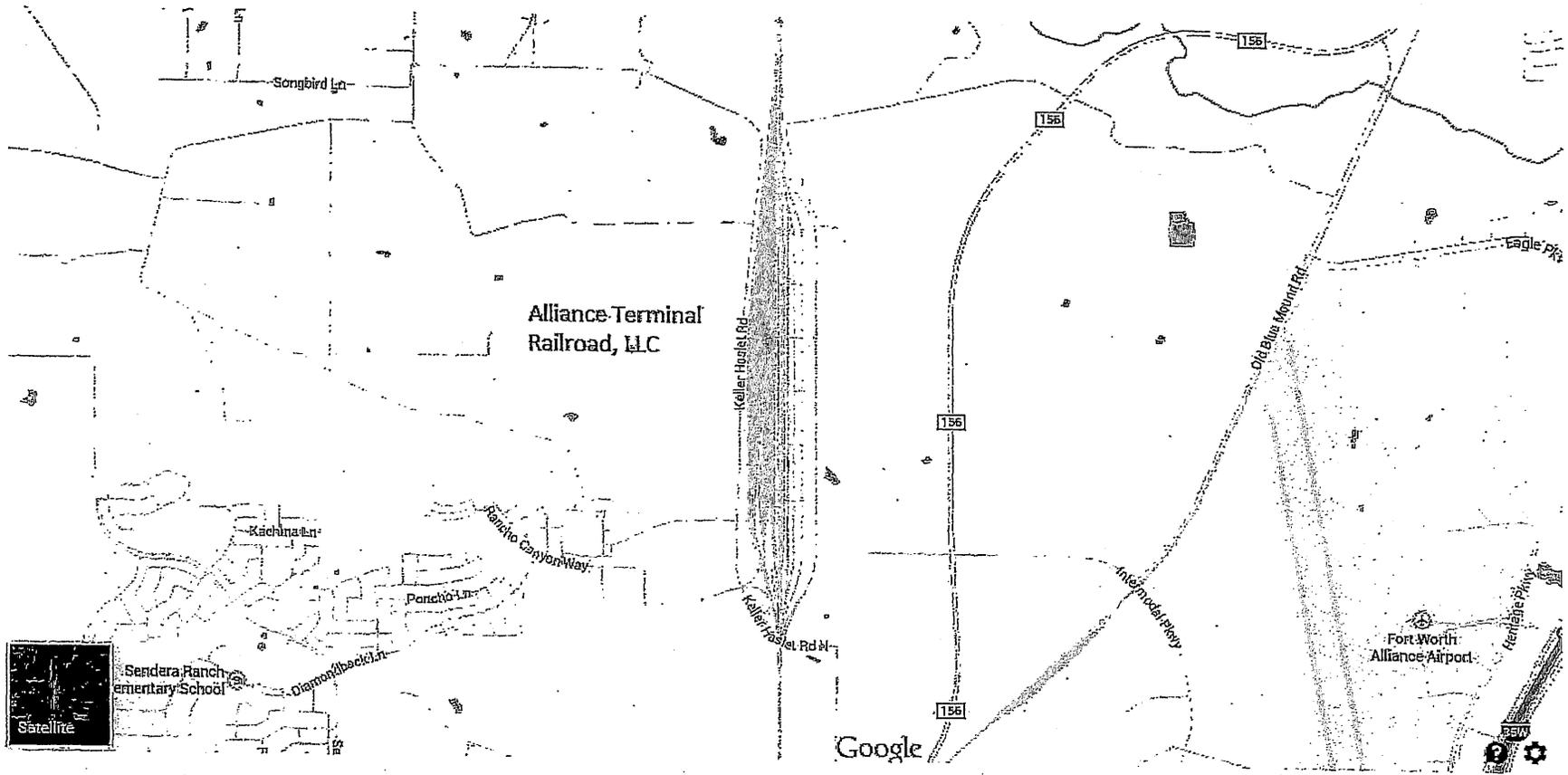
DOCKET NO. FD 36032

OMNITRAX HOLDINGS COMBINED, INC. --
ACQUISITION OF CONTROL PETITION FOR EXEMPTION

**PETITION FOR EXEMPTION OF
OMNITRAX HOLDINGS COMBINED, INC.**

EXHIBIT A

MAPS OF OMNITRAX RAILROADS



BRG Track and Interchange Stations

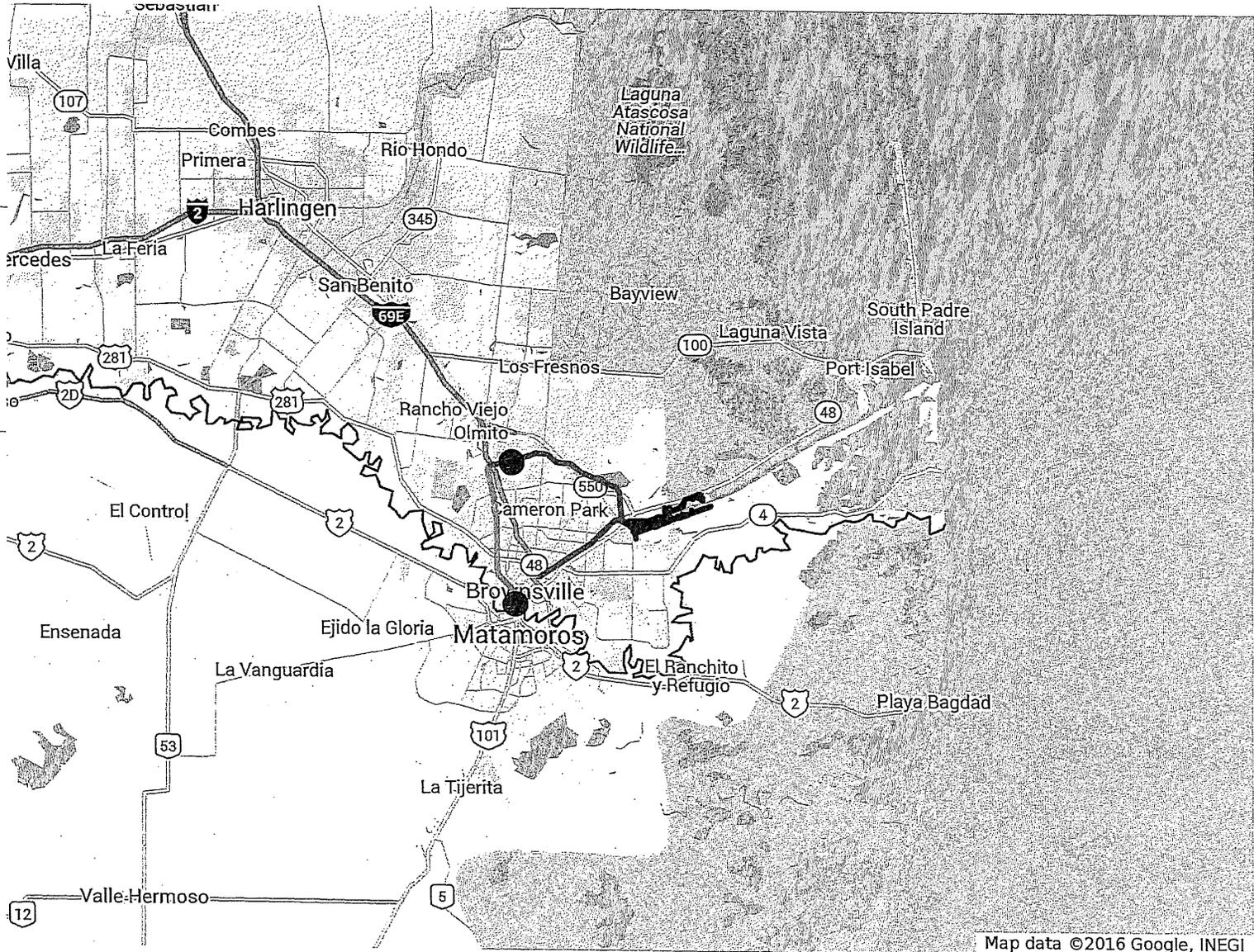
BRG Track

-  Haulage Rights
-  Trackage Rights
-  BRG

Interchange Stations

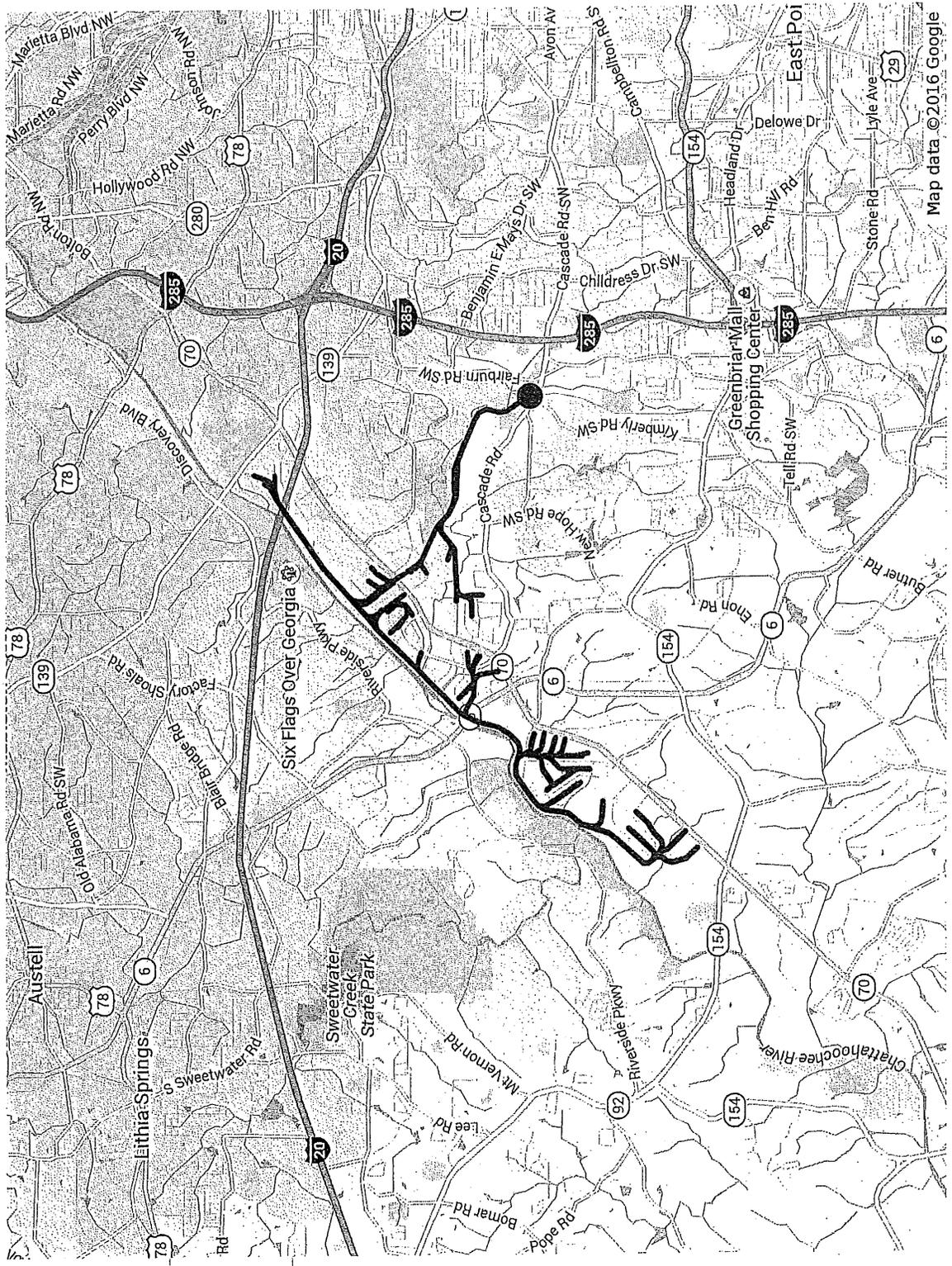
-  Brownsville & Matamoros Int'l Bridge
-  Olmito Yard

Brownsville and Rio Grande International Railway



Map data ©2016 Google, INEGI

FCR Track and Interchange Station



FCR Track
 Westgate
 FCR

Interchange Station
 Fulco Jct

Fulton County Railway

GFRR Track and Interchange Stations

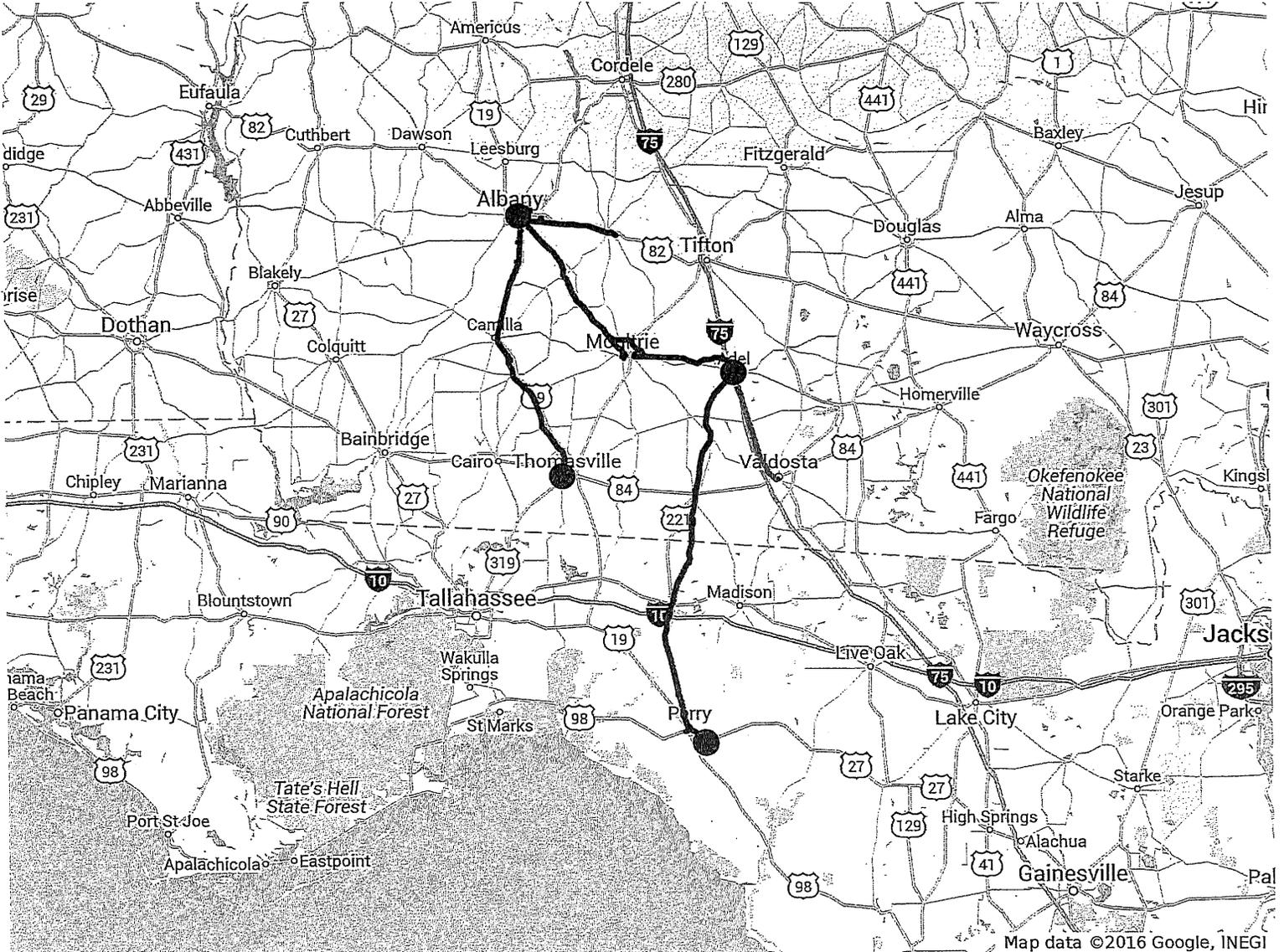
GFRR Track

-  Foley
-  Thomasville
-  Moultrie
-  Sylvester
-  Trackage Rights

Interchange Stations

-  Albany
-  Adel
-  Foley
-  Thomasville

Georgia and Florida Railway



Map data ©2016 Google, INEGI

GWR Track, Interchange Stations and the Great Western Industrial Park

GWR Track

-  Anheuser-Busch
-  Black Hollow
- 

Great Western Industrial Park

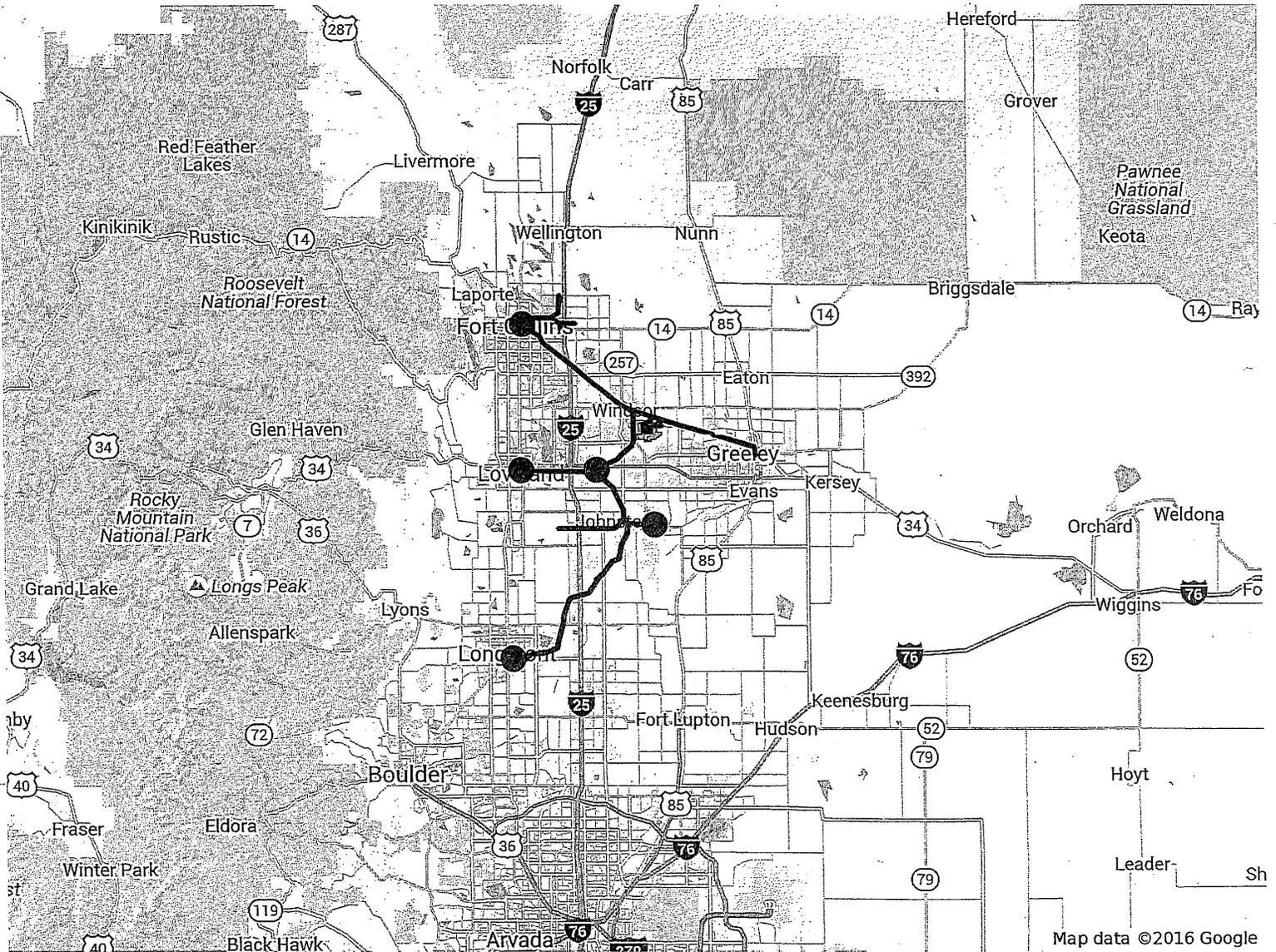
-  Greeley
-  Longmont
-  Loveland
-  Milliken
-  North Yard
-  Welty

Interchange Stations

-  Longmont
-  Fort Collins
-  Loveland
-  Milliken
-  Kelim

Great Western Industrial Park

- 
- 
- 



Great Western Railway of Colorado

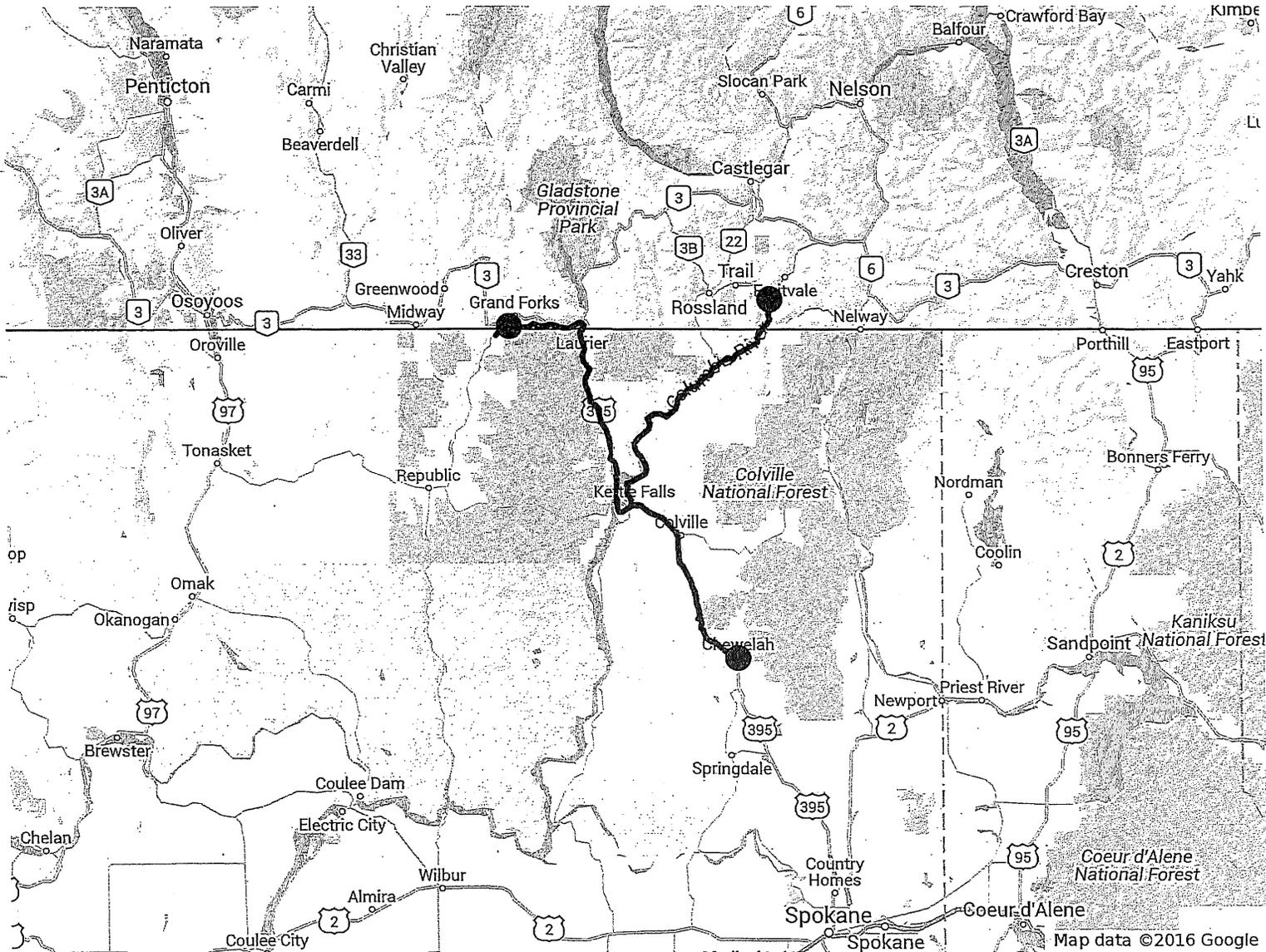
Map data ©2016 Google

KFR Track and Interchange Stations

- KFR Track**
-  San Poil
 -  Kettle Falls

- Interchange Stations**
-  Chewelah
 -  Grand Forks
 -  Columbia Gardens

Kettle Falls International Railway



NKCR Track and Interchange Stations

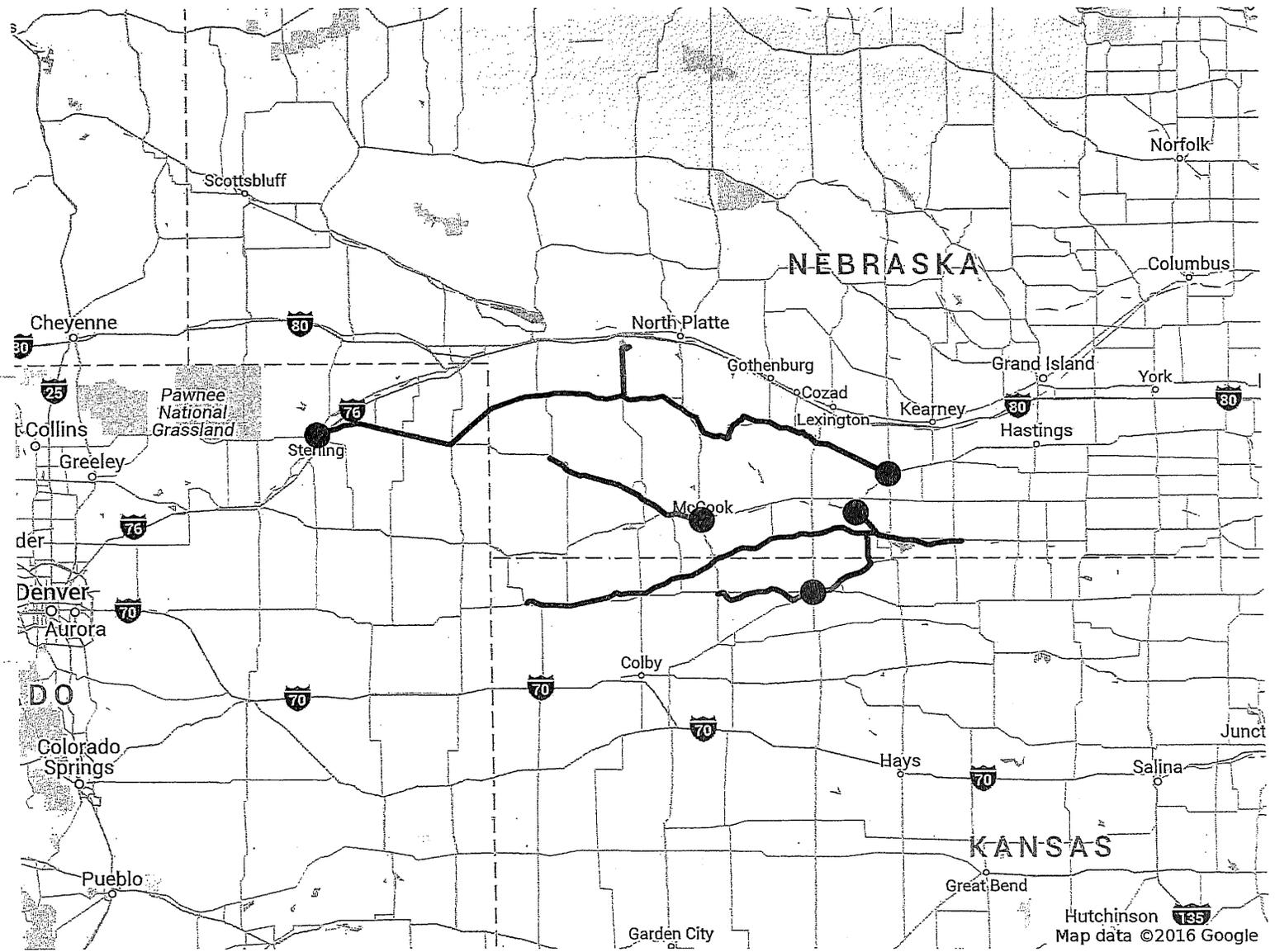
NKCR Track

-  Holdrege
-  Wallace
-  St. Francis
-  Oberlin
-  Imperial
-  Franklin
-  Trackage Rights

Interchange Stations

-  Norton
-  Holdrege
-  Oxford Junction
-  McCook
-  Sterling

Nebraska, Kansas and Colorado Railway



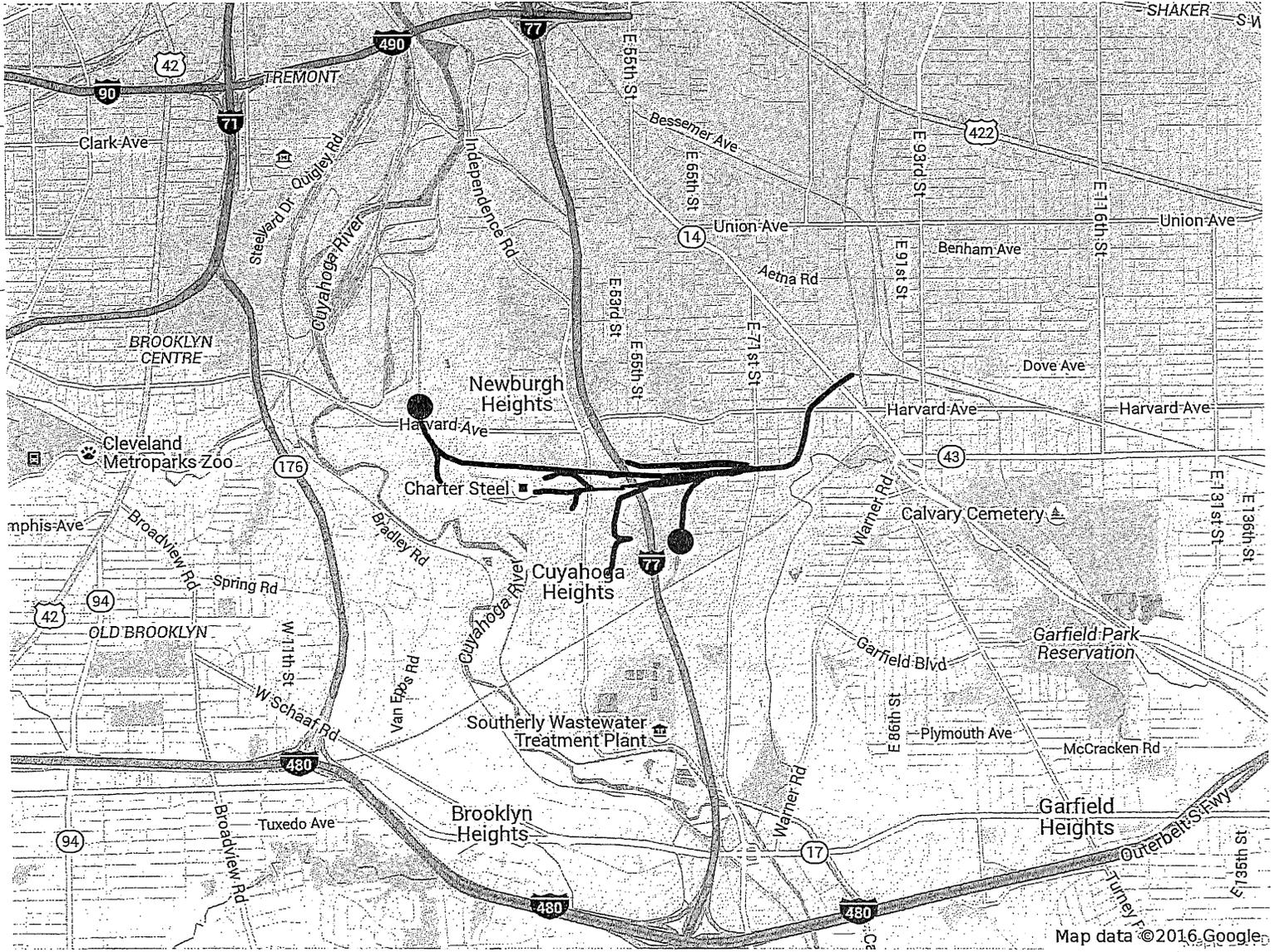
Hutchinson  Map data ©2016 Google

NSR Track and Interchange Stations

NSR Track
 NSR

Interchange Stations
 Cleveland
 Marcelline Yard

Newburgh and South Shore
 Railroad

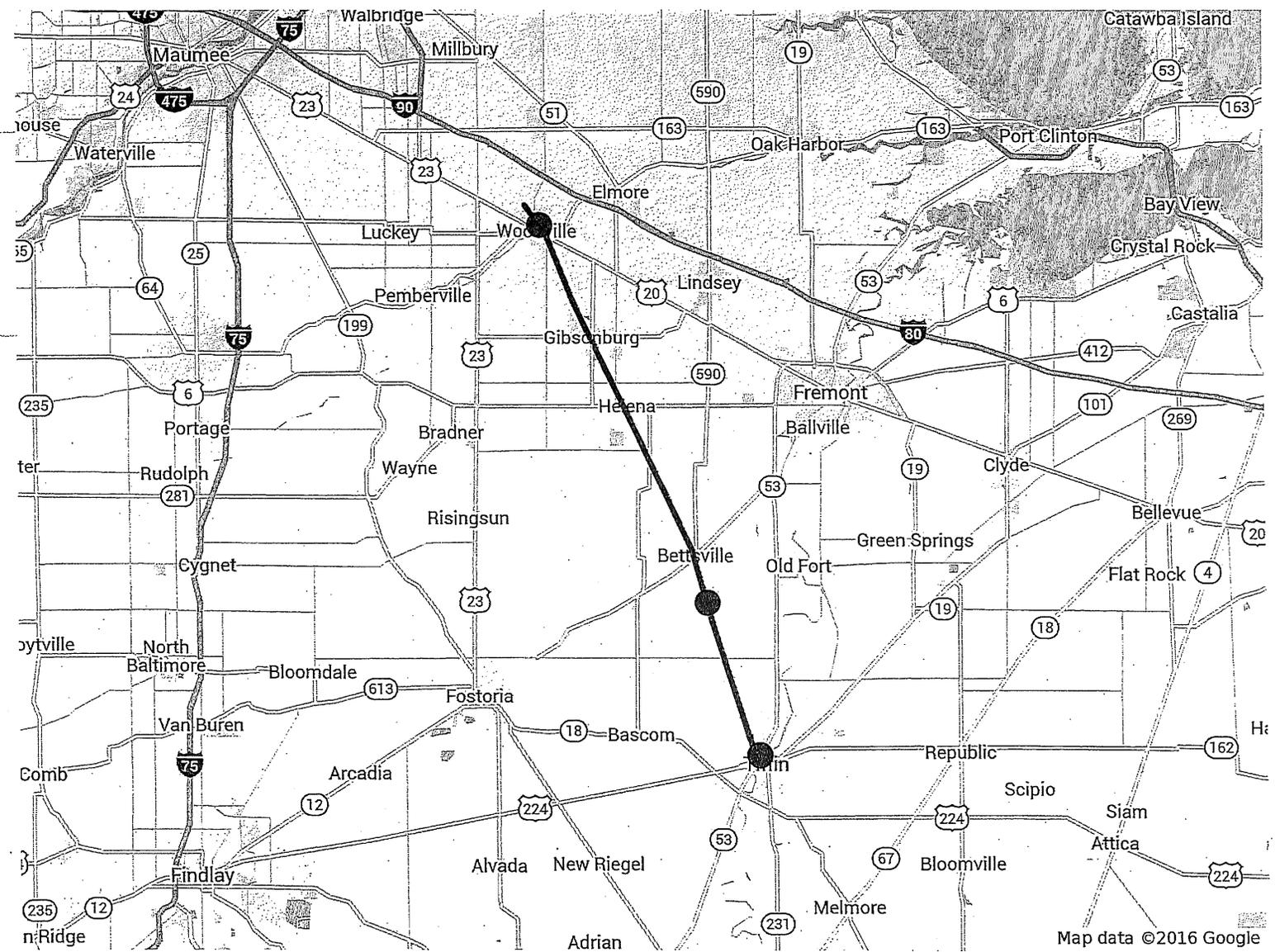


NOW Track and Interchange Stations

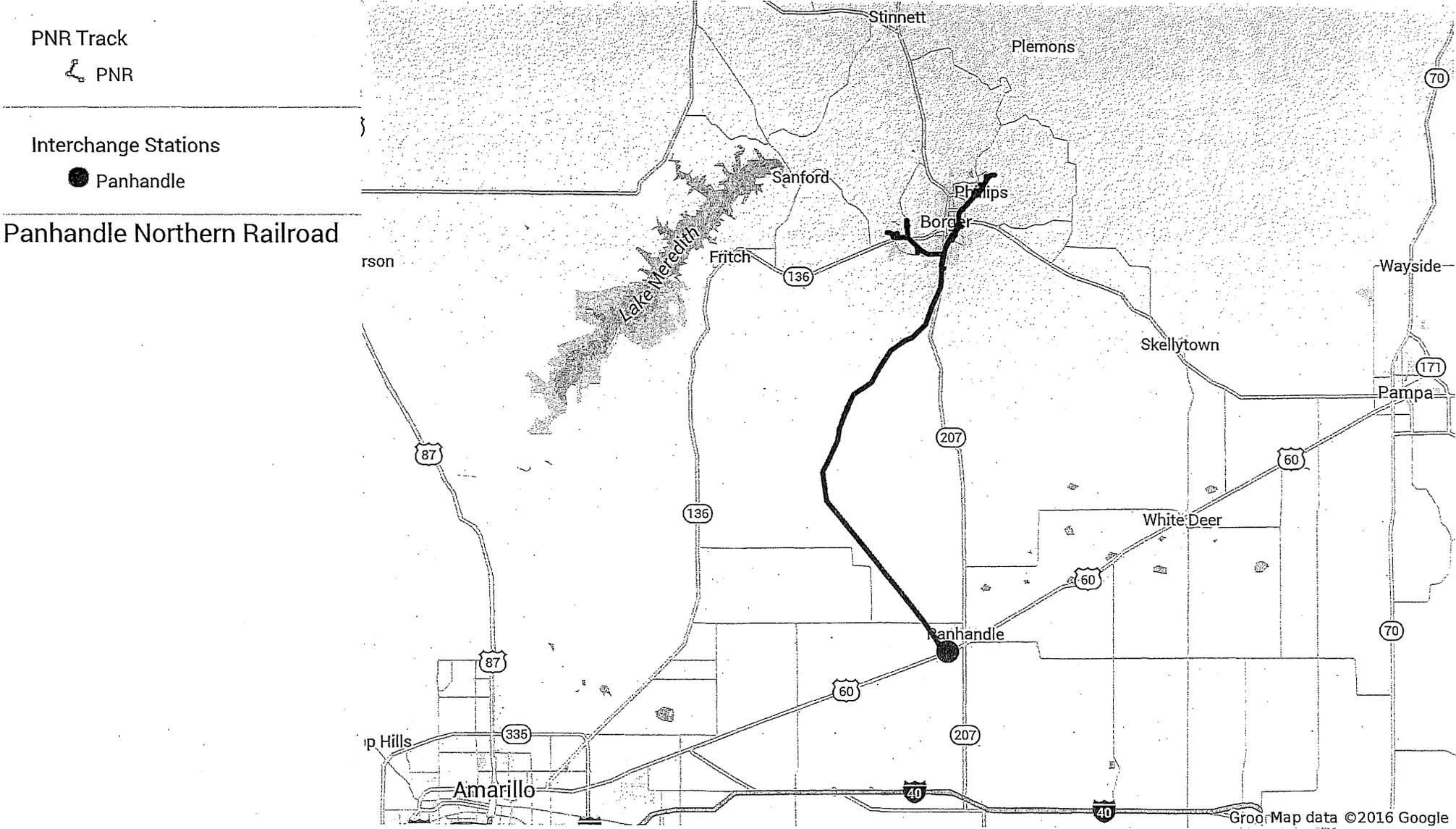
NOW Track
 NOW

Interchange Stations
 Woodville
 Maple Grove
 Tiffin

Northern Ohio and Western
 Railway



PNR Track and Interchange Station



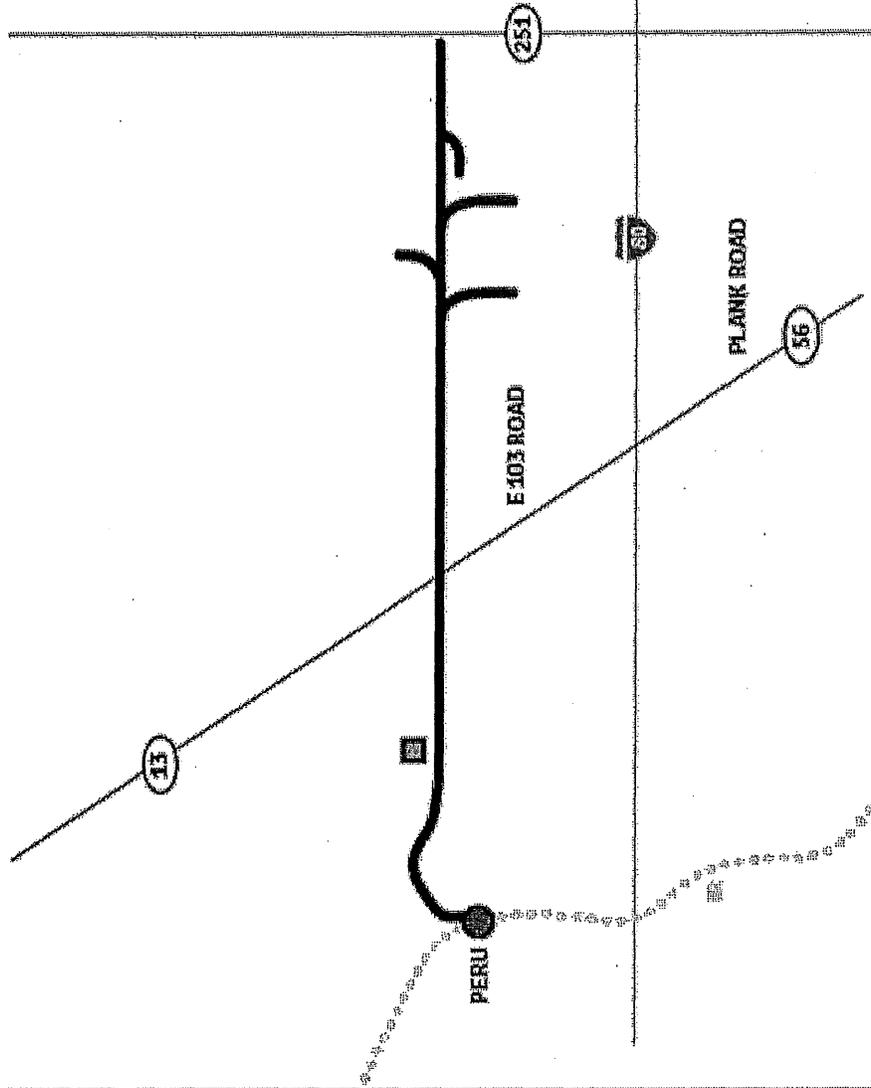
**PERU INDUSTRIAL
RAILROAD, LLC**
PERU, ILLINOIS

MAP KEY

- AVAILABLE LAND
- INTERCHANGE STATION
- PIR
- RAILROADS
- MILES

0 5 1

[VIEW GOOGLE MAP](#)

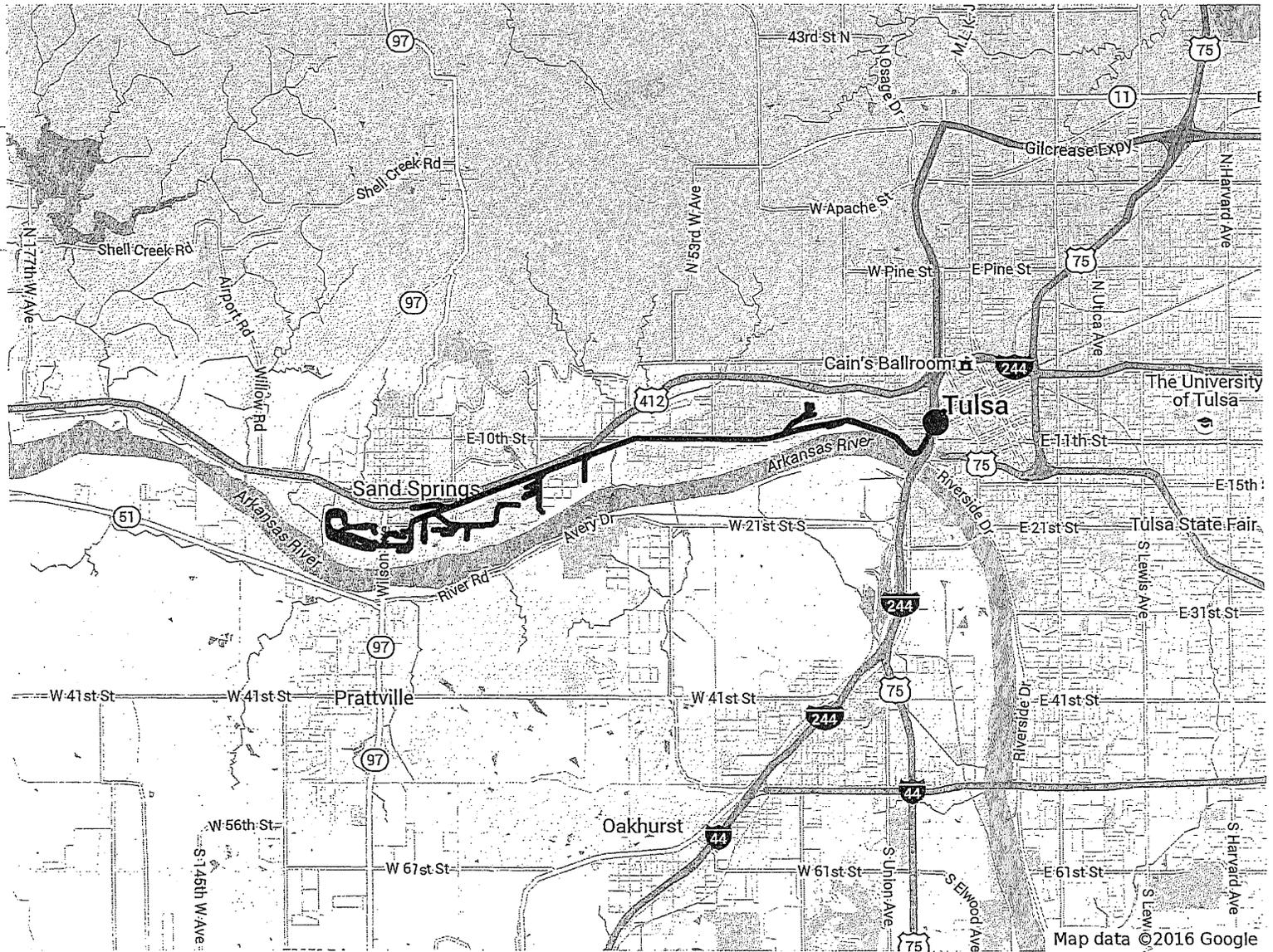


SS Track and Interchange Station

SS Track
SS

Interchange Station
Tulsa

Sand Springs Railway
Company

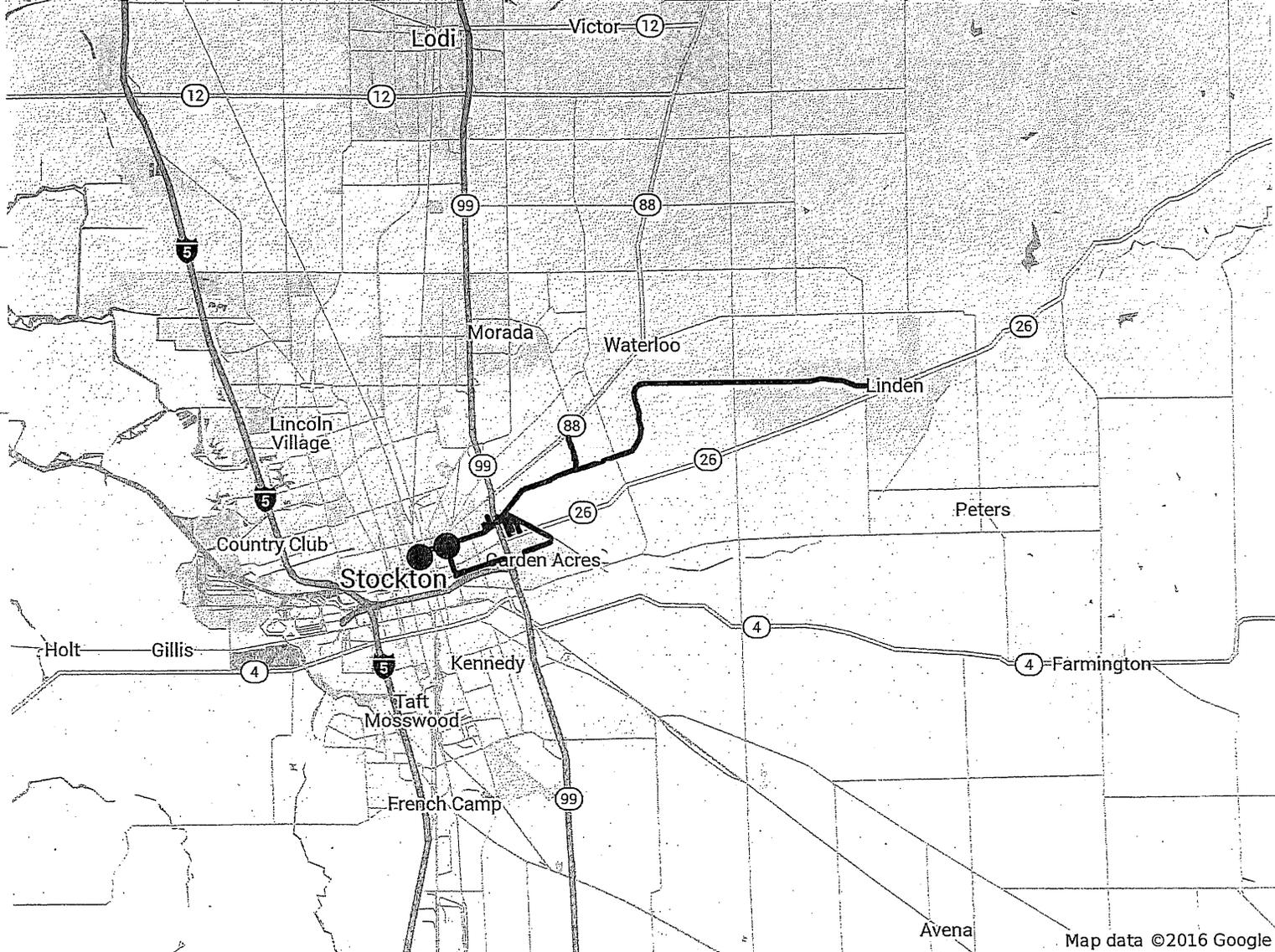


STE Track and Interchange Stations

- STE Track
-  Linden
 -  UP Right of Way
 -  STE
 -  Main Line

- Interchange Stations
-  Stockton BN Xfer
 -  Stockton UP Xfer

Stockton Terminal and Eastern Railroad



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