

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35828

236018

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May 8, 2014
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Public Record

**THE APACHE RAILROAD COMPANY, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -
THE APACHE RAILWAY COMPANY
UNDER 49 CFR § 1180.2(d) (3)**

Submitted By:

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Counsel for Applicant

Dated: May 8, 2014

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Come now The Apache Railroad Company, LLC (“APA”) and its corporate affiliate, The Apache Railway Company (“Apache”)¹ and state as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules (49 C.F.R. §1180), Applicants hereby give notice of a transaction which qualifies for exemption under §1180.2(d) (3) of those rules.
2. As relevant here, APA is a limited liability company and a noncarrier established for the purpose of owning and operating a common carrier short line railroad.
3. Apache is an existing Class III short line railroad subject to the Board’s jurisdiction that operates from a connection with the BNSF Railway at Holbrook to the former Catalyst Paper Company’s (“Catalyst”) paper mill at

¹ Collectively, “the Applicants.”

Snowflake, Arizona, a distance of 38 miles. The railroad was established in 1917 before the enactment of the entry provisions of the former Interstate Commerce Act. The company has been owned by a series of paper company shippers, most recently Catalyst.

4. Both APA and Apache are wholly-owned corporate subsidiaries of Snowflake Community Foundation (“Snowflake”),² a noncarrier and entity established in 2013 that acquired Apache’s common stock for the purpose of preserving the railroad’s track and facilities and operations for the benefit and future economic development of the citizens and communities of Navajo County, AZ.

5. Applicants propose to undertake a corporate family transaction in order to qualify for acquisition funding from the Federal Railroad Administration (“FRA”) under its Railroad Rehabilitation Improvement Fund (“RRIF”) loan program. More specifically, Snowflake has established APA as a new limited liability company and subsidiary that will upon consummation of this transaction become a railroad common carrier. It will acquire all of the assets, franchises, rights, obligations, and operations of Apache which will then be merged into APA with APA as the sole surviving entity.

² Other than APA and Apache, Snowflake does not own any railroads or railroad assets subject to the Board’s jurisdiction.

6. Under §1180.2(d) (3) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, §1180.2(d) (3) exempts corporate family transactions where the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

7. The Board has on numerous occasions authorized transactions involving some combination of a transfer of railroad assets and operations from one corporate affiliate to another and/or a merger of the two or more affiliated entities. Precedent involving the transfer or assignment of railroad assets and common carrier operations from one corporate affiliate to another under the corporate family transaction exemption of 49 CFR §1180.2(d)(3) include *New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.—Corporate Family Transaction Exemption*, FD 34813, (STB served July 27, 2006) and *Kansas City Southern, The Kansas City Southern Railway Company, and The Texas Mexican Railway Company—Exemption for Transactions Within a Corporate Family*, FD 34849 (STB served April 17, 2006). Cases where the applicants have utilized the corporate family transaction exemption of 49 CFR §1180.2(d)(3) to obtain Board approval of merger transactions include *Summit View, Inc.-Intracorporate Family Exemption-Merger of Pittsburgh Industrial*

Railroad, Inc. Into The Pittsburgh & Ohio River Railroad Company, FD 33994 (STB served Feb. 21, 2001) and *The Kansas City Southern Railway Company-Acquisition and Merger Exemption-Gateway Western Railway Company and Kansas City Southern Transportation Company*, FD 34009 (STB served October 19, 2001)(the surviving company acquired all of the stock it owns in a subsidiary and assumes of all of the rights, obligations, and business functions of its subsidiaries one of which was then merged into the surviving company). While less common, there is Board precedent authorizing a transaction involving both a merger of affiliated entities *and* the transfer of assets. *See, Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.--Intracorporate Family Transaction Exemption*, FD 33815 (STB served December 13, 1999)(where the Board authorized a transaction whereby two subsidiary rail carriers were merged into one new entity and the physical assets of both subsidiaries were transferred to two newly formed limited liability companies controlled by the surviving entity. Accordingly, the Apache and APA should be able to use the corporate family transaction exemption of 49 CFR §1180.2(d) (3) for approval of the subject transaction.

8. In order to claim the §1180.2(d) (3) exemption, §1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in

§§1180.6(a) (1) (i) – (iii), 1180.6(a) (5) – (6), and 1180.6(a) (7) (ii) of those rules.

That information is provided as follows:

Summary of Proposed Transaction: 49 CFR §1180.6(a) (1) (i)

As described above, Apache will transfer all of its assets, franchises, rights, obligations, and operations to APA in order to facilitate Snowflake's ability to obtain a RRIF to finance the acquisition of those assets

Applicant's name, address, and telephone number:

For both Apache and APA:

P.O. Box 857

Snowflake, AZ 85937

Legal counsel to whom questions should be addressed:

John D. Heffner

Strasburger & Price, LLP

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Washington, D.C. 20036

(202) 742-8607

Schedule for consummation: 49 CFR §1180.6(a) (1) (ii)

The parties intend to consummate the proposed transaction at least 30 days from the date of this notice, on or about mid June 2014.

Purpose to be accomplished by the transaction: 49 CFR §1180.6(a) (1) (iii)

The purpose of this transaction is to enable Snowflake to obtain a federal loan in order to finance the acquisition of Apache's assets and operations.

Snowflake acquired Apache's assets and operations in 2013 from Catlyst which

was in bankruptcy at the time. In order to finance this purchase quickly, Snowflake had obtained a short term loan from a venture capital firm which needs to be repaid soon. Snowflake has been in discussions with the FRA over the past few months for a RRIF loan. The FRA has indicated that it could approve the loan if the loan applicant [APA] would use the loan proceeds to purchase the physical assets of an existing rail carrier, here Apache.

(5) State(s) in which the property of each carrier is situated: 49 CFR §1180.6(a)

Arizona

Map: 49 CFR §1180.6(a) (6)

Attached hereto as Exhibit A.

Copy of Agreement: 49 CFR §1180.6(a) (7) (ii)

N.A. As yet, no agreement of merger has been prepared. It will be prepared should the FRA approve the RRIF loan.

Environmental and historical considerations:

This corporate family transaction exemption proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b)(1) because there are no plans to dispose of or

alter properties subject to Board jurisdiction that are at least 50 years old.

Accordingly, no historic report is required.

Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads.

See, 49 U.S.C. §11326(c).

Respectfully submitted,


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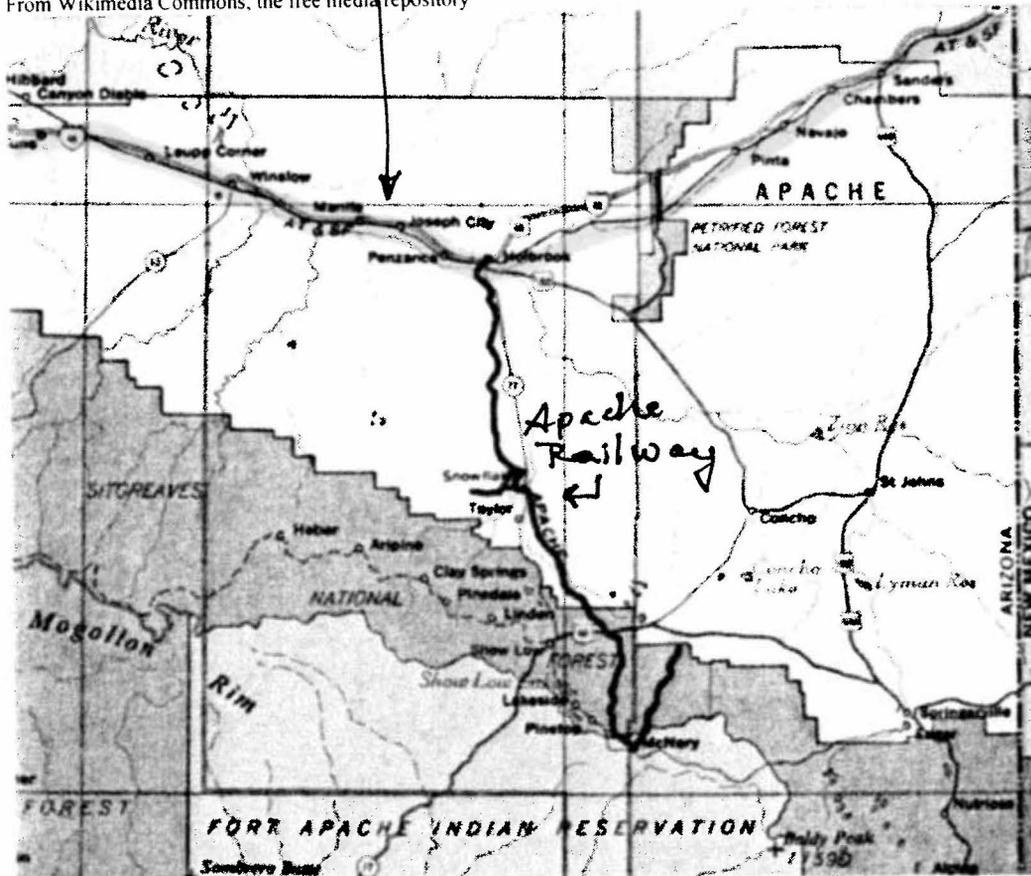
Dated: May 8, 2014

EXHIBIT A

BNSF Railway

File:Map of the Apache Railway.png

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Size of this preview: 712 × 599 pixels.
Original file (1.155 × 972 pixels, file size: 1.65 MB, MIME type: image/png)

Expand view

Description	Map of the Apache Railway
Date	6 February 2010
Source	map based on the National Atlas of the United States 1970
Author	Liesel
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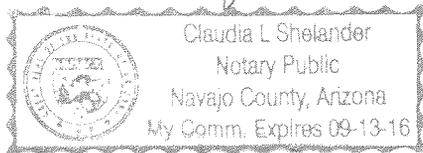
VERIFICATION

STATE OF Arizona)
)
CITY OF Snowflake)

Shirley Cornett, being duly sworn according to law, hereby deposes and states that (s)he holds the position of Superintendent with applicant/petitioner, is authorized to make this Verification, had 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.

Shirley Cornett

Subscribed to and sworn to before me, a Notary Public, in and for the County of Navajo
in the State of Az, this 1st day of May 2014



Claudia L. Shelander
Notary Public

My Commission expires: