

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1081X

SAN PEDRO RAILROAD OPERATING COMPANY, LLC—ABANDONMENT  
EXEMPTION—IN COCHISE COUNTY, AZ

MOTION FOR PROTECTIVE ORDER

Decided: February 17, 2006

By decision served February 3, 2006, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by San Pedro Railroad Operating Company, LLC (SPROC) of approximately 76.2 miles of railroad line in Cochise County, AZ, as follows: (1) the Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) the Douglas Branch (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, a distance of 19.9 miles, subject to public use, environmental, and standard employee protective conditions. The exemption was scheduled to become effective on March 5, 2006, unless an offer of financial assistance (OFA) was filed on or before February 13, 2006.

On February 13, 2006, Sonora-Arizona International LLC (Sonora) filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c).<sup>1</sup> On the same date, Sonora also filed a motion for protective order, pursuant to 49 CFR 1104.14, to allow it to file under seal certain confidential and highly confidential documents and information in connection with the OFA.<sup>2</sup> These confidential and highly confidential documents include commercially or competitively sensitive information, including information relating to the identity of an investor who wishes to remain anonymous for the purpose of the public docket. On February 17, 2006, SPROC filed a reply in opposition to the motion for a protective order insofar as it requires SPROC to negotiate with Sonora through counsel and does not allow SPROC to satisfy itself as to the financial fitness of Sonora or its investor.

Despite SPROC's objections, the motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials

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<sup>1</sup> The merits of Sonora's OFA are addressed in a separate decision being issued today.

<sup>2</sup> A proposed Protective Order and Undertaking were included with the motion.

submitted to the Board. The Board allows parties to participate in agency proceedings through counsel. Accordingly, the motion for protective order will be granted, with minor revisions, subject to the Protective Order and Undertaking contained in the Appendix to this decision. Issuance of the protective order ensures that Sonora's confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. Sonora's motion for protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. Sonora's confidential and highly confidential documents and information submitted in STB Docket No. AB-1081X will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Sonora” refers to Sonora-Arizona International LLC, which is submitting an offer of financial assistance (OFA) to acquire the rail properties that are the subject of the petition for exemption for abandonment authority in San Pedro Railroad Operating Company, LLC—Abandonment Exemption—In Cochise County, AZ, STB Docket No. AB-1081X. “Confidential Information” means data and documents furnished to the Board by Sonora in connection with the OFA in STB Docket No. AB-1081X and designated as “Confidential Information” on the face of the document. “Highly Confidential Information” means data and documents furnished by Sonora, and designated as “Highly Confidential” by Sonora in good faith, that include competitively or commercially sensitive information such as shipper-specific rate or cost data or information regarding the identity or business enterprises of investors in Sonora.

2. Confidential Information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Confidential Material prior to receiving access to such materials. Confidential Information shall be used solely for the purpose of this and any related Board proceeding, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. Any party producing information in discovery or in pleadings in this proceeding may in good faith designate and label such information Highly Confidential Information. If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board or any Administrative Law Judge presiding over this proceeding. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as “Highly Confidential” and produced in discovery or as part of pleadings in this proceeding shall be subject to all other provisions of this Protective Order.

4. Confidential Information or Highly Confidential Information shall not be disclosed in any way or to any person without the written consent of Sonora, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom.

5. Any party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with Sonora or its affiliate, Sonora-Arizona Internacional S.A. de C.V. (Sonora Mexico) relating to the Confidential or Highly Confidential Information and/or the OFA will be handled solely by counsel for Sonora. Each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of Sonora or Sonora Mexico to discuss the Confidential or Highly Confidential Information or the OFA except through counsel for Sonora as stated above.

6. Any documents containing Confidential or Highly Confidential Information must be destroyed, and notice of such destruction must be served on Sonora at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.

7. If the Board retains the Confidential or Highly Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.

8. If any party intends to use Confidential or Highly Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential or Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential or Highly Confidential Information in accordance with this Protective Order.

9. A party must file simultaneously a public version of any confidential submission it files with the Board.

10. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other party return the inadvertently produced privileged document. The party who received the inadvertently produced document will either return the document and any copies thereof to the producing party or destroy the document and any copies thereof immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

11. All parties must comply with all provisions stated in this Protective Order unless good cause, as determined by an Administrative Law Judge decision from which no appeal is taken or by the Board, warrants suspension of any of the provisions herein.

UNDERTAKING  
CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by Sonora in STB Docket No. AB-1081X, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-1081X or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof. I further agree to be bound by all the terms of the Protective Order even if not specifically enumerated in the foregoing sentences. I understand further that the Protective Order states that any party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with Sonora relating to the Confidential or Highly Confidential Information and/ or the OFA will be handled solely by counsel for Sonora. I understand as well that each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of Sonora or its affiliate Sonora-Arizona Internacional S.A. de C.V. to discuss the Confidential or Highly Confidential Information or the OFA except through counsel as agreed to above. I hereby specifically agree to the obligations set forth in the two preceding sentences.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Sonora shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_ Address: \_\_\_\_\_  
Position: \_\_\_\_\_  
Affiliation: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Dated: \_\_\_\_\_

UNDERTAKING  
HIGHLY CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, am [outside counsel] [consultant] for \_\_\_\_\_, for which I am acting in this proceeding, I certify that I have read the Protective Order governing the filing of Highly Confidential Information in STB Docket No. AB-1081X, understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated “Highly Confidential”, that I will limit my use of those documents and the information they contain to this proceeding, and any judicial review proceedings arising herefrom, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceedings arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated “Highly Confidential” by, or disclose any information contained therein, to any persons or entities for which I am not acting in this proceeding. I understand further that the Protective Order states that any party, including but not limited to person who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with Sonora relating to the Confidential or Highly Confidential Information and/or the OFA will be handled solely by counsel for Sonora. I understand as well that each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of Sonora or its affiliate Sonora-Arizona Internacional S.A. de C.V. to discuss the Confidential or Highly Confidential Information or the OFA except through counsel as agreed to above. I hereby specifically agree to the obligations set forth in the two preceding sentences.

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Signed: \_\_\_\_\_ Address: \_\_\_\_\_  
Position: \_\_\_\_\_  
Affiliation: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Dated: \_\_\_\_\_