

232632

ORIGINAL

August 1, 2012

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

RECEIVED
B I
MANAGEMENT
JTB

VIA COURIER

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

ENTERED
Office of Proceedings

AUG 01 2012

Part of
Public Record

**RE: FD 35632, Iowa Pacific Holdings, LLC, And Permian Basin Railways –
Continuance In Control Exemption – Santa Cruz and Monterey Bay
Railway Company**

**FD 35633, Santa Cruz and Monterey Bay Railway Company –
Assignment of Lease Exemption – Union Pacific Railroad Company and
Sierra Northern Railway**

Dear Ms. Brown:

On behalf of Iowa Pacific Holdings, Permian Basin Railways, and the Santa Cruz and Monterey Bay Railway Company, I am submitting the following documents:

- (1) in FD 35632 an original and ten copies of a verified notice of exemption under 49 CFR §1180.2(d)(7) for Iowa Pacific Holdings, LLC, And Permian Basin Railways to continue in control of the Santa Cruz and Monterey Bay Railway Company; and
- (2) in FD 35633 an original and ten copies of a verified notice of exemption under 49 CFR §1150.31 for the assignment of the lease of a railroad line to the Santa Cruz and Monterey Bay Railway Company.

FEE RECEIVED

AUG 01 2012

**SURFACE
TRANSPORTATION BOARD**

FILED

AUG 01 2012

**SURFACE
TRANSPORTATION BOARD**

Strasburger & Price, LLP

Ms. Cynthia A. Brown

August 1, 2012

Page 2

I am enclosing a CD containing these documents in an electronic form as well as a check payable to the Board for \$3100 to cover the applicable filing fees. Please date stamp and return to me one copy of each.

Sincerely yours,



John D. Heffner

Enclosures

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

232632

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35632

RECEIVED
AUG 1 2012
MANAGEMENT
STB

ENTERED
Office of Proceedings

AUG 01 2012

Part of
Public Record

**IOWA PACIFIC HOLDINGS, LLC
AND PERMIAN BASIN RAILWAYS
-- CONTINUANCE IN CONTROL EXEMPTION --
SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

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

FILED
AUG 01 2012
SURFACE
TRANSPORTATION BOARD

Dated: August 1, 2012

FEE RECEIVED

AUG 01 2012

SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35632

**IOWA PACIFIC HOLDINGS, LLC
AND PERMIAN BASIN RAILWAYS
-- CONTINUANCE IN CONTROL EXEMPTION --
SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

Come now Iowa Pacific Holdings, LLC (“IPH”), and its wholly owned subsidiaries Permian Basin Railways (“PBR”)¹ and Santa Cruz and Monterey Bay Railway Company (“SCMB”), and state as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules (49 C.F.R. § 1180), the parties hereby give notice of a transaction which qualifies for exemption under Section 1180.2(d) (2) of those rules.

¹ Collectively referred to as “IPH/PBR.”

2. As relevant here, SCMB is a newly established company and noncarrier formed by IPH/PBR for the purpose of providing common carrier freight railroad service over a rail line² that up until now has been operated by the Sierra Northern Railroad (“Sierra”) under a lease from the Union Pacific Railroad Company (“UP”).

3. More specifically, IPH/PBR has established SCMB to replace Sierra as the operator of the Line currently owned and leased to Sierra by UP. Sierra has announced its desire to terminate its operations over the Line and UP desires for another short line railroad to continue service on an interim basis pending the acquisition of the physical assets of the Line by the Santa Cruz County Regional Transportation Commission (“SCCRTC”).³ Upon SCCRTC’s consummation of

² 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.

³ SCCRTC has filed a petition for declaratory order in FD 35653 seeking such a ruling under precedents such as *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 I.C.C. 835 (1991).

that acquisition SCMB will become the permanent operator of the Line by acquiring from UP a permanent and exclusive operating easement and common carrier obligation reserved from the sale to SCCRTC by UP.

4. The lines currently owned or leased and operated by IPH/PBR subsidiary railroads will not connect with the Line as they are located hundreds, if not thousands, of miles apart from the Line and there are no plans to connect these lines. Presently, IPH/PBR subsidiary railroads include the Chicago Terminal Railroad (located in and around Chicago), the Mount Hood Railroad (Oregon), the San Luis & Rio Grande Railroad (Colorado), the Saratoga & North Creek Railway (New York), the Texas-New Mexico Railroad (New Mexico and Texas), and the West Texas & Lubbock Railway (Texas). A map showing the relationship between these various railroads is attached here as Exhibit A.

5. Under section 1180.2(d) (2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, section 1180.2(d) (2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the acquisition is not part of a series of

anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a class I carrier.

6. In order to claim the section 1180.2(d)(2) exemption, section 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in sections 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)**

SCMB will acquire by assignment the current lease between UP and Sierra with the consent and acknowledgment of those parties. As noted above, SCMB is a newly established company and noncarrier organized by IPH/PBR for the specific purpose of operating the Line.

Applicant's name, address, and telephone number:

Santa Cruz and Monterey Bay Railway Company
c/o Iowa Pacific Holdings, LLC
118 South Clinton Street,
Suite 400
Chicago, IL 60661
(312) 466-0900

Legal counsel to whom questions should be addressed:

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

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

SCRM intends to consummate this transaction at least 30 days from the effective date of this notice, probably on or about September 1, 2012.

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

The purpose of this transaction is for applicant IPH/PBR's subsidiary SCMB to expeditiously replace the service currently provided on the Line by Sierra which has announced its desire to terminate service. The SCCRTC plans to purchase the physical railroad assets from UP with the latter to retain a permanent and exclusive railroad operating easement and the common carrier obligation. Once the SCCRTC consummates its acquisition, SCMB will file a new class exemption notice for it to acquire UP's retained easement and common carrier obligation and provide operations over the Line. The lease assignment exemption will ensure that there is no gap in service during the Board's consideration of SCCRTC's Petition

and the time until SCCRRA is able to consummate its acquisition of the physical railroad assets.

State(s) in which the property of each carrier is situated: **49 CFR**

§1180.6(a) (5)

SCMB: California

Other IPH/PBR subsidiary railroads:

Chicago Terminal Railroad: Illinois

Mount Hood Railroad: Oregon

San Luis & Rio Grande Railroad: Colorado

Saratoga & North Creek Railway: New York

Texas-New Mexico Railroad: New Mexico and Texas

West Texas & Lubbock Railway: Texas

Map: **49 CFR § 1180.6(a) (6)**

Attached hereto as Exhibit A.

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

N.A. There is no agreement covering IPH/PBR's control of SCMB.

Related transactions

Concurrently with this filing, SCMB is submitting a verified Notice of Exemption for the assignment of the lease and operation of the Line. That notice has been assigned docket number FD 35633. 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 constitute a transaction subject to Board approval jurisdiction.

Other information / Certification:

IPH/PBR and SCMB hereby certify that (1) the Line to be operated by the rail carrier [SCMB] to be controlled pursuant to this notice of exemption does not connect with any of the other short line railroad subsidiaries of IPH/PBR, (2) the subject proceeding is not a part of a series of anticipated transactions that would connect these railroads with each other, and (3) the transaction does not involve a class I carrier.

Environmental and historical considerations:

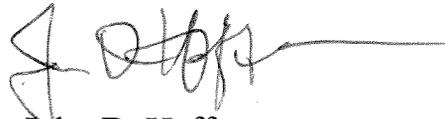
This continuance in control proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause

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,



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

Counsel for Petitioner

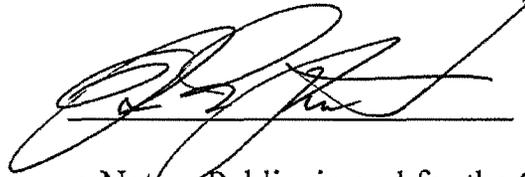
Dated: August 1, 2012

EXHIBIT A

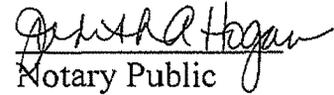
VERIFICATION

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 1st day of August, 2012.


Notary Public

My commission expires: *Jan 13 2013*

