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December 7, 2011

VIA ELECTRONIC FILING

ENTERED
Office of Proceedings

FILED

DEC 7 - 2011

**SURFACE
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

DEC 7 - 2011

Part of
Public Record

NOR42133

re: Docket No. FD-35580; Sierra Railroad Company and Sierra Northern
Railway v. Sacramento Valley Railroad, LLC, McClellan Business
Park, LLC and County of Sacramento

Dear Ms. Brown:

Enclosed for filing in the subject proceeding is the Complaint of Sierra Railroad
Company and Sierra Northern Railway.

By facsimile transmission yesterday, arrangements were made for payment of the
\$350 filing fee.

Copies of this letter have been served upon Sacramento Valley Railroad, LLC by
e-mailing a copy to its counsel, Louis E. Gitomer, Esq. at Lou_Gitomer@verizon.net, and
on McClellan Business Park, LLC and the County of Sacramento by mailing them copies
by prepaid first-class mail.

If you have any questions concerning the filing or if I otherwise can be of
assistance, please let me know.

Sincerely yours,



Fritz R. Kahn

cc: Louis E. Gitomer, Esq.
McClellan Business Park, LLC
County of Sacramento

FEE RECEIVED
DEC 7 - 2011
**SURFACE
TRANSPORTATION BOARD**

SURFACE TRANSPORTATION BOARD

42133
Docket No. ~~FD 35580~~

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY,

Complainants,

v.

**SACRAMENTO VALLEY RAILROAD, LLC, MCCLELLAN BUSINESS
PARK LLC AND COUNTY OF SACRAMENTO,**

Respondents.

**COMPLAINT
OF
SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY**

**Torgny R. Nilsson
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**Fritz R. Kahn
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1920 N Street, NW (8th fl.)
Washington, DC 20036
Tel.: (202) 263-4152**

Attorneys for

**SIERRA RAILROAD COMPANY
SIERRA NORTHERN RAILWAY**

Dated: December 7, 2011

SURFACE TRANSPORTATION BOARD

42133
Docket No. ~~FD 35580~~

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY,

Complainants,

v.

SACRAMENTO VALLEY RAILROAD, LLC, MCCLELLAN BUSINESS
PARK LLC AND COUNTY OF SACRAMENTO,

Respondents.

COMPLAINT
OF
SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY

Complainants, Sierra Railroad Company of Davis, Calif. ("Sierra") and Sierra Northern Railway of Woodland, Calif. ("SERA"), pursuant to 49 U.S.C. §§10702(2) & 10704(b), allege that Respondents, Sacramento Valley Railroad, LLC of Boca Raton, Fla. ("SAV"), McClellan Business Park LLC of McClellan, Calif. ("McClellan") and the County of Sacramento of Sacramento, Calif. ("County") have failed to maintain reasonable practices and ask the Board to direct them to stop their violations of the law's requirements, and in support thereof Complainants state, as follows:

I. Sierra is a non-carrier which controls its wholly-owned subsidiary, SERA, formerly named the Yolo Shortline Railroad Company ("Yolo"). *See*, STB Finance Docket No. 34360, *Sierra Railroad Company--Corporate Family Transaction Exemption--Yolo Shortline Railroad Company*, served June 23, 2003.

2. SERA is a Class III rail carrier subject to the Board's jurisdiction. *See*, Docket No. FD 35490, *Sierra Northern Railway--Acquisition and Operation Exemption--Union Pacific Railroad Company*, served April 21, 2011.

3. SAV is a Class III rail carrier subject to the Board's jurisdiction. *See*, STB Finance Docket No. 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Holdings LLC and Patriot Rail Corp.--Continuance in Control Exemption--Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC*, served November 12, 2010.

4. McClellan is a rail carrier, notwithstanding that it never sought certification by the Board, because it retained the ability to exercise control of the rail carrier rendering common carrier service on its seven miles of railroad tracks. *See*, Finance Docket No. 32264, *Public Service Company of Colorado--Acquisition Exemption--Line of the Colorado & Wyoming Railway Company*, served November 10, 1993; *Southern Pacific Transportation Company--Abandonment--Los Angeles County, CA*, 8 I.C.C. 2d 495 (1992),

5. County is a rail carrier, notwithstanding that it never sought certification by the Board, because it retained the ability to exercise control of the rail carrier rendering common carrier service on its seven miles of railroad tracks. *Id.*

6. McClellan Air Force Base at McClellan, Calif., in 1995 was ordered by the Department of Defense to be closed, and, as portions of the Base were vacated, their

properties, including the seven miles of railroad tracks within the facility, were conveyed to the County.

7. In 2001, the County determined that its interest in having the former McClellan Air Force Base properties developed for commercial purposes would be aided by the introduction of common carrier railroad service.

8. The County chose Yolo to render railroad service within the former McClellan Air Force Base properties and entered into a License and Operating Agreement with it granting the railroad exclusive occupancy and operating right over the facility's seven miles of railroad tracks.

9. Yolo elected to render service on the seven miles of railroad tracks as a rail carrier subject to the Board's jurisdiction. *See*, STB Finance Docket No. 34018, *Yolo Shortline Railroad Company--Acquisition and Operation Exemption--County of Sacramento, CA*, served March 27, 2001.

10. In 2003 SRA acquired the Yolo and renamed it the Sierra Northern Railway. *See*, STB Finance Docket No. 34351, *Sierra Railroad Company--Acquisition of Control Exemption--Yolo Short Line Railroad Company*, served June 11, 2003.

11. SERA and Yolo rendered service as rail carriers on the seven miles of railroad tracks from 2001 until 2008.

12. In the meantime the County had turned over the operation of the former McClellan Air Force Base properties to McClellan.

13. In 2007 McClellan notified SERA that it would not renew its License and Operating Agreement and that it would extend invitations to bid for the rendition of service on the seven miles of railroad tracks.

14. SERA thought it would be aided in retaining the right to operate on the seven miles of railroad tracks if it were acquired by Patriot Rail, LLC, and, subject to a non-disclosure/confidentiality agreement, SERA provided Patriot Rail Corp., a non-carrier affiliate of Patriot Rail, LLC, with a wealth of proprietary financial and operating data.

15. In partial reliance on the proprietary financial and operating data it had received from SERA, Patriot Rail, LLC and its affiliates organized SAV to bid for the right to provide service on the seven miles of railroad tracks, and in January 2008 McClellan advised SERA that it would be entering into the License and Operating Agreement with SAV, effective March 1, 2008. See, STB Finance Docket No. 35117, *Sacramento Valley Railroad, Inc.-- Operation Exemption --McClellan Business Park LLC*, served February 14, 2008, and STB Finance Docket No. 35118, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp--Continuance in Control Exemption-- Sacramento Valley Railroad, Inc.*, served February 14, 2008.

16. The improper and illegal means by which SAV wrested the right to render the McClellan service has led to a lawsuit, Case No. 2:09-cv-00009-MCE-EFB, *Patriot Rail Corp. v. Sierra Railroad Company*, pending before the United States District Court for the Eastern District of California, in which Sierra seeks more than \$15 million in compensatory damages, statutory treble damages and punitive damages and the return to SERA of the right to render the McClellan operations.

17. Pending the outcome of the District Court action, it is SAV which solely and exclusively renders the service within the McClellan complex. SERA, however, remains a rail carrier authorized by the Board to operate as a common carrier on McClellan's seven miles of railroad tracks. As the Board noted in STB Finance Docket No. 33905,

served October 2, 2001, slip p. 6, fn. 8:

Under 49 U.S.C. 10903(d), a rail carrier providing transportation subject to the jurisdiction of the Board may discontinue rail service only if the Board finds that the present or future public convenience and necessity require or permit the discontinuance. The common carrier obligation to serve continues until the Board permits it to end, regardless of any contract provisions. Because [the rail carrier] provided rail transportation over the [subject] line, discontinuance authority must be obtained from the Board under 49 U.S.C. 10903. Authority for [the rail carrier] to discontinue service over the [subject] line may be sought by [the rail carrier] or by a third party from the Board under 49 U.S.C. 10903. If the Board should grant a third party discontinuance, the Board's jurisdiction over the [subject] line would be removed as a shield and the parties could then proceed to state court to pursue enforcement of any contractual rights.

18. Patriot Rail, LLC and its affiliates were well aware of the need to secure the Board's authority for SERA to be unable to operate on McClellan's seven miles of railroad tracks and for SAV to enjoy the exclusive occupancy and operating rights on tracks. In its Verified Notice of Exemption, filed January 29, 2008, SAV said that it "understands that Yolo's successor has been as asked by [McClellan] to vacate the Line, but may or may not have filed for abandonment authority with the Board at the time this notice is filed."

19. It is the County and its operator of the former McClellan Air Force Base properties, McClellan, which want SAV to have the sole and exclusive operating rights to render service on the seven miles of railroad tracks, but none of them -- not SAV, not McClellan, not the County -- has filed a third-party or adverse discontinuance application with the Board to revoke SERA's the right to operate on the track.

20. Notwithstanding that SERA continues to be a rail carrier authorized by the Board to operate on the seven miles of McClellan's railroad tracks, SAV, McClelland and the County will not allow SERA on the tracks to enable it to fulfill its common carrier

obligation to provide service to the shippers or receivers of freight located within the McClellan industrial park.

21. SAV, McClellan and the County cannot have it both ways, They cannot deny SERA the right to operate on McClellan's seven miles of railroad tracks, on the one hand, and, on the other hand, fail to file a third-party or adverse discontinuance application for SERA to be denied the right to operate on the tracks.

22. This is the unreasonable practice of which the Complainants contend the Respondents are guilty.

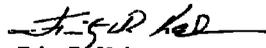
WHEREFORE, Complainants, Sierra Railroad Company and Sierra Northern Railway, ask that the Board find Respondents, Sacramento Valley Railroad, Inc., McClellan Business Park, LLC and the County of Sacramento, to have engaged in unreasonable practices, in violation of 49 U.S.C. §10702(2), and to order them, pursuant to 49 U.S.C. §10704(a)(1), to stop the violations by complying with the law's requirements.

Respectfully submitted,

SIERRA RAILROAD COMPANY
SIERRA NORTHERN RAILWAY

By their attorneys,

Torgny R. Nilsson
General Counsel
Sierra Railroad Company
221 1st Street
Davis, CA 95616
Tel.: (530) 759-9827

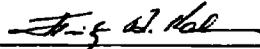

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: December 7, 2011

CERTIFICATE OF SERVICE

I certify that I this day served the forgoing Complaint on Sacramento Valley Railroad, LLC by e-mailing a copy to its counsel, Louis E. Gitomer, Esq., at Lou_Gitomer@verizon.net and on McClellan Business Park, LLC and the County of Sacramento by mailing them copies of the Complaint by prepaid first-class mail.

Dated at Washington, DC, this 7th day of December 2011.

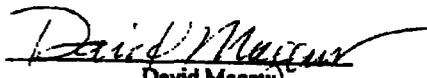


Fritz R. Kahn

VERIFICATION

I, David Magaw, Vice President of Sierra Railroad Company of Davis, Calif., and President of Sierra Northern Railway of Woodland, Calif., declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Complaint and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Sierra Railroad Company and Sierra Northern Railway. I know that willful misstatements or omission of material fact constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Woodland, CA this 6th day of December 2011.


David Magaw