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February 27, 2012

VIA ELECTRONIC FILING

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

Dear Ms. Brown:

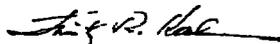
This refers to Docket No. NOR 42133, Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad, LLC, McClellan Business Park, LLC and County of Sacramento, and to the Response of the Respondents to the Complainants' First Set of Interrogatories, Document Production Requests and Requests for Admissions, filed February 16, 2012.

Attached is the Complainants' Motion to Compel.

I certify that I this day served this letter and its attachment on the Respondents, Sacramento Valley Railroad, LLC, McClellan Business Park, LLC and County of Sacramento, by e-mailing copies to the counsel, Louis E. Gitomer, Esq., at [lou@lgraillaw.com](mailto:lou@lgraillaw.com).

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

Sincerely yours,

  
Fritz R. Kahn

cc: Louis E. Gitomer, Esq.

**SURFACE TRANSPORTATION BOARD**

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**Docket No. NOR 42133**

**SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY,**

**Complainants,**

**v.**

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

**Respondents.**

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**COMPLAINANTS' MOTION TO COMPEL**

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**Attorneys for**

**SIERRA RAILROAD COMPANY  
SIERRA NORTHERN RAILWAY**

**Due and dated: February 27, 2012**

SURFACE TRANSPORTATION BOARD

—————  
Docket No. NOR 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY,

Complainants,

v.

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

Respondents.

—————  
COMPLAINANTS' MOTION TO COMPEL

Complainants, Sierra Railroad Company ("Sierra") and Sierra Northern Railway ("SERA"), pursuant to 49 C.F.R. §1114.31(a), respectfully request the Board to enter an order compelling Respondents, Sacramento Valley Railroad, LLC ("SAV"), McClellan Business Park, LLC ("McClellan") and the County of Sacramento ("County") to respond completely and without evasion to Complainants' First Set of Interrogatories, Document Production Requests and Requests for Admission, served on Respondents on January 26, 2012, a copy of which is attached as Exhibit A. Respondents' Response, a copy of which is attached as Exhibit B, was served on Complainants on February 16, 2012.

Introduction

McClellan Air Force Base, located near Sacramento, Calif., was among the installations ordered closed by the Department of Defense in 1995. As portions of the Base were vacated by the Air Force, the properties, including seven miles of railroad line, were conveyed to the County. 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. The County chose Yolo Shortline Railroad Company ("Yolo") to render railroad service within the former Base properties and entered into a License and Operating Agreement with it granting the railroad exclusive occupancy and operating rights over the facility's seven-mile railroad line. Yolo elected to render service on the seven-mile railroad line 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.

The County meanwhile selected McClellan to manage the former Base properties which the County had secured.

In 2003, Sierra acquired Yolo and renamed it the Sierra Northern Railway. *See*, STB Finance Docket No. 34351, *Sierra Railroad Company--Acquisition of Control Exemption--Yolo Shortline Railroad Company*, served June 11, 2003. SERA thereby became the rail carrier which, pursuant to the License and Operating Agreement between the County and Yolo, was granted the exclusive occupancy and operating rights over the seven-mile railroad line within the former Base properties, then referred to as McClellan.

On August 31, 2007, McClellan's Senior Vice President and General Counsel, Jay Heckenlively, Esq., in a letter to SERA's President, Mr. David Magaw, gave SERA six-months' notice that McClellan was terminating the License and Operating Agreement pursuant to which SERA had been operating as a rail carrier within the McClellan complex and advised it that McClellan was going to issue a Request for Proposal to potentially interested short line railroads to render the McClellan service. Mr.

Heckenlively concluded his letter by saying, "Notwithstanding our termination election. I believe that your company's history and experience at the project gives you a significant advantage in this process and we look forward to evaluating your response to the request for proposal."

On October 11, 2007, McClellan sent its Request for Proposal to the four respondents which it deemed to be qualified: Sierra, Genesee and Wyoming Railroad Company, RailAmerica, Inc. and Patriot Rail Corp.

The circumstances relating to Patriot Rail Corp.'s response to McClellan's Request for Proposal in competition with that of Sierra and Patriot Rail Corp.'s use of the confidential and proprietary information received from Sierra pursuant to a non-disclosure agreement entered into in connection with purchase discussions between the parties are at issue in a pending suit, Case No. 2:09-CV-00009-MCE-EFB, *Patriot Rail Corp. v. Sierra Railroad Company*, before the United States District Court for the Eastern District of California.

Possessing the confidential and proprietary information it had received from Sierra, including data pertaining to SERA's prior operations at the McClellan industrial park, as well as the bid Sierra planned to submit to McClellan in response to its Request for Proposal, Patriot Rail Corp. offered to pay McClellan more money than Sierra had. Not surprisingly, McClellan chose Patriot Rail Corp. to provide the railroad service in its industrial park,<sup>1</sup> a decision of which Sierra and SERA only learned by receiving a letter from McClellan's Senior Vice President, Mr. Frank Myers, dated January 7, 2008, in

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<sup>1</sup> In its Verified Notice of Exemption in Finance Docket No. 35117, *Sacramento Valley Railroad, Inc. -- Operation Exemption--McClellan Business Part LLC*, filed January 29, 2008, SAV falsely stated, "SAVR was the winning bidder." This falsehood was repeated verbatim in the Decision of the Board, served February 14, 2008. 73 *Fed Reg* 8745, February 14, 2008.

which Mr. Myers, in part, said, "Thank you for the work you and your team put into the project over the years. We appreciate that effort and look forward to your cooperation over the next two months as we transition to Patriot Rail, who we selected as the short line operator."

Of course, Patriot Rail Corp. is not a short line operator; it is not a rail carrier of any sort. As Respondents acknowledged in their Motion to Dismiss filed in this proceeding on January 25, 2012, "Thereafter, SAV was formed and incorporated to be the entity to provide rail operator services in the [McClellan] Park."

At the time of its formation, SAV was directly controlled by Patriot Rail Corp., a subsidiary of Patriot Rail Holdings, LLC, which in turn was a subsidiary of Patriot Rail, LLC. *See*, 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. *73 Fed. Reg.* 8744, February 14, 2008. It was only later, as noted in 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, that Patriot Rail Corp.'s control of SAV became indirect. *See*, *73 Fed. Reg.* 70076, November 16, 2010.

SAV commenced rendering railroad services on the seven-mile line within McClellan on March 1, 2008. Pursuant to the license and operating agreement between McClellan and SAV, SAV is the sole and exclusive rail carrier within the facility,

although SERA continues to be the rail carrier which had been authorized by the Board to provide service within the industrial park.

#### General Objections

In their first General Objection, Respondents insist that they will not answer any interrogatory, that they will not produce any document and that they will not respond to any request for admission which they believe to be unrelated to the issues raised by the Complainants' Complaint. Their refusal to do so is unsustainable, for the Board's regulation, 49 C.F.R. §1114.21(a)(2), specifically states, "It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonable calculated to lead to the discovery of admissible evidence." Complainants have not sought any information that they do not believe will lead to evidence pertaining to the allegations of their Complaint. Respondents may want to frame the allegations of the Complaint to suit their own purposes, but the Complaint speaks for itself.

In their second General Objection, Respondents insist that they will not provide any information and that they will not produce any documents which are "administratively confidential". Unlike attorney-client or work product, there is no "administratively confidential" privilege, and such information must be provided and documents produced.

In their fifth General Objection, Respondents insist that they will not provide any information and that they will not produce any documents which are attainable from the Complainants' own files. That is an invalid ground for objecting, because Complainants are entitled to obtain whatever information and documents which the Respondents

possess, if for no other reason than to permit comparisons and to determine whether Respondents have distorted the information or have made notations on the documents.

In their sixth General Objection, Respondents insist that they will not provide any information and that they will not produce any document which is subject to disclosure restrictions imposed by law. Presumably Respondents are referring to the District Court's Protective Order, issued May 21, 2009, in response to Patriot's request, which effectively denies Sierra the ability to obtain by discovery in this proceeding any of the deposition testimony and most of the documents produced in discovery in the District Court action. Respondents further insist that they will not provide any information and they will not produce any documents subject to disclosure restrictions imposed by contractual obligations to third parties. Not only does no such privilege exist, but Respondents' position is an obvious although oblique reference to the confidentiality/non-disclosure agreement entered into by Patriot and Sierra in connection with their negotiations for Patriot's purchase of Sierra, including SERA. Patriot should not be allowed to take shelter behind barriers of its own making to avoid the disclosure of requested information and production of requested documents. Respondents, moreover, insist that they will not provide any information and that they will not produce any document which they deem to be of "insufficient materiality to warrant production here even under a protective order". There is no privilege that permits the Respondents to withhold information or documents which they consider to be of "insufficient materiality to warrant production here even under a protective order." Moreover, under 49 C.F.R. §1114.21(a)(2), the information needs to be provided and the documents need to be produced even if they ultimately will be inadmissible as evidence in the proceeding.

In their ninth General Objection, Respondents object to the Definition of "SAV" in Complainants' First Set of Interrogatories, Document Production Requests and Requests for Admission. The definition includes those entities which directly or indirectly control SAV, for they, in fact, are the real parties in interest. Complainants did not -- and could not -- name them as Respondents in their Complaint because they are not rail carriers subject to the Board's regulatory jurisdiction. That, however, does not mean that they are not the source of information that is critical to the resolution of the issues which are the subject of the Complaint filed with the Board. The Board regularly obtains information from non-carrier entities in control of the railroads subject to its jurisdiction. *See, i e.,* Docket No. EP 558 (Sub No. 14), *Railroad Cost of Capital--2010*, served October 3, 2011, and there is no reason why Complainants shouldn't obtain information which SAV may not have but which the entities which control it most certainly do possess.

In their tenth General Objection, Respondents object to the Definition of "Patriot" in Complainants' First Set of Interrogatories, Document Production Requests and Requests for Admission. The definition collectively refers to Patriot Rail, LLC, Patriot Holdings, LLC and Patriot Rail Corp. as "Patriot", just as the Board itself did in its Decisions in 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, and Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail 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. Patriot, as already noted, was the entity selected by McClellan to have the exclusive right to provide short-line railroad service on the seven-mile railroad line within its industrial park. Yet Patriot was not -- and could not -- be named as a Respondent in Complainants' Complaint because Patriot is not a rail carrier subject to the Board's regulatory jurisdiction. Nevertheless, Patriot is among the real parties in interest in this proceeding. Patriot created SAV merely to fulfill its own need for a rail carrier in whose name it could perform the McClellan operations, operations which Patriot had been selected by McClellan to perform. The information which Patriot -- and Patriot alone -- possesses is essential to enable the Board to reach conclusions on the issues raised by the Complaint. Patriot may not be SAV's alter ego, as Respondents repeatedly assert, but Patriot assuredly is in complete control of SAV and is thus required to provide the information and produce the documents in its control.

Interrogatories

1. Respondents insist that they will not provide any information and they will not produce any documents in response to this interrogatory, contending that they do not know what information Patriot received from Complainants. That is a deliberate and inexcusable refusal to answer the interrogatory, in violation of 49 C.F.R. §1114.31(a). The interrogatory clearly identifies that the information or documents sought is that which Patriot received from Sierra as part of or in connection with SERA's endeavor to remain the rail carrier on all or any segment of the McClellan railroad line. Of course, Patriot knows what data it received. It already has provided much of this information and produced many of these documents in the District Court action, although the District

Court's Protective Order prohibits Sierra from introducing them in this proceeding. So that the Board can gain a complete understanding of how SAV came to replace SERA as the sole short-line operator on the McClellan line, SAV, defined to include Patriot, should be compelled to disclose the requested information and documents.

2. Respondents insist that they will not provide any information and that they will not produce any documents in response to this interrogatory, again contending that they do not know what information Patriot received from Complainants. As discussed above, this is a further violation of 49 C.F.R. §1114.31(a). The interrogatory asks Patriot to disclose what data it received from Sierra as part of or in connection with the negotiations between Patriot and Sierra for Patriot's purchase of the assets and/or stock of Sierra and/or SERA. Patriot assuredly knows what that data was, and, so that the Board will have a complete understanding how SAV came to replace SERA as the sole short-line operator on the McClellan line, SAV, defined to include Patriot, should be compelled to disclose it.

3. Respondents insist that they will not provide any information and that they will not produce any documents in response to this interrogatory, contending that they do not know the thoughts of Patriot. That is utter nonsense. Patriot knows full well why it submitted a bid to become the sole short-line operator on the McClellan railroad line, replacing SERA as the line's operator, when it knew that SERA at the same time was seeking to continue as the rail carrier with the license and operating agreement to serve the facility. SAV, defined to include Patriot, should be compelled to answer the interrogatory.

4. Respondents insist that they will not provide any information and that they will not produce any documents in response to this interrogatory. That once more is a violation of 49 C.F.R. §1114.31(a). Patriot knows exactly how its bid to operate the McClellan railroad line compared with that of SERA, and, so that the Board will have a complete understanding how SAV came to replace SERA as the sole short-line operator on the McClellan line, SAV, defined to include Patriot, should be compelled to answer the interrogatory.

5. Complainants accept Respondents' answer to the interrogatory.

6. Respondents provided nothing in response to the interrogatory. Complainants accept the County's inability to respond to the interrogatory. SAV, defined to include Patriot attended the very meetings with McClellan about which the interrogatory seeks information, and yet, in violation of 49 C.F.R. §1114.31(a), it refuses to respond to the interrogatory. SAV should be compelled to answer the interrogatory. As far as McClellan is concerned, it states that it will produce documents responsive to the interrogatory; yet it has produced none. It is doubtful that any of the document sought by this interrogatory contain commercially sensitive material, and the Respondents' withholding of any and all documents pending the entry by the Board of the Protective Order they requested is simply a convenient means of delaying or withholding altogether the production of documents responsive to this interrogatory. McClellan should be compelled forthwith to produce those documents responsive to the interrogatory which do not contain commercially sensitive material.

7. Respondents insist that they will not provide the information and that they will not produce the documents responsive to this interrogatory. The interrogatory asks how

much money the County and/or McClellan received from SERA each year between 2001 and 2008 as their share of the rate divisions or allowances which SERA received from the Union Pacific Railroad Company and/or BNSF Railway Company. The sharing by the County and McClellan of SERA's freight revenue is an indicium that the County and McClellan were and remain rail carriers, and Respondents should be compelled to answer this interrogatory.

8. Respondents insist that they will not provide the information and that they will not produce the documents responsive to this interrogatory. The interrogatory asks how much money the County and/or McClellan received from SERA each year between 2001 and 2008 as their share of the car storage fees or track sublicense fees which SERA received for storing cars or from sub-leasing any segment of the McClellan railroad line. Their sharing of the car storage and sub-leasing fees received by SERA is an indicium that the County and McClellan were and remain rail carriers, and Respondents should be compelled to answer the interrogatory.

9. Respondents insist that they will not provide the information and that they will not produce the documents responsive to this interrogatory. The interrogatory asks how much money the County and/or McClellan received from SERA each year between 2001 and 2008 as their share of the payments SERA received from any of the industries within the McClellan industrial park which leased or otherwise used the open space next to the track or any segment of the seven-mile line for transloading freight shipments or for any other purpose. Their sharing of the lease payments received by SERA is an indicium that the County and McClellan were and remain rail carriers, and Respondents should be compelled to answer this interrogatory.

Document Production Requests

1. Respondents insist that they will not produce any documents concerning SERA's rendition of service on the seven-mile McClellan railroad line between 2001 and 2008 or concerning SAV's rendition of service on the line since March 1, 2008, including the license and operating agreement between the County and SERA , McClellan and SERA and McClellan and SAV, except for a HIGHLY CONFIDENTIAL version of the Railroad License and Operating Agreement between McClellan and SAV and then only if and when the Board enters the Protective Order which Respondents have requested. Accepting Respondents' position as to the license and operating agreement between McClellan and SAV, there is no excuse for Respondents' refusal to produce the other responsive documents, and they should be compelled to produce them forthwith.

2. Respondents insist that they will not produce any documents concerning SAV's business as a rail carrier operating the McClellan line since March 1, 2008, including SAV's business relationships with Patriot, among others. The requested documents may shed light on the relationship between SAV, defined to include Patriot, and McClellan, and Respondents should be compelled to produce them forthwith.

3. Respondents insist that they will not produce any documents relating to the negotiations for Patriot's proposed purchase of Sierra, including SERA, including the documents which led to the filing on July 14, 2008, of the Verified Notices of Exemption in STB Finance Docket No. 35165, *Sierra & Central Pacific Railroad Company, Inc.-- Acquisition and Operation Exemption--Sierra Northern Railway and Sierra Railroad Company* and STB Finance Docket No. 35166, *Patriot Rail, LLC, Patriot Holdings, LLC, and Patriot Rail Corp.--Continuance in Control Exemption--Sierra & Central Pacific*

*Railroad Company, Inc.* The requested documents well may explain why SAV, defined to include Patriot, became the sole short-line operator within McClellan, displacing SERA, and Respondents should be compelled to produce the documents forthwith.

4. Respondents insist that they will not produce any documents exchanged between Patriot and McClellan leading to McClellan's selection of Patriot as the sole short-line operator within the McClellan industrial park, displacing SERA, except for a HIGHLY CONFIDENTIAL version of the Railroad License and Operating Agreement between McClellan and SAV and then only if and when the Board enters the Protective Order which Respondents have requested. As discussed above, there is, in any event, no excuse for Respondents' refusal to produce all other responsive documents, and they should be compelled to produce them forthwith.

5. Respondents insist that they will not produce any documents concerning meetings of the managers and/or members of SAV, defined to include Patriot, at which the proposed and actual railroad operations on all or any segment of the McClellan railroad line and/or the proposed purchase of the assets and/or stock of Sierra and/or SERA were among the subjects considered or discussed. The requests documents well may explain why SAV, defined to include Patriot, became the sole short-line operator within McClellan industrial park, displacing SERA, and Respondents should be compelled to produce the documents forthwith.

6. Respondents insist that they will not produce any Environmental Questionnaire and Hazardous Materials Handling Plan submitted by SERA and/or SAV to the County and/or McClellan between 2001 and the present. These documents are indicia that the County and McClellan exercised such control of SERA and SAV when performing

services under the license and operating agreements with the County and McClellan as to have the County and McClellan be deemed rail carriers, and Respondents should be compelled to produce them forthwith.

7. Respondents insist that they will not produce any annual dormant track budgets prepared by SERA and/or SAV and approved by the County and/or McClellan between 2001 and the present. These documents are indicia that the County and McClellan exercised such control of SERA and SAV when performing services under the license and operating agreements with the County and McClellan as to have the County and McClellan be deemed rail carriers, and Respondents should be compelled to produce them forthwith.

8. Complainants accept Respondents' response to the document production request.

9. Respondents insist that they will not produce any documents concerning SERA's indemnification of the County and/or McClellan for any loss they sustained due to or arising from SERA's operations on all or any segment of the McClellan railroad line or SERA's failure to comply with any provisions of the then effective license and operating agreement between SERA and the County and/or McClellan. These documents are indicia that the County and McClellan exercised such control of SERA and SAV when performing services under the license and operating agreements as to be deemed rail carriers, and Respondents should be compelled to produce them forthwith.

10. Complainants accept Respondents' response to the document production request.

Requests for Admission

1. Complainants accept McClellan's admission, as well as SAV and the County's explanation of why they are neither admitting nor denying the request for admission.

2. Complainants accept the admission of McClellan and SAV that by their agreement they intended SAV to be the exclusive short-line operator in the McClellan industrial park, as well as the County's explanation why it is neither admitting nor denying the request for admission.

3. Respondents insist that they will neither admit nor deny the request for admission, in violation of 49 C.F.R. §1114.27(a). Respondents' objection is a transparent attempt to avoid admitting the request for admission or denying it, setting forth in detail the reasons why the Respondents cannot truthfully admit or deny the matter. The Respondents should be compelled to respond to the request for admission.

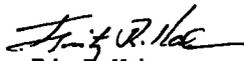
Lack of Verification

Respondents' responses to the Interrogatories lack the verification required by 49 C.F.R. §1114.26.

SIERRA RAILROAD COMPANY  
SIERRA NORTHERN RAILWAY

By their attorneys,

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

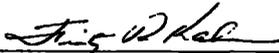
  
Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8th fl.)  
Washington, DC 20036  
Tel.: (202) 263-4152

Dated: February 27, 2012

**CERTIFICATE OF SERVICE**

I certify that I this day served the forgoing Motion to Compel on Sacramento Valley Railroad, LLC, McClellan Business Park, LLC and the County of Sacramento by e-mailing a copy to their counsel, Louis E. Gitomer, Esq., at [lou@lgrailaw.com](mailto:lou@lgrailaw.com).

Dated at Washington, DC, this 27th day of February 2012.

  
\_\_\_\_\_  
Fritz R. Kahn

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY,

Complainants,

v.

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

Respondents.

COMPLAINANTS' FIRST SET OF INTERROGATORIES,  
DOCUMENT PRODUCTION REQUESTS AND REQUESTS  
FOR ADMISSIONS TO RESPONDENTS

Complainants, Sierra Railroad Company and Sierra Northern Railway, request that Respondents, Sacramento Valley Railroad, LLC, McClellan Business Park, LLC and County of Sacramento, pursuant to 49 C.F.R. Subpart B to Part 1114, answer the following interrogatories, document production requests and requests for admissions. Each discovery request should be answered separately and fully in writing and subscribed by an appropriate verification by a representative having personal knowledge of the requested information. Respondents are asked to serve their responses within twenty days' time.

DEFINITIONS

1. "SAV" means Sacramento Valley Railroad, LLC, its predecessor companies, including but not limited to Sacramento Valley Railroad, Inc., and the companies directly

or indirectly currently or previously having control of Sacramento Valley Railroad, LLC, including but not limited to each of Tennessee Southern Railroad Company, Patriot Rail Corp., Patriot Rail Holdings LLC and Patriot Rail, LLC, their current and prior directors, officers, members, managers, agents, representatives, employees, attorneys and all persons acting on their behalf.

2. "Patriot" means each of Patriot Rail Corp., Patriot Rail Holdings LLC and Patriot Rail, LLC, their current and prior members, managers, agents, representatives, employees, attorneys and all persons acting on their behalf.

3. "McClellan" means McClellan Business Park, LLC and each of its predecessor companies, including but not limited to McClellan Park, their current and prior directors, officers, members, managers, agents, representatives, employees, attorneys and all persons acting on their behalf.

4. "County" means the County of Sacramento, and each of its current and prior Supervisors, County Executive Officers, Chief Operations Officers, County Attorneys, agents, representatives, employees, attorneys and all persons acting on their behalf.

5. "Sierra" means Sierra Railroad Company, and each of its current and prior directors, officers, agents, representatives, employees, attorneys and all persons acting on its behalf.

6. "SERA" means Sierra Northern Railway and each of its predecessor companies, including but not limited to Yolo Shortline Railroad Company, their current and prior directors, officers, agents, representatives, employees, attorneys and all persons acting on their behalf.

7. "Line" means the approximately seven miles of unmarked railroad track located within what had been the McClellan Air Force Base and any additional track installed

within the facility by the County or McClellan since the Base's closure ordered by the U S. Air Force in July 2001.

8. "Industry" means any shipper or receiver of rail freight shipments situated on and served by the Line.

9. "Board" means the Surface Transportation Board.

10. "Pending District Court case" means 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

11. "Document" or "documents" means the original drafts, red-lined drafts, final versions and any and all copies of any printed, typed, handwritten or other processed writings, letters, correspondence, memoranda, notes, papers, analyses, transcripts, summaries, minutes, drawings, graphs, charts, photographs, phonograph records, tapes, voicemail messages and other data compilations from which information can be obtained, including but not limited to e-mails, faxes, computer disks, diskettes, tapes, cards or any other form of computer data storage or electronic data, computers, desktops or laptop hard drives, external hard drives, external devices for copying and/or making DVDs or CDs, external memory devices or media such as CDs, DVDs, memory cards, memory sticks, memory tapes, SIM cards, floppy disks and zip disks, personal data assistants such as Palm Pilot, Pocket PCs and iPods, text messaging devices such as Blackberries and cellular phones with text messaging functions.

12. "Concerning" means pertaining to, referring to, relating to, affecting, implicating, involving, detailing, discussing, identifying or mentioning.

## INSTRUCTIONS

1. Use of the conjunctive includes the disjunctive and vice versa.
2. The construction of 49 C.F.R. §1101.3 shall apply, including that a word in the singular includes the plural and vice versa.
3. If the answering person cannot supply the exact data in answering any request that calls for a numerical response, he or she should provide the best estimate of the data called for, indicate that he or she has provided the best estimate by making the notation "(est.)" in the response and describe the basis upon which the estimate was derived.
4. If the answering person claims any requested document is privileged from disclosure, he or she should state the basis for the claim of privilege, state the nature of the information or document withheld, state the facts upon which the claim of privilege is based, provide the number of such documents which are being withheld from production on a claim of privilege along with an identification of each such document (author, addressee, date, length in pages and subject(s)) and answer any remaining part of the discovery request for which such claim is not made.
5. Answers to requests for admission shall comply with the provisions of 49 C.F.R. §1114.27(a).
6. The time period for the discovery requests is the approximately ten-year period between January 1, 2001 and the present.
7. These interrogatories, document production requests and requests for admission are continuing in nature, and responses should be supplemented promptly as more information or documents responsive to a request becomes available.

## INTERROGATORIES

1. What information, including but not limited to confidential and proprietary financial and operating data concerning SERA's rendition of railroad service on all or any segment of the Line, did Patriot receive from Sierra as part of or in connection with SERA's endeavor to remain the rail carrier operating on all or any segment of the Line, including information which may have been subject to a confidentiality or non-disclosure agreement between Sierra and Patriot?
2. What information, including but not limited to confidential and proprietary financial and operating data concerning SERA's rendition of railroad service on all or any segment of the Line, did Patriot receive from Sierra as part of or in connection with the negotiations between Sierra and Patriot for Patriot's purchase of the assets and/or stock of Sierra and/or SERA, including information which may have been subject to a confidentiality or non-disclosure agreement between Sierra and Patriot?
3. Why did Patriot in 2007 or 2008 submit to McClellan a bid for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line when it knew that SERA itself was submitting to McClellan a bid for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line?
4. Did not Patriot in 2007 or 2008 in proposing a rail opportunity for McClellan and/or bidding for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line offer McClellan terms and conditions more favorable than those which had been in the license and operating agreements under which

SERA had been rendering railroad service on all or any segment of the Line between 2001 and 2008 and which SERA, with Patriot's knowledge, offered in response to McClellan's 2007 request of rail carriers for their proposals for a multi-year license and operating agreement to render railroad operations on all or any segment of the Line?

5. Is not among the issues to be decided in the pending District Court case the allegation that Patriot won the bid for the multiple-year license and operating agreement with McClellan and organized SAV to render railroad service on all or any segment of the Line based on Patriot's improper use of Sierra's confidential and proprietary financial and operating data concerning SERA's rendition of the railroad service on all or any segment of the Line which Patriot had received from Sierra?

6. What visits, meetings, telephone conversations or other contacts were there in 2007 and 2008 between representatives of Patriot and representatives of McClellan concerning a rail opportunity for McClellan and/or the multiple-year license and service agreement to render railroad operations on all or any segment of the Line, when did they occur, who participated and what was the substance of the each party's representations?

7. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the rate divisions or allowances which SERA received from the Union Pacific Railroad Company and/or BNSF Railway Company?

8. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the car storage fees or track sublicense fees which SERA received for storing cars on, or sub-leasing, any segment of the Line?

9. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the payments SERA received from any Industry

which leased or otherwise used the open space next to the track of any segment of the Line for transloading freight shipments or any other purpose?

#### DOCUMENT PRODUCTION REQUESTS

1. Each document concerning SERA's rendition of railroad service on all or any segment of the Line between 2001 and 2008 and SAV's, including Patriot's, proposed and actual rendition of railroad service on all or any segment of the Line since 2008, including but not limited to, each license and operating agreement between the County and SERA, McClellan and SERA and McClellan and SAV.
2. Each document concerning SAV's business as a rail carrier operating all or segments of the Line since 2008 including but not limited to the minutes of the meetings of its managers and/or members, its annual profit and loss statements, annual balance sheets, contracts and/or agreements with Patriot and/or any other person or entity for supplies such as fuel and/or lubricants, equipment such as locomotives, maintenance-of-way gear and/or railroad cars and services such as personnel recruitment, training and/or preparation for licensing, bookkeeping, accounting and/or billing, track inspection, track maintenance and/or track repairs.
3. Each document concerning the negotiations between Sierra and Patriot pertaining to Patriot's proposed purchase of the Sierra and/or SERA, their assets and/or their stock, including all documents leading to the filing of the Notices of Exemption with the Board of STB Finance Docket No. 35165, *Sierra & Central Pacific Railroad Company, Inc.-- Acquisition and Operation Exemption -- Sierra Northern Railway and Sierra Railroad Company* and STB Finance Docket No. 35166. *Patriot Rail, LLC, Patriot Rail Holdings*

*LLC, and Patriot Rail Corp -- Continuance in Control Exemption -- Sierra & Central Pacific Railroad Company, Inc.*

4. Each document originated by Patriot intended for McClellan and each document originated by McClellan intended for Patriot in 2007 and 2008 concerning a rail opportunity at McClellan and/or license and operating agreement for railroad operations on all or any segment of the Line.
5. Each document concerning meetings of the managers and/or members of SAV, including Patriot, from 2006 to the present, at which the proposed and actual railroad operations on all or any segment of the Line and/or the proposed purchase of the assets and/or the stock of Sierra and/or SERA were among the subjects considered or discussed.
6. Each Environmental Questionnaire and Hazardous Materials Handling Plan submitted by SERA and/or SAV to the County and/or McClellan between 2001 and the present.
7. Each annual dormant track budget prepared by SERA and/or SAV and approved by the County and/or McClellan between 2001 and the present.
8. Each notice which the County and/or McClellan gave SERA between 2001 and 2008 alleging that it was in default in the performance of any covenant or agreement in the then effective license and operating agreement.
9. Each document concerning SERA's indemnification of the County and/or McClellan for any loss it sustained due to or arising from SERA's operations on all or any segment of the Line or failure to comply with any provisions of the then effective license and operating agreement.

10. Each document lodged or filed by the County and/or McClellan with the Board informally or formally complaining that SERA's railroad operations on all or any segment of the Line were deficient or inadequate.

#### REQUESTS FOR ADMISSION

1. Neither McClellan nor any Industry lodged or filed an informal or formal complaint with the Board alleging that SERA in operating on the Line between 2001 and 2008 had failed to render adequate service upon reasonable request, in violation of 49 U.S.C. §11101(a).

2. McClellan and SAV by their agreement intended for SAV to obtain the exclusive occupancy and operating rights on all or any segment of the Line, and, since SAV began rendering railroad service on the Line on or about March 1, 2008, McClellan and SAV have not allowed SERA to operate as a rail carrier on the Line or permitted it to fulfill its common carrier obligation to serve any Industry on the Line.

3. In stating in its Verified Notice of Exemption, filed with the Board on January 29, 2008, in Finance Docket No. 35117, *Sacramento Valley Railroad, Inc.-- Operation Exemption -- McClellan Business Park LLC*. "SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, in order to meet the needs of MBP", SAV did not intend advise the Board that it was prepared to relinquish its exclusive occupancy and operating rights on the Line conferred by the license and operating agreement with McClellan and to allow SERA to operate as a rail carrier on the Line or permit it to fulfill its common carrier obligation to serve any Industry on the Line.

Respectfully submitted,

SIERRA RAILROAD COMPANY  
SIERRA NORTHERN RAILWAY

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Dated: January 26, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42133

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SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY  
v.  
SACRAMENTO VALLEY RAILROAD COMPANY, LLC  
MCCLELLAN BUSINESS PARK, LLC  
AND COUNTY OF SACRAMENTO

---

RESPONSE OF SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN  
BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO TO  
COMPLAINANTS' FIRST SET OF INTERROGATORIES, DOCUMENT PRODUCTION  
REQUESTS AND REQUESTS FOR ADMISSIONS

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42133

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SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY  
v.  
SACRAMENTO VALLEY RAILROAD COMPANY, LLC  
MCCLELLAN BUSINESS PARK, LLC  
AND COUNTY OF SACRAMENTO

---

RESPONSE OF SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN  
BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO TO  
COMPLAINANTS' FIRST SET OF INTERROGATORIES, DOCUMENT PRODUCTION  
REQUESTS AND REQUESTS FOR ADMISSIONS

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Pursuant to 49 C.F.R. §§ 1121.2 and 1114.21, .26, .27, and .30, Sacramento Valley Railroad Company, LLC ("SAV"), McClellan Business Park, LLC (McClellan"), and the County of Sacramento ("Sacramento" and with SAV and McClellan, jointly referred to as "Defendants") respond to the First Set of Interrogatories, Document Production Requests and Requests for Admissions of Sierra Railroad Company ("Sierra") and Sierra Northern Railway ("SERA"), collectively "Complainants."

**GENERAL RESPONSES**

The following general responses are made with respect to all of the discovery requests.

1. Defendants have conducted a reasonable search for responsive documents and information to respond consistent with the stated objections.<sup>1</sup>

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<sup>1</sup> Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

2. Where objections have been raised to the scope of the request, Defendants are willing to discuss searching for and producing documents or information covered by a more limited request taking into account the stated objection.

3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

#### **GENERAL OBJECTIONS**

The following general objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each discovery request.

1. The Complaint, and as further clarified and confirmed by Complainants via an email from counsel received on February 14, 2012, is limited to the following issues - (1) whether Defendants are obligated to file a third-party discontinuance to terminate SERA's rights to operate as a common carrier in the McClellan Business Park and (2) whether McClellan and Sacramento are rail carriers subject to the jurisdiction of the Board. Accordingly, Defendants object to and will not respond to any and all Interrogatories, Document Production Requests, and Requests for Admission that are not related to the issues as defined above by Complainants and not relevant to the proceeding before the Board.

2. Defendants object to production of, and are not producing, documents or information subject to the attorney-client privilege, the work product doctrine, or administratively confidential documents or information.

3. Defendants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

4. Defendants object to production of, and are not producing, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("Board"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

5. Defendants object to the production of, and are not producing, information or documents that are as readily attainable by Complainants from their own files.

6. Defendants object to the production of, and are not producing, information or documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7 Defendants object to the production of, and are not producing, information or documents to the extent they are sought in a form not maintained by Defendants in the regular course of business and are not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which Defendants object to performing.

8. Defendants object to Complainants' Definitions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

9. Defendants object to Complainants' Definition of "SAV" to the extent that they seek to use the definition of SAV to obtain third party discovery from the Tennessee Southern Railroad Company, Patriot Rail Corp., Patriot Rail Holdings LLC, and Patriot Rail, LLC by including such entities in the definition of SAV, even though they are separate corporations or limited liability companies, are not named as defendants in the Complaint, that Patriot Rail Corp., Patriot Rail Holdings LLC, and Patriot Rail, LLC are not railroads subject to the jurisdiction of the Surface Transportation Board, and that discovery from such entities is not necessary to resolve the issues in this proceeding as enumerated by Defendants.

10. Defendants object to Complainants' Definition of "Patriot" to the extent that Patriot Rail Corp., Patriot Rail Holdings LLC, and Patriot Rail, LLC, their current and prior members, managers, agents, representatives, employees, attorneys, and all persons acting on their behalf are not named as defendants in the Complaint, that Patriot Rail Corp., Patriot Rail Holdings LLC, and Patriot Rail, LLC are not railroads subject to the jurisdiction of the Surface Transportation Board, and that discovery from such entities is not necessary to resolve the issues in this proceeding as enumerated by Defendants.

11. Defendants object to Complainants' Instructions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

#### **INTERROGATORIES**

1. What information, including but not limited to confidential and proprietary financial and operating data concerning SERA's rendition of railroad service on all or any segment of the Line, did Patriot receive from Sierra as part of or in connection with SERA's endeavor to remain the rail carrier operating on all or any segment of the Line, including information which may have been subject to a confidentiality or non-disclosure agreement between Sierra and Patriot?

**Objection.** Defendants object to Interrogatory No. 1 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the exchange of documents as described in the Interrogatory, and that

Complainants are in a better position to know the information provided by Complainants. SAV further objects to Interrogatory No. 1 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants state that they do not know the information received from Complainants.

2. What information, including but not limited to confidential and proprietary financial and operating data concerning SERA's rendition of railroad service on all or any segment of the Line, did Patriot receive from Sierra as part of or in connection with the negotiations between Sierra and Patriot for Patriot's purchase of the assets and/or stock of Sierra and/or SERA, including information which may have been subject to a confidentiality or non-disclosure agreement between Sierra and Patriot?

**Objection.** Defendants object to Interrogatory No. 2 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the exchange of documents as described in the Interrogatory, and that Complainants are in a better position to know the information provided by Complainants. SAV further objects to Interrogatory No. 2 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants state that they do not know the information received from Complainants.

3. Why did Patriot in 2007 or 2008 submit to McClellan a bid for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line when it knew that SERA itself was submitting to McClellan a bid for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line?

**Objection.** Defendants object to Interrogatory No. 3 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, and that it calls for Defendants to speculate as to thoughts of Patriot. SAV further objects to Interrogatory No. 3 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants state that they do not know the thoughts of Patriot.

4. Did not Patriot in 2007 [o]r 2008 in proposing a rail opportunity for McClellan and/or bidding for the multiple-year license and operating agreement for rendering railroad service on all or any segment of the Line offer McClellan terms and conditions more favorable than those which had been in the license and operating agreements under which SERA had been rendering railroad service on all or any segment of the Line between 2001 and 2008 and which SERA, with Patriot's knowledge, offered in response to McClellan's 2007 request of rail carriers for their proposals for a multi-year license and operating agreement to render railroad operations on all or any segment of the Line?

**Objection.** Defendants object to Interrogatory No. 4 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the thoughts of Patriot, that the Interrogatory calls for speculation and improper opinions and legal conclusions, and that it is incomprehensible. SAV further objects to Interrogatory No. 4 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants will not respond to Interrogatory No. 4.

5. Is not among the issues to be decided in the pending District Court case the allegation that Patriot won the bid for the multiple-year license and operating agreement with McClellan and organized SAV to render railroad service on all or any segment of the Line based on Patriot's improper use of Sierra's confidential and proprietary financial and operating data concerning SERA's rendition of the railroad service on all or any segment of the Line which Patriot had received from Sierra?

**Objection.** Defendants object to Interrogatory No. 5 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that the Interrogatory calls for speculation and improper opinions and legal conclusions, and that it is incomprehensible. SAV further objects to Interrogatory No. 5 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants state that the pleadings before the District Court speak for themselves.

6. What visits, meetings, telephone conversations or other contacts were there in 2007 and 2008 between representatives of Patriot and representatives of McClellan concerning a rail opportunity for McClellan and/or the multiple-year license and service agreement to render railroad operations on all or any segment of the Line, when did they occur, who participated and what was the substance of the each party's representations?

**Objection.** SAV and Sacramento object to Interrogatory No. 6 on the grounds that it is not relevant or responsive to the limited issues in this matter, that Patriot is not a party to this proceeding, and that the Interrogatory calls for speculation as to meetings between Patriot and McClellan. McClellan objects to Interrogatory No. 6 on the grounds that it is not relevant to this proceeding and that Patriot is not a party to this proceeding. SAV further objects to Interrogatory No. 6 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Without waiving the General Objections or the Specific Objections, SAV and Sacramento will not respond to Interrogatory No. 6 and McClellan will produce documents responsive to this Interrogatory

7. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the rate divisions or allowances which SERA received from the Union Pacific Railroad Company and/or BNSF Railway Company?

**Objection.** McClellan and Sacramento object to Interrogatory No. 7 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the amount of money paid by SERA. SAV objects to Interrogatory No. 7 on the grounds that it is not relevant to this proceeding and that it is not directed at SAV.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants will not respond to Interrogatory No. 7.

8. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the car storage fees or track sublicense fees which SERA received for storing cars on, or sub-leasing, any segment of the Line?

**Objection.** McClellan and Sacramento object to Interrogatory No. 8 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the amount of money paid by SERA. SAV objects to Interrogatory No. 8 on the grounds that it is not relevant to this proceeding and that it is not directed at SAV.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants will not respond to Interrogatory No. 8.

9. How much money did the County and/or McClellan receive from SERA each year between 2001 and 2008 as its share of the payments SERA received from any Industry which leased or otherwise used the open space next to the track of any segment of the Line for transloading freight shipments or any other purpose?

**Objection.** McClellan and Sacramento object to Interrogatory No. 9 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the amount of money paid by SERA. SAV objects to Interrogatory No. 9 on the grounds that it is not relevant to this proceeding and that it is not directed at SAV.

**Response.** Without waiving the General Objections or the Specific Objections, Defendants will not respond to Interrogatory No. 9.

#### **DOCUMENT PRODUCTION REQUESTS**

1. Each document concerning SERA's rendition of railroad service on all or any segment of the Line between 2001 and 2008 and SAV's, including Patriot's, proposed and actual rendition of railroad service on all or any segment of the Line since 2008, including but not limited to, each license and operating agreement between the County and SERA, McClellan and SERA and McClellan and SAV.

**Objection.** Defendants object to Document Production Request No. 1 on the grounds that it is not relevant to this proceeding, that the term "rendition" is vague and subject to numerous meanings, that Patriot is not a party to this proceeding, and that the Document Production Request No. 1 is not limited to the issues enunciated by Complainants. SAV further

objects to Document Production Request No. 1 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 1, except for a HIGHLY CONFIDENTIAL version of the Railroad License and Operating Agreement between McClellan and SAV subject to a protective order to be entered by the Board.

2. Each document concerning SAV's business as a rail carrier operating all or segments of the Line since 2008 including but not limited to the minutes of the meetings of its managers and/or members, its annual profit and loss statements, annual balance sheets, contracts and/or agreements with Patriot and/or any other person or entity for supplies such as fuel and/or lubricants, equipment such as locomotives, maintenance-of-way gear and/or railroad cars and services such as personnel recruitment, training and/or preparation for licensing, bookkeeping, accounting and/or billing, track inspection, track maintenance and/or track repairs.

**Objection.** Defendants object to Document Production Request No. 2 on the grounds that it seeks documents containing confidential financial and trade secret information that is not relevant to this proceeding and unlikely to lead to admissible evidence, that Patriot is not a party to this proceeding, and that the Document Production Request No. 2 is not limited to the issues enunciated by Complainants. SAV further objects to Document Production Request No. 2 on the ground that Patriot is not the alter ego of any of the Defendants.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 2.

3. Each document concerning the negotiations between Sierra and Patriot pertaining to Patriot's proposed purchase of the Sierra and/or SERA, their assets and/or their stock, including all documents leading to the filing of the Notices of Exemption with the Board of STB Finance Docket No. 35165, *Sierra & Central Pacific Railroad Company, Inc -Acquisition and Operation Exemption --Sierra Northern Railway and Sierra Railroad Company* and STB Finance Docket No. 35166, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp --Continuance in Control Exemption --Sierra & Central Pacific Railroad Company, Inc.*

**Objection.** Defendants object to Document Production Request No. 3 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the exchange of documents as described in the Document Production Request, and that Complainants are in a better position to know the information provided by Complainants. SAV further objects to Document Production Request No. 3 on the ground that Patriot is not the alter ego of any of the Defendants. McClellan and Sacramento further object to Document Production Request No. 3 on the ground that they have no knowledge of the information exchanged.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 3. After a diligent search, Defendants have no documents that are relevant or responsive to the limited issues in this matter.

4. Each document originated by Patriot intended for McClellan and each document originated by McClellan intended for Patriot in 2007 and 2008 concerning a rail opportunity at McClellan and/or license and operating agreement for railroad operations on all or any segment of the Line.

**Objection.** Defendants object to Document Production Request No. 4 on the grounds that it is not relevant to this proceeding, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the exchange of documents as described in the Document Production Request, and that Complainants are in a better position to know the information provided by Complainants. SAV further objects to Document Production Request No. 4 on the ground that Patriot is not the alter ego of any of the Defendants. Sacramento further objects to Document Production Request No. 4 on the ground that they have no knowledge of the information exchanged.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 4, except for a HIGHLY CONFIDENTIAL version of the Railroad License and Operating Agreement between McClellan and SAV subject to a protective order to be entered by the Board.

5. Each document concerning meetings of the managers and/or members of SAV, including Patriot, from 2006 to the present, at which the proposed and actual railroad operations on all or any segment of the Line and/or the proposed purchase of the assets and/or the stock of Sierra and/or SERA were among the subjects considered or discussed.

**Objection.** Defendants object to Document Production Request No. 5 on the grounds that it seeks documents containing confidential financial and trade secret information that is not relevant to this proceeding and unlikely to lead to admissible evidence, that Patriot is not a party to this proceeding, that it calls for Defendants to speculate as to the exchange of documents as described in the Document Production Request, and that Complainants are in a better position to know the information provided by Complainants. SAV further objects to Document Production Request No. 5 on the ground that Patriot is not the alter ego of any of the Defendants. McClellan and Sacramento further object to Document Production Request No. 5 on the ground that they have no knowledge of the information exchanged.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 5. After a diligent search, Defendants have no documents that are relevant or responsive to the limited issues in this matter.

6. Each Environmental Questionnaire and Hazardous Materials Handling Plan submitted by SERA and/or SAV to the County and/or McClellan between 2001 and the present.

**Objection.** Defendants object to Document Production Request No. 6 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the information provided by Complainants.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 6. After a diligent search, Defendants have no documents that are relevant or responsive to the limited issues in this matter.

7. Each annual dormant track budget prepared by SERA and/or SAV and approved by the County and/or McClellan between 2001 and the present.

**Objection.** Defendants object to Document Production Request No. 7 on the grounds that it seeks documents confidential financial and trade secret information that is not relevant to this proceeding and unlikely to lead to admissible evidence, that the Document Production Request is vague, and that Complainants are in a better position to know the information provided by Complainants.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 7. After a diligent search, Defendants have no documents that are relevant or responsive to the limited issues in this matter.

8. Each notice which the County and/or McClellan gave SERA between 2001 and 2008 alleging that it was in default in the performance of any covenant or agreement in the then effective license and operating agreement.

**Objection.** Defendants object to Document Production Request No. 8 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the information provided to Complainants.

**Response.** Defendants do not have any documents to produce responsive to Document Production Request No. 8.

9. Each document concerning SERA's indemnification of the County and/or McClellan for any loss it sustained due to or arising from SERA's operations on all or any segment of the Line or failure to comply with any provisions of the then effective license and operating agreement.

**Objection.** Defendants object to Document Production Request No. 9 on the grounds that it is not relevant to this proceeding and that Complainants are in a better position to know the information provided to Complainants.

**Response.** Defendants will not produce documents responsive to Document Production Request No. 9. After a diligent search, Defendants have no documents that are relevant or responsive to the limited issues in this matter.

10. Each document lodged or filed by the County and/or McClellan with the Board informally or formally complaining that SERA's railroad operations on all or any segment of the Line were deficient or inadequate.

**Objection.** Defendants object to Document Production Request No. 10 on the grounds that it is not relevant to this proceeding and that the documents sought by Complainants are public records.

**Response.** Defendants do not have any documents to produce responsive to Document Production Request No. 10.

#### **REQUESTS FOR ADMISSION**

1. Neither McClellan nor any Industry lodged or filed an informal or formal complaint with the Board alleging that SERA in operating on the Line between 2001 and 2008 had failed to render adequate service upon reasonable request, in violation of 49 U.S.C. §11101(a).

**Objection.** Defendants object to Request for Admission No. 1 on the grounds that it is not relevant to this proceeding, that it is a vague and multi-part request, and that it asks Defendants to speculate as to the actions of any Industry.

**Response.** SAV and Sacramento do not have enough knowledge to admit or deny Request for Admission No. 1, and therefore deny Request for Admission No. 1 in order not to admit by default. McClellan does not have enough knowledge to admit or deny Request for Admission No. 1 with respect to any Industry, and therefore denies Request for Admission No. 1 in order not to admit by default. With respect to McClellan, McClellan admits Request for Admission No. 1.

2. McClellan and SAV by their agreement intended for SAV to obtain the exclusive occupancy and operating rights on all or any segment of the Line, and, since SAV began rendering railroad service on the Line on or about March 1, 2008, McClellan and SAV have not allowed SERA to operate as a rail carrier on the Line or permitted it to fulfill its common carrier obligation to serve any Industry on the Line.

**Objection.** Defendants object to Request for Admission No. 2 on the grounds that it is not relevant to this proceeding, and that it is a vague and multi-part request.

**Response.** McClellan and SAV admit that their agreement intended SAV to be the exclusive operator in the McClellan Business Park. After the termination of SERA's license to operate in the McClellan business Park and after SAV commenced operations, McClellan and SAV deny that they have not allowed SERA to operate in the McClellan Business Park because they have not received a request from SERA to operate in the McClellan Business Park. Sacramento does not have enough knowledge to admit or deny Request for Admission No. 2 and therefore denies Request for Admission No. 2.

3. In stating in its Verified Notice of Exemption, filed with the Board on January 29, 2008, in Finance Docket No. 35117, *Sacramento Valley Railroad, Inc --Operation Exemption-- McClellan Business Park LLC*, "SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, in order to meet the needs of MBP", SAV did not intend advise the Board that it was prepared to relinquish its exclusive occupancy and operating rights on the Line conferred by the license and operating agreement with McClellan and to allow SFRA to operate as a rail carrier on the Line or permit it to fulfill its common carrier obligation to serve any Industry on the Line.

**Objection.** Defendants object to Request for Admission No. 3 on the grounds that it is not relevant to this proceeding, and that it is a vague and multi-part request.

**Response.** SAV admits that if SERA obtained joint agreement from SAV and McClellan to operate in the McClellan Business Park SAV would be willing to allow SERA to operate pursuant to an operating protocol, if necessary to meet the needs of McClellan Business Park, but that SERA never approached SAV about entering an operating protocol, SERA never demonstrated the ability to use McClellan's property and SERA never asked any of Defendants for access prior to the filing of the Complaint. Defendants further state that none of them have been made aware that the rail services needs of McClellan Business Park have been inadequate or have not been met. McClellan and Sacramento do not have enough knowledge to admit or deny Request for Admission No. 3 and therefore deny Request for Admission No. 3.

Respectfully submitted,

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Dated: February 16, 2012

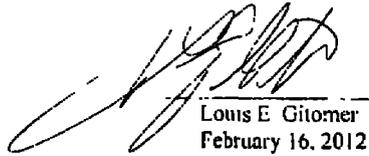
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Company, LLC, McClellan Business Park,  
LLC, and County of Sacramento

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing document was served  
electronically on

Fritz R. Kahn, P.C.  
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Louis E. Gitomer  
February 16, 2012