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March 19, 2012

**ENTERED**  
**Office of Proceedings**

MAR 19 2012

**Part of**  
**Public Record**

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

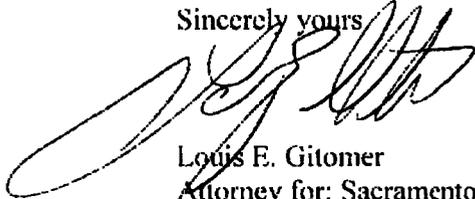
RE: *Docket No. 42133, Sierra Railroad Company and Sierra Northern  
Railway v. Sacramento Valley Railroad Company, LLC, McClellan  
Business Park, LLC, and County of Sacramento*

Dear Ms. Brown:

Enclosed for filing is the Response of Sacramento Valley Railroad Company,  
LLC, McClellan Business Park, LLC, and County of Sacramento to the Motion to  
Compel.

Thank you for your assistance. If you have any questions, please call or email  
me.

Sincerely yours



Louis E. Gitomer  
Attorney for: Sacramento Valley Railroad  
Company, LLC, McClellan Business Park, LLC,  
and County of Sacramento

Enclosure

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

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RESPONSE OF SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN  
BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO TO  
COMPLAINANTS' MOTION TO COMPEL

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Dated: March 19, 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, I.I.C.  
AND COUNTY OF SACRAMENTO

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RESPONSE OF SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN  
BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO TO  
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Pursuant to 49 C.F.R. §1114.31, 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 Motion to Compel filed on February 27, 2012 (the "Motion") by Sierra Railroad Company ("Sierra") and Sierra Northern Railway ("SERA"), collectively "Complainants." The Motion was filed to compel Defendants to respond to the First Set of Interrogatories, Document Production Requests and Requests for Admissions of Complainants (the "Discovery Requests").

Defendants oppose the Motion in its entirety and respectfully request the Surface Transportation Board (the "Board") to deny the relief sought by Complainants.

**BACKGROUND**

Complainants provide a generally accurate history of rail operations in the McClellan Business Park ("MPB") in the Motion. However, Complainants are silent as to the issues in the Complaint in this proceeding that they filed with the Board on December 7, 2011, except for

quixotic statement that “the Complaint speaks for itself.” Motion at 5. Defendants contend that before Complainants are entitled to relief under the Motion, they must demonstrate that the sought discovery is relevant to the Complaint or will lead to information that is relevant to the Complaint. This they have failed to do.

The Complaint alleges that the Defendants have engage in an unlawful practice under 49 U.S.C. §10702(2).<sup>1</sup> In the Complaint, Complainants contend that SERA acquired an exclusive occupancy and operating rights over seven miles of unmarked railroad track in MBP (the “Line”) and that SERA was operating pursuant to authorization from the Board.<sup>2</sup> McClellan then terminated SERA and replaced SERA with SAV.<sup>3</sup> The basis of the Complaint seems to be the contention that SERA still has a common carrier obligation to serve the Line and therefore, McClellan and SAV must permit SERA to access the Park or they must file an adverse abandonment or discontinuance to terminate SERA’s common carrier obligation.

In an effort to clarify the issues in the Complaint and properly respond to discovery, Defendants sent a letter to Complainants on February 13, 2012 (Exhibit A). Defendants proposed holding the Complaint in abeyance if the issues in the Complaint were the same as the issues in the Court proceeding<sup>4</sup> or, if the issues were different, the Defendants requested the Complainants to agree not to use any of the discovery provided in the Complaint in the Court case. In an email response dated February 14, 2012 (Exhibit B) (the “February 14 Letter”),

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<sup>1</sup> Defendants are unaware of a proceeding before the Board where one railroad was engaged in an unreasonable practice under section 10702(2). All of the decisions served by the Board involve a shipper and a railroad.

<sup>2</sup> *Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA*, Finance Docket No. 34018 (STB served March 27, 2001) (“FD 34018”). Sierra acquired control of Yolo Shortline Railroad Company (“Yolo”), and SERA was merged into Yolo with the surviving corporation taking the SERA name. *Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company*, Finance Docket No. 34351 (STB served June 11, 2003). *Sierra Railroad Company—Corporate Family Transaction Exemption—Yolo Shortline Railroad Company*, Finance Docket No. 34360 (STB served June 23, 2003).

<sup>3</sup> *Sacramento Valley Railroad, Inc.—Operation Exemption—McClellan Business Park LLC*, Finance Docket No. 35117 (STB served February 14, 2008); and *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Sacramento Valley Railroad, Inc.*, Finance Docket No. 35118 (STB served February 14, 2008).

<sup>4</sup> Case No. 2:09-CV-00009-MCE-EFB, *Patriot Rail Corp. v. Sierra Railroad Company*.

Complainants stated that Defendants proposals were “totally unacceptable.” Complainants went on to state that the “issues before the Board are wholly dissimilar from those before the District Court.” Complainants emphasized that the issues in the Complaint are whether Defendants “are obligated to file a third-party or adverse discontinuance application”<sup>5</sup> and whether “McClellan and/or the County are rail carriers subject to the jurisdiction of the Board.” Informed of the scope of the Complaint by the February 14 letter, Defendants submitted their response to discovery based on the Complaint and the February 14 letter.

### RESPONSE TO COMPLAINANTS’ ARGUMENTS

**General Objections.** Complainants argue that a number of Defendants General Objections are improper. Defendants dispute all of Complainants claims concerning the General Objections. However, regardless of the General Objections, Complainants have failed to demonstrate that the discovery they seek (1) will produce “information” that “might be able to affect the outcome of a proceeding”<sup>6</sup> as Complainants have clarified the issues in the February 14 letter, or (2) appears “reasonably calculated to lead to the discovery of admissible evidence.” 49 C.F.R.

1114.21(a)(2).”<sup>7</sup>

However, Defendants are compelled to respond to Complainants responses to General Objections five, six, nine and ten.

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<sup>5</sup> Defendants contend that the issue of whether they “are obligated to file a third-party or adverse discontinuance application” can be resolved by a review of the specific provisions of any agreements between Complainants and McClellan, which are in Complainants’ possession, or the Railroad License and Operating Agreement between McClellan and SAV, which has been produced to Complainants. If the agreements do not address or resolve the obligation to seek discontinuance authority by or on behalf of SERA, then it is a purely legal issue. In that case, Defendants believe that no further discovery is necessary and that the Board can resolve the legal issue based on precedent and argument concerning the responsibility for seeking authority from the Board to discontinue a railroad’s common carrier obligation when the right to access certain property has been terminated.

<sup>6</sup> *Waterloo Ry.—Adverse Aband. —Lines of Bangor and Aroostook R R and Van Buren Bridge Co In Aroostook Cnty., Me*, AB 124 (Sub-No 2), et al. (STB served Nov. 14, 2003), *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, Docket No. FD 35557, slip op at 2 (STB served March 5, 2012).

<sup>7</sup> *Id.*

**Number 5.** Defendants objected to “production of ...information or documents that are readily attainable by Complainants from their own files.” In the Complainants’ Objections and Responses to Respondents’ First Discovery Request served February 16, 2012 (Exhibit C). At page 2, the Complainants objected “to the extent the requests seek information, documents or admissions that are publicly available, that can be obtained through other sources or **that already is within possession, custody or control of one or more of the Respondents.**” (emphasis added). In essence, in the Motion, Complainants are disavowing the same General Objection that they made and are seeking to impose a costly and burdensome requirement on Defendants. In responding to the individual discovery requests, instead of repeating this response, Defendants will merely cite to it when appropriate.

**Number 6.** In responding to General Objection No. 6, Complainants misinterpret the objection. The Board is very familiar with this type of objection where there is an agreement, such as a transportation contract, providing that the agreement is confidential and cannot be produced without an order from a court or regulatory body. Complainants, contrary to their letter of February 14, then launch into an attack on Defendants based on the proceeding in Court, even though the Defendants are not parties to the Court proceeding.

**Numbers 9 and 10.** Defendants take extreme umbrage with Complainants’ attack on General Objections nine and ten. Defendants objected to Complainants seeking to add additional defendants to this proceeding (1) through the use of definitions in their discovery request without amending the Complaint and (2) knowing that the Board did not have jurisdiction over the named parties. Motion at 7, where it is stated that “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.” The majority of the Motion concerns

Complainants efforts to use the legerdemain of the definitional section to obtain discovery from the **non-parties** Tennessee Southern Railroad Company (“TSRR”), Patriot Rail Corp. (“PRC”), Patriot Rail Holdings LLC (“PRH”), and Patriot Rail, LLC (“PRL” together with PRC and PRH collectively referred to as “Patriot”).

Defendants remind the Board that Complainants stated the issues in the Complaint in the February 14 Letter, which only referred to Patriot with respect to the court case. Moreover, the Board’s own rules limit discovery. Complainants sought responses to interrogatories, production of documents, and admissions. With respect to interrogatories “any party may serve upon any other party written interrogatories.” 49 C.F.R. §1114.26(a). In requesting admissions, “a party may serve upon any other party a written request for the admission ...” 49 C.F.R. §1114.27(a). Finally, with respect to the production of documents “Any party may serve on any other party...” 49 C.F.R. §1114.30(a). The Board limits discovery to parties to a proceeding. Patriot is not a party to the Complaint. Indeed, Complainants admit that they could not make Patriot a party to the Complaint. Motion at 7. Patriot is not a carrier and is not subject to the general jurisdiction of the Board.

As justification for obtaining information from Patriot, Complainants cite to a proceeding with no explanation as to the relevance to the Complaint. *Railroad Cost of Capital – 2010*, Docket No. EP 558 (Sub-No. 14) (STB served October 3, 2011) (“*Cost of Capital*”). In *Cost of Capital*, the Board annually obtains financial information from the publicly traded owners of certain railroads where two of the criteria are that the railroad involved is a Class I railroad and the stock of the holding company is listed on either the New York or American Stock Exchange. *Id.* at 2. In addition, the railroads considered file annual reports with the Board. Neither SAV nor any of its affiliates are Class I railroads. Neither SAV nor any of its affiliate railroads file

annual reports with the Board. Patriot is a privately held company and is not traded on the New York or American Stock Exchange, like the BNSF Railway Company, which is not included in the *Cost of Capital*. Complainants have not explained the relevance of *Cost of Capital* to discovery in the Complaint or explained why *Cost of Capital* applies when SAV and Patriot do not meet the criteria.

Complainants have not justified obtaining discovery from Patriot, a non-party to the Complaint.

In responding to the individual discovery requests involving Patriot, instead of repeating this response, Defendants will merely cite to it when appropriate.

**Interrogatories.**

**Interrogatory No. 1.** Complainants seek information in their possession from Patriot. Complainants contend that this information, which is in their possession, must be produced 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.” Motion at 9. Defendants respectfully refer the Board to Defendants’ responses to General Objection 5 and General Objections 9 and 10. Complainants also state that there is “no excuse” preventing Defendants from responding to Interrogatory No. 1. Defendants have properly objected to Interrogatory No. 1 and Complainants have not justified their Motion with respect to Defendants objections. Of most importance, as Complainants have clarified the issues in the February 14 letter, Complainants have not demonstrated that the information they are seeking in Interrogatory No. 1 is relevant or that the information might be able to affect the outcome of the Complaint and appears to be reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 2.** Complainants seek information in their possession from Patriot. Complainants contend that this information, which is in their possession, must be provided 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.” Motion at 9. Defendants respectfully refer the Board to Defendants’ responses to General Objection 5 and General Objections 9 and 10.

Complainants also state that there is “no excuse” preventing Defendants from responding to Interrogatory No. 1. Defendants have properly objected to Interrogatory No. 1 and Complainants have not justified their Motion with respect to Defendants objections. Of most importance, as Complainants have clarified the issues in the February 14 letter, Complainants have not demonstrated that the information they are seeking in Interrogatory No. 1 is relevant or that the information might be able to affect the outcome of the Complaint and appears to be reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 3.** Complainants seek information in Interrogatory No. 3 from Patriot. Complainants contend that this information, which is in their possession, must be provided 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.” Motion at 9. No other reason is given for responding to Interrogatory No. 3. Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Moreover, as Complainants have clarified the issues in the February 14 letter, Interrogatory No. 3 is not seeking information that might be able to affect the outcome of the Complaint and does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Nor have Complainants provided any justification to compel Defendants to respond to Interrogatory No. 3.

**Interrogatory No. 4.** Complainants seek information in Interrogatory No. 4 from Patriot. Complainants contend that this information must be provided 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.” Motion at 9. No other reason is given for responding to Interrogatory No. 4. Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Moreover, as Complainants have clarified the issues in the February 14 letter, Interrogatory No. 4 is not seeking information that might be able to affect the outcome of the Complaint and does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Nor have Complainants provided any justification to compel Defendants to respond to Interrogatory No. 4.

**Interrogatory No. 6.** In Interrogatory No. 6, Complainants are again seeking information that is not relevant to the Complaint as explained by Complainants in the February 14 letter. Meetings between Patriot, a non-party, and McClellan will shed no light on whether Defendants have an obligation to seek authority from the Board for SERA to terminate its rail service over the Line or whether McClellan is a rail carrier. The best evidence has been produced to Complainants, the Railroad License and Operating Agreement between McClellan and SAV. SAV was not present at the meetings with McClellan. McClellan stated it would produce responsive documents. McClellan has determined that it does not have documents responsive to Interrogatory No. 6. Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10.

**Interrogatory No. 7.** Complainants seek to compel McClellan and Sacramento to respond to Interrogatory No. 7, which requests how much money SERA paid to them from rates collected by SERA. This information is in the possession of SERA.

Complainants allege that “[t]he sharing by the County and McClellan of SERA’s freight revenue is an indicium that the County and McClellan were and remain rail carriers.” Motion at 11. Complainants are wrong. Payments from SERA to McClellan and Sacramento were based on agreements between SERA and McClellan. SERA executed those agreements. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service.

“Common carrier,” although not defined in the ICA, means “one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.” *Kieronski v. Wyundotte Terminal R R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises. LLC -Petition for Declaratory Order*, STB Docket No. FD 34914, slip op. at 12 (STB served May 7, 2010). Interrogatory No. 7 does not address whether McClellan or Sacramento was holding itself out to provide transportation.

**Interrogatory No. 8.** Complainants seek to compel McClellan and Sacramento to respond to Interrogatory No. 8, which requests how much money SERA paid to them from car storage fees or track sublicense fees collected by SERA. This information is in the possession of SERA.

Complainants allege that “[t]he 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.” Motion at 11. Complainants are wrong. Payments from SERA to McClellan and Sacramento were based on agreements between SERA and McClellan. SERA executed those agreements. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service.

“Common carrier,” although not defined in the ICA, means “one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.” *Kieronski v. Wyandotte Terminal R.R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, STB Docket No. FD 34914, slip op. at 12 (STB served May 7, 2010). Interrogatory No. 8 does not address whether McClellan or Sacramento was holding itself out to provide transportation.

**Interrogatory No. 9.** Complainants seek to compel McClellan and Sacramento to respond to Interrogatory No. 9, which requests how much money SERA paid to them from any Industry which leased or otherwise used open space next to the track of any segment of the Line for transloading freight shipments or any other purpose. This information is in the possession of SERA.

Complainants allege that “sharing of the lease payments received by SERA is an indicium that the County and McClellan were and remain rail carriers.” Motion at 11. Complainants are wrong. Payments from SERA to McClellan and Sacramento were based on agreements between SERA and McClellan. SERA executed those agreements. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service. “‘Common carrier,’ although not defined in the ICA, means ‘one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.’” *Kieronski v. Wyandotte Terminal R.R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, STB Docket

No. FD 34914, slip op. at 12 (STB served May 7, 2010). Interrogatory No. 9 does not address whether McClellan or Sacramento was holding itself out to provide transportation.

**Document Production Requests.** As with the rest of their response to the discovery propounded by Complainants, Defendants based their responses on the February 14 letter from Complainants that stated the issues in the Complaint are whether Defendants “are obligated to file a third-party or adverse discontinuance application” and whether “McClellan and/or the County are rail carriers subject to the jurisdiction of the Board.”

**Document Production Request No. 1.** Complainants seek documents relating to SERA’s “rendition” of service on the Line and the license and operating agreements between McClellan and SERA and between McClellan and SAV.

Pursuant to the Protective order served by the Board on March 9, 2012, the agreement between McClellan and SAV has been produced. The other documents are in the possession of Complainants. In addition, these documents are not relevant to the issues in this proceeding as defined in Complainants’ February 14 letter.

**Document Production Request No. 2.** Complainants essentially seek all documents concerning SAV’s operation of the Line. Complainant’s justification is that these documents “may shed light on the relationship between SAV, defined to include Patriot, and McClellan.” Motion at 12. With respect to Patriot, Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Moreover, this document request is burdensome and not relevant to the issues in this proceeding as defined in Complainants’ February 14 letter.

**Document Production Request No. 3.** Complainants seek to compel production of “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.” Discovery Request at 3. Complainants contend these documents must be produced because they “may well explain why SAV, defined to include Patriot, became the sole short-line operator with McClellan, displacing SERA.” Motion at 13.

Obviously, Complainants should be in possession of documents between Sierra and Patriot. Second, with respect to Patriot, Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Complainants have not justified production of these documents.

**Document Production Request No. 4.** Complainants seek production of documents exchanged by Patriot and McClellan concerning railroad operations on the Line. The only rationale given by Complainants to compel production is that there is “no excuse.”

Complainants have not refuted Defendants valid objections. Moreover, with respect to Patriot, Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Complainants have not justified production of these documents.

**Document Production Request No. 5.** Complainants seek to compel discovery of “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.” Discovery Request at 8. Complainants state that “The requests documents well may explain why SAV, defined to include Patriot, became the sole short-line operator within McClellan industrial park.” Motion at 13. No other reason is given for responding to Document Request No. 5. With respect to Patriot, Defendants respectfully refer the Board to Defendants’ responses to General Objections 9 and 10. Moreover, as

Complainants have clarified the issues in the February 14 letter, Document Request No. 5 is not seeking information that might be able to affect the outcome of the Complaint and does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Nor have Complainants provided any justification to compel Defendants to respond to Document Request No. 5.

**Document Production Request No. 6.** Complainants seek to compel production of “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.” Discovery Request at 8. Complainants allege that “these documents are indicia that the County and McClellan exercised such control of SERA and SAV ... as to have the County and McClellan deemed rail carriers.” Motion at 13-14. Complainants are wrong. These reports from SERA and SAV to McClellan and Sacramento was based on agreements between the parties. SERA executed those agreements and has them in its possession. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service.

“Common carrier,” although not defined in the ICA, means “one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.” *Kieronski v. Wyandotte Terminal R.R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises, LLC –Petition for Declaratory Order*, STB Docket No. FD 34914, slip op. at 12 (STB served May 7, 2010). Document Request No. 6 does not address whether McClellan or Sacramento was holding itself out to provide transportation. Complainants provided any justification to compel Defendants to respond to Document Request No. 6.

**Document Production Request No. 7.** Complainants seek to compel production of “Each annual dormant track budget prepared by SERA and/or SAV and approved by the County and/or McClellan between 2001 and the present.” Discovery Request at 8. Complainants repeat their mantra that these documents are “indicia that the County and McClellan exercised such control of SERA and SAV ... as to have the County and McClellan deemed rail carriers. Motion at 14.

These reports from SERA and SAV to McClellan and Sacramento was based on agreements between the parties. SERA executed those agreements and has them in its possession. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service.

“Common carrier,” although not defined in the ICA, means “one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.” *Kieronski v. Wyandotte Terminal R.R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, STB Docket No. FD 34914, slip op. at 12 (STB served May 7, 2010). Document Request No. 7 does not address whether McClellan or Sacramento was holding itself out to provide transportation. Complainants provided any justification to compel Defendants to respond to Document Request No. 7.

**Document Production Request No. 9.** Complainants seek to compel production of “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.”

Discovery Request at 8. Complainants repeat their mantra that these documents are “indicia that the County and McClellan exercised such control of SERA and SAV ... as to be deemed rail carriers.”<sup>8</sup> Motion at 14.

These documents from SERA SAV to McClellan and Sacramento were based on agreements between the parties. SERA executed those agreements and has them in its possession. Moreover, the indicium of whether an entity is a rail carrier is whether it held itself out to provide rail service.

“Common carrier,” although not defined in the ICA, means “one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally.” *Kieronski v. Wyandotte Terminal R.R.*, 806 F.2d 107, 108 (6th Cir. 1986), *quoted in Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006). *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, STB Docket No. FD 34914, slip op. at 12 (STB served May 7, 2010). Document Request No. 9 does not address whether McClellan or Sacramento was holding itself out to provide transportation. Complainants provided any justification to compel Defendants to respond to Document Request No. 9.

### **Requests for Admissions.**

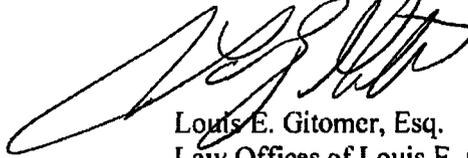
**Admission 3.** Complainants must not have read the complete response to their discovery requests submitted by Defendants, otherwise they would not, in good conscience moved to compel a response. The penultimate page of the Motion contains Defendants’ response to Admission Request No. 3.

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<sup>8</sup> Since Complainants do not request this information from SAV, Defendants do not understand how production will demonstrate anything concerning SAV

**Verification.** The verifications of Defendants are attached hereto as Exhibit D.

Respectfully submitted,



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(916) 965-7100  
Attorney for McClellan Business Park, LLC

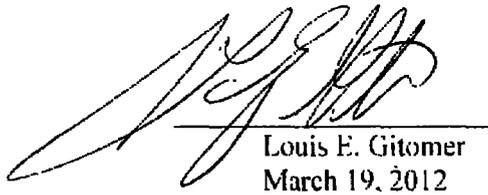
Diane E. McElhern, Esq.  
Deputy County Counsel  
700 H Street, Suite 2650  
Sacramento, CA 95814  
Attorney for County of Sacramento

Dated: March 19, 2012

**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.  
1920 N Street, N.W. (8th fl.)  
Washington, DC 20036  
Attorney for Sierra Railroad Company and Sierra Northern Railway



Louis E. Gitomer  
March 19, 2012

**EXHIBIT A-FEBRUARY 13, 2012 LETTER TO COMPLAINANTS**

LAW OFFICES OF  
LOUIS E. GITOMER, LLC.

LOUIS E. GITOMER  
Llu@lgaillaw.com

MELANIE B. YASBIN  
Melanie@lgaillaw.com  
410-296-2225

600 BALTIMORE AVENUE, SUITE 301  
TOWSON, MARYLAND 21284-4022  
(410) 296-2250 • (202) 466-6532  
FAX (410) 332-0885

February 13, 2012

Fritz R. Kahn, Esq.  
Fritz R. Kahn, P.C.  
1920 N Street, N.W. (8th fl.)  
Washington, DC 20036

RE: Docket No. 42133, *Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento*

Dear Fritz:

Based on the Reply of Sierra Railroad Company and Sierra Northern Railway ("STB Complainants") filed today to the Motion to Dismiss filed on January 25, 2012 by Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento ("STB Defendants"), it appears that the STB Complainants are now raising the same issues before the Surface Transportation Board (the "STB") in the above-entitled proceeding (the "*STB Proceeding*") as they are raising in *Patriot Rail Corp. v. Sierra Railroad Company*, USDC Eastern District, Case No. 2:09-cv-00009-MCF-EFB (the "*Patriot Case*").

If the STB Complainants are raising the same issues in the *STB Proceeding* as they are raising in the *Patriot Case*, for administrative convenience and judicial economy and to avoid inconsistent rulings, the STB Defendants request that the STB Complainants agree to hold the *STB Proceeding* in abeyance while the *Patriot Case* proceeds. The *Patriot Case* is scheduled to proceed to trial in July. With the record scheduled to close in the *STB Proceeding* on May 21, 2012, it is highly unlikely that the STB will decide the *STB Proceeding* before the trial is complete.

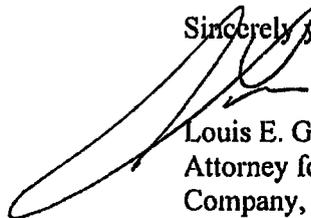
If however, the STB Complainants instead contend that the issues and parties in the STB Proceeding and the *Patriot Case* are *different*, then the STB Defendants request that the STB Complainants agree not to use, or attempt to use, any of the discovery provided in the STB Proceeding in the *Patriot Case*. If you are agreeable to this proposal, we should be able to modify a standard STB protective order to accommodate the agreement.

Fritz R. Kahn, Esq.  
February 13, 2012

Since discovery responses and objections are due on Thursday February 16, 2012, I request that you respond to this letter by noon on February 16.

Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over the typed name and title.

Louis E. Gitomer  
Attorney for: Sacramento Valley Railroad  
Company, LLC, McClellan Business Park, LLC,  
and County of Sacramento

**EXHIBIT B- FEBRUARY 14, 2012 LETTER FROM COMPLAINANTS**

**Louis E. Gitomer**

---

**From:** Fritz R. Kahn <xiccgc@verizon.net>  
**Sent:** Tuesday, February 14, 2012 4:08 PM  
**To:** Louis E. Gitomer  
**Subject:** STB Docket No. NOR 42133

Lou:

The proposals of your letter of February 13, 2012, are totally unacceptable to my clients.

The issues before the Board are wholly dissimilar from those before the District Court. Docket No. NOR 42133 requires the Board's determination whether, since it is the Respondents which want to be rid of SERA as the rail carrier authorized to operate on the seven miles of track within the McClellan industrial park, Respondents are obliged to file a third-party or adverse discontinuance application and whether, since they have control of SERA and SAV's operations pursuant to the license and operating agreements, McClellan and/or the County are rail carriers subject to the jurisdiction of the Board. Neither of these issues is raised in Case No. 2:09-cv-00009-MCE-FFB. The District Court case is about the failed acquisition of Sierra by Patriot and Patriot's misappropriation of Sierra's trade secrets which resulted in Patriot's offering the successful bid to render railroad service within the McClellan industrial park.

That the issues before the Board and the District Court are altogether different has nothing whatever to do with what responses Complainants will make on Thursday to the Respondents' Initial Discovery Request and what evidence and arguments they intend to introduce on April 9, 2012. At this time I know of nothing that Complainants plan to use that they are reluctant to have made public, and, therefore, I know of no reason to ask the Board to enter a confidentiality order.

All the best.

Fritz

Fritz R. Kahn, P.C.  
1920 N Street, N.W. (8th fl.)  
Washington, DC 20036  
Tel.: (202) 263-4152  
Fax: (202) 331-8330  
e-mail: [xiccgc@verizon.net](mailto:xiccgc@verizon.net)

This transmission is privileged and intended for the exclusive use of the addressee. If it has been misdirected, please advise by telephone and return the transmission by mailing it to the originator at the above address.

**EXHIBIT C-COMPLAINANTS RESPONSE TO DISCOVERY**

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.

---

COMPLAINANTS' OBJECTIONS AND RESPONSES  
TO RESPONDENTS' FIRST DISCOVERY REQUEST

Complainants, Sierra Railroad Company ("Sierra") and Sierra Northern Railway ("SERA"), object and respond to the First Discovery Request of Respondents, Sacramento Valley Railroad, LLC ("SAV"), McClellan Business Park, LLC ("McClellan") and County of Sacramento ("County"), as follows:

General Objections

1. Complainants object to Respondents' First Discovery Request, because the requests are overly broad, unnecessarily vexatious and unduly burdensome.

2. Complainants object to Respondents' First Discovery Request, because the requests seek information, documents or admissions irrelevant to the subject complaint proceeding.

3. Complainants object to Respondents' First Discovery Request, because the requests seek information, documents or admissions to be used or useful in other litigation.

4. Complainants object to Respondents' First Discovery Request, because the requests seek to impose obligation beyond those required by the Board's discovery rules.

5. Complainants object to Respondents' First Discovery Request to the extent that the requests seek information, documents or admissions which are protected from disclosure by the attorney-client privilege any other privilege or by the work-product doctrine or any other doctrine.

6. Complainants object to Respondents' First Discovery Request to the extent that the requests seek information, documents or admissions not within the Complainants' possession, custody or control.

7. Complainants object to Respondents' First Discovery Request to the extent that the requests seek information, documents or admissions that are publicly available, that can be obtained through other sources or that already is within possession, custody or control of one or more of the Respondents.

8. Complainants object to Respondents' First Discovery Request to the extent that the requests seek confidential or proprietary information or material in the absence of a Board approved protective order.

### Interrogatories

1. The information sought by the interrogatory may be found in the Verified Notice of Exemption, filed March 9, 2001, and the Decision of the Board in STB Finance Docket No. 34018, served March 27, 2001.
2. The information sought by the interrogatory may be found in the Railroad License and Operating Agreement between SERA's predecessor company, Yolo Shortline Railroad Company, and the County, dated as of February 6, 2001, as amended May 13, 2002.
3. August 31, 2007.
4. February 29, 2008.
5. The information sought by the interrogatory may be found in the Verified Notice of Exemption, filed January 29, 2008, and the Decision of the Board in STB Finance Docket No. 35117, served February 14, 2008, in the letter from Mr. Heckenlively to Mr. Magaw, dated August 31, 2007, in the letter from Mr. Kelly to Mr. Magaw, dated October 11, 2007, and in the e-mail from Mr. Myers to Messrs. Magaw and Hart, dated January 7, 2008.
6. There is no document that contains the information sought by the interrogatory.
7. There is no identifiable request for service from shippers in McClellan received by SERA after March 1, 2008. In 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, Defendant seeks a court order requiring the corporate parent of SAV to allow the restoration of SERA as the operator to provide service to the shippers in McClellan.
8. There is no document that contains the information sought by the interrogatory.

9. The Verified Notice of Exemption, filed January 29, 2008, and the Decision of the Board in STB Finance Docket No. 35117, served February 14, 2008, the letter from Mr. Heckenlively to Mr. Magaw, dated August 31, 2007, the letter from Mr. Kelly to Mr. Magaw, dated October 11, 2007, and the e-mail from Mr. Myers to Messrs. Magaw and Hart, dated January 7, 2008, identified in response to Interrogatory No. 5, contemplated that SERA would be denied access to the railroad line in McClellan effective March 1, 2008, and that the successful bidder, Patriot Rail, through its indirectly controlled subsidiary, SAV, would obtain the exclusive occupancy and operating rights on the railroad line in McClellan, thereby obliging Respondents to file a third-party or adverse discontinuance application with the Board, as SERA was not required to make any filing. In the meantime, SERA remains a rail carrier authorized to operate on the railroad line in McClellan and may provide railroad service in the industrial park, not by virtue of the Railroad License and Operating Agreement, dated as of February 6, 2001, as amended May 13, 2002, but pursuant to the Verified Notice of Exemption, filed March 9, 2001, and the Decision of the Board in STB Finance Docket No. 34018, served March 27, 2001, and to the Verified Notice of Exemption, filed June 3, 2003, and the Decision of the Board in STB Finance Docket No. 34360, served June 23, 2003.

Complainants knew as of August 11, 2007, that McClellan had solicited bids for the provision of rail service in McClellan.

#### Document Requests

1. The requested documents are in the possession of one or more of the Respondents.
  2. The documents identified in the response to Interrogatory No. 1 are publicly available.
- The documents identified in the response to Interrogatory No. 2 are in the possession of

one or more of the Respondents. The response to Interrogatory No. 6 said that there is no document that contains the information sought by the interrogatory. The documents identified in the response to Interrogatory No. 5 are publicly available, except for the letter from Mr. Heckenlively to Mr. Magaw, dated August 31, 2007, the letter from Mr. Kelly to Mr. Magaw, dated October 11, 2007, and the e-mail from Mr. Myers to Messrs. Magaw and Hart, dated January 7, 2008, copies of which are attached.

3. There is no such document.

4. The letter from Mr. Heckenlively to Mr. Magaw, dated August 31, 2007, the letter from Mr. Kelly to Mr. Magaw, dated October 11, 2007, and the e-mail from Mr. Myers to Messrs. Magaw and Hart, dated January 7, 2008, copies of which are attached.

5. The e-mails from Mr. Hart to Mr. Myers, dated January 8, 2008, February 4, 2008, and February 5, 2008, copies of which are attached.

6. The requested documents have been identified and/or produced.

#### Requests for Admission

1. Admit that Complainants were advised as early as August 31, 2007, that the Railroad License and Operating Agreement of February 6, 2001, as amended May 13, 2002, was to be terminated.

2. Deny.

3. Deny.

4. Admit. Complainants learned on January 7, 2008, that Patriot Rail had submitted the successful bid to replace SERA as the operator at McClellan.

5. Admit.

6. Admit.

7. Admit in part and deny in part.

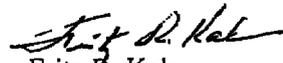
8. Admit.

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: February 16, 2012



August 31, 2007

**VIA FACSIMILE - (530) 666-2919 AND CERTIFIED MAIL**

Mr. David Magaw  
Sierra Northern Railway  
341 Industrial Way  
Woodland, CA 95776-6012

Re: Railroad License and Operating Agreement, dated February 6, 2001, between McClellan Business Park, LLC (as successor to the County of Sacramento), and Sierra Northern Railroad (as successor to Yolo Shortline Railroad Company), as amended ("Railroad License"), McClellan, California

Dear Dave:

As you are aware, our company has been in preliminary discussions with multiple shortline operators, including your company, to explore whether we would pursue a formal request for proposal on the shortline operations at McClellan Park. The discussions thus far have been very informative and helpful in our process.

We are pleased to inform you that we have selected a group of four (4) shortline operators, including your company, to respond to a formal request for proposal for the opportunity at McClellan Park. The request for proposal will be released within the next sixty (60) days along with instructions for the response. Our intention is that we will enter into a new contractual relationship with one of the four (4) shortline companies as of March 1, 2008. To achieve this process, this letter constitutes notice, under Section 9.4 of the Railroad License, of our election to terminate the Railroad License with six (6) months notice. The termination election is made as of September 1, 2007 and the six (6) month period expires on February 28, 2008.

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. If you have any questions, please contact me.

Sincerely,

Jody Heckenlively  
Senior Vice President and General Counsel

JJH:scb  
cc: Larry D. Kelley  
Debra Compton  
1000.011.12100



RECEIVED  
OCT 16 2007

October 11, 2007

David Magaw  
Sierra Northern Railway  
241 Industrial Way  
Woodland, CA 95776-6012

Dear Mr. Magaw,

Your firm was selected as a qualified respondent for the enclosed Request for Proposal (RFP) for Rail Service at McClellan Park. We look forward to receiving your response to this RFP.

If you have questions on this RFP please group those questions and provide them as per the instructions. All questions received, and McClellan Park's response, will be distributed to all respondents.

If you would like to schedule another tour or inspection of the facilities please notify us as soon as possible. Upon request, we will make every effort to arrange tour dates to accommodate the deadlines specified in the RFP.

Please note that the information requested in the RFP is the minimum amount of information to provide. If there is any other pertinent information you would like to include with your proposal feel free to do so.

Thank you for your interest in McClellan Park

Sincerely,

McClellan Business Park

  
Larry D. Kelly  
President

ldk/lk-

Enclosure

cc w/o enc:

Jay Heckenlively

Debra Compton

Nathan Ellis

Carl Bradley

cc w/enc:

Frank Myers



**McClellan Business Park, LLC  
Rail Service  
Request for Proposal**

**McClellan Park Introduction**

McClellan Business Park, LLC (MBP) was selected by the County of Sacramento in 1999 to acquire and redevelop McClellan Air Force Base, subsequently renamed McClellan Business Park. Since that time MBP has actively renovated, leased and managed the existing buildings and planned future development. To date MBP has leased approximately 6.0MM sf of existing space on base, with another 1MM sf in documentation and an additional 1.0MM sf under negotiation. Future development plans can accommodate over 6MM square feet of additional new development.

MBP is located in the northern portion of Sacramento County. Totalling approximately 3,000 acres, MBP was dedicated as an Air Force Base in 1936 as the Sacramento Air Depot and renamed McClellan Air Force Base one-year later. McClellan was integral to the war effort during World War II, processing over 3,500 aircraft annually by the end of the war. During the Korean War and the 1950's McClellan expanded considerably, developing facilities to accommodate jet aircraft maintenance and the management of satellite systems. Depot modernization continued through the 1960's and 1970's. By the 1980's McClellan was a leading military facility in advanced technology, including advanced composite design, microelectronics and fiber optics. By July 2001 the base was fully closed, leaving the facilities available for re-use.

McClellan is well located along Interstate 80, and is served by 4 major interchanges. Rail access exists along the southern boundary. Watt Avenue borders McClellan to the east. Watt Avenue is a major retail and office corridor through Sacramento. To the north is Elkhorn Boulevard, a major east-west connector in the area that leads from I-80 to the Sacramento international airport. The south and west side of the property is accessible via two major interchanges, Winters Boulevard and Raley Boulevard. The site is an in-fill location, only five miles from downtown Sacramento.

**Sacramento Overview**

The greater Sacramento area has proven to be one of the fastest growing markets among major metropolitan areas in the United States. The region encompasses approximately 5,145 square miles, from the Sacramento River Delta to the Sierra Nevada mountain range. At the center of this region is the City and County of Sacramento, which is surrounded by a number of smaller towns and communities. McClellan Park is at the hub of the community along the Interstate 80 corridor in close proximity to downtown and the airport and represents a major employment center in the region.

According to the California Department of Finance the current population in the Sacramento metropolitan area will increase approximately 40% by 2020, ranking it among the fastest growing major metropolitan areas in that timeframe. The area is also projected to add 25,000 jobs annually, of which a significant portion is being generated at McClellan Park as the redevelopment continues. The business park currently provides approximately 12,500 jobs, with County projections showing growth to 35,000 over the next 10 years.

## Request for Proposal

MBP seeks proposals from selected qualified respondents (Respondents) interested in providing common carrier rail service to existing and potential tenants of McClellan Park. Service is to be provided along existing rail as well as future rail to be developed based on the responses to this proposal and mutually agreed terms.

MBP has approximately seven (7) miles of existing railroad track and is strategically located with freeway access which makes it a prime site for transmodal use. The track meets current FRA and CPUC standards, and is served by UP and BNSF. Existing rail serves a transmodal yard totaling approximately 35 acres and industrial buildings totaling over 2.5MM square feet. Significant opportunity exists for new rail served industrial development as well as relocation and expansion of transmodal operations.

As responses to this RFP will serve as the primary means to select a rail operator (Operator), responses to any portion of this RFP may be incorporated into a future contractual agreement or serve as benchmarks to measure Operator's performance. MBP reserves the right to disregard any or all responses to this RFP, and will select an Operator in its sole discretion based on responses received or any other information that becomes available. MBP makes no representation or promise of any kind regarding the selection of an Operator.

## Procedure for Responses

**Questions** - All questions regarding this RFP are to be submitted in writing (e-mail is acceptable) to McClellan Business Park no later than Friday, November 2, 2007. All questions received, and MBP responses, will be transmitted electronically to all Respondents.

**Response Due Date** - All responses to this RFP are due in our office by end of business on Friday, November 16, 2007. Please provide five (5) hard copies of your response to:

Debra A. Compton  
Senior Vice President  
McClellan Business Park  
3140 Peacekeeper Way  
McClellan, CA 95652  
916.965.7100  
[dcompton@mcclellanpark.com](mailto:dcompton@mcclellanpark.com)

**Required Response Documents** - All information requested in schedules I and II are required. In addition any information the Respondent feels is pertinent may be provided for consideration.

All materials submitted in response to this RFP become the property of MBP. Proposals and supporting materials will not be returned to respondents. MBP reserves the right to reject any or all proposals. The successful respondent will be notified on or before December 31, 2007 and must be prepared to facilitate a seamless transition on or before March 1, 2008.

**Term** - Subject to mutual agreement between the respondent and MBP, it is MBP's intent to award the successful respondent with the exclusive right to provide short line rail service at McClellan Business Park for a minimum five (5) year term commencing on March 1, 2008. Said right shall be granted pursuant to a Track License Agreement. MBP may elect to negotiate a differing term with any Respondent in MBP's sole discretion based on responses received.

**Track Maintenance and Repair - Respondent shall consider in their response that Operator shall be responsible, at its cost, for the maintenance of the track and right of way. Maintenance shall include repairs, routine maintenance and replacement of all rail components including all road crossings. The integrity of the rail and all components shall be maintained to Federal Railroad Administration Class I or better (FRA) California Public Utilities Commission (CPUC) standard. Respondent shall also bear the responsibility for daily policing, and maintenance of landscaping and hardscape within 15 feet of centerline of each track.**



## Schedule II - Narrative

2.

### Introduction

An introductory cover letter to include the following information:

- Company name and proposed contracting entity, if different
- Name and title of primary contact
- Company address and contact information including e-mail address

3-A

### Marketing and Sales

Describe your company's marketing plan for McClellan Park. Include the following:

- Sales goals and measurable objectives
- A list of significant clients interested in locating at the Park.
- An estimate for growth of rail operations and revenue over a 10 year period.
- Details of assumptions backing the projections
- A list of targeted industries reflected in the assumptions
- Anticipated rail activity for each targeted industry and revenue generated from that activity
- Initial assumptions for all other revenue sources listed in Schedule I and anticipated growth for those revenue sources.
- Projections should reflect the total payments to McClellan Park over the term with a clear explanation of how the amounts were derived.

3-B

### Administration and Finance

Define the staffing plan for McClellan Park. Include the following:

- Key personnel profiles
- An Organizational Chart for the McClellan Park operations, including all personnel involved. Be specific as to staffing in the areas of marketing and sales, administration, and transportation, as well as any use of contractors and their roles. Include any allocation of staff from the company's other operations or headquarters.
- Specific work schedules and job descriptions for each position.

Describe the process and frequency of reporting and remittance of proceeds to McClellan Park. Reports are to include at a minimum:

- The number of rail cars received
- The number of switch charges on stored cars
- The number of switch charges on any other rail cars
- The number of cars stored at any given time
- Itemized listing of total revenue generated from all sources

Provide details of proposed insurance coverage and deductibles.

Outline the anticipated structure, revenue and costs associated with new or existing agreements with major rail carriers that will impact McClellan Park rail operations in any way.

Provide information on expertise in planning and engineering that would be beneficial with respect to future development of rail operations and services

### 3-1 Maintenance and Operations

- Define the track usage plan for storage tracks other than those used for commercial operations, customers, warehouses and team tracks.
- What is the plan for regular track maintenance? Provide an inspection schedule and checklist.
- Provide the number of locomotives that will be on site at McClellan Park. Also provide the manufacturer and age of each locomotive.
- Will the operations be remote control locomotive (RCL) or will it be staffed by a locomotive engineer?
- When and how will accidents and derailments be reported to McClellan Park?
- If an accident or derailment occurs, what is the plan for timely repair and resumption of operations?
- Provide a Transition Plan
- Provide anticipated hours of operations, along with a schedule for off hour charges and the regular notification period
- Provide the proposed procedure and charges for bonus not covered in normal hours of operation.
- Provide historic safety performance for the past 3 years
- Provide at least 5 professional references.

### 3-2 Ancillary Building

The existing 5,350 square foot engine repair facility is available for use by Operator. Please provide the utilization and proposed rent to be paid for use of the facility.

### 3-3 Capital Requirements

It is anticipated that additional capital investment will be required to reach the full potential of the McClellan Park rail operations. Provide information on the following

- Describe the vision and timeline for ultimate rail build-out and how that build-out will translate into rail operations and revenue.
- Outline limitations that currently exist and at what point, in terms of annual rail operations, improvements will be required to continue with growth.
- Provide estimates of costs for improvements anticipated to be required over the term.
- Provide information on the capability to fund capital improvements, the criteria for making those expenditures (i.e. rate of return requirements, minimum term, etc) and proposed cost sharing, if any
- Provide examples of grant funded projects completed and specific examples of successful grant applications with the PUC, CA DOT or other public agencies.

**From:** Frank Myers  
**Sent:** 01/07/2008  
**To:** dmagaw@att.net; mg.hart@att.net  
**Cc:** Larry Kelley; Jay Heckenlively  
**Bcc:**  
**Subject:** Rail RFP

---

Dave and Mike,

We'd like to thank you for your response to the McClellan Park Rail Operations RFP. We gave your proposal a great deal of consideration, and appreciate the time you put into the response. Your potential transaction with Morrison and Company along with the years Sierra Northern / Yolo spent as the rail operator were both factors in our decision and made the decision more difficult, but ultimately we chose a different service provider.

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 shortline operator. Please let me know who your point of contact will be for the transition.

Feel free to contact me if you have any questions.

Frank Myers  
Senior Vice President  
McClellan Park / Stanford Ranch  
Phone: (916) 570-5303  
Mobile: (916) 284-8826  
Fax: (916) 568-2848

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**From:** Michael Hart  
**Sent:** 01/08/2008  
**To:** Frank Myers; dmagaw@att.net  
**Cc:** Larry Kelley; Jay Heckenlively; Torgny Nilsson  
**Bcc:**  
**Subject:** Re: Rail RFP

---

Dear Frank,

We were disappointed to hear that we were not your final choice to continue to provide rail operations at McClellan Business Park. We believed that our favorable relations with our Class I partners, and our excellent relations with McClellan's tenants added great value to our proposal. We also believed that Morrison & Company's plan to make a major capital investment in the operation at McClellan coupled with their interest in McClellan's airport facilities, would have added a great deal to our remaining the operator there. Most importantly, we were certain that having the same operator for the Port of Sacramento and McClellan's rail facilities could open enormous warehousing opportunities, those are made impossible with three railroads involved in such a short move. We felt we had a good proposal, and had looked forward to handing over the operation to a well-financed partner who would center their operations at McClellan.

I would appreciate it if you could tell me if we were your second choice. Contract negotiations take time, as will any negotiations with UP and BNSF, and I would like to know if we should position our railroad assets that are currently at McClellan in such a manner as to keep them available to McClellan if needed. Otherwise, we will need reposition our key team members and equipment from McClellan to other railroad operations. I have copied Torgny Nilsson on this message and would appreciate it if he could be your principal point of contact for any correspondence regarding the transition, copying Dave Magaw as well on any e-mails.

We will continue to provide excellent service until the end of our agreement and wish you all the best in your continued expansion of McClellan Park.

Best wishes,

Mike Hart  
President, CEO  
Sierra Railroad Company

Frank Myers wrote:

Dave and Mike,

We'd like to thank you for your response to the McClellan Park Rail Operations RFP. We gave your proposal a great deal of consideration, and appreciate the time you put into the response. Your potential transaction with Morrison and Company along with the years Sierra Northern / Yolo spent as the rail operator were both factors in our decision and made the decision more difficult, but ultimately we chose a different service provider. 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 shortline operator. Please let me know who your point of contact will be for the transition.

Feel free to contact me if you have any questions.

Frank Myers  
Senior Vice President  
McClellan Park / Stanford Ranch  
Phone: (916) 570-5303  
Mobile: (916) 284-8826  
Fax: (916) 568-2848

---

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**From:** Michael Hart  
**Sent:** 02/04/2008  
**To:** Frank Myers; dmagaw@att.net  
**Cc:** Jay Heckenlively  
**Bcc:**  
**Subject:** RE: Rail RFP

---

Frank-

We will be happy to provide you with a copy of any filings we make. Please let us know when and if you reach a final agreement with Patriot.

Best wishes,  
Mike Hart  
Sierra Railroad

Frank Myers wrote:

Mike -

When we spoke a couple weeks ago you were preparing to file the cessation notice with the surface transportation board. Can you please provide a copy for our records? Thank you.

Frank Myers  
Senior Vice President  
McClellan Park / Stanford Ranch  
Phone: (916) 570-5303  
Mobile: (916) 284-8826  
Fax: (916) 568-2848  
From: Michael Hart [mailto:mg.hart@att.net]  
Sent: Tuesday, January 08, 2008 12:33 PM  
To: Frank Myers; dmagaw@att.net  
Cc: Larry Kelley; Jay Heckenlively; Torgny Nilsson  
Subject: Re: Rail RFP

Dear Frank,

We were disappointed to hear that we were not your final choice to continue to provide rail operations at McClellan Business Park. We believed that our favorable relations with our Class I partners, and our excellent relations with McClellan's tenants added great value to our proposal. We also believed that Morrison & Company's plan to make a major capital investment in the operation at McClellan coupled with their interest in McClellan's airport facilities, would have added a great deal to our remaining the operator there. Most importantly, we were certain that having the same operator for the Port of Sacramento and McClellan's rail facilities could open enormous warehousing opportunities, those are made impossible with three railroads involved in such a short move. We felt we had a good proposal, and had looked forward to handing over the operation to a well-financed partner who would center their operations at McClellan.

I would appreciate it if you could tell me if we were your second choice. Contract

negotiations take time, as will any negotiations with UP and BNSF, and I would like to know if we should position our railroad assets that are currently at McClellan in such a manner as to keep them available to McClellan if needed. Otherwise, we will need reposition our key team members and equipment from McClellan to other railroad operations. I have copied Torgny Nilsson on this message and would appreciate it if he could be your principal point of contact for any correspondence regarding the transition, copying Dave Magaw as well on any e-mails.

We will continue to provide excellent service until the end of our agreement and wish you all the best in your continued expansion of McClellan Park.

Best wishes,

Mike Hart  
President, CEO  
Sierra Railroad Company

Frank Myers wrote:

Dave and Mike,

We'd like to thank you for your response to the McClellan Park Rail Operations RFP. We gave your proposal a great deal of consideration, and appreciate the time you put into the response. Your potential transaction with Morrison and Company along with the years Sierra Northern / Yolo spent as the rail operator were both factors in our decision and made the decision more difficult, but ultimately we chose a different service provider. 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 shortline operator. Please let me know who your point of contact will be for the transition. Feel free to contact me if you have any questions.

Frank Myers  
Senior Vice President  
McClellan Park / Stanford Ranch  
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Mobile: (916) 284-8826  
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**From:** Michael Hart  
**Sent:** 02/05/2008  
**To:** Frank Myers; dmagaw@att.net  
**Cc:** Jay Heckenlively; Torgny Nilsson  
**Bcc:**  
**Subject:** RE: Rail RFP

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Frank-

I have received confirmation from counsel that we are not required to make any filings regarding the Patriot action.

Please confirm if and when you reach a final agreement with Patriot.

Best wishes,  
Mike Hart  
Sierra RR

Michael Hart wrote:

Frank-

We will be happy to provide you with a copy of any filings we make. Please let us know when and if you reach a final agreement with Patriot.

Best wishes,  
Mike Hart  
Sierra Railroad

Frank Myers wrote:

Mike -

When we spoke a couple weeks ago you were preparing to file the cessation notice with the surface transportation board. Can you please provide a copy for our records? Thank you.

Frank Myers  
Senior Vice President  
McClellan Park / Stanford Ranch  
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Mobile: (916) 284-8826  
Fax: (916) 568-2848  
From: Michael Hart [mailto:mg.hart@att.net]  
Sent: Tuesday, January 08, 2008 12:33 PM  
To: Frank Myers; dmagaw@att.net  
Cc: Larry Keley; Jay Heckenlively; Torgny Nilsson  
Subject: Re: Rail RFP

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**EXHIBIT D-VERIFICATIONS**



VERIFICATION

State of California )  
County of ~~Palm Beach~~ <sup>Sacramento</sup> ) ss.

Jay Heckenlively, Executive Vice President and General Counsel of McClellan Business Park, LLC, being duly sworn, deposes and says that he has read the 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 dated February 16, 2012, that he has personal knowledge of the facts asserted in the Response of McClellan Business Park, LLC and that the same are true and correct to the best of his knowledge as stated.

  
Jay Heckenlively

~~Attached~~  
\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of Sacramento }  
 On 3/19/2012 before me, Tiffany Joanne Garcia  
Date Here insert Name and Title of the Officer  
 personally appeared Jay Heckenlively  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
 Signature: [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

