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May 23, 2012

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

Re: Docket No. Nor 42133, Sierra Railroad Company and Sierra  
Northern Railway v. Sacramento Valley Railroad, LLC,  
McClellan Business Park LLC and County of Sacramento

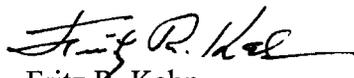
Dear Ms. Brown:

Attached are the Redacted - Public Version and the Highly Confidential - Subject to Protective Order version of the Complainants' Opening Evidence and Arguments.

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

This letter and its attachment have been served upon the Respondents by e-mailing and mailing by prepaid first-class mail copies to their counsel, Louis E. Gitomer, Esq.

Sincerely yours,

  
Fritz R. Kahn

cc: Louis E. Gitomer, Esq.

**REDACTED - PUBLIC VERSION**

**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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**COMPLAINTS' OPENING EVIDENCE AND ARGUMENTS**

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SIERRA NORTHERN RAILWAY

Due and dated: May 23, 2012

SURFACE TRANSPORTATION BOARD

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Docket No. NOR 42133

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COMPLAINTS' OPENING EVIDENCE AND ARGUMENTS

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

I.

Background

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

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

SAV is a Class III rail carrier subject to the Board's jurisdiction. *See*, STB Finance Docket No. 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Holdings LLC and Patriot Rail Corp.--Continuance in Control Exemption--Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC*, served November 12, 2010. McClellan is subject to the Board's jurisdiction as a residual common carrier having acquired and been granted the right to operate the seven-mile railroad line formerly situated in McClellan Air Force Base (hereinafter referred to as the "Line") on which Yolo, SERA and SAV have been granted the authority by the Board to operate as rail carriers. County is subject to the Board's jurisdiction as a residual common carrier having acquired and been granted the right to operate the Line on which Yolo, SERA and SA have been granted the authority by the Board to operate as rail carriers.

McClellan Air Force Base at McClellan, Calif., in 1995 was ordered by the Department of Defense to be closed, and, as portions of the Base were vacated, their properties, including the Line, were conveyed to the County.<sup>1</sup> 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

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<sup>1</sup> The County did not file an application to acquire and operate the Line, pursuant to 49 C.F.R. §10901 or an exemption therefrom, under 49 U.S.C. §10502. *Cf.*, Docket No. 29423, *North Carolina Ports Railway Commission--Acquisition and Operation in New Hanover and Carteret Counties, NC*, served December 29, 1980).

carrier railroad service. The County chose Yolo to render railroad service within the former McClellan Air Force Base properties, and they entered into a License and Operating Agreement, dated as of February 6, 2001 (hereinafter referred to as the "2001 Licensing Agreement"), which granted Yolo the exclusive occupancy and operating right over the Line. Yolo elected to render service on the 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.

In 2003, SERA acquired the 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 and Yolo rendered service as rail carriers on the Line from 2001 until 2008. In the meantime the County had turned over the management of the former McClellan Air Force Base properties, including the Line, to McClellan.<sup>2</sup>

In 2007, McClellan notified SERA that it would not renew the 2001 Licensing Agreement and that it would extend invitations to bid for the rendition of service on the Line. SERA thought it would be aided in retaining the right to operate on the Line if it were acquired by Patriot Rail, LLC, and, subject to a non-disclosure/confidentiality agreement, SERA provided Patriot Rail Corp., a non-carrier affiliate of Patriot Rail Holding, LLC, a non-carrier affiliate of non-carrier Patriot Rail, LLC, (together "Patriot") with a wealth of proprietary financial and operating data.. In partial reliance on the

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<sup>2</sup> McClellan did not file an application to acquire and operate the Line, pursuant to 49 U.S.C. §10901 or and exemption therefrom, under 49 U.S.C. §10502. *Cf.*, STB Finance Docket No. 34161, *Lackawanna County Railroad Authority--Acquisition Exemption--Scranton Lackawanna Industrial Building Company*, served January 29, 2002.

proprietary financial and operating data it had received from SERA, Patriot Rail Corp. bid for the right to provide service on the Line, and in January 2008 McClellan advised SERA that it would be entering into a License and Operating Agreement with Patriot Rail Corp., effective March 1, 2008. Patriot thereupon organized SAV, and it was SAV which entered into the License and Operating Agreement with McClellan, dated as of February 27, 2008 ("hereinafter referred to as the "2008 Licensing Agreement"). See, Docket No. 35117, *Sacramento Valley Railroad, Inc.-- Operation Exemption --McClellan Business Park LLC*, served February 14, 2008, and STB Finance Docket No. 35118, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp--Continuance in Control Exemption--Sacramento Valley Railroad, Inc.*, served February 14, 2008.

The inappropriate and illegal means by which Patriot wrested -- some might say stole -- the right to render the McClellan railroad service has led to a lawsuit, Case No. 2:09-cv-00009-MCE-EFB, *Patriot Rail Corp. v. Sierra Railroad Company*, pending before the United States District Court for the Eastern District of California, in which Sierra seeks more than \$15 million in compensatory damages, statutory treble damages and punitive damages and the return to SERA of the right to render the McClellan operations. Pending the outcome of the District Court action, it is SAV which solely and exclusively renders the service within the McClellan complex. SERA, however, remains the rail carrier initially authorized by the Board to operate as a rail carrier on the Line within the McClellan's industrial park.

SAV was well aware of the need to secure the Board's authority for SERA to be unable to operate on the Line and for SAV to enjoy the exclusive occupancy and operating rights on the tracks as contemplated in the 2008 Licensing Agreement. In its

Verified Notice of Exemption in Finance Docket No. 35117, *Sacramento Valley Railroad Inc.--Operation Exemption--McClellan Business Park*, filed January 29, 2008, Exhibit 1, Patriot's SAV said that it "understands that Yolo's successor has been asked by [McClellan] to vacate the Line, but may or may not have filed for abandonment authority with the Board at the time this notice is filed."

It is the County and the manager of the former McClellan Air Force Base properties, McClellan, which want SAV to have the sole and exclusive operating rights to render service on the Line, but none of them -- not SAV, not McClellan, not the County - has filed a third-party or adverse discontinuance application with the Board to revoke SERA's right to operate on the Line. Notwithstanding that SERA continues to be the rail carrier initially authorized by the Board to operate on the Line, SAV, McClellan and the County have made it evident that they will not allow SERA on the Line to enable it to fulfill its common carrier obligation to provide service to the shippers or receivers of freight located within the McClellan industrial park. SAV, McClellan and the County cannot have it both ways, They cannot have SAV have the sole and exclusive right to operate on the Line, on the one hand, and, on the other, fail to file a third-party or adverse discontinuance application for SERA to no longer have the authority to render service on the Line.

I.

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For SAV to be the sole and exclusive rail carrier to operate on the Line necessitated seeking the adverse discontinuance of SERA's authority.

The Board in a number of proceedings has found it perfectly permissible for it to grant authority to a rail carrier to render service on a railroad line on which it previously had authorized another rail carrier to conduct operations. In one of the earlier proceedings, STB Finance Docket No. 33760, *Indiana Northeastern Railroad Company -- Change in Operators -- Branch and St. Joseph Counties Rail Users Association, Inc. in Branch County, Michigan*, served September 1, 1999, the Board noted that "multiple carriers routinely operate over the same rail lines." In STB Finance Docket No. 33905, *Lackawanna County Railroad Authority--Acquisition Exemption--F&L Realty, Inc.*, served October 22, 2001, the Board declared, "Any authority granted is permissive in nature, not mandatory. The Board has held that, once authority becomes effective, it is up to the parties to decide whether and how to go forward." In STB Finance Docket No. 34114, *Yolo Shortline Railroad Company--Lease and Operation Exemption--Port of Sacramento*, served February 3, 2003, the Board held, "We see no reason to prevent the [line's owner] from determining which carrier it wants to have operating over its track." Perhaps the most expansive expression of its views was contained in Finance Docket No. 34551, *Standard Terminal Railroad of New Jersey, Inc.--Acquisition Exemption--Rail Line of Joseph C. Horner*, served October 8, 2004, in which the Board declared, "The Board has sanctioned dual operations on rail lines previously, and requires coordinated dispatching and operating protocols to assure safe operations. The Federal Railroad Administration also has regulations governing rail safety in the instance of such

operations. These regulations have assured safe operations in the past and may be relied upon to do so in the future, on this line and elsewhere."

The line's owner, however, can make it clear that it wants the previously authorized rail carrier to continue to render service on the line and to have the subsequently authorized rail carrier be denied the right to operate on its line. As the Board observed in its Decision in STB Finance Docket No. 35022, *New Hampshire Central Railroad, Inc.--Lease and Operation Exemption--Line of the New Hampshire Department of Transportation*, served December 11, 2007, "[P]etitioners have not on this record supported their 'exclusive' argument. Although [the previously authorized rail carrier] asserts that the [Lease and Operating] Agreement gives it exclusive rights to operate on the Line, petitioner fails to identify any provision therein supporting that claim." In sharp contrast, in this proceeding there is ample evidence that Yolo, renamed SERA, was granted the exclusive authority to operate on the Line owned by the County and subsequently managed by McClellan and that the Board affirmed the County's choice by its Decision authorizing Yolo to serve the Line.

Section 1.1 of the 2001 Licensing Agreement, Exhibit 2, unambiguously stated, "Licensor hereby grants to the Licensee the exclusive license (which is not coupled with an interest) to occupy, maintain, repair and operate all of the Railroad Facilities (as hereinafter defined) within McClellan Park".

The Board, in its Decision in STB Finance Docket No. 34018, *Yolo Shortline Railroad Company--Acquisition and Operation Exemption--County of Sacramento*, served March 27, 2001, Exhibit 3, acknowledged the exclusivity of the arrangement, stating "Yolo Shortline Railroad Company (Yolo), a Class III rail carrier [the 'Licensee'],"

has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the County of Sacramento, CA (County)[the 'Licensor'], the exclusive occupancy and operating rights over 7 miles of unmarked railroad track within McClellan Park, in McClellan, CA [footnotes omitted]."

SERA, the renamed Yolo, remained the sole and exclusive operator of the Line until August 31, 2007, when 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 would not be renewing the 2001 Licensing Agreement pursuant to which SERA had been serving the McClellan facility and advised it that McClellan was going to issue a Request for Proposal to potentially interested short line railroads to render the McClellan service. Exhibit 4(a). 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."<sup>3</sup>

On October 11, 2007, McClellan sent its Request for Proposal to the potential bidders to serve the Line. Exhibit 4(b). The Request for Proposal made clear that the successful bidder would have the sole and exclusive right to operate the Line. It declared, "Subject to mutual agreement between the respondent and [McClellan], it is [McClellan's] intent to award the successful respondent with the exclusive right to provide short line rail service at McClellan Business Park for a minimum of five (5) year

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<sup>3</sup> In STB Finance Docket No. 35296, *Anthony Macrie--Continuance in Control Exemption--New Jersey Seashore Lines*, served September 29, 2009, fn. 2. p. 1, the Board reminded the rail carrier, "[O]nce a party obtains STB authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, unless and until the Board grants appropriate discontinuance or abandonment authority [citations omitted]"

term commencing on March 1, 2008. Said right shall be granted pursuant to a Track License Agreement."

By an e-mail, dated January 1, 2008, addressed to Mr. Mike Hart, President of Sierra, and Mr. Dave Magaw, President of SERA, Mr. Frank Myers, Senior Vice President of McClellan, thanked them for the work that they and their team had put into the project over the years and expressed his appreciation for that effort and looked forward to their cooperation over the next two months as McClellan transitioned to Patriot Rail Corp, whom Mr. Myers said McClellan had selected as the short line operator. Exhibit 4(c). Patriot Rail Corp., of course, was not a short line operator; it was and remains a non-carrier. Accordingly, Patriot established SAV, and it was SAV which sought the authority from the Board to operate on the Line.

The Verified Notice of Exemption in Finance Docket No. 35117, *Sacramento Valley Railroad, Inc.--Operation Exemption--McClellan Business Park LLC*, filed January 29, 2008, asked the Board "to permit SAVR to obtain the exclusive occupancy and operating rights over about seven miles of unmarked railroad track within McClellan Business Park, in McClellan, Sacramento County, CA (the 'Line')".<sup>4</sup> Exhibit 5. The Board granted Patriot's SAV's request by its Decision, served February 14, 2008. Exhibit 6.

In their discovery response served the Complainants on February 16, 2012, Respondents acknowledged, "McClellan and SAV admit that their agreement intended SAV to be the exclusive operator in the McClellan Business Park." Exhibit 8.

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<sup>4</sup> The Verified Notice of Exemption falsely stated that, in response to McClellan's Request for Proposal submitted to the prospective short line operators, "SAVR was the winning bidder." The error was repeated in the Board's Decision in STB Finance Docket No. 35117, *Sacramento Valley Railroad, Inc.--Operation Exemption--McClellan Business Park LLC*, served February 14, 2008. Exhibit 6.

Thus, there are now two rail carriers which the Board has authorized to render service on the Line, SAV and SERA. Both rail carriers, SAV and SERA, want to continue to have the right to operate the Line within the McClellan industrial park. One of them, however, SAV, together with McClellan and presumably the County, want to be rid of SERA and have SAV alone be the authorized rail carrier on the Line, as contemplated by 2008 Licensing Agreement.

Respondents contend that, upon termination of the 2001 Licensing Agreement, it was incumbent upon SERA to apply for the Board's abandonment authorization. They point to Section 15.1 of the Agreement which obliges SERA, upon termination of the Agreement, to "remove its equipment, personnel and other property from Licensor's premises" and contend that the clause inferred that SERA should obtain the Board's approval to remove itself from the McClellan railroad line.<sup>5</sup> As the Board noted in its Decision in this proceeding, served April 23, 2012, "A rail carrier may seek authority to discontinue its operations under 49 U.S.C. §10903; however, the statute does not require it to do so under the circumstances presented here."

If it had been the intent of the McClellan and the County, upon termination of the 2001 Licensing Agreement, to have SERA apply to the Board for its abandonment authorization, it would have been a simple matter to have included such a provision in the Agreement. No such provision, however, appears in the 2001 Licensing Agreement. The 2001 Licensing Agreement is altogether silent as to who is to apply to the Board for SERA's abandonment or discontinuance authorization. As the Board said in its Decision in this proceeding, served April 23, 2012, "[I]f an owner of a line wishes to remove any

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<sup>5</sup> SERA has not rendered service on the Line for the past four years, but its failure to do so hardly has been voluntary. *Cf., Modern Handcraft, Inc.--Aband.*, 363 I.C.C. 969, 972 (1981).

doubt about a common carrier operator's right to maintain a presence on a line, it has a readily available remedy: an adverse discontinuance."

SAV, McClellan and the County have had the right to file an application with the Board for the third-party or adverse discontinuance of SERA's operating authority. *See, Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 145 (1946); *Consol. Rail Corp. v. I.C.C.*, 29 F.3rd 706, 710 (D.C. Cir. 1994), *affirming Chelsea Prop. Owners -- Abandonment*, 8 I.C.C. 773, 778 (1992). None, however, has done so -- not SAV, not McClellan and not the County. Instead, they seem content to rely on the alleged contractual right of SAV to be the sole and exclusive operator of the Line and presumably expect SERA, in the absence of any provision in the 2001 Licensing Agreement and contrary to its own self-interest, to petition the Board for the authority to discontinue serving as a rail carrier on the Line.

The position of the parties in this proceeding is not dissimilar from that in STB Docket No. AB-878, *City of Peoria and the Village of Peoria Heights, IL--Adverse Discontinuance--Pioneer Industrial Railway Company*, served August 10, 2005, in which the Board explained:

The Cities are the owners of a rail line, and [Pioneer Industrial Railway Company] PIE is their tenant. the Cities contend that the agreement between the parties has expired, that it has obtained a new carrier [Central Illinois Railway Company] (CIRY) and that it seeks to have PIRY removed from the property. Although the Board does not undertake to interpret or enforce operating agreements or contracts, see Tacoma [Eastern Railway Co.--Adverse Discontinuance of Operation Application--A Line of the City of Tacoma in Pierce, Thurston and Lewis Counties, WA]; The Kansas City Southern Railway Company--Adverse Discontinuance Application--A Line of Arkansas and Missouri Railroad Company, STB Docket No. AB-103 (Sub-No. 14)(STB served Mar. 26, 1999), the Cities seek to have the Board remove its primary jurisdiction with respect to PIRY's operating authority so that they may attempt to have PIRY evicted from the Keller Branch under any applicable state law. Until the Board removes its primary jurisdiction, no state court may apply the processes of state law.

The proper way for the Board to remove its primary jurisdiction in such circumstances is through an adverse discontinuance proceeding. Jacksonville Port [Authority -- Adverse Discontinuance in Duval County, FL, Docket No. AB-469 (STB served July 17, 1996); Modern Handcraft, Inc.---Aband., 363 U.S. 969 (981) (Modern Handcraft); Thompson v. Texas-Mexican Ry. Co., 328 U.S. 134 (1946). If the Board grants an adverse discontinuance application, the Cities can proceed to court to attempt to have PIRY evicted. At the same time, adverse discontinuance authority is permissive, which means that the operator can continue to operate until there is an adverse state court judgment against it or until it voluntarily ceases operations. Modern Handcraft at 972. Thus, if the Cities failed to evict PIRY in state court after the Board granted an adverse discontinuance application, PIRY could continue to operate on the line.

*Accord, STB Finance Docket No. 34090, Union Pacific Railroad Company -- Petition for Declaratory Order, served November 9, 2001, in which the Board held, "The courts have been clear that '[a]bsent . . . valid . . . abandonment [authority] . . . a state may not require a railroad to cease operations over a right-of-way.' National Wildlife Federation v. ICC, 850 F.2d 694, 704 (D.C. Cir 1988) (citing New Orleans Terminal Co. v. Spencer, 366 F.2d 160 (5th Cir. 1966).* Thus, any party seeking the abandonment of a line of railroad or discontinuance of rail service, must first obtain appropriate authority from the Board. See Consolidated Rail Corp. v. I.C.C., 29 F.3d 706 (D.C. Cir. 1994)."

In Docket No. AB 32 (Sub-No. 100), *Boston and Maine Corporation and Springfield Terminal Railway Company--Adverse Discontinuance--New England Southern Railroad Co., Inc.*, served April 30, 2010, the Board declared, "In an adverse discontinuance case, if we conclude that the PC&N does not require or permit a carrier's continued operation over the line, our decision removes the shield of our jurisdiction, enabling the applicant to pursue other legal remedies, if necessary, to force the carrier off the line [footnote omitted]." In STB Docket AB-1014, *Denver & Rio Grande Railway Historical Foundation--Adverse Abandonment--in Mineral County, CO*, served May 23, 2008, the Board said, "In an adverse abandonment case, if we conclude that the PC&N

does not require or permit continued operation over the line, our decision removes the shield of our jurisdiction, enabling the applicant to pursue other legal remedies to force the carrier off a line [footnote omitted]." In STB Finance Docket No. 33905, *Lackawanna County Railroad Authority--Acquisition Exemption--F&L Realty*, served October 22, 2001, the Board noted, "If the Board should grant a third party discontinuance, the Board's jurisdiction over the . . . line would be removed as a shield and the parties could then proceed to state court to pursue enforcement of any contractual rights."

The foregoing decisions of the Board permit of no doubt that, if SAV, McClellan or the County believe that revocation of the 2001 Licensing Agreement negated SERA's right to operate on the Line and that by virtue of the 2008 Licensing Agreement SAV currently has sole and exclusive authority to operate on the Line, it was incumbent upon them to apply to the Board for the third-party or adverse discontinuance of SERA's operating authority. Should the Board grant them such relief and revoke SERA's operating authority, the Board's decision would remove the shield of its jurisdiction so that SAV, McClellan or the County could proceed to court to pursue enforcement of their alleged contractual rights. Their failure to invoke the Board's jurisdiction to secure the third-party or adverse discontinuance of SERA's authority to operate on the Line constitutes an unreasonable practice.

### III.

The County and McClellan retained such rights relating to the Line on which Yolo, SERA and SAV were authorized to operate as to subject them to the Board's jurisdiction as residual common carriers.

The owner of the Line in what had been the McClellan Air Force Base, the County, and the company which the County engaged to manage the acquired properties, including the Line, McClellan, took what had been a seven-mile private railroad track and converted it into a line of railroad on which Yolo, SERA and SAV were authorized by the Board to render service as rail carriers. Their ownership and management of the Line on which Yolo, SERA and SAV have operated and their contractual rights affecting the rail carriers' operations on the Line made the County and McClellan residual rail common carriers and obliged them obtain the requisite authority from the Board, pursuant to 49 U.S.C. §10901, or an exemption therefrom, under 49 U.S.C. §10502. They however, they did not do. They evidently believed that refraining from subjecting themselves to the Board's jurisdiction relieved them of the obligation of residual rail common carriers. Their inaction, however, does not excuse the County and McClellan from the statutory and regulatory provisions they would have needed to observe had they been certificated by the Board to be residual rail common carriers.

In *Anthony Macrie--Continuance in Control Exemption--New Jersey Seashore Lines, Inc.*, served September 25, 2009, as in this proceeding, the Board noted, "The proposal is to convert what is currently private track into a line of railroad that is regulated. Therefore, . . . the line's owner, would assume a residual common carrier obligation to ensure continuing service to the shippers in the event [the rail carrier] should cease operations. Consequently, [the line's owner] must seek acquisition authority from the Board, or [the rail carrier] must provide an explanation as to why [the line's owner] need not do so in these circumstances [citations omitted]." As it turned out, what had thought to be private track was an abandoned railroad line, and, based on

*Wisconsin Central Ltd. v. STB*, 112 F.3d 881 (7th Cir. 1997), the Board concluded that the line's owner did not need to secure acquisition authority from the Board, as it would not acquire a residual common carrier obligation. Decision, served August 31, 2010. The Line acquired by the County and managed by McClellan, however, was not an abandoned railroad line, but rather was the private track of the former McClellan Air Force Base. Therefore, upon Yolo, SERA and SAV's commencing rail carrier operations on the Line, the County and McClellan assumed the residual common carrier obligations and were required to seek the appropriate acquisition authority from the Board, but they did not do so.

In 1980 the Interstate Commerce Commission authorized the North Carolina Ports Railway Commission to acquire and operate the port terminals' tracks in Wilmington and Morehead City, NC. It thereafter contracted with Wilmington Terminal Railroad, Inc., to become the rail carrier at Wilmington, Finance Docket No. 30910, *Wilmington Terminal Railroad, Inc.--Operation Exemption--Wilmington, NC*, served October 1, 1986, and with Carolina Rail Services, Inc., to become the rail carrier at Morehead City, Finance Docket No. 30908, *Carolina Rail Services, Inc.--Exemption--Acquisition and Operations and Trackage Rights--The Ports Railway Commission of the State of North Carolina*, served October 1, 1986. The ICC subsequently determined that the North Carolina Ports Railway Commission had acquired the residual common carrier obligation to provide service on these lines, but on its own motion exempted it from securing the requisite authority from the ICC. Finance Docket No. 31248, *North Carolina Ports Railway Commission--Petition for Declaratory Order or Prospective Abandonment Exemption*, served September 30, 1988.

In 1992, the Indiana Port Commission determined that the trackage in its public ports should become rail lines subject to the ICC's jurisdiction. Finance Docket No. 32112, *Clark Shortline Railroad Company--Acquisition and Operation Exemption--Indiana Port Commission*, served August 13, 1992, and Finance Docket No. 32113, *Southwind Shortline Railroad Company--Acquisition and Operation Exemption--Indiana Port Commission*, served August 13, 1992. The Clark Maritime Center operations thereafter were contracted to be performed by MG Rail, Inc., and Southwind Centre operations were contracted to be performed by two operators. By its Decision, served May 14, 1998, the Board held, "Even though [Clark Shortline Railroad Company] and [Southwind Shortline Railroad Company] have contracted with operators who actually perform the service, [Clark Shortline Railroad Company] and [Southwind Shortline Railroad Company] have the residual common carrier obligation to provide service at the respective facilities."

In STB Finance Docket No. 34448, *Allegheny & Eastern Railroad, LLC--Acquisition Exemption--Buffalo & Pittsburgh Railroad, Inc.*, served January 22, 2004, the Board noted, "The instant transaction contemplates that [the rail carrier] will retain operating authority over the line and [the line's owner] will have a residual common carrier obligation." In STB Finance Docket No. 34449, *Pittsburg & Shawmut Railroad, LLC--Acquisition Exemption--Buffalo & Pittsburgh Railroad, Inc.*, served January 22, 2004, the Board concluded, "The instant transaction contemplates that [the rail carrier] will retain the operating authority over the lines and [the line's owner] will have a residual common carrier obligation."

The owner of the Line, the County, and the manager of the Line, McClellan, having acquired the private track within the former McClellan Air Force Base, upon granting licenses to operate the Line to Yolo, SERA and SAV, subject to the Board's authorization, became the residual common carriers and were obligated -- but failed -- to obtain the requisite authority from the Board, pursuant to 49 U.S.C. §10901, or an exemption therefrom, under 49 U.S.C. §10502.

The relationship between the County, as the Licensor, and Yolo, as the Licensee, was established by the 2001 Licensing Agreement, Exhibit 2, as the relationship between McClellan, as the Licensor, and SAV, as the Licensee, was established by the 2008 Licensing Agreement. Exhibit 8.

Neither agreement -- not the 2001 Licensing Agreement and not the 2008 Licensing Agreement - granted the Licensee "an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight operations easement to provide freight rail service" on the Line. *Cf.*, Docket No. FD 35606, *State of Michigan Department of Transportation--Acquisition Exemption--Certain Assets of Norfolk Southern Railway Company*, served April 13, 2012. The 2001 Licensing Agreement declared that the Agreement's term was for a period of five years and year to year thereafter, and Section 2.2 underscored that the Agreement was made without covenant of title or for quiet enjoyment. Section 9.4 of the 2001 Licensing Agreement allowed either party to terminate the Agreement without cause upon six months' written notice to the other party.

Sections 2.1 and 5.1 of the 2001 Licensing Agreement allowed the Licensor, if it found such action to be necessary, to add to, change, modify, relocate or remove any

segment of the Line on which the Licensee was authorized to operate. The Agreement contained no provision referring to the need of the Licensee to secure the authorization of the Board for the Licensor to extend the Line or abandon any part of it, although that obviously would have been required.

Section 6.1 of the 2001 Licensing Agreement obliged the Licensee to operate the Line "in such a manner as to minimize interference with the use by the tenants of the roadway, property and facilities of the Licensor".

Section 23.1 of the 2001 Licensing Agreement disallowed the Agreement's transfer or assignment, in whole or in part, without the Licensor's written consent.

Section 3.2 of the 2001 Licensing Agreement required the Licensee to maintain the Line to FRA class I standards or better.

Section 16.2 of the 2001 Licensing Agreement prohibited the Licensee from handling any hazardous materials on the Line, except with the written permission of the Licensor, which could be withheld in the Licensor's sole discretion. To obtain the Licensor's permission to handle hazardous materials on the Line, Section 16.8 of the Agreement required the Licensee to complete an Environmental Questionnaire, which the Licensor had the right to approve or disapprove.

Both agreements made joint venturers of the Licensees and Licensors insofar as the Licensees committed themselves to contribute to the growth of the McClellan industrial park and the Licensors received shares of the Licensees' revenues.

Section 7.1 of the 2001 Licensing Agreement declared that what the Licensor would be paid by the Licensee "shall be dependent upon the railroad traffic", and to implement that fee arrangement the section required the Licensee to provide the Licensor

with a summary of the divisions or allowances which it received from the connecting line haul rail carriers. If the Licensee received no more than 350 carloads during the calendar year, the Licensor received no portion of the Licensee's divisions or allowances. If the Licensee received between 351 and 1,000 carloads during the calendar year, the Licensor received ten percent of the Licensee's divisions or allowances. If the Licensee received more than 1,000 carloads during the calendar year, the Licensor received fifteen percent of the Licensee's divisions or allowances. Section 7.1.6 of the 2001 Licensing Agreement allowed the Licensee to make non-operating use of the McClellan tracks, such as car storage, and the Licensor received fifty percent of the car storage payments received by the Licensee. Section 8.1 of the 2001 Licensing Agreement provided that, if the Licensor did not object, the Licensee could lease space adjacent to the track for such use as transloading, and the Licensor received twenty percent of the lease payments received by the Licensee. In the last four years of its operations on the Line, SERA paid McClellan between fifteen and eighteen percent of its gross receipts, \$102,526 in 2004, \$168,893 in 2005, \$152,492 in 2006 and \$155,103 in 2007.

What amounts actually were paid by SAV to McClellan in each of the first four years of its operations on the Line Respondents refused to disclose in response to Complainants' discovery requests, notwithstanding that a Protective Order had been entered by the Board.<sup>6</sup>

The Board long has allowed the separation of the railroad line's right-of-way and its improvements from the rights and obligations to render service thereon as a regulated rail carrier. The bellwether decision is that in *Maine, DOT -- Acq. Exemption, ME*.

---

<sup>6</sup> Complainants' Motion to Compel the disclosure of the amounts paid by the Licensee to the Licensor since commencing operations pursuant to the 2008 Licensing Agreement was denied by Decision of the Board, served April 23, 2012.

*Central R. Co.*, 8 I.C.C.2d 835, 837 (1991), in which the transferee of the right-of-way and its improvements acquired none of the common carrier obligations associated with its ownership of the line so as to subject the transaction to 49 U.S.C. §10901. *Accord* STB Finance Docket No. 34764, *Wisconsin Department of Transportation -- Petition for Declaratory Order*, served March 13, 2006; STB Finance Docket No. 34609, *State of Washington, Department of Transportation -- Acquisition Exemption -- Palouse River and Coulee City Railroad, Inc.*, served May 3, 2005; STB Finance Docket No. 34405, *Transportation Agency of Monterey County -- Acquisition Exemption -- Certain Assets of Union Pacific Railroad Company*, served January 23, 2004; Finance Docket No. 31971, *South Orient Railroad Company, Ltd.--Acquisition and Operation Exemption--Line of the Atchison, Topeka and Santa Fe Railway Company*, served September 2, 1992.

When, however, the owner of a railroad line enters into an agreement for a rail carrier to operate on its tracks subject to restrictions, it acquires a residual common carrier obligation which requires the Board's approval, pursuant to 49 U.S.C. §10901 or an exemption therefrom, under 49 U.S.C. §10502. *See, Southern Pacific Transp. Co. -- Abandonment*, 8 I.C.C.2d 495, 508 (1992), *reconsideration denied*, 9 I.C.C.2d 385 (1993). The owner of the railroad line will not be held to be a residual common carrier only if it cannot unreasonably interfere with rail carrier's ability to operate on its railroad line. *See, Docket No. FD 35366, Wisconsin Department of Transportation-- Petition for Declaratory Order--Rail Lines in Almena, Cameron, and Rice Lake, Barron County, Wis.*, served September 23, 2010.

While the *State of Maine* case and its progeny involve the conveyance of the rights-of-way and their improvements to non-carrier entities without the need for the

Board's authorization, the Board examines the rail carriers' ability to operate on the lines without the rail owners' interference in other contexts. In Docket No. FD 35296, *Anthony Macrie--Continuance in Control Exemption--New Jersey Seashore Lines, Inc.*, served August 31, 2010, the Board held that the owner of the railroad line "cannot (1) exercise control over [the rail carrier's] operations such that [the owner] must become a common carrier itself, thus implicating the Board's jurisdiction, or (2) interfere with [the rail carrier's] ability to meet its common carrier obligation to its shippers."

In its Decision in Docket No. FD 35377, *North Shore Railroad Company--Acquisition and Operation Exemption--PPD Susquehanna, LLC*, served April 26, 2011, the Board declared, "The transaction here has similarities to State of Maine and Macrie. If North Shore were acquiring a freight operating easement in an abandoned rail line or in track that had never been part of the interstate rail network, the Board would examine the easement and related agreements to determine the owner-grantor's degree of control over the line's operation and potential to interfere with the operator's ability to carry out its common carrier obligation to provide rail service over the line." In Docket No. FD 35555, *Midwest Rail d/b/a Toledo, Lake Erie and Western Railway--Lease and Operation Exemption--Toledo, Lake Erie and Western Railway and Museum, Inc.*, served October 14, 2011, fn. 1, p. 2, the Board said it wanted to review the agreement between the parties "in order to provide sufficient information and documentation for the Board to determine whether the owner-lessor can exert undue control over the lessee-carrier's operations."

In STB Finance Docket No. 35063, *Michigan Central Railway, LLC--Acquisition and Operation Exemption--Lines of Norfolk Southern Railway Company*, served December 10, 2007, the Board noted "The day-to-day management of a carrier does not

only relate to the details of scheduling trains and purchasing consumables. It also embraces making and implementing the important strategic decisions that lead to the short- and long-term success or failure of the business."

In this proceeding, the 2001 Licensing Agreement and the 2008 Licensing Agreement allowed the Licensors to interfere with the Licensees' operation of the Line in an altogether unprecedented manner, ranging from

By its Decision in this proceeding, served April 23, 2012, the Board said, "The County's mere act of leasing its line to Sierra did not confer any common carrier obligation on the County. See Wis. Cent. v. STB, 112 F.3d 881 (7th Cir. 1997). However, the Board has in the past examined the relationship between the line owners and rail carriers to determine whether a line owner acquired a common carrier obligation because of its degree of control and potential interference with the rail carrier operating over the line." The 2001 Licensing Agreement, Exhibit 2, and the 2008 Licensing Agreement, Exhibit 7, portray vividly the degree of control which the Licensors retained and their potential interference with the Licensees' operations on the Line.

The extent of the Licensors' ability to interfere with the operations of the Licensees under both the 2001 Licensing Agreement and the 2008 Licensing Agreement vested the Licensors with the residual rights of rail common carriers, and required the Licensors, namely the County and McClellan, to obtain the requisite authority from the Board, pursuant to 49 U.S.C. §10901, or an exemption therefrom, under 49 U.S.C. §10502, which, however, they did not do and have not done. Their inaction does not relieve the County and McClellan from the statutory and regulatory provisions which they would need to observe had they been certificated by the Board as residual rail

common carriers. One violation of the law does not confer a license to commit another. The County and McClellan are guilty of having engaged in unreasonable practices, in violation of 49 U.S.C. §10702, notwithstanding that chose not to secure the requisite acquisition authority from the Board and, as a result, technically are not rail carriers.

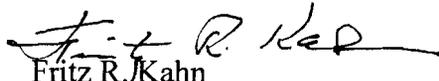
WHEREFORE, Complainants, Sierra Railroad Company and Sierra Northern Railway, ask that the Board find Respondents, Sacramento Valley Railroad, Inc., McClellan Business Park, LLC and the County of Sacramento, to have engaged in unreasonable practices, in violation of 49 U.S.C. §10702(2), and to order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

Respectfully submitted,

SIERRA RAILROAD COMPANY  
SIERRA NORTHERN RAILWAY

By their attorneys,

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

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

Dated: May 23, 2012

EXHIBIT 1

221455

**LAW OFFICES OF  
LOUIS E. GITOMER**

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

January 29, 2008

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: Finance Docket No. 35117, *Sacramento Valley Railroad, Inc. - Operation  
Exemption - McClellan Business Park LLC*

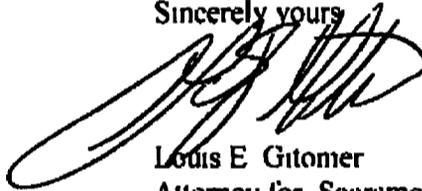
Dear Acting Secretary Quinlan:

Enclosed for filing are the original and 10 copies of a Verified Notice of Exemption under 49 C.F.R. 1150.31, a check covering the \$1,600.00 filing fee, and a CD with the file Notice of Exemption.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger. 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, Inc.

**FILED**  
JAN 29 2007  
SURFACE  
TRANSPORTATION BOARD

Enclosures

**FEE RECEIVED**  
JAN 29 2007  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
JAN 29 2008  
Part of  
Public Record



JAN 29 2008  
RECEIVED

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35117



SACRAMENTO VALLEY RAILROAD, INC.—OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C F R § 1150.31. Et Seq.

ENTERED  
Office of Proceedings  
JAN 29 2008  
Part of  
Public Record

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532

Attorney for SACRAMENTO VALLEY  
RAILROAD, INC

Dated January 29, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO 35117

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SACRAMENTO VALLEY RAILROAD, INC —OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C F R § 1150.31, Et Seq.

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Sacramento Valley Railroad, Inc. ("SAVR"), a noncarrier, files this Notice of Exemption, pursuant to 49 C F R Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the "Board") to permit SAVR to obtain the exclusive occupancy and operating rights over about seven miles of unmarked railroad track within McClellan Business Park, in McClellan, Sacramento County, CA (the "Line")

In support of this Notice of Exemption, SAVR submits the following information as required by 49 C F R § 1150.33.

**a. Full name and address of applicant.**

Sacramento Valley Railroad, Inc  
c/o Patriot Rail Corp  
One Boca Place  
2255 Glades Road, Suite 342W  
Boca Raton, FL 33431  
(561) 443-5300

**b Applicant's Representatives:**

Louis E Gitomer, Esq  
Law Offices of Louis E Gitomer  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(202) 466-6532

**c SAVR, as operator, and McClellan Business Park, LLC ("MBP"), as seller, are negotiating a License and Operating Agreement that will be completed by March 1, 2008**

**d The operator of the property will be SAVR**

**e Summary of proposed transaction**

**1. The name and address of the railroad transferring the property is.**

McClellan Business Park LLC  
5241 Arnold Avenue  
McClellan, CA 95652

**MBP is not a carrier. MBP acquired McClellan Business Park as a result of its closing by the U.S Air Force and has developed it as a rail-served industrial park**

**2. The proposed time schedule for the consummation of the transaction is on or after March 1, 2008.**

**3. The mileposts of the subject property, including any branch lines There are no mileposts on the Line**

**4. SAVR will operate about seven route miles There will be no interchange**

commitments or paper barriers in the License and Operating Agreement between SAVR and MBP

5 MBP's predecessor entered a License and Operating Agreement with the Yolo Shortline Railroad Company ("Yolo") on February 6, 2001.<sup>1</sup> Sierra Railroad Company acquired control of Yolo<sup>2</sup> and began operating the Line.<sup>3</sup> MBP notified Yolo's successor that the License to Operate would not be renewed and put the operation of the Line out for bid. SAVR was the winning bidder.

SAVR understands that Yolo's successor has been asked by MBP to vacate the Line, but may or may not have filed for abandonment authority with the Board at the time this notice is filed. MBP has asked SAVR to be prepared to commence operations on March 1, 2008. SAVR does not know what Yolo's successor's response will be and if it will oppose SAVR's notice in this proceeding. SAVR wants to meet the needs of MBP and the shippers on the Line in McClellan Park. SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, in order to meet the needs of MBP.

f. A map of the Line is attached as Exhibit C.

g. A Certificate of Compliance with the provisions of 49 CFR § 1150.33(g) is attached as Exhibit A.

h. A caption summary, as required by 49 C.F.R. §1150.34, is attached as Exhibit B.

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<sup>1</sup> *Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA*, STB Finance Docket No. 34018 (STB served March 27, 2001).

<sup>2</sup> *Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company*, STB Finance Docket No. 34351 (STB served June 11, 2003)

<sup>3</sup> *Sierra Railroad Company—Corporate Family Transaction Exemption—Yolo Shortline Railroad Company*, STB Finance Docket No. 34360 (STB served June 23, 2003)

i No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Hence, this Notice of Exemption does not require environmental documentation under 49 CFR §1105.6(b)(4) and (c)(2)(i).

j An historic report is not required because SAVR will operate the Lines, will require further Board approval as required to discontinue and abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C F R §1105.8(b)(1).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532

Attorney for SACRAMENTO VALLEY  
RAILROAD, INC

Dated: January 29, 2008

# **EXHIBIT A**

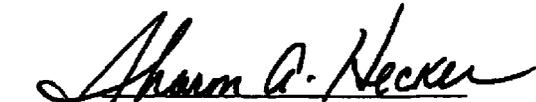
**CERTIFICATION**

State of Florida            )  
  ) ss:  
County of Palm Beach    )

I, Gary O. Marino being duly sworn depose and state that I am President and Chief Executive Officer of the Sacramento Valley Railroad, Inc , a California corporation, and that the projected annual revenues from the rail operations would not exceed those that would make it a Class III carrier under 49 CFR Part 1201(1-1) and would not exceed \$ 5 million

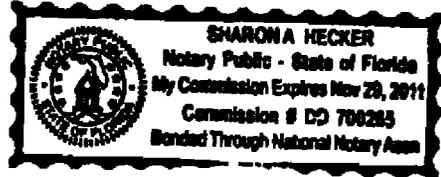
  
\_\_\_\_\_  
Gary O. Marino

Subscribed and sworn to before me this 30<sup>th</sup> day of January 2008

  
\_\_\_\_\_  
Notary Public

(SEAL)

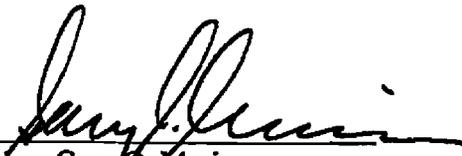
My Commission Expires Nov. 29, 2011



VERIFICATION

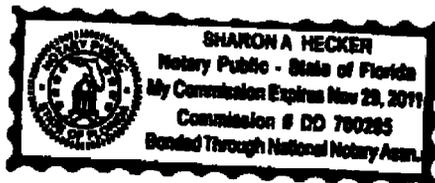
State of Florida )  
 ) SS  
County of Palm Beach )

I, Gary O Marino, being duly sworn, deposes and says that I am President and Chief Executive Officer of the Sacramento Valley Railroad, Inc . a California corporation, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief

  
Gary O. Marino

Subscribed and sworn to before me this 28<sup>th</sup> day of January 2008.

  
Notary Public



# **EXHIBIT B – CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

**Notice of Exemption**

**FINANCE DOCKET NO 35117**

**SACRAMENTO VALLEY RAILROAD, INC.—OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC**

Sacramento Valley Railroad, Inc has filed a notice of exemption to obtain the exclusive occupancy and operating rights over seven miles of unmarked railroad track within McClellan Business Park, in McClellan, Sacramento County, CA .

The transaction is scheduled to take place on or after March 1, 2008

A class exemption for Patriot Rail, LLC (“PRL”), and its subsidiaries Patriot Rail Holdings LLC (“PRH”) and Patriot Rail Corp . to continue in control of Sacramento Valley Railroad, Inc . was concurrently filed in Finance Docket No 35118, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp Continuance in Control Exemption Sacramento Valley Railroad, Inc*

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U S C 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No 35118, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, S W . Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq , Law Offices of Louis E Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (202) 466-6532

Board decisions and notices are available on our website at "WWW STB DOT.GOV."

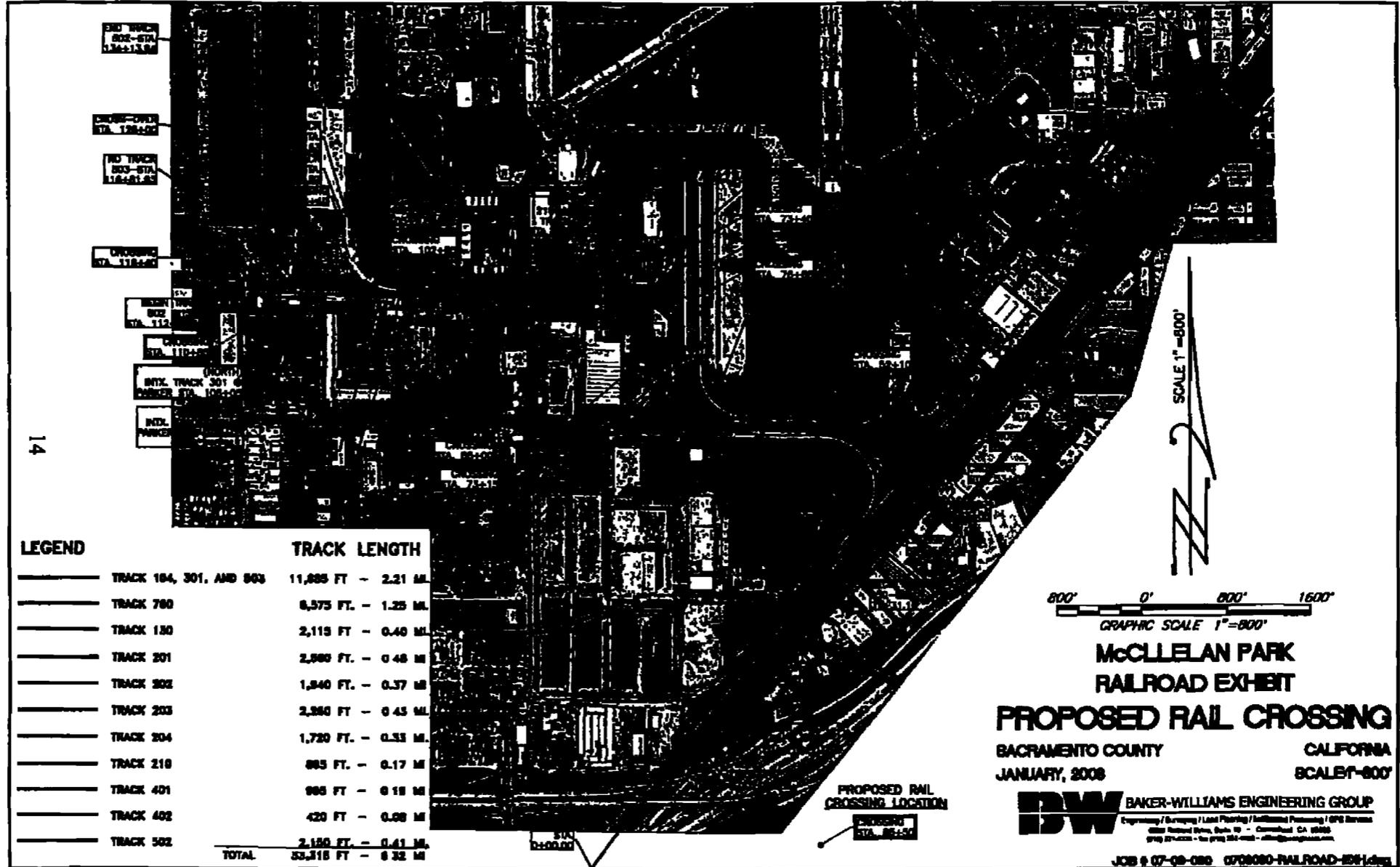
Decided \_\_\_\_ \_\_, 2008.

By the Board. David M Konschnik, Director, Office of Proceedings

Anne K Quinlan

Acting Secretary

# **EXHIBIT C-MAP**



**LEGEND**

	TRACK LENGTH
TRACK 164, 301, AND 503	11,885 FT - 2.21 MI
TRACK 780	8,575 FT - 1.25 MI
TRACK 150	2,115 FT - 0.40 MI
TRACK 201	2,980 FT - 0.48 MI
TRACK 302	1,840 FT - 0.37 MI
TRACK 203	2,260 FT - 0.45 MI
TRACK 204	1,720 FT - 0.33 MI
TRACK 210	885 FT - 0.17 MI
TRACK 401	885 FT - 0.18 MI
TRACK 402	420 FT - 0.08 MI
TRACK 502	2,120 FT - 0.41 MI
<b>TOTAL</b>	<b>53,515 FT - 9.32 MI</b>

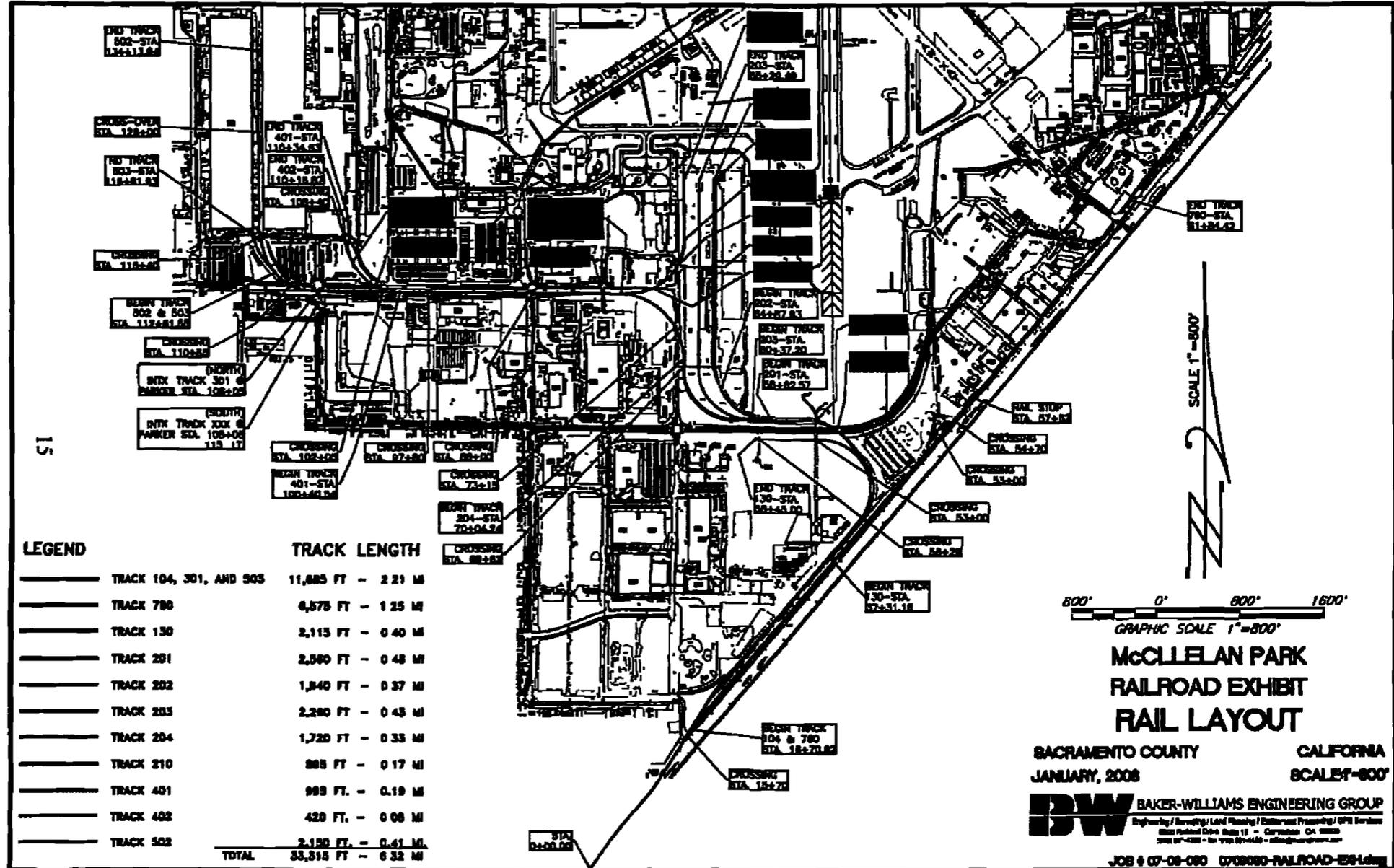


**McCLELLAN PARK  
RAILROAD EXHIBIT**

**PROPOSED RAIL CROSSING**  
 SACRAMENTO COUNTY CALIFORNIA  
 JANUARY, 2008 SCALE 1"=800'

**IDW** BAKER-WILLIAMS ENGINEERING GROUP  
 Engineering / Surveying / Land Planning / Infrastructure Planning / GIS Services  
 6800 Regent Drive, Suite 100 - Sacramento, CA 95825  
 916.437.4200 • Fax 916.437.4201 • [info@idwgroup.com](mailto:info@idwgroup.com)

JOB # 07-08-080 0708080-RAILROAD-EXH1.dwg



**LEGEND**

TRACK	TRACK LENGTH
TRACK 104, 301, AND 503	11,885 FT - 2.21 MI
TRACK 780	6,575 FT - 1.25 MI
TRACK 130	2,115 FT - 0.40 MI
TRACK 201	2,590 FT - 0.48 MI
TRACK 202	1,840 FT - 0.37 MI
TRACK 203	2,290 FT - 0.43 MI
TRACK 204	1,720 FT - 0.33 MI
TRACK 310	885 FT - 0.17 MI
TRACK 401	995 FT - 0.19 MI
TRACK 402	420 FT - 0.08 MI
TRACK 502	2,150 FT - 0.41 MI
<b>TOTAL</b>	<b>33,315 FT - 6.32 MI</b>



GRAPHIC SCALE 1"=800'

**McCLELLAN PARK  
RAILROAD EXHIBIT  
RAIL LAYOUT**

SACRAMENTO COUNTY  
JANUARY, 2008

CALIFORNIA  
SCALE 1"=800'

**IDW** BAKER-WILLIAMS ENGINEERING GROUP  
Engineering / Surveying / Land Planning / Estimating / GIS Services  
2000 National Center Drive Suite 110 - Carmichael, CA 95628  
916-487-4200 - Fax 916-487-4400 - idw@idw-engineering.com

JOB # 07-08-080 0708080-RAILROAD-ES-1.dwg

EXHIBIT 2

## RAILROAD LICENSE AND OPERATING AGREEMENT

McClellan Park  
Sacramento County, CA

This Railroad License and Operating Agreement ("**License Agreement**") is made and entered into as of the 6<sup>th</sup> day of February, 2001 ("**Agreement Date**"), by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California ("**Licensor**") and **YOLO SHORTLINE RAILROAD COMPANY**, a California Corporation ("**Licensee**").

### RECITALS:

- A. McClellan Air Force Base is being closed by the U.S. Air Force and transferred to Sacramento County for redevelopment, and
- B. Licensor, pursuant to separate documentation, has the right to enter into leases and other contracts with businesses and other enterprises for the redevelopment of McClellan Air Force Base (hereinafter also referred to as "**McClellan Park**"), and
- C. Licensor desires to provide for common carrier rail service to tenants of McClellan Park utilizing the existing trackage at McClellan Park, and
- D. Licensor desires to arrange for the necessary repairs and maintenance to the existing trackage and road crossings of the trackage so that such trackage becomes and remains operational in accordance with applicable regulations, and
- E. Licensee is a common carrier railroad and is willing to make the necessary repairs to the trackage to make it operational and to operate and maintain such trackage to provide rail service to Licensor's tenants at McClellan Park, and
- F. Licensee will make such necessary agreements with the Union Pacific Railroad Company and other users of the trackage at McClellan Park so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices.

### AGREEMENT:

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

#### 1. LICENSOR GRANTS RIGHT.

1.1 In consideration of the license fees to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the exclusive license (which is not coupled with an interest) to occupy, maintain, repair and operate all of the Railroad Facilities (as hereinafter defined) within McClellan Park, except (1) that trackage that is specifically specified for dismantling (see Section 5.1 below), and (2) trackage that is specifically leased to other parties by Licensor (see Section 4.1 below) ("**License**"). Exhibit A, attached hereto and made a part hereof, shows all trackage subject to this License Agreement. This License shall encompass all such trackage so designated in Exhibit A and in shall include the area within 15 feet of the centerline of each track, except where

roadways or buildings, as permitted by Licensor, reduce such distance to less than 15 feet. Also this License shall include all railroad signs, switch mechanisms, and other appurtenances associated with the trackage subject to this License Agreement, as designated on Exhibit A. All such trackage and appurtenances described on Exhibit A shall be as subject to this License Agreement are hereinafter defined as the "**Railroad Facilities**".

## 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

2.1 The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain McClellan Park, including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, pipelines or other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee for compensation or damages, provided that Licensor shall, to the extent possible, notify the Licensee as soon as practicable of any planned or actual interference with the Railroad Facilities or Licensee's operation thereof, and Licensor shall take all practicable measures to minimize such interference.

2.2 The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees of the Licensor's property, and others), and the right of the Licensor to renew and extend the same; and, is made without covenant of title or for quiet enjoyment.

2.3 Licensee hereby acknowledges that (1) it has satisfied itself with respect to the condition of the Railroad Facilities and the present and future suitability of the Railroad Facilities for Licensee's intended use; (2) that Licensee has made such investigations as it deems necessary with respect to the Railroad Facilities, is satisfied with reference thereto, and assumes a responsibility therefore as to Licensee's occupancy and use thereof; and (3) neither the Licensor, nor any of Licensor's agents, has made any oral or written representations or warranties with respect to said Railroad Facilities other than as set forth in this License Agreement.

2.4 Notwithstanding any other provision of this Agreement to the contrary, Licensee acknowledges and agrees that Licensor's obligations under this Agreement are expressly contingent upon Licensor, in its sole discretion, determining that the requisite governmental approvals, authorizations and/or permits for the operation of the Railroad Facilities, which includes, but is not limited to, approvals from the United States Air Force (collectively, "**Initial Approvals**") have been issued. Licensor agrees to utilize its good faith efforts and due diligence to obtain the Initial Approvals on or before May 1, 2001; provided, however, the failure to do so on or before such date shall not be deemed a breach of either parties' obligations under this Agreement, but rather a failed condition precedent to Licensor's obligations hereunder. If the Initial Approvals have not been granted by May 1, 2001, this Agreement shall automatically terminate, and the provisions of Section 9.4 shall thereafter apply.

## 3. MAINTENANCE, AND OPERATION OF RAILROAD FACILITIES.

3.1 Following the Agreement Date, using its best commercial efforts and its due diligence, the Licensee, at its expense, shall make all necessary repairs and install all necessary signage to a portion of the Railroad Facilities identified on Exhibit A attached hereto ("**Primary Use Railroad Facilities**") in accordance with the requirements of Section 3.2 below. The remaining portion of the Railroad Facilities not within the definition of Primary Use Railroad Facilities shall be referred to as the "**Dormant Railroad Facilities**". Licensee acknowledges and agrees that the Railroad Facilities marked as "**Delayed Delivery**" on Exhibit A attached hereto may be delivered to Licensee following the Agreement Date by Licensor upon Licensor's receipt of requisite approvals from the applicable governmental authorities for

the use thereof. Following such election by Licensor, the Delayed Delivery areas shall thereafter be within the definition of "**Railroad Facilities**" and a portion of the "**Primary Use Railroad Facilities**."

3.2 The Licensee, at its expense, but subject to Licensor's payment obligation set forth in Section 3.4 below, shall keep the Railroad Facilities in use in good repair and in a good and safe condition in conformity with the requirements of General Orders of the California Public Utilities Commission and the regulations of the Federal Railroad Administration ("FRA"), as applicable, and all other applicable laws, codes or regulations. Such trackage will be maintained to FRA class I or better. For purposes of this section, such repairs include, but are not limited to, tie replacements, joint bar replacements, replacements of bolts, spikes, broken tie plates and fittings, and repair or replacement of cracked or broken rails, frogs and/or switch parts, but does not include upgrades of rail, switches and other track material. In addition, Licensee shall keep the Railroad Facilities in a clean condition and keep all weeds mowed and trash and debris picked up and removed.

3.3 All track materials installed as part of the Railroad Facilities shall become the property of the Licensor. All materials removed from the Railroad Facilities as part of maintenance or repairs shall become the property of Licensee.

3.4 Notwithstanding the provisions of this Section 3, Licensor shall reimburse Licensee for its costs incurred pursuant to the provisions of this Section 3 allocable to the Dormant Railroad Facilities. In this regard, on an annual basis during the term of this Agreement, Licensee shall prepare written budget ("**Dormant Track Budget**"), which sets forth Licensee's anticipated costs with regard to performing its obligations under this Section for the Dormant Railroad Facilities. Licensor's obligations to reimburse Licensee pursuant to this Section shall not become effective until Licensor has approved of the Dormant Track Budget, which approval shall not be unreasonably withheld, and Licensor's reimbursement obligation shall be limited to the amounts set forth on such approved budget notwithstanding Licensee's annual expenses. Licensee shall update the Dormant Track Budget on an annual basis. Following the approval of the Dormant Track Budget, if Licensor fails to reimburse Licensee for amounts owing under this Section 3.4 within fifteen (15) business days following Licensor's receipt of written request, Licensee may cease all maintenance and repair required with regard to the Dormant Railroad Facilities until such amounts are paid in full. Any amounts which are not paid when due shall accrue interest at (i) twelve percent (12.00%) per annum, or (ii) the maximum legal rate, whichever is less, until paid in full.

3.5 At any time during the Term of this License Agreement, Licensee may request Licensor, in writing, to convert any Dormant Railroad Facilities into Primary Use Railroad Facilities. Licensor shall, within fifteen (15) business days following receipt of such request, approve or disapprove of such request. Until such time as Licensor has approved of such conversion, excepting Licensee's repair and maintenance obligations set forth in this Section, Licensee shall have no right to utilize the Dormant Railroad Facilities for any purpose. Upon a conversion of the Dormant Railroad Facilities to Primary Use Facilities, Licensor's obligations pursuant to Section 3.4 above shall cease.

#### 4. TRACKAGE LEASED TO OTHER PARTIES BY LICENSOR.

4.1 Licensor may lease, from time to time, specific trackage at McClellan Park to third parties as part of a land or facility lease. Such trackage leased to third parties shall not be part of the Railroad Facilities as defined in this License Agreement. All trackage specifically leased by Licensor to third parties shall be separated from the trackage subject to this License Agreement by means of gates, fencing, signs, derails or similar means that prevent operations by such other parties on trackage licensed to Licensee or operations by Licensee on trackage leased or licensed to such other parties, unless and

except when such operations are conducted under a specific agreement between Licensee and such other party.

4.2 Subject to the terms and conditions of this License Agreement, Licensee shall have the exclusive right to switch rail cars or other on-rail equipment of any type, and receive revenue therefor, between any trackage leased by Licensor to a third party(ies) and Licensee, any other railroad common carrier, or any other party.

#### 5. RELOCATION OR REMOVAL OF RAILROAD FACILITIES.

5.1 The License herein granted is subject to the needs and requirements of the Licensor in the operation of McClellan Park and in the improvement and use of that property. The Licensor, at its sole expense, may add to or remove any portion of the Railroad Facilities, or relocate them to such new location(s) as the Licensor may designate, whenever, in the furtherance of Licensor's needs and requirements, the Licensor shall find such action necessary. In such cases, Licensee shall provide Licensor with a fixed price quote for performing such work, and Licensor shall have the option of accepting Licensee's quote and have Licensee perform the work, or have another rail contractor perform such work. In the event that any railroad trackage is removed at McClellan Park, Licensee may designate and stockpile for future use all or a portion of such removed materials as is reasonably necessary for repairs and maintenance of the Railroad Facilities. All such work performed and installation of railroad trackage shall be in conformance to all requirements of the General Orders of the California Public Utilities Commission and regulations of the Federal Railroad Administration (FRA), as applicable, and all other applicable laws, codes or regulations.

5.2 All the terms, conditions and stipulations herein expressed with reference to the Railroad Facilities, so far as any new or relocated trackage is on McClellan Park, shall apply to the Railroad Facilities as so modified, changed or relocated within the contemplation of this Section.

#### 6. MINIMIZE INTERFERENCE WITH LICENSOR'S TENANTS.

6.1 The Railroad Facilities shall be operated in such a manner as to minimize interference with the use by tenants of the roadways, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

#### 7. LICENSE FEES.

7.1 The License Fees shall be dependent upon the railroad traffic. Licensee shall pay Licensor the following fees based on railcars received from the connecting carrier and delivered to tenants of McClellan Park or received from tenants of McClellan Park and delivered to the connecting carrier, when Licensee receives revenue from the connecting carrier under negotiated standard divisions, which amount is referred to as the "**Railcar Division**" (Licensee shall provide Licensor with a summary of its negotiated Railroad Division and shall update such summary on any adjustments to such amounts).

7.1.1 On the first 350 railcars each calendar year—No fee

7.1.2 On the 351st through 1000th railcar each calendar year—ten percent (10%) of the Railcar Division received by Licensee from the connecting carrier railroad.

7.1.3 On the 1001st and greater railcars each calendar year—fifteen percent (15%) of the Railcar Division received by Licensee from the connecting carrier railroad

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7.1.4 For all railcars received, for which Licensee is paid a special negotiated division (such as excess dimension or weight railcars) higher than standard, Licensor shall receive twenty percent (20%) of the Railcar Division received by Licensee.

7.1.5 All other incidental switching or operating fees (if any) shall accrue solely to Licensee (the parties acknowledge that the amounts anticipated to be received by Licensee pursuant to this Section 7.1.5 are minimal and if such assumption is incorrect and Lessee begins to receive significant funds from the services described in this Section 7.15 (defined as five percent (5.00%) or more of revenues generated at McClellan Park), the parties shall meet and agree upon an allocation share for Licensor.

7.1.6 For all non-operating revenue (car storage fees or track sublicense fees) received by Licensee related to the trackage at McClellan Park, Licensee shall pay to Licensor fifty percent (50%) of such revenue.

7.2 On or before the last day of each month, Licensee shall determine the amounts payable arising from the preceding month, and shall pay such amount to the Licensor. Licensee shall prepare a statement detailing the payments made. Any adjustments shall be made as soon as practicable on subsequent statements. Licensee shall, upon reasonable request from Licensor, make available for inspection and copying all documents and receipts upon which the License fees are based.

## 8. TEMPORARY USE OF LAYDOWN SPACE

8.1 Licensee may make arrangements from time to time with a temporary shipper by rail for use of otherwise unused laydown space (open space next to railroad track). Licensee shall notify Licensor of each such use. If Licensor reasonably objects to any specific use of laydown space by Licensee or its shipper, Licensee shall discontinue that use of such laydown space as soon as practicable. Licensee shall pay to Licensor twenty percent (20%) of all revenue (if any) received by Licensee by such shippers for such use of such laydown space.

## 9. TERM AND TERMINATION.

9.1 This License Agreement shall be effective when fully executed, shall continue in full force and effect for a period of five (5) years and year to year thereafter (“**Term**”), unless otherwise terminated as provided herein.

9.2 This License Agreement may be terminated by either party upon notice in the event that Licensee cannot make commercially reasonable interchange and trackage rights agreements with Union Pacific Railroad Company for the interchange, delivery and receipt of cars at McClellan Park, a reasonable division of revenues, and trackage rights to move locomotives and non-revenue equipment between West Sacramento and McClellan Park.

9.3 If the Licensee does not use the right herein granted or the Railroad Facilities for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith terminate this License Agreement by written notice, provided however, that if such default cannot reasonably be cured within thirty (30) days, Licensor shall not terminate this License Agreement if Licensee begins to cure the default within the thirty day notice period and proceeds diligently to complete such cure.

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9.4 Notwithstanding any other provision of this License Agreement to the contrary, this License Agreement may be terminated, without cause, by written notice given by either party to the other on any date stated in such notice, not less, however, than six (6) months subsequent to the date which such notice shall be given, provided that, if Licensor terminates this License Agreement pursuant to this subsection or any other section of this License Agreement within five (5) years of the effective date of this License Agreement, Licensor shall reimburse Licensee for the unamortized (using the initial 5-year term as an amortization period) costs, including labor, material and overhead costs, incurred by Licensee under Section 3.1 hereof, which reimbursement obligation shall not, in any event exceed One Hundred Thousand and No/100ths (\$100,000.00).

9.5 All obligations incurred by the Parties prior to the termination of this License Agreement shall be preserved until satisfied.

9.6 If this License Agreement is terminated pursuant to Section 9.2 or 9.3 above, Licensor shall not be obligated to reimburse Licensee for any of its costs incurred pursuant to this License Agreement.

#### 10. INSURANCE.

10.1 The Licensee shall, at its own cost and expense, provide and procure General Public Liability and, as applicable, Workman's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the life of this License Agreement.

10.2 The General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$5,000,000 each occurrence or claim and at all times an unimpaired aggregate limit of at least \$5,000,000. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this License Agreement, coverage for construction or demolition work on or near railroad tracks, and name the Licensor as an additional insured. Such insurance coverage shall be subject to Licensor's prior written approval and Licensee shall provide Licensor with a certificate of such insurance prior to the execution of this License Agreement.

10.3 Workers' Compensation or FELA insurance shall cover the statutory liability as determined by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1,000,000.

10.4 In addition to the provisions of this Section 10, Licensee shall maintain the insurance and comply with the requirements set forth on Exhibit B attached hereto.

#### 11. NOTICES

11.1 All correspondence, notices and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

General Manager  
Yolo Shortline Railroad Company  
341 Industrial Way  
Woodland, CA 95776-6012

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McClellan Business Park LLC  
5241 Arnold Avenue  
McClellan, CA 95652  
Attention: Senior Vice President of Property Management and  
General Counsel

## 12. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

12.1 The Licensee shall fully pay, when due and before any lien shall attach to the Railroad Facilities, if the same may lawfully be asserted, for all materials joined or affixed to, and labor performed upon, the property of the Licensor in connection with the maintenance, repair, and operation of the Railroad Facilities, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee agrees to indemnify, hold harmless, and defend, the Licensor and Licensor's property against and from any and all liens, claims, demands, liabilities, causes of action, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished. The provisions of this Section 12 shall survive the termination or expiration of the term of this License Agreement.

## 13. PROPERTY TAXES

13.1 The Licensee shall not be responsible or liable for any property or other taxes assessed on the Railroad Facilities by any governmental authority. Licensor shall indemnify, defend and hold Licensee harmless for any property taxes on the Railroad Facilities that are assessed to and/or paid by Licensee.

## 14. INDEMNITY.

14.1 As used in this Section, "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (1) injury to or death of persons whomsoever (including the Licensor's officers, agents and employees, the Licensee's officers, agents and employees, as well as any other person); and (2) damage to or loss or destruction of any property whatsoever (including Licensee's property, adjacent property and crops, the roadbed, tracks, equipment or other property of the Licensor, or property in its care or custody).

14.2 The Licensee shall indemnify, defend and hold harmless the Licensor from any Loss which is due to or arises from: (1) the operation, maintenance, repair, or use of the Railroad Facilities and appurtenances thereto, or any part thereof; or (2) Licensee's failure to comply with or perform any of the terms and conditions set forth in this License Agreement; except to the extent that the Loss is caused by the negligence or willful misconduct of the Licensor or a breach of an express material warranty of Licensor. The provisions of this Section 14 shall survive the termination or expiration of the term of this License Agreement.

## 15. REMOVAL OF LICENSEE EQUIPMENT, PERSONNEL AND PROPERTY UPON TERMINATION OF LICENSE.

15.1 Prior to or upon the termination of this License Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's

premises and shall restore, to the satisfaction of the Licensor, such portions of such premises to as good a condition as they were in at the beginning of this License Agreement, excepting normal wear and tear. If the Licensee fails to do the foregoing, the Licensor may do such work at the cost and expense of the Licensee.

#### 16. HAZARDOUS SUBSTANCES AND WASTES.

16.1 For the purpose of this Section, "**Hazardous Materials**" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and "**Hazardous Materials Laws**" shall mean all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

16.2 Licensee shall comply with all federal, state and local environmental laws and regulations in its occupancy, operation and maintenance of the Railroad Facilities. Without first obtaining the Licensor's written permission (which may be withheld in Licensor's sole discretion), Licensee shall not treat, or dispose of Hazardous Materials (as hereinafter defined) on the Railroad Facilities, and shall not transport or bring any Hazardous Materials onto McClellan Park, except such Hazardous Materials which have been approved by Licensor pursuant to the Hazardous Materials Handling Plan, by railcar, or transloaded to or from railcars. If such permission is granted (which may be withheld in Licensor's sole discretion), the Licensee shall obtain any necessary permits and identification numbers and provide the Lessor the identification numbers and copies of the permits. Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with a release or leak of any such Hazardous Materials, unless such event was caused by the negligence or willful misconduct of Licensor.

16.3 In addition, Licensee shall not install any above ground or underground storage tanks without first obtaining the Licensor's written permission. If such permission is granted (which may be withheld in Licensor's sole discretion), the Licensee shall obtain any necessary permits, notify the proper authorities, and provide the Lessor with copies of such permits and notifications. Furthermore, Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Lessor against all costs and claims associated with a release or leak of any tank contents, unless such event was caused by the negligence or willful misconduct of Licensor.

16.4 If Licensee knows, or has reasonable cause to believe, that a Hazardous Material has come to be located under or about McClellan Park, other than as specifically provided herein or as previously consented to by Licensor, Licensee shall immediately give Licensor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

16.5 Licensee shall not be liable or responsible for any Hazardous Materials present at McClellan Park prior to the Agreement Date.

16.6 Licensee shall not release any Hazardous Materials on or at McClellan Park, including through any drainage or sewer systems. Licensee assumes all responsibility for the investigation and cleanup of any such release and shall indemnify, defend and hold harmless the Licensor and its property, its officers, agents and employees, for all costs, including environmental consultant and attorney fees and claims resulting from or associated with any such release. This provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision, or the Railroad Facilities are abandoned and vacated by the Licensee.

16.7 Licensee acknowledges and agrees that Licensor has disclosed that McClellan Park has contained and may continue to contain Hazardous Materials in violation of Hazardous Material Laws. Licensee hereby assumes all risk for and waives, to the fullest extent permitted by law, any and all claims, damages, liabilities, and expenses relating to any property damage, personal injury and/or adverse affect associated with the presence of Hazardous Materials at McClellan Park and any contact therewith by Licensee, its agents, employees, and/or subcontractors. Licensee, for itself and its agents, affiliates, successors and assigns, hereby waives, releases and forever discharges Licensor, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this License Agreement, which Licensee has or may have in the future, arising out of the matters set forth and disclosed in this Section concerning the presence of Hazardous Materials. Licensee hereby specifically waives the provisions of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

\_\_\_\_\_  
Licensee

16.8 Environmental Questionnaire; Reports. Prior to execution of this License Agreement, Licensee shall complete, execute, and deliver to Licensor an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in a form of Exhibit C attached hereto. For a period of fifteen (15) days following Licensor's receipt of the Environmental Questionnaire, Licensor shall have the right to approve or disapprove such document. The failure of Licensor to approve such document shall be deemed Licensor's disapproval thereof. Licensor's approval of the Environmental Questionnaire shall constitute approval for Licensee's use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws and the Hazardous Materials Handling Plan. Licensee acknowledges that, in conjunction with Licensor's review of the Environmental Questionnaire, Licensor may require Licensee to comply with a "**Hazardous Materials Handling Plan**," the approval of which by Licensor and Licensee is a condition precedent to each party's obligations hereunder (Licensee shall be responsible for the preparation of the draft Hazardous Materials Handling Plan). If Licensor and Licensee cannot reach agreement upon the provisions of the Hazardous Materials Handling Plan within ten (10) days following Licensor's receipt thereof, Licensor shall have the right to terminate this License Agreement by providing Licensee with written notice of such election, in which case the parties shall have no further obligations hereunder. Except as provided in this License Agreement, following approval of the Hazardous Materials Handling Plan, Licensee shall comply therewith throughout the Term. Unless approved in writing by Licensor, Licensee shall not be entitled to utilize any Hazardous Materials within the Premises. To the extent Licensee is permitted to utilize Hazardous Materials upon the Railroad Facilities, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, and Licensee shall promptly provide Licensor with complete and legible copies of all the following environmental comments relating thereto: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and

community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for Hazardous Materials; orders, reports, notices, listings and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of Hazardous Materials; and all complaints, pleadings and other legal documents filed by or against Licensee related to Licensee's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Licensee's business operations at McClellan pursuant to this License Agreement, Licensee must commence the utilization of previously undisclosed Hazardous Materials, prior to the usage thereof, Licensee shall notify Licensor thereof, by written summary determining the scope of such usage and updating the Hazardous Materials Handling Plan to the extent required by such additional usage. Such notice shall be captioned with the following: [Licensor's failure to respond within fifteen (15) days following receipt of this notice shall be deemed approval of this notice]. For a period of fifteen (15) days following Licensor's receipt of such notice, Licensor shall have the right to approve or disapprove of such documents which approval shall not be unreasonably withheld (provided such usage is consistent with Hazardous Materials Laws, the McClellan Use Documentation, and the requirements of applicable governmental authorities). The failure of Licensor to disapprove of such documents within such time period shall be deemed Licensor's approval thereof.

#### 17. WAIVER OF BREACH.

17.1 Except as set forth in this License Agreement, the waiver by a party of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the first party to avail itself of any subsequent breach thereof.

#### 18. CONSENT.

18.1 Wherever the consent, approval, judgment or determination of a party is required or permitted under this License, that party shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

#### 19. SUBLEASE STATUS

19.1 Licensor, pursuant to the EDC Lease Agreement between Licensor, as Lessee, and the United States Air Force, as Lessor, dated August 13, 1998, as supplemented and/or amended ("**EDC Lease Agreement**"), and subject to Operating Agreement, as supplemented and/or amended ("**Operating Agreement**") between Licensor as "**Lessee**," and the United States Air Force, as "**Air Force**," is entitled to certain leasehold rights within McClellan Park. As a result of such tenancy pursuant to the EDC Lease Agreement, (i) the provisions of this License Agreement are junior, subordinate and subject to the terms and conditions of the EDC Lease Agreement, and (ii) this License Agreement is a "**Sublease**" in accordance with applicable law, statutes and ordinances. During the Term of this License Agreement, Licensor, using its commercially reasonable efforts, shall not violate the provisions of the EDC Lease Agreement. Subject to Section 9.4 of this License Agreement, the termination of the EDC Lease Agreement for any reason shall result in the automatic termination of this License Agreement, without liability to Licensee or Licensor, as a result of such termination, in which case the parties shall have no further obligations under this License Agreement. Licensee shall not cause or take any action or inaction or cause or permit any Licensee representatives to take any action or which would constitute a default by Licensor under the EDC Lease Agreement, which occurrence would be deemed a default by Licensee under Section 22 of this License Agreement. Licensee acknowledges and agrees that pursuant to the provisions of, and in accordance with, the documentation described on Exhibit D attached hereto (collectively, "**McClellan Use Documentation**"), the Air Force, its agents,

employees, contractors and subcontractors, have the right to enter upon all areas within McClellan, which includes, but is not limited to, the Railroad Facilities, to implement hazardous waste remediation activities, whether imposed by law or regulatory agencies, and to perform various tasks, repairs, maintenance and obligations required by the McClellan Use Documentation. Licensee acknowledges that some or all of these actions may interfere with Licensee's business operations within McClellan for the duration of such entrance. Such entrance shall not cause any form of liability, offset, abatement and/or claim against Licensor and/or the Air Force.

19.2 In accordance with the Licensor's Economic Development Conveyance Agreement with the United States Air Force ("**EDC Agreement**"), Licensor has the right to acquire fee title to McClellan, including the Railroad Facilities, which acquisition may or may not occur during the term of this License Agreement. Notwithstanding any other provision of this License Agreement to the contrary, in the event the Licensor does acquire fee title to McClellan during the term of this License Agreement, and as a result thereof, the EDC Lease Agreement terminates as such document relates to the Railroad Facilities, the parties hereto agree that this License Agreement shall remain in full force and effect as a direct contractual obligation between the Licensor and Licensee, Licensee shall recognize and attorn to the Licensor as its direct "Owner", and the Licensee agrees to enter into any further documentation with the Licensor to evidence the intent of the parties as set forth in this Section; provided, however, such further documentation shall not materially increase Licensee's obligations under this License Agreement.

19.3 Notwithstanding any other provision of this License Agreement to the contrary, Licensee acknowledges and agrees that the Licensor's right, title and interest in this License Agreement is transferable and assignable to any third party selected by the Licensor. In this regard, upon written notice from the Licensor, Licensee agrees to execute any and all reasonable documentation to evidence such assignment as set forth in this Section, and the named Licensor shall be release from any and all future liability under this License Agreement; provided, however, such further documentation shall not materially increase Licensee's obligations under this License Agreement.

## 20. ARBITRATION

20.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement and upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person with at least one-year exposure to the concepts of railroad operations and maintenance. If the parties are unable to agree on a single arbitrator, the party demanding such arbitration (the "**Demanding Party**") shall notify the other party (the "**Noticed Party**") in writing of such demand, stating the question or questions to be submitted for decision and nominating one similarly qualified arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing. The arbitrators so chosen shall select one similarly qualified additional arbitrator to compete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the Eastern District of California.

20.2 Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or

fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

20.3 Each party shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by the parties.

20.4 The books, records, documents (however recorded or stored) of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

## 21. ENTIRE AGREEMENT

21.1 This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this License Agreement that are not fully expressed herein.

## 22. MODIFICATION TO AGREEMENT

22.1 The provisions of this License Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this License Agreement. Any agreement made after this date of this License Agreement and related to the subject matter contained herein shall be ineffective to modify this License Agreement in any respect unless in writing and signed.

## 23. LICENSE NOT TO BE ASSIGNED.

23.1 The Licensee shall not assign this License Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, which may be withheld in Licensor's sole discretion, and it is agreed that any transfer or assignment or attempted transfer or assignment of this License Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this License Agreement.

23.2 Licensee may enter into agreements with Union Pacific Railroad (or its successor) for trackage rights over any portion of the Railroad Facilities or for railcar storage. Subject to the terms and conditions of this License Agreement, Licensee may enter into agreements with any party for railcar storage or repairs. Pursuant to Section 8, Licensee may make agreements with shippers for use of temporary laydown space.

## 24. SUCCESSORS AND ASSIGNS.

24.1 Subject to the provisions of Section 23 hereof, this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

25. CHOICE OF LAW.

25.1 This License Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.

26. ACTS OF GOD, ETC.

26.1 Neither party shall be deemed to be in default of this License Agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control.

27. LIMITATION ON LIABILITY. The Licensee agrees that the obligations incurred by the Licensor under this License Agreement shall not constitute personal obligations of the members, partners, joint venturers, directors, officers, trustees, employees, policyholders or any other principals or representatives of Licensor. Licensee further agrees that its recourse against the Licensor under this License Agreement (including, without limitation, with respect to Licensor's indemnity of Licensee) shall be strictly limited to the Licensor's interest in the Rail Facilities, and that the Licensee shall have no recourse to any other asset of the Licensor, or of any member, partner, joint venturer, director, officer, trustee, employee, policyholder or any other principal or representative of the Licensor for the satisfaction of any of the Licensor's obligations hereunder.

**IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed as of the date first herein written.**

**LICENSEE:**

**YOLO SHORTLINE RAILROAD COMPANY,**  
a California corporation

By: \_\_\_\_\_  
David Magaw  
President

Date: \_\_\_\_\_

**LICENSOR:**

**COUNTY OF SACRAMENTO,** a political  
subdivision of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESS:**

\_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT LIST**

- Exhibit A - Railroad Facilities
- Exhibit B - Insurance
- Exhibit C - Environmental Questionnaire
- Exhibit D - McClellan Use Documentation

EXHIBIT A  
RAILROAD FACILITIES

EXHIBIT B  
INSURANCE

EXHIBIT C

**ENVIRONMENTAL QUESTIONNAIRE**

The purpose of this form is to obtain information regarding the use, if any, of hazardous substances in the process proposed on the premises to be leased. Any such use must be approved in writing by Landlord. Prospective tenants should answer the questions in light of their proposed operations on the premises. Existing tenants should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

Alan Hersh, Senior Vice President  
McClellan Business Park  
5241 Arnold Avenue  
McClellan, CA 95652  
(916) 965-7100; (916) 568-2764 fax  
[ash@stanfordranch.com](mailto:ash@stanfordranch.com)

1. General Information.

Name of Responding Company: \_\_\_\_\_

Check the Applicable Status: \_\_\_\_\_

Prospective Tenant  Existing Tenant

Mailing Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

McClellan Park (MP) Address of Proposed Premises to be Leased: \_\_\_\_\_

Length of Lease Term: \_\_\_\_\_

Your Standard Industrial Classification (SIC) Code Number: \_\_\_\_\_

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

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**2. Use and/or Storage of Hazardous Materials.**

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Hazardous Chemical Products	Yes <input type="checkbox"/>	No <input type="checkbox"/>

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes  No

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Sacramento County Environmental Management Department?

Yes  No

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes  No

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements.

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2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes  No

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Storage Tanks and Pumps.**

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes  No

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. \_\_\_\_\_  
\_\_\_\_\_

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes  No  Not Applicable

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes  No  Not Applicable

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes  No  Not Applicable

If so, describe. \_\_\_\_\_  
\_\_\_\_\_

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes  No  Not Applicable

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes  No  Not Applicable

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. **Spills.**

4.1 During the past year, have any spills occurred on any site you occupy?

Yes  No  Not Applicable

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes  No  Not Applicable

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes  No  Not Applicable

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work.

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5. **Waste Management.**

5.1 Has your business filed a Hazardous Material Plan with the Sacramento County Environmental Management Department?

Yes  No

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes  No

If yes: EPA ID# \_\_\_\_\_

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5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes  No

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stores in secondary containments?

Yes  No

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes  No

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes  No

If yes, what types and quantities? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

5.6 Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5.7 Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5.8 Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes  No

If yes, please describe any existing or proposed treatment, processing or recycling methods. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5.9 Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. **Wastewater Treatment/Discharge.**

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

\_\_\_\_\_ storm drain                      \_\_\_\_\_ sewer  
\_\_\_\_\_ surface water                      \_\_\_\_\_ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Sacramento Regional County Sanitation District?

Yes                       No

6.3 Is your wastewater treated before discharge?

Yes                       No                       Not Applicable

If yes, describe the type of treatment conducted.

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Does your business conduct operations outside the building or store materials outside?

Yes                       No                       Not Applicable

6.4 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes                       No                       Not Applicable

6.5 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes                       No                       Not Applicable

6.6 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes                       No                       Not Applicable

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6.7 Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. **Air Discharges.** <sup>1</sup>

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes  No

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Dip tank	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Drying oven	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Incinerator	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other (please describe)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Boiler	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I/C Engine	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Emergency Backup Generator	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Processes that apply coatings, inks, adhesives or use solvents	Yes <input type="checkbox"/>	No <input type="checkbox"/>

7.3 Do you emit or plan to emit any toxic air contaminants?

Yes  No

7.4 Are air emissions from your operations monitored?

Yes  No

If so, indicate the frequency of monitoring and a description of the monitoring results.

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7.5 Attach copies of any air emissions permits pertaining to your operations on the premises.

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<sup>1</sup> NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

**8. Enforcement Actions, Complaints.**

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes  No

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. \_\_\_\_\_  
\_\_\_\_\_

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes  No

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes  No

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes  No

If so, discuss the results of the audit. \_\_\_\_\_  
\_\_\_\_\_

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes  No

Please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT C-1

**AIR FORCE NOTIFICATION REQUEST**

From time to time various environmental proposals, construction projects, and modifications to existing systems will be undertaken by the Environmental Management group at McClellan AFB. These projects may temporarily create disruption in the operation of your business.

To provide adequate notification and to allow your input on these projects, and/or changes, Environmental Management will notify you in advance of new projects or changes. Please complete the information request form where you would like information sent.

---

**Notification Request Form**

Leased Space:

Building: \_\_\_\_\_

Bay: \_\_\_\_\_

Square Footage: \_\_\_\_\_

Use: \_\_\_\_\_

Lease Start Date: \_\_\_\_\_ Lease End Date: \_\_\_\_\_

Business Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

cc: Merianne Briggs  
SM-ALC/EM  
Environmental Community Relations  
5050 Dudley Boulevard, Suite 3  
McClellan AFB, CA 95652-1389  
(916) 643-1742 ext. 457 or 354

**EXHIBIT C-2**

**SEWER USE QUESTIONNAIRE**

1. \_\_\_\_\_  
Company Name: \_\_\_\_\_  
\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Description of Business:  
(Type of Product/Service)

3. Is your business one of the following:       Yes (circle)    No

- |                     |                        |                   |
|---------------------|------------------------|-------------------|
| Bank/Credit Union   | Bar                    | Grocery Store     |
| Bowling Alley       | Rest Home              | Gym/Health Studio |
| Barber/Beauty Shop  | Hall/Auditorium/Club   | Law Office        |
| Child Care Center   | Lodge                  | Hotel/Motel       |
| School/College      | Retail Bakery          | Office Building   |
| Church              | Restaurant             | Retail Store      |
| Gardener/Landscaper | Real Estate Office     | Consultant        |
| Theater             | Laundry (Self Service) | Private Residence |

4. If you answer yes to item 3 skip to item 12. All other business types need to complete the entire questionnaire.

5. *Optional* – Standard Industrial Classification (SIC) Code: \_\_\_\_\_  
(If you do not know your SIC Code you may call the Industrial Waste Section at 875-6470 and we can look it up for you.)

6. Number of full-time employees at this location: \_\_\_\_\_

7. Business hours: \_\_\_\_\_

8. Excluding restrooms, lunchroom, and landscape watering, do you routinely use water in any of your business activities?       Yes (circle)    No

9. Describe business activities (processes) which generate waste water at this location:  
\_\_\_\_\_  
\_\_\_\_\_

10. *Optional* - Excluding sanitary wastewater, approximately amount of wastewater discharged per day: \_\_\_\_\_

11. List all substances, materials or chemicals which may be present in your wastewater.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\*You may attach additional sheets if necessary.

---

12. I certify that the information furnished herein is true and correct to the best of my knowledge.  
(Must be signed by operator or manager of the facility.)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: (type or print): \_\_\_\_\_

Title: \_\_\_\_\_

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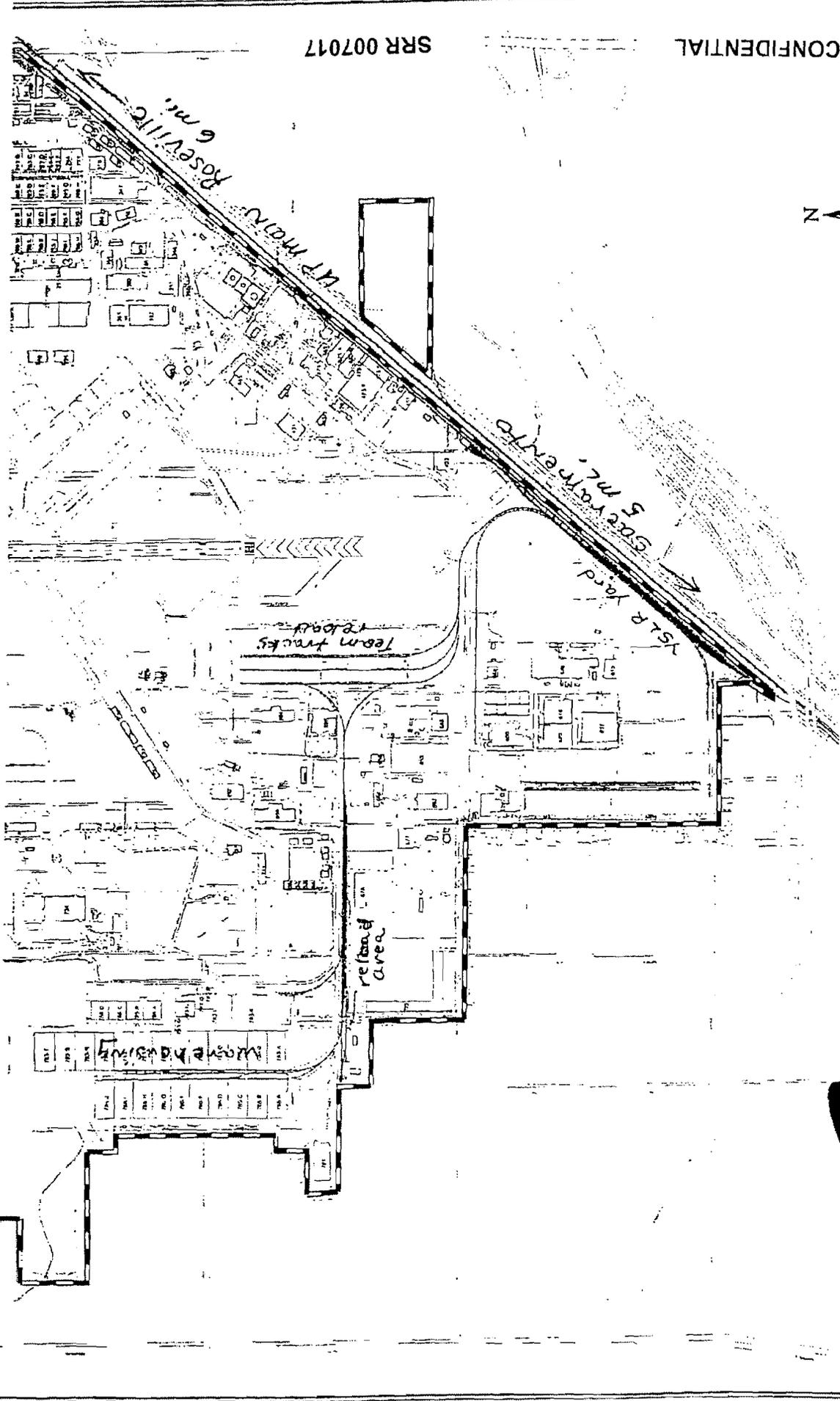
**Make a copy for your records and send completed questionnaire to:**

Industrial Waste Section  
County of Sacramento  
Water Quality Division  
9660 Ecology Lane  
Sacramento, California 95827

**EXHIBIT D**

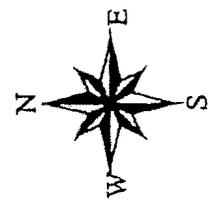
**McCLELLAN USE DOCUMENTATION**

1. Environmental Certificate (as defined in the Lease).
2. SSEBS (as defined in the Lease).
3. EDC Lease, and all amendments thereto (as defined in the Lease).
4. Operating Agreement (as defined in the Lease).
5. EDC Agreement (as defined in the Lease).
6. Historic Preservation Agreement (as defined in the Lease).



SRR 007017

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**NOLTE**  
CONSTRUCTION MANAGEMENT

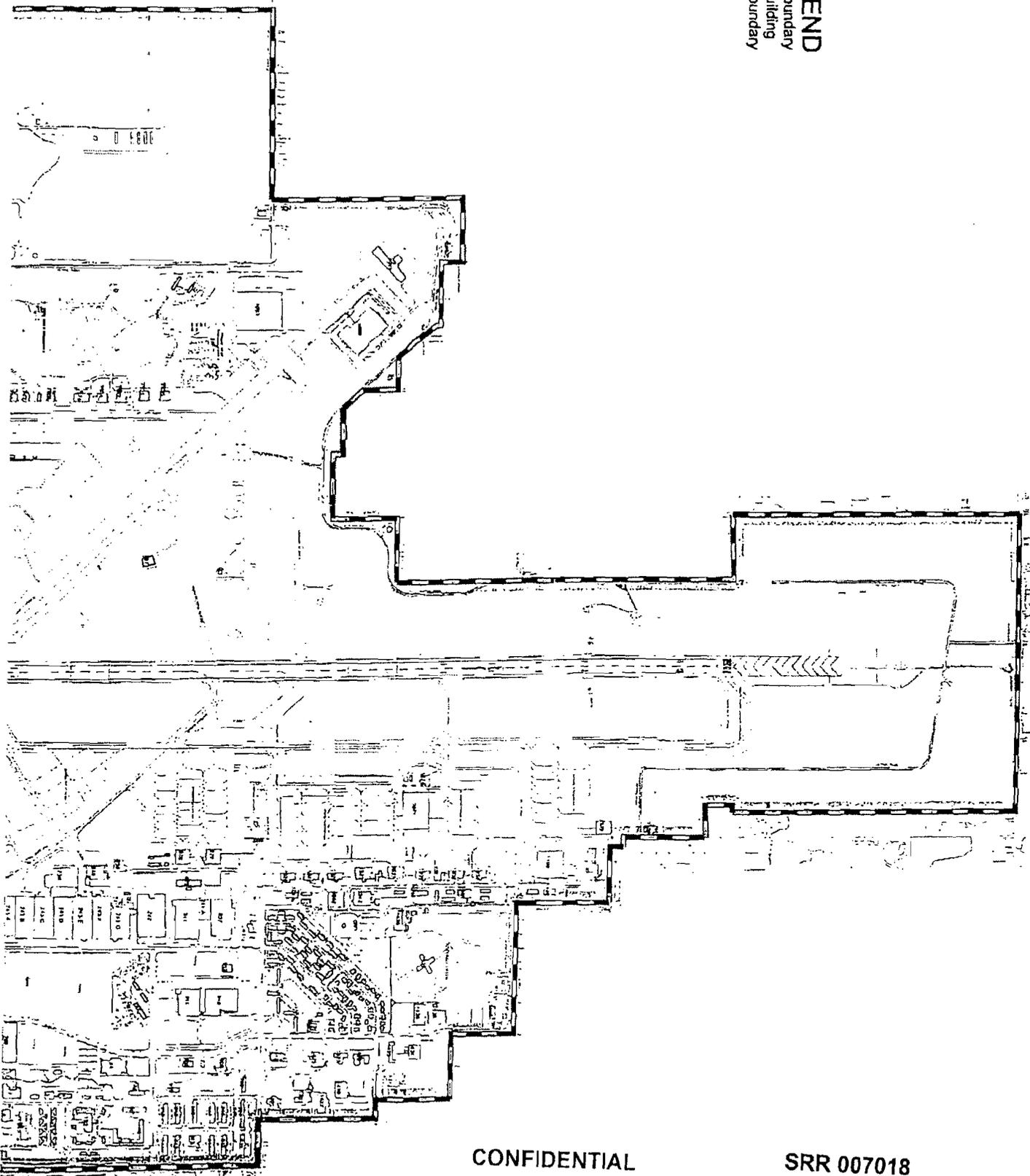


# McClellan Park

CALIFORNIA'S UNIQUE CORPORATE COMMUNITY

NOVEMBER 2000

**LEGEND**  
Boundary  
Building  
Boundary



CONFIDENTIAL

SRR 007018

*Attachment 2*

FIRST AMENDMENT TO RAILROAD LICENSE AND OPERATING AGREEMENT  
McClellan Park  
Sacramento County, California

This First Amendment to Railroad License and Operating Agreement ("**First Amendment**"), dated for reference purposes as May 13, 2002, is entered into by and between **McCLELLAN BUSINESS PARK LLC**, a Delaware limited liability company ("**Licensor**"), and **YOLO SHORTLINE RAILROAD COMPANY**, a California corporation ("**Licensee**"). In the event of any inconsistencies between the terms and conditions of this First Amendment and the terms and conditions of the License (as defined below), the terms and conditions of this First Amendment shall govern and control.

Recitals

A. Licensor's predecessor-in-interest and Licensee have entered into that certain Railroad License and Operating Agreement, dated February 6, 2001 ("**License**") for the exclusive license (which is not coupled with an interest) of certain "**Railroad Facilities**" within McClellan Park, McClellan, California, as more particularly described in the License.

B. Licensor and Licensee now desire to amend the License in accordance with the terms and conditions of this First Amendment.

NOW, THEREFORE in consideration of the foregoing Recitals and the mutual covenants contained herein, the parties agree as follows:

Agreement

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this First Amendment shall have the same meaning ascribed to such terms in the License.

2. Effective Date. This First Amendment shall become effective on the date upon which the last party hereto executes this First Amendment ("**Effective Date**").

3. Laydown Space. Licensor and Licensee hereby agree that Section 8 of the License is deleted in its entirety and replaced with the following provision:

"Laydown/Storage Space. Licensee may sublease to third parties ("**Sublicensees**"), those portions of the areas adjacent to the Railroad Facilities generally depicted on Exhibit A attached hereto and incorporated herein by this reference ("**Laydown Areas**"), on a month-to-month basis pursuant to the provisions of this Section. The use of the Laydown Areas shall be solely for the purpose of unloading and transloading bulk commodities between railcar and trucks or other vehicles, and for such other purposes incidental thereto, but shall not be used for other purposes without the express written consent of Licensor. Licensee's rights and obligations relating to the Laydown Areas and the use thereof by its Sublicensees shall be subject to the same limitations as are applicable to the Railroad Facilities, in addition to all of

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1000071.3697

SRR 007000

05/13/02.V1



EXHIBIT 3

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34018]

Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA

Yolo Shortline Railroad Company (Yolo), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the County of Sacramento, CA (County), the exclusive occupancy and operating rights over 7 miles of unmarked railroad track within McClellan Park,<sup>1</sup> in McClellan, CA.<sup>2</sup> In addition, Yolo has leased the associated engine house and shop.

The transaction is scheduled to be consummated on or about April 2, 2001. The earliest the transaction could be consummated was March 16, 2001, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49

---

<sup>1</sup> Yolo states that McClellan Park a new site being developed from the former McClellan Air Force Base (Base), which was slated for closure by the U.S. Department of Defense and will be officially closed by the U.S. Air Force in July 2001. Yolo indicates that, as portions of the Base are closed, they are turned over to the County for redevelopment. According to Yolo, there is no rail traffic currently at McClellan Park but that the track is usable for team track and reloading areas and service to warehousing.

<sup>2</sup> Yolo notes that the Union Pacific Railroad Company has filed McClellan Park at milepost 97.5 on its Martinez Subdivision, between Roseville and Sacramento, CA. Certain attachments to the verified notice indicate that the Base is in Planehaven, CA.

U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34018, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Mr. David Magaw, General Manager, Yolo Shortline Railroad, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our website at  
“WWW.STB.DOT.GOV.”

Decided: March 20, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

EXHIBIT 4



[Print](#)

Subject: **STB Docket No. NOR 42133**

From: **Fritz R. Kahn <xiccg@verizon.net>**

Sent: **Thursday, February 16, 2012 10:27:00 AM**

To: **Lou@lgrailaw.com**

CC: **mhart@sierraenergycorp.com, davemagaw@gmail.com, tnilsson@sierraenergycorp.com, lgonzalez@weintraub.com, SPlamondon@weintraub.com**

---

Lou:

Attached are the Complainants' Objections and Responses to Respondents' First Discover Request. I shall mail you the signed copy. If you have any question about the material, please let me know.

Have a good day.

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: xiccg@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.

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' 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.

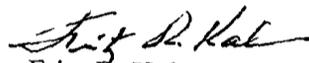
8. Admit.

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



Exhibit 4 (a)

August 31, 2007

**VIA FACSIMILE - (330) 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,

Jay Heckenlively  
Senior Vice President and General Counsel

JH:srb  
cc: Larry D. Kelley  
Debra Compton  
1000.071.12190



RECEIVED  
OCT 16 2007

October 11, 2007

Exhibit 4 (b)

David Magaw  
Sierra Northern Railway  
341 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.

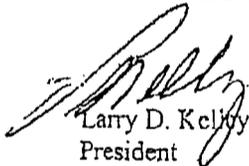
If you would like to schedule another tour or inspection of the facilities please notify us as soon as possible. Upon request, we will make every effort to arrange tour dates to accommodate the deadlines specified in the RFP.

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/lkr

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 I. Gross Revenue Participation  
 Percentage Revenue Proposed for Payment to McClellan Park

<i>Switching Fees / Car Count</i>	<i>% of Gross Revenue 5 year Term</i>	<i>% of Gross Revenue 10 year Term</i>	<i>% of Gross Revenue Alternate Term (provide details)</i>
0 -			
Negotiated Fees:			
Special Moves:			
Excess Weight:			
Excess Dimension:			
High Value:			
Hazmat			
Unit Trains			
Team Track Bulk Storage			
Rail Car Storage			
Truck transload revenue			
Other Revenue (please specify)			

Additional Revenue Opportunities and Participation (attach a separate sheet if necessary):

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## 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-C 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-D 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-E 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

---

Exhibit 4 (c)

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

---

Exhibit 4 (d)

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,

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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

---

Exhibit 4 (e)

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:

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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:** 02/05/2008  
**To:** Frank Myers; dmagaw@att.net  
**Cc:** Jay Heckenlively; Torgny Nilsson  
**Bcc:**  
**Subject:** RE: Rail RFP

---

Exhibit 4 (f)

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  
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

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President, CEO  
Sierra Railroad Company

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EXHIBIT 5

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221455

LAW OFFICES OF  
LOUIS E. GITOMER

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

January 29, 2008

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: Finance Docket No. 35117, *Sacramento Valley Railroad, Inc. - Operation  
Exemption-McClellan Business Park LLC*

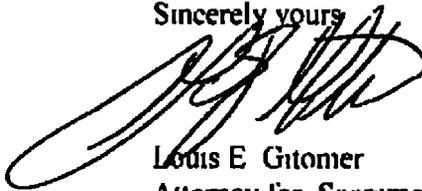
Dear Acting Secretary Quinlan:

Enclosed for filing are the original and 10 copies of a Verified Notice of Exemption under 49 C.F.R. 1150.31, a check covering the \$1,600.00 filing fee, and a CD with the file Notice of Exemption.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger. 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, Inc.

**FILED**  
JAN 29 2007  
SURFACE  
TRANSPORTATION BOARD

Enclosures

**FEE RECEIVED**  
JAN 29 2007  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
JAN 29 2008  
Part of  
Public Record

JAN 29 2008  
RECEIVED

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35117

SACRAMENTO VALLEY RAILROAD, INC.—OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C F R § 1150.31, Et Seq.

ENTERED  
Office of Proceedings

JAN 29 2008

Part of  
Public Record

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532

Attorney for SACRAMENTO VALLEY  
RAILROAD, INC

Dated January 29, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO 35117

---

SACRAMENTO VALLEY RAILROAD, INC —OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C F R § 1150.31, Et Seq.

---

Sacramento Valley Railroad, Inc. ("SAVR"), a noncarrier, files this Notice of Exemption, pursuant to 49 C F R Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the "Board") to permit SAVR to obtain the exclusive occupancy and operating rights over about seven miles of unmarked railroad track within McClellan Business Park, in McClellan, Sacramento County, CA (the "Line")

In support of this Notice of Exemption, SAVR submits the following information as required by 49 C F R § 1150.33.

**a. Full name and address of applicant.**

Sacramento Valley Railroad, Inc  
c/o Patriot Rail Corp  
One Boca Place  
2255 Glades Road, Suite 342W  
Boca Raton, FL 33431  
(561) 443-5300

**b Applicant's Representatives:**

Louis E Gitomer, Esq  
Law Offices of Louis E Gitomer  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(202) 466-6532

**c SAVR, as operator, and McClellan Business Park, LLC ("MBP"), as seller, are negotiating a License and Operating Agreement that will be completed by March 1, 2008**

**d The operator of the property will be SAVR**

**e Summary of proposed transaction**

**1. The name and address of the railroad transferring the property is.**

McClellan Business Park I.L.C  
5241 Arnold Avenue  
McClellan, CA 95652

**MBP is not a carrier. MBP acquired McClellan Business Park as a result of its closing by the U.S Air Force and has developed it as a rail-served industrial park**

**2. The proposed time schedule for the consummation of the transaction is on or after March 1, 2008.**

**3. The mileposts of the subject property, including any branch lines There are no mileposts on the Line**

**4. SAVR will operate about seven route miles There will be no interchange**

commitments or paper barriers in the License and Operating Agreement between SAVR and MBP

5 MBP's predecessor entered a License and Operating Agreement with the Yolo Shortline Railroad Company ("Yolo") on February 6, 2001.<sup>1</sup> Sierra Railroad Company acquired control of Yolo<sup>2</sup> and began operating the Line.<sup>3</sup> MBP notified Yolo's successor that the License to Operate would not be renewed and put the operation of the Line out for bid. SAVR was the winning bidder.

SAVR understands that Yolo's successor has been asked by MBP to vacate the Line, but may or may not have filed for abandonment authority with the Board at the time this notice is filed. MBP has asked SAVR to be prepared to commence operations on March 1, 2008. SAVR does not know what Yolo's successor's response will be and if it will oppose SAVR's notice in this proceeding. SAVR wants to meet the needs of MBP and the shippers on the Line in McClellan Park. SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, in order to meet the needs of MBP.

f. A map of the Line is attached as Exhibit C.

g. A Certificate of Compliance with the provisions of 49 CFR § 1150.33(g) is attached as Exhibit A.

h. A caption summary, as required by 49 C.F.R. § 1150.34, is attached as Exhibit B.

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<sup>1</sup> *Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA*, STB Finance Docket No. 34018 (STB served March 27, 2001).

<sup>2</sup> *Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company*, STB Finance Docket No. 34351 (STB served June 11, 2003)

<sup>3</sup> *Sierra Railroad Company—Corporate Family Transaction Exemption—Yolo Shortline Railroad Company*, STB Finance Docket No. 34360 (STB served June 23, 2003)

i No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Hence, this Notice of Exemption does not require environmental documentation under 49 CFR §1105.6(b)(4) and (c)(2)(i).

j An historic report is not required because SAVR will operate the Lines, will require further Board approval as required to discontinue and abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C F R §1105.8(b)(1).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



Louis E. Gitomer, Esq  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532

Attorney for SACRAMENTO VALLEY  
RAILROAD, INC

Dated: January 29, 2008

# EXHIBIT A

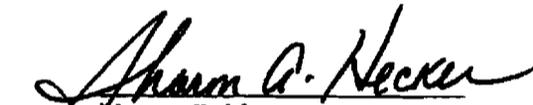
**CERTIFICATION**

State of Florida            )  
  ) ss:  
County of Palm Beach    )

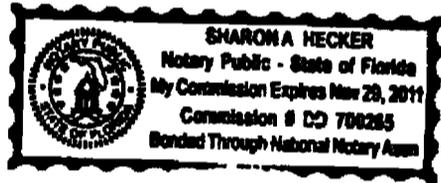
I, Gary O. Marino being duly sworn depose and state that I am President and Chief Executive Officer of the Sacramento Valley Railroad, Inc , a California corporation, and that the projected annual revenues from the rail operations would not exceed those that would make it a Class III carrier under 49 CFR Part 1201(1-1) and would not exceed \$ 5 million

  
\_\_\_\_\_  
Gary O. Marino

Subscribed and sworn to before me this 28<sup>th</sup> day of January 2008

  
\_\_\_\_\_  
Notary Public  
(SEAL)

My Commission Expires Nov. 29, 2011



VERIFICATION

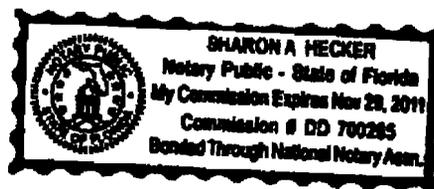
State of Florida            )  
  ) SS  
County of Palm Beach        )

I, Gary O Marino, being duly sworn, deposes and says that I am President and Chief Executive Officer of the Sacramento Valley Railroad, Inc . a California corporation, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief

  
\_\_\_\_\_  
Gary O. Marino

Subscribed and sworn to before me this 28<sup>th</sup> day of January 2008.

  
\_\_\_\_\_  
Notary Public



# **EXHIBIT B – CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

**Notice of Exemption**

**FINANCE DOCKET NO 35117**

**SACRAMENTO VALLEY RAILROAD, INC.—OPERATION EXEMPTION—  
MCCLELLAN BUSINESS PARK LLC**

Sacramento Valley Railroad, Inc has filed a notice of exemption to obtain the exclusive occupancy and operating rights over seven miles of unmarked railroad track within McClellan Business Park, in McClellan, Sacramento County, CA.

The transaction is scheduled to take place on or after March 1, 2008

A class exemption for Patriot Rail, LLC (“PRL”), and its subsidiaries Patriot Rail Holdings LLC (“PRH”) and Patriot Rail Corp., to continue in control of Sacramento Valley Railroad, Inc., was concurrently filed in Finance Docket No 35118, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp. Continuance in Control Exemption Sacramento Valley Railroad, Inc*

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U S C 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No 35118, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, S W, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis F. Gitomer, Esq., Law Offices of Louis E Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (202) 466-6532

Board decisions and notices are available on our website at "WWW STB DOT.GOV."

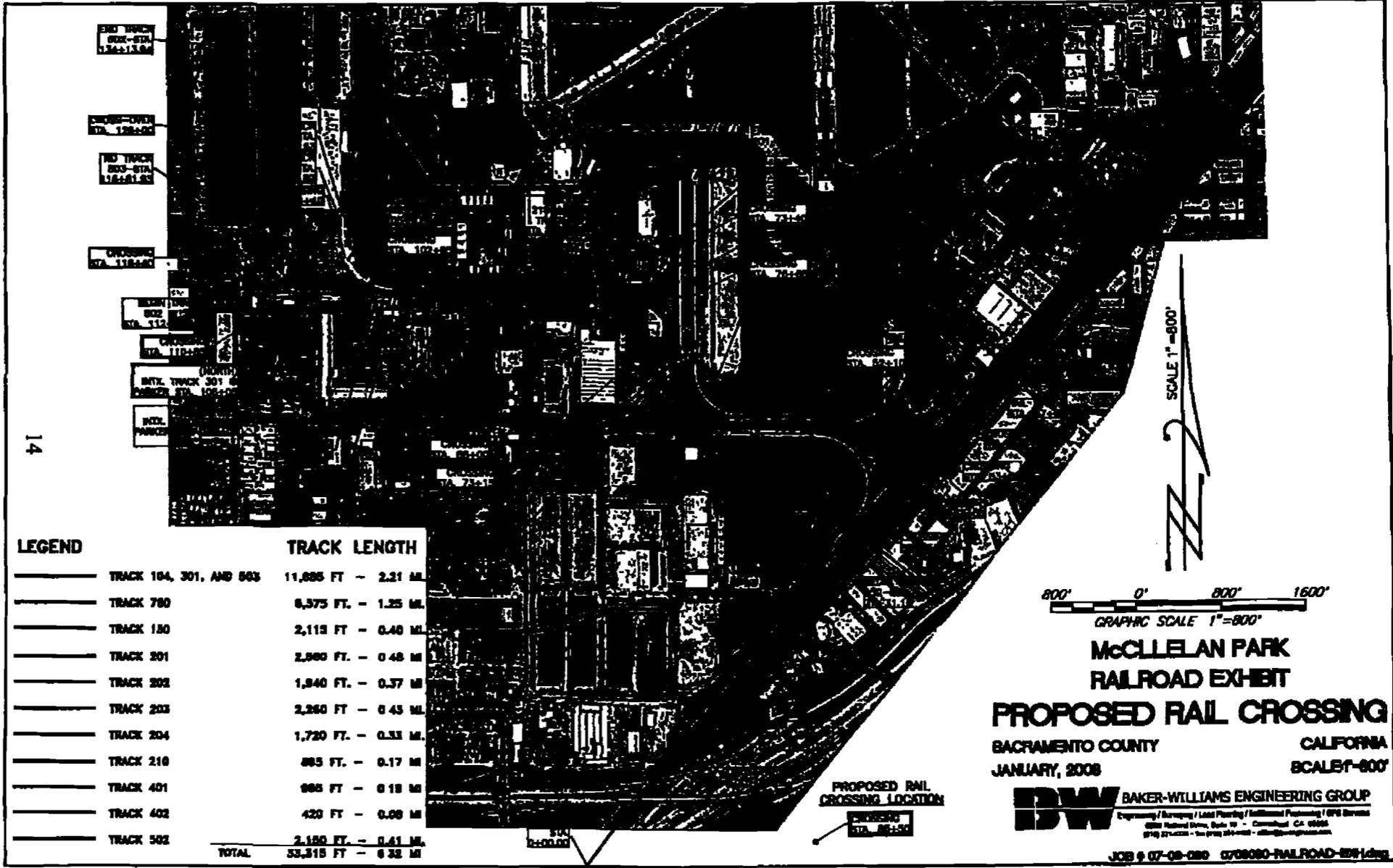
Decided \_\_\_\_ \_\_, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings

Anne K. Quinlan

Acting Secretary

# **EXHIBIT C-MAP**



14

**LEGEND**

**TRACK LENGTH**

TRACK 104, 301, AND 503	11,885 FT - 2.21 MI
TRACK 780	8,375 FT - 1.25 MI
TRACK 130	2,115 FT - 0.40 MI
TRACK 301	2,580 FT - 0.48 MI
TRACK 302	1,940 FT - 0.37 MI
TRACK 203	2,260 FT - 0.43 MI
TRACK 204	1,720 FT - 0.33 MI
TRACK 210	885 FT - 0.17 MI
TRACK 401	985 FT - 0.18 MI
TRACK 402	420 FT - 0.08 MI
TRACK 502	2,150 FT - 0.41 MI
<b>TOTAL</b>	<b>53,315 FT - 10.02 MI</b>

SCALE 1"=800'



**McCLELLAN PARK  
RAILROAD EXHIBIT  
PROPOSED RAIL CROSSING**  
SACRAMENTO COUNTY CALIFORNIA  
JANUARY, 2008 SCALE 1"=800'

PROPOSED RAIL CROSSING LOCATION

**BW** BAKER-WILLIAMS ENGINEERING GROUP  
Engineering / Surveying / Land Planning / Facilities Planning / GPS Services  
2000 National Drive, Suite 100 - Concord, CA 95060  
916-438-2222 - Fax 916-438-2222 - info@bakermiller.com

JOB # 07-08-080 0708080-RAILROAD-EXHIBIT.dwg

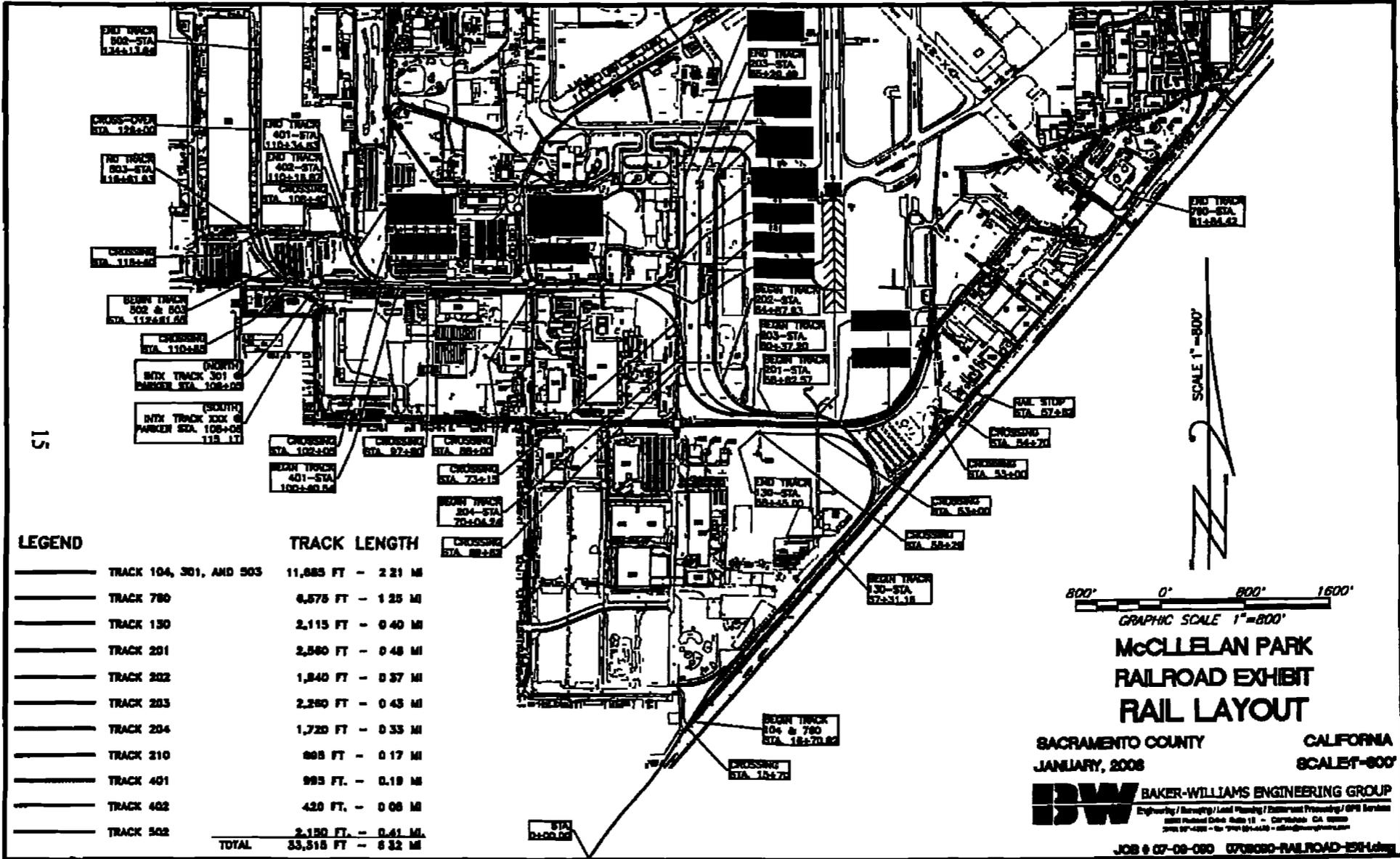


EXHIBIT 6

38767

SERVICE DATE – FEBRUARY 14, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35117]

Sacramento Valley Railroad, Inc.—Operation Exemption—McClellan Business Park  
LLC

Sacramento Valley Railroad, Inc. (SAVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement that will be completed by March 1, 2008, with McClellan Business Park LLC (MBP), over MBP's approximately 7-mile line of unmarked railroad within McClellan Business Park, in McClellan, Sacramento County, CA.

SAVR advises that MBP's predecessor entered into a license and operating agreement with the Yolo Shortline Railroad Company (Yolo) on February 6, 2001.<sup>1</sup> Sierra Railroad Company acquired control of Yolo<sup>2</sup> and began operating the line.<sup>3</sup> MBP notified Yolo's successor that the license to operate would not be renewed and put the operation of the line out for bid. SAVR was the winning bidder.

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<sup>1</sup> See Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA, STB Finance Docket No. 34018 (STB served Mar. 27, 2001).

<sup>2</sup> See Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company, STB Finance Docket No. 34351 (STB served June 11, 2003).

<sup>3</sup> See Sierra Railroad Company—Corporate Family Transaction Exemption—Yolo Shortline Railroad Company, STB Finance Docket No. 34360 (STB served June 23, 2003).

This transaction is related to the concurrently filed verified notice of exemption 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. In that proceeding, Patriot Rail, LLC and its subsidiaries, Patriot Rail Holdings LLC and Patriot Rail Corp., jointly have filed a verified notice of exemption to continue in control of SAVR, upon SAVR's becoming a rail carrier.

The transaction is scheduled to be consummated on or after March 1, 2008, and hence after the February 28, 2008 effective date of the exemption.

SAVR certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

effectiveness of the exemption. Petitions for stay must be filed no later than February 21, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35117, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: February 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary

EXHIBIT 7

EXHIBIT 8

LAW OFFICES OF  
**LOUIS E. GITOMER, LLC.**

LOUIS E. GITOMER  
Lou@lgraillaw.com

600 BALTIMORE AVENUE, SUITE 301  
TOWSON, MARYLAND 21204-4022  
(410) 296-2250 • (202) 466-6532  
FAX (410) 332-0885

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

February 16, 2012

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

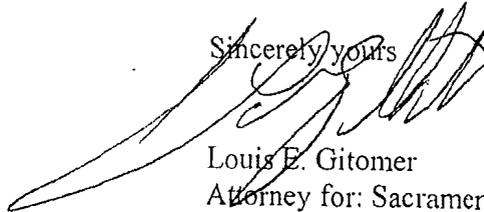
RE: Docket No. 42133, *Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento*

Dear Fritz:

Enclosed is the Response of Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento to the discovery requests from Sierra Railroad Company and Sierra Northern Railway ("Complainants"). Documents will be provided once the Surface Transportation Board serves a protective order and Complainants comply with that order.

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

---

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

---

Robert I. Schellig, Jr., Esq.  
Vice President – Law  
Sacramento Valley Railroad Company LLC  
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(561) 443-5300  
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Lou@lgraillaw.com  
Attorney for Sacramento Valley Railroad  
Company, LLC, McClellan Business Park,  
LLC, and County of Sacramento

Jay Heckenlively, Esq.  
Executive Vice President and General Counsel  
3140 Peacekeeper Way  
McClellan, CA 95652  
(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: February 16, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. 42133

---

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

---

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.

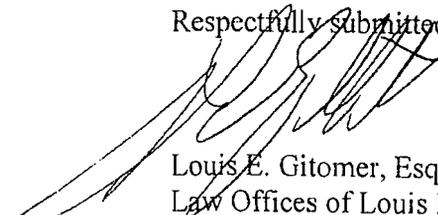
3. In stating in its Verified Notice of Exemption, filed with the Board on January 29, 2008, in Finance Docket No. 35117, *Sacramento Valley Railroad, Inc. --Operation Exemption-- McClellan Business Park LLC*, "SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, 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 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.

**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,

Robert I. Schellig, Jr., Esq.  
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Company, LLC

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Company, LLC, McClellan Business Park,  
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Attorney for McClellan Business Park, LLC

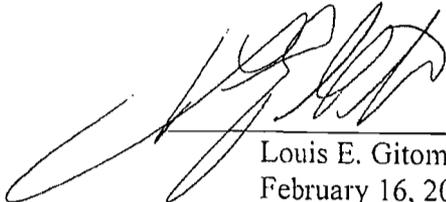
Diane E. McElhern, Esq.  
Deputy County Counsel  
700 H Street, Suite 2650  
Sacramento, CA 95814  
Attorney for County of Sacramento

Dated: February 16, 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



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Louis E. Gitomer  
February 16, 2012

VERIFICATION

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

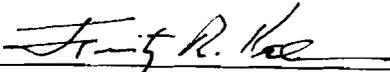
Dated at Davis, CA, this 3 day of May 2012.

  
\_\_\_\_\_  
Michael G Hart

CERTIFICATE OF SERVICE

I certify that I this day served the forgoing Opening Evidence and Arguments on Sacramento Valley, McClelland Business Park, LLC and the County of Sacramento by e-mailing a copy to their counsel, Louis E. Gitomer, Esq., at Lou@lgraillaw.com, and by mailing a copy to him by prepaid first-class mail.

Dated at Washington, DC, this 23rd day of May, 2012.

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