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THOMAS F. MCFARLAND

December 20, 2012

By UPS overnight mail

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

233581

Re Finance Docket No 35709, *Pacific Imperial Railroad, Inc. -- Change In Operators Exemption -- Rail Line Of San Diego And Arizona Eastern Railway Company (Residual Operating Authority Of San Diego & Imperial Valley Railroad Company)*

Dear Ms Brown.

Hereby transmitted is the original and 10 copies of a Verified Notice Of Exemption Under 49 C.F.R. § 1150.31(a)(3) for filing with the Board in the above referenced matter

Also enclosed is a check in the amount of \$1,800 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant

T.McF ml enc 1505\trSTB2

ENTERED
Office of Proceedings

DEC 26 2012

Part of
Public Record

FEE RECEIVED

DEC 26 2012

**SURFACE
TRANSPORTATION BOARD**

FILED

DEC 26 2012

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

PACIFIC IMPERIAL RAILROAD, INC. --)
CHANGE IN OPERATORS EXEMPTION)
-- RAIL LINE OF SAN DIEGO AND)
ARIZONA EASTERN RAILWAY) FINANCE DOCKET
COMPANY (RESIDUAL OPERATING) NO. 35709
AUTHORITY OF SAN DIEGO &)
IMPERIAL VALLEY RAILROAD)
COMPANY))

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31(a)(3)

PACIFIC IMPERIAL RAILROAD, INC.
402 West Broadway, Suite 690
San Diego, CA 92101

Applicant

THOMAS F McFARLAND
THOMAS F. McFARLAND, P C
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

DATE FILED. December 21, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

PACIFIC IMPERIAL RAILROAD, INC --)
CHANGE IN OPERATORS EXEMPTION)
-- RAIL LINE OF SAN DIEGO AND)
ARIZONA EASTERN RAILWAY) FINANCE DOCKET
COMPANY (RESIDUAL OPERATING) NO. 35709
AUTHORITY OF SAN DIEGO &)
IMPERIAL VALLEY RAILROAD)
COMPANY))

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31(a)(3)**

Pursuant to 49 C.F.R. § 1150.31(a)(3) and 49 U.S.C. § 10502(a), PACIFIC IMPERIAL RAILROAD, INC. (PIR), a noncarrier,^{1/} hereby provides notice of its class exemption from 49 U.S.C. § 10901 for its acquisition of the residual authority of San Diego & Imperial Valley Railroad Company, Inc (SDIY) to operate a 70.01-mile rail line owned by San Diego and Arizona Eastern Railway Company (SD&AE) between Division, CA (Milepost 59.60) and Plaster City, CA (Milepost 129.61) (Desert Line), by means of assignment of such authority by

^{1/} A Notice of Exemption for PIR to replace Carrizo Gorge Railway Company (CZRY) as primary operator of the Desert Line became effective on August 31, 2012. See STB Finance Docket No. 35657, *Pacific Imperial Railroad, Inc. -- Change in Operators Exemption -- Rail Line of San Diego and Arizona Eastern Railway Company*, Notice served August 17, 2012. However, PIR has not consummated that operating authority pending PIR's acquisition of SDIY's residual authority to operate the Desert Line in the proceeding here under consideration. Accordingly, PIR believes that it continues to be a noncarrier. If the Board determines that PIR has become a Class III rail carrier by virtue of the effective authority in Finance Docket No 35657, *supra*, this Verified Notice of Exemption should be considered to be filed under 49 C.F.R. § 1150.41(a)(3), for which the informational requirements are virtually identical to those under 49 C.F.R. § 1150.31(a)(3).

SDIY to PIR with the consent of SD&AE, and its parent, San Diego Metropolitan Transit Development Board, a.k.a San Diego Metropolitan Transit System (MTS).

SDIY has authority to operate the Desert Line by virtue of the Interstate Commerce Commission's decision in ICC Finance Docket No. 30457, *San Diego & Imperial Valley Railroad Company -- Exemption from 49 USC 10901 and 11301*, served August 17, 1984.

SDIY's authority is residual because with SDIY's concurrence, Carrizo Gorge Railway, Inc (CZRY) was authorized to operate the Desert Line in STB Finance Docket No 34485, *Carrizo Gorge Railway, Inc -- Operation Exemption -- San Diego and Arizona Eastern Railway Company*, decision served April 12, 2004.

With concurrence of SDIY and SD&AE, PIR has been authorized to replace CZRY as primary operator of the Desert Line STB Finance Docket No 35657, *Pacific Imperial Railroad, Inc -- Change in Operators Exemption -- Rail Line of San Diego and Arizona Eastern Railway Company*, Notice served August 17, 2002.

On August 16, 2012, SDIY assigned its residual authority to operate the Desert Line to PIR with the express consent of SD&AE. The Notice of Exemption in the proceeding here under consideration seeks Board authorization of that assignment

In accordance with 49 C.F.R. § 1150.33, PIR submits the following:

(a) The full name and address of the applicant;

Applicant is Pacific Imperial Railroad, Inc., 402 West Broadway, Suite 690, San Diego, CA 92101.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicant's representative is Thomas F. McFarland, Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204 (ph), (312) 201-9695 (fax), mcfarland@aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached.

SDIY has agreed to assign its authority to operate the Desert Line to PIR SD&AE and MTS have consented to that assignment.

(d) The operator of the property.

PIR will be the operator of the property

(e) A brief summary of the proposed transaction, including

(1) The name and address of the railroad transferring the subject property.

The name and address of the railroad who has assigned its authority to operate the Desert Line to PIR is:

San Diego & Imperial Valley Railroad Company, Inc
1501 National Avenue
San Diego, CA 92113-1029

(2) The proposed time schedule for consummation of the transaction.

The change in operators will be consummated no earlier than the 60th day after a Notice under 49 C.F.R. § 1150.32(c) is posted at Applicant's place of business.

(3) The mile-posts of the subject property, including any branch lines.

The Desert Line extends between Milepost 59.60 at or near Division, CA and Milepost 129.61 at or near Plaster City, CA.

(4) The total route miles being acquired;

A total of 70.01 miles of rail line are proposed to be operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier

A certificate of Donald J. Stoecklein, President of PIR, is attached as Appendix 2, stating that PIR's projected revenues do not exceed those that would qualify it as a Class III carrier

(h) Transactions imposing interchange commitments. (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided

(i) The existence of that provision or agreement and identification of the affected interchange points, and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b)

The proposed operation does not involve a provision or agreement that may limit future interchange between PIR and a third-party connecting rail carrier.

Certification under 49 C.F.R. § 1150.32(e)

The projected annual revenue of PIR is expected to exceed \$5 million. Accordingly, at least 60 days before the exemption in this proceeding is to become effective, PIR has posted a notice of intent to acquire the residual authority of SDIY to operate the Desert Line. That notice has been posted in the main office of PIR in San Diego, CA. There are no current employees of PIR. Consequently, PIR has not been able to post the notice in an employee workplace, nor at a national office of a labor union to which employees of PIR belong. To the extent determinable by PIR at present, the notice identifies the likely types and numbers of jobs expected to be

available, the terms of employment and principles of employee selection. (See verification of Donald J Stoecklein, attached as Appendix 2)

Verification

Mr. Stoecklein's certificate attached as Appendix 2 includes a notarized verification of all factual matter asserted in this Notice of Exemption

Environmental and Historic Considerations

Pursuant to 49 C.F.R. § 1105.6(c)(2) and 49 C.F.R. § 1105.7(b)(1), no environmental or historic documentation or report is required in conjunction with this proposed change in operators.

Labor Considerations

Pursuant to 49 U.S.C. § 10901(c), no labor protection is required in conjunction with the proposed change in operators.

Caption Summary

The required Caption Summary is attached as Appendix 3.

Land Grant Right-of-Way

PIR is not aware of any land grant right-of-way in the involved rail line. Any documentation on that subject would be made available by PIR on request

Conclusion and Requested Relief

WHEREFORE, the Board should publish a Notice of the proposed change in operators within 16 days of the filing of this Notice of Exemption with the Board

Respectfully submitted,

PACIFIC IMPERIAL RAILROAD, INC.
402 West Broadway, Suite 690
San Diego, CA 92101

Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
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mcfarland@aol.com

Attorney for Applicant

DATE FILED December 21, 2012

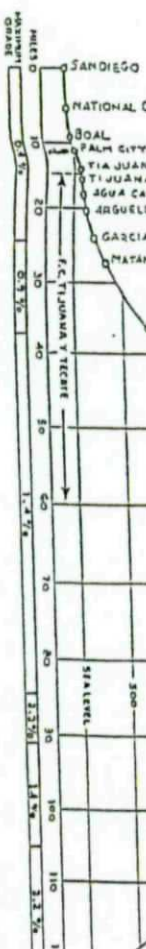
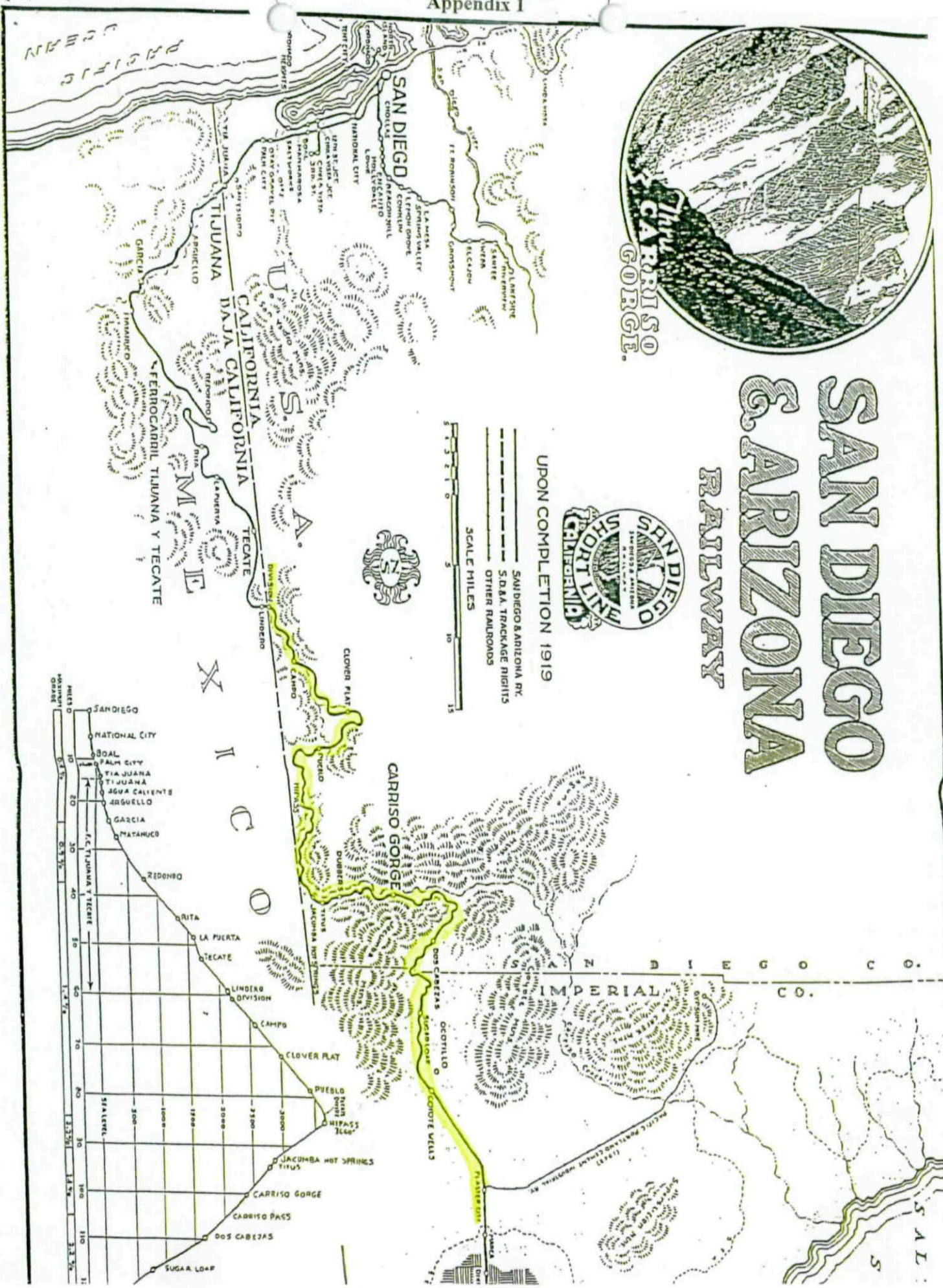


SAN DIEGO & ARIZONA RAILWAY



UPON COMPLETION 1919

- SAN DIEGO & ARIZONA RY.
- - - S.D.A. TRAPSHAGE RIGHTS
- OTHER RAILROADS



PACIFIC OCEAN

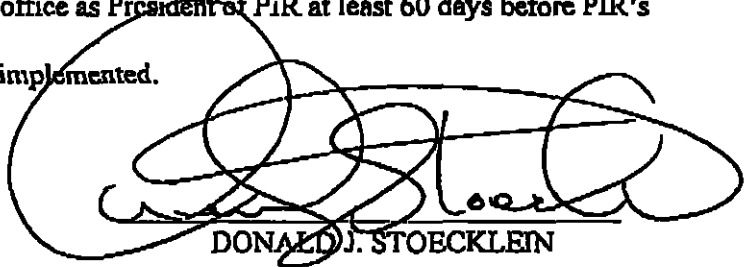
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Finance Docket No. 35709

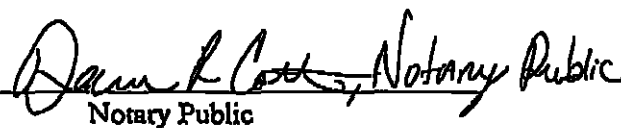
Appendix 2

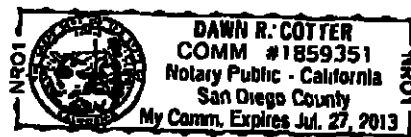
VERIFICATION

DONALD J. STOECKLEIN, being duly sworn, states that he is an authorized representative of Pacific Imperial Railroad, Inc (PIR); that he is familiar with the facts asserted in the foregoing Notice of Exemption; that all of those facts are true and correct; that the projected annual revenues of PIR as a result of the proposed transaction will not result in creation of a Class I or Class II rail carrier, and that inasmuch as the projected annual revenue associated with the operating authority to be acquired is likely to exceed \$5 million, PIR posted the notice required by 49 C.F.R. § 1150.32(e) at my office as President of PIR at least 60 days before PIR's acquisition of operating authority is to be implemented.


DONALD J. STOECKLEIN

SUBSCRIBED and SWORN to
before me this 19th day of
December, 2012


Notary Public



My Commission expires: July 27, 2013

CAPTION SUMMARY

Surface Transportation Board
Notice of Exemption

Finance Docket No. 35709

*Pacific Imperial Railroad, Inc -- Change in Operators
Exemption -- Rail Line of San Diego and Arizona Eastern
Railway Company (Residual Operating Authority of
San Diego & Imperial Valley Railroad Company, Inc)*

Pacific Imperial Railroad, Inc. (PIR), a noncarrier, has filed a Notice of Exemption under 49 C.F.R. § 1150.31(a)(3) and 49 U.S.C. 10502(a) for its class exemption from 49 U.S.C. § 10901 for its acquisition of the residual authority of San Diego & Imperial Valley Railroad Company, Inc. (SDIY) to operate a 70.01-mile rail line owned by San Diego and Arizona Eastern Railway Company (SD&AE) between Division, CA (Milepost 59.60) and Plaster City, CA (Milepost 129.61), by means of assignment of such authority from SDIY with the consent of SD&AE and its parent, San Diego Metropolitan Transit Development Board, a.k.a. San Diego Metropolitan Transit Service (MTS).

The projected annual revenues of PIR to be created by the proposed operation are anticipated to exceed \$5 million. Consequently, PIR has posted the Notice required by 49 C.F.R. § 1150.32(e) at least 60 days before the proposed exemption becomes effective. The proposed change in operators will be consummated no earlier than 60 days after such posting and no earlier than 30 days after the filing of this Notice.

Any comments must be filed with the Board and must be served on PIR's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204 (ph), (312) 201-9695 (fax), mcfarland@aol.com.

This Notice of Exemption is filed under 49 C.F.R. § 1150.31(a)(3). If the 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 transaction.

(SEAL)

By the Board