

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35660**

232873

**GWI VOTING TRUST AND  
R. LAWRENCE McCaffrey, VOTING TRUSTEE**

**ENTERED**

**- CONTROL EXEMPTION -**

Office of Proceedings  
August 27, 2012

**RAILAMERICA, INC., et al.**

Part of  
Public Record

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**REPLY OF GWI VOTING TRUST AND R. LAWRENCE McCAFFREY  
TO THE AUGUST 24, 2012 PETITION FILED JOINTLY BY  
NAPA VALLEY RAILROAD COMPANY AND  
YREKA WESTERN RAILROAD COMPANY**

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The GWI Voting Trust established by Genesee & Wyoming Inc. ("GWI"), a non-carrier holding company, and R. Lawrence McCaffrey, the individual appointed as the voting trustee (the "Voting Trustee"), hereby reply in opposition to the August 24, 2012 petition filed jointly by Napa Valley Railroad Company ("NVR") and Yreka Western Railroad Company ("YW").

**ARGUMENT**

NVR/YW argue that the August 6, 2012 Notice of Exemption in this proceeding contains false or misleading information and should be deemed void *ab initio*. They base this contention on the allegation that the Mr. McCaffrey is involved through an entity he solely owns and controls, UniRail LLC ("UniRail"), in a business arrangement with Settlor GWI. NVR/YW contend that this business arrangement is in violation of the terms of the Voting Trust Agreement ("Agreement") proposed to be entered between Mr. McCaffrey and GWI because it indicates that GWI controls Mr. McCaffrey in violation of the Board's voting trust rules at 49 CFR Part 1013.

NVRR/YW's contention is false and the nullification of the Exemption sought by its Petition should be denied. As explained in the attached Declaration of Mr. McCaffrey, the UniRail business arrangement with GWI, which involved certain investment or consulting dealings pertaining to railroads in South America or Mexico, ended in 2010, and was formally cancelled by the State of Delaware prior to the end of 2011. At present, neither Mr. McCaffrey personally nor UniRail or any other entity controlled by Mr. McCaffrey, has any business arrangements with GWI (other than Mr. McCaffrey's agreement to serve as voting trustee of the RailAmerica railroads), and neither earn any income from GWI or are owed any funds from GWI. Further, Mr. McCaffrey is not a director or officer of GWI or any entity affiliated with or controlled by GWI. He also does not own more than the one percent of GWI's voting shares, as permitted under the Agreement, and the shares he owns do not entitle him to direct or control the affairs of GWI. In addition, there are no planned arrangements of any kind between Mr. McCaffrey and GWI, other than the trustee arrangement.

The information on which the NVRR/YW Petition is based is outdated. As Mr. McCaffrey explains, the web pages attached to the Petition were published (as they indicate) in 2007 and have not been updated since that time. Mr. McCaffrey's Declaration lays to rest any suggestion that he has any remaining business or other ties to GWI or any entity related to GWI.

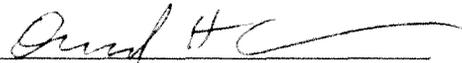
Mr. McCaffrey is thus fully qualified as an independent voting trustee under the terms of the Agreement, a copy of which was previously submitted to, and reviewed by, the Board staff pursuant to the Board's regulations at 49 CFR § 1013.3. Consistent with the Board's rules at 49 CFR § 1013.1(b) and (c), that Agreement requires that the Trustee may not serve as an officer or director of the settlor (GWI) or any company controlled by or affiliated with the settlor; or have any business arrangements or dealings, financial or otherwise, with the settlor or any company

controlled by or affiliated with the settlor; or own more than one percent of the outstanding voting securities of the settlor, provided that the investment does not allow the Trustee to control or direct the affairs of the settlor. Agreement, § 8. These requirements are met here. Thus, there is no evidence to support NVR/WW's allegation that GWI controls Mr. McCaffrey or UniRail or that Mr. McCaffrey, a veteran of the rail industry, is otherwise unqualified to serve independently as a voting trustee pending final Board action on GWI's application to control RailAmerica.

### **CONCLUSION**

For the reasons stated above, the Board should deny the unwarranted and false August 24, 2012 Petition filed jointly by NVR/WW and allow the Exemption to become effective as scheduled on September 5, 2012.

Respectfully submitted,



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Lawrence McCaffery, Voting Trustee, and  
Genesee & Wyoming Inc.*

August 27, 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35660**

**GWV VOTING TRUST AND  
R. LAWRENCE McCAFFREY, VOTING TRUSTEE**

**- CONTROL EXEMPTION -**

**RAILAMERICA, INC., *et al.***

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**DECLARATION OF R. LAWRENCE McCAFFREY**

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My name is R. Lawrence McCaffrey. I am a consultant in the railroad industry and President of UniRail LLC ("UniRail"), an entity in which I hold the sole membership interest. I have been involved in the railroad industry for the last several decades, both in an investment and consulting capacity and as a director of several railroads. In recent years, my focus has been on the development of rail infrastructure in Latin America.

I have read the August 24, 2012 Petition filed jointly by Napa Valley Railroad Company ("NVR") and Yreka Western Railroad Company ("YW") alleging that I am not qualified to serve as an independent voting trustee in connection with the Genesee & Wyoming, Inc. ("GWI") acquisition of control of RailAmerica, Inc. ("RailAmerica") on the grounds that UniRail maintains a strategic relationship with GWI. NVR/YW cite to the UniRail website, which purports to show that UniRail and GWI are joint venturers in connection with certain South American railroads.

NVRR/YW are mistaken. The UniRail website pages on which they based their Petition have not been updated for several years and in fact display a 2007 copyright. That website is no longer accurate with respect to relationships between UniRail and GWI, all of which relationships have terminated. In other words, GWI is no longer a strategic investor or partner with UniRail or me in any other capacity.

Specifically, in the late 1990's and early 2000's, GWI had invested with UniRail in two railroads, one in Chile and the other in Bolivia, partially through an entity known as Latin American Rail, LLC. In addition, in or around 2005, acting through UniRail, I consulted with GWI on a rail investment in Mexico and served as a director of GWI's then Mexican affiliate.

However, all of these relationships terminated prior to the end of 2011. GWI sold its interests in the Chilean and Bolivian railroads during the period between September 2009 and December 2010. As a result, Latin American Rail, LLC was dissolved effective November 17, 2011. See attached certificate of cancellation. Further, my directorship with respect to GWI's Mexican affiliate came to an end in August 2009, when GWI sold its Mexican affiliate, and my consulting with GWI in regard to certain insurance claims related to the Mexican affiliate ended in August 2010.

I have never had any consulting or other form of business arrangement with GWI with respect to any domestic rail operation. In addition, there are at present no railroads or other investments of any kind held jointly by GWI (or any of its affiliates) and UniRail, or jointly held by GWI and me personally or through any other entity. Nor are there any plans for such investments or other joint business dealings.

Since the end of 2011, I have had no business dealings of any kind, direct or indirect through UniRail or any other entity, with GWI or any of its affiliates or companies controlled by

it, other than the recent arrangement under which I agreed to serve as the trustee of the voting stock of the RailAmerica railroads that GWI seeks to control. I neither receive nor am I owed any financial remuneration of any kind from GWI, directly or indirectly through UniRail or any other entity. Nor am I currently involved in any way in advising GWI on its business operations. Further, I am not, and have never been (with the exception of the now-terminated Mexican rail directorship), either an officer or a director of GWI or any affiliate of GWI or any company controlled by GWI. While I do own a modest amount of GWI stock, the amount I own is far less than the one percent of the outstanding voting stock of GWI permitted under the terms of the Trust Agreement that I understand was informally reviewed by the staff of the Surface Transportation Board, and this stock ownership does not permit me to control or direct the affairs of GWI.

In addition, I have no business or other relationship with RailAmerica or any of the RailAmerica affiliate railroads.

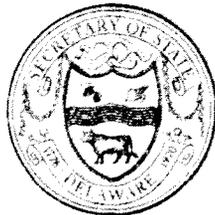
In light of the above, I am confident that I can serve independently as a voting trustee with respect to the trust agreement that is contemplated in this Board proceeding.

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CANCELLATION OF "LATIN AMERICAN RAIL, LLC", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF NOVEMBER, A.D. 2011, AT 12:03 O'CLOCK P.M.



3050649 8100

111207052

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9170681

DATE: 11-21-11

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:12 PM 11/17/2011  
FILED 12:03 PM 11/17/2011  
SRV 111207052 - 3050649 FILE

STATE OF DELAWARE  
CERTIFICATE OF CANCELLATION

- 1. The name of the limited liability company is LATIN AMERICAN  
RAIL, LLC
- 2. The Certificate of Formation of the limited liability company was filed on  
June 2, 1999

IN WITNESS WHEREOF, the undersigned has executed this Certificate of  
Cancellation this 17<sup>th</sup> day of November, A.D. 2011.

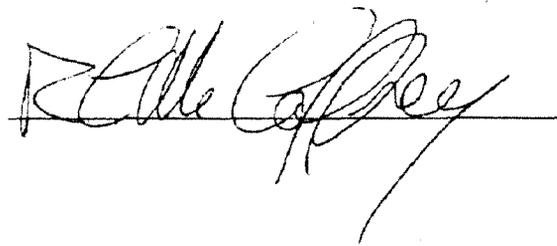
By: R. L. Mc Caffrey  
Authorized Person(s)

Name: R. L. Mc Caffrey  
Print or Type

**VERIFICATION**

I, R. Lawrence McCaffrey, in my capacity as the Voting Trustee of the GWI Voting Trust, individually and on behalf of the GWI Voting Trust, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on August 26, 2012.

A handwritten signature in black ink, appearing to read "R. Lawrence McCaffrey", is written over a solid horizontal line. The signature is cursive and somewhat stylized.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2012, I caused a copy of the foregoing to be served by e-mail and first-class mail, postage prepaid, upon all parties of record in this proceeding as follows:

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1919 M Street, NW (7th Fl.)  
(202) 263-4152  
xiccgc@gmail.com

  
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David H. Coburn

