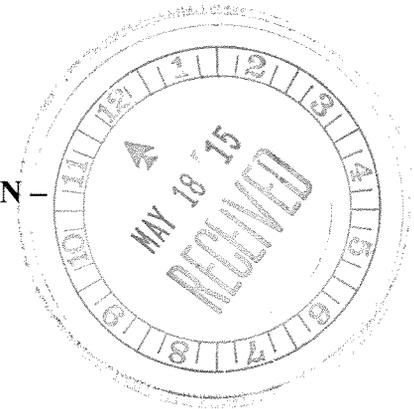


ENTERED  
Office of Proceedings  
May 18, 2015  
Part of  
Public Record

BEFORE THE  
**SURFACE TRANSPORTATION BOARD**  
STB DOCKET NO. FD 35926

**SAN JOAQUIN VALLEY RAILROAD CO.**  
**- AMENDED LEASE AND OPERATION EXEMPTION -**  
**SUNSET RAILWAY COMPANY**



**VERIFIED NOTICE OF EXEMPTION**  
**UNDER 49 U.S.C. §10902**

**REQUEST FOR WAIVER OF**  
**NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)**  
(Expedited Consideration Requested)

ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Dated: May 15, 2015

Attorneys for  
San Joaquin Valley Railroad Co.

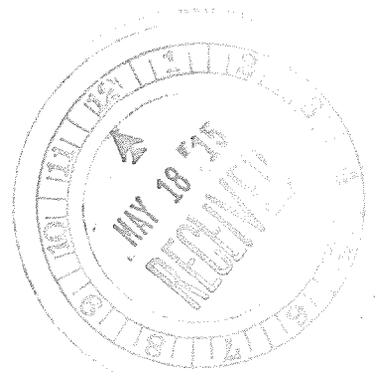
**FEE RECEIVED**  
**May 18, 2015**  
**SURFACE**  
**TRANSPORTATION BOARD**

**FILED**  
**May 18, 2015**  
**SURFACE**  
**TRANSPORTATION BOARD**

BEFORE THE  
**SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35926

**SAN JOAQUIN VALLEY RAILROAD CO.**  
**– AMENDED LEASE AND OPERATION EXEMPTION –**  
**SUNSET RAILWAY COMPANY**



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**VERIFIED NOTICE OF EXEMPTION**  
**UNDER 49 U.S.C. §10902**

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**REQUEST FOR WAIVER OF**  
**NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)**  
(Expedited Consideration Requested)

San Joaquin Valley Railroad Co. (“SJVR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, SJVR’s entry into an amended and restated lease agreement to extend the term of, and to make other changes to, its lease of the line of railroad between MP 0.05 at Gosford, California, and the end of the line at MP 19.8 at Levee, California, a distance of approximately 19.75 miles (the “Leased Premises”), as shown on the map attached as Exhibit A. The original lease (the “Original Lease”) was entered into between SJVR and Sunset Railway Company (“Sunset”)<sup>1</sup> on June 6, 1997.

**Notice**

In accordance with 49 C.F.R. §1150.43, SJVR hereby provides the following information:

(a) The full name and address of Applicant are: San Joaquin Valley Railroad Co., 3220 State Street, Suite 200, Salem, OR 97301.

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<sup>1</sup> Sunset Railway Company is owned 50% by Union Pacific Railroad Company and 50% by BNSF Railway Company.

(b) The name, address and telephone number of the representative of SJVR who should receive correspondence are: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(c) SJVR and Sunset have entered into an Amended and Restated Lease Agreement which has extended the term of the lease until December 21, 2019, which provides for the lease to automatically renew for successive five (5) year terms unless either party delivers written notice of its desire not to renew the lease not less than 180 days prior to the end of the initial or any subsequent five (5) year term, and which makes other changes to the lease.

(d) The current operator of the Leased Premises is SJVR, and SJVR will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction:

In 1997, SJVR entered into the Original Lease with Sunset under which SJVR leased the line between MP 0.5 at Gosford, and MP 36.3 at Taft, California. *San Joaquin Valley Railroad Company – Acquisition and Operation Exemption – Sunset Railway Company*, STB Finance Docket No. 33404 (served June 18, 1997) (mileposts corrected by decision served June 27, 1997). The portion of the line between the current endpoint in Levee at MP 19.8 (previously reported as MP 20.0) and MP 36.3 was abandoned by Sunset and discontinued by SJVR. See *Sunset Railway Company–Abandonment Exemption–In Kern County, CA*, STB Docket No. AB-170 (Sub-No. 1X) (served December 21, 2004); *San Joaquin Valley Railroad Company – Discontinuance Exemption – In Kern County, CA*, STB Docket No. AB-398 (Sub-No. 9X) (served December 21, 2004). SJVR and Sunset have now reached agreement on an amended and restated lease that would extend the term of the lease through December 21, 2019, with five successive five-year automatic renewals, unless terminated by either party on not less than 180

days' notice prior to the end of the initial or any renewal term, and would make other changes to the Original Lease.

- (1) The name and address of the railroad transferring the Leased Premises: Sunset Railway Company, c/o Union Pacific Railroad Company, 1400 Douglas Street, Stop 1180, Omaha, NE 68112.
  - (2) The lease extension will be effective upon the effective date of this Notice of Exemption, thirty days after filing. SJVR is currently operating the Leased Premises and will continue to do so.
  - (3) The mileposts of the Leased Premises are between MP 0.05 at Gosford, California, and the end of the line at MP 19.8 at Levee, California. The Leased Premises are located in Kern County, California.
  - (4) The total route miles to be leased and operated are approximately 19.75 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Leased Premises.
- (g) SJVR certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.
- (h) SJVR certifies that the amended and restated lease does *not* include an interchange commitment. (The Original Lease also did not include an interchange commitment.)

In addition to the information set forth above, SJVR certifies that its total annual revenues after the transaction will exceed \$5,000,000. However, since SJVR will continue to be the operator of the Leased Premises both before and after the transaction, SJVR is requesting a

waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

### **Labor Protection**

SJVR is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since SJVR is already the operator of the Leased Premises, there will be no employees adversely affected by the new lease arrangements.

### **Environmental and Historic Reports**

This is an amendment and extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for SJVR to discontinue (or Sunset to abandon) service, or for Sunset to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

### **Caption Summary**

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44.

### **Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)**

SJVR is a Class III carrier with annual revenues in excess of \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), SJVR would be required to give sixty days' notice to employees working on the Leased Premises (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Belt Line Division of*

*Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA*, STB Finance Docket No. 33666 (served October 30, 1998) at 2. *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions (“Advanced Notice of proposed Transactions”)*, 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance SJVR should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Leased Premises. SJVR already leases the line and has been the sole common carrier operator of the Leased Premises since 1997. The parties are merely extending the term of the lease and making other changes, and SJVR will continue to be the sole common carrier operator of the Leased Premises. No employees of the transferring carrier, Sunset (or its railroad owners), have worked on the line since before 1997, and there are no employees of Sunset (or its railroad owners) who will be affected or have to make any career choices as a result of the sale. Posting notices on the Leased Premises would not provide notice to any Sunset employees since none work on the Leased Premises. Further, there will be no operational changes arising from the extension of the lease or the other changes to the terms of the lease and no employees of SJVR will be affected. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting SJVR a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend a lease it was previously leasing and will remain as the common carrier operator on the line. *Southwestern Railroad, Inc. – Lease and*

*Operations Exemption – BNSF Railway Company, STB Docket No. FD 35855 (served October 15, 2014); Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company - Lease Exemption Containing Interchange Commitment - Norfolk Southern Railway Company, STB Docket No. FD 35841 (served July 11, 2014); New Orleans & Gulf Coast Railway Company, Inc. - Lease Exemption Containing Interchange Commitment - Union Pacific Railroad Company, STB Docket No. FD 35777 (served December 12, 2013); Puget Sound & Pacific Railroad Company - Lease Exemption - The United States of America, STB Docket No. FD 35714 (served February 22, 2013).*

SJVR is providing notice of this request for waiver by serving a copy of this Verified Notice of Exemption on the national offices of the unions representing SJVR employees who work on the Leased Premises. *See* certificate of service attached hereto.

SJVR asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice can become effective as scheduled 30 days after it is filed.

### **Conclusion**

Accordingly, SJVR requests that the Board issue an exemption notice, and grant the waiver in time to be effective at the same time as the exemption notice.

Respectfully submitted,



ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500

Attorneys for  
San Joaquin Valley Railroad Co.

Dated: May 15, 2015

**VERIFICATION**

I hereby verify on behalf of San Joaquin Valley Railroad Co., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 15, 2015.

  
\_\_\_\_\_  
Joel Haka, President

**EXHIBIT A**

**MAP**

EXHIBIT A

LEASED PREMISES PRINT

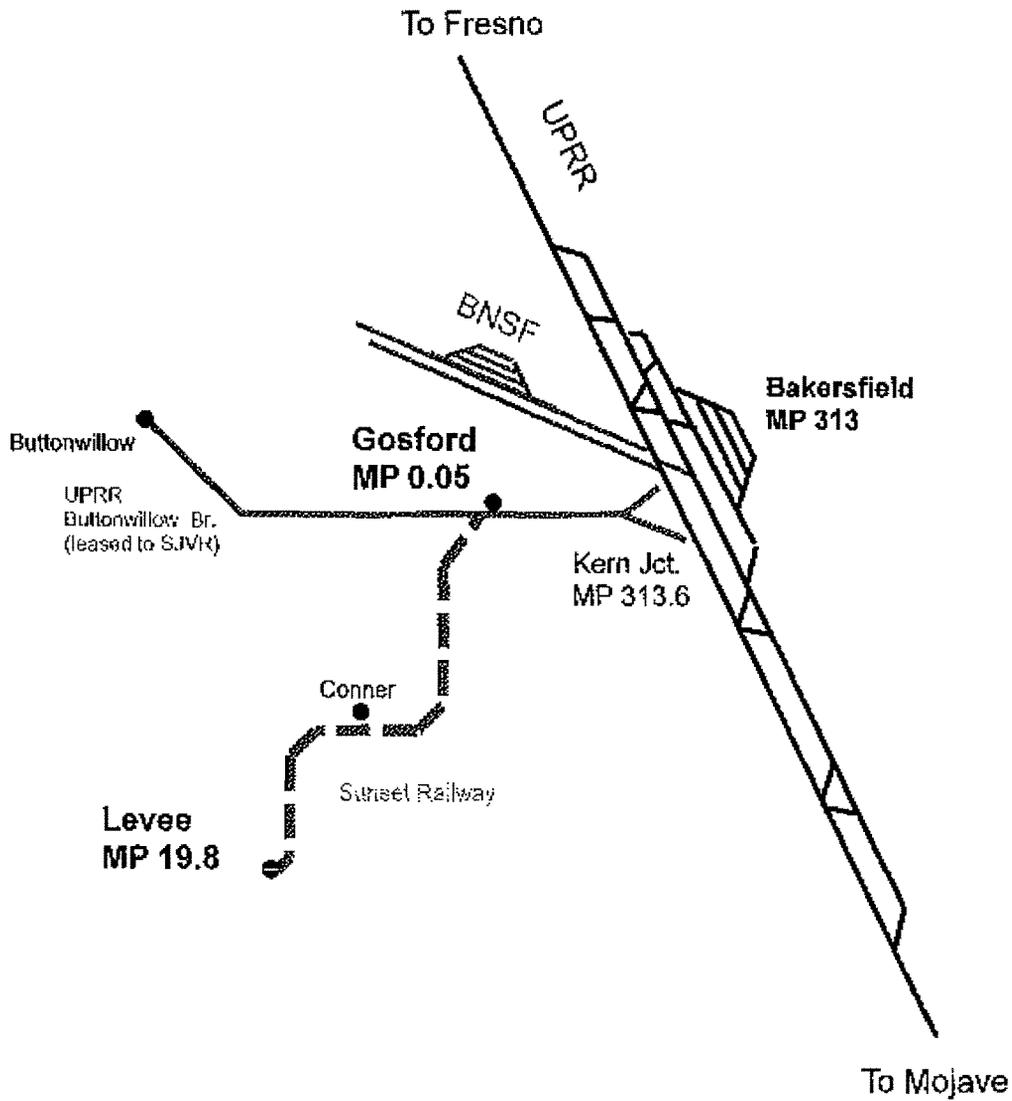


Exhibit A to the Amended and Restated Lease Agreement  
By and Between  
Sunset Railway Company and San Joaquin Valley Railroad Co.  
Leased Premises -   
December 22, 2014

**EXHIBIT B**  
**CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35926

**SAN JOAQUIN VALLEY RAILROAD CO.  
– AMENDED LEASE AND OPERATION EXEMPTION –  
SUNSET RAILWAY COMPANY**

San Joaquin Valley Railroad Co. (“SJVR”) has filed a Notice of Exemption to exempt its entry into an amended and restated lease agreement to extend the term of, and to make other changes to, its lease of the line between MP 0.05 at Gosford, California, and the end of the line at MP 19.8 at Levee, California, a distance of approximately 19.75 miles (the “Leased Premises”). The Leased Premises is located in Kern County, California. SJVR is the current operator of the Leased Premises.

Comments must be filed with the Board and served on SJVR’s representative, Eric M. Hocky, Esquire, Clark Hill. PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

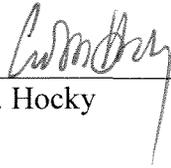
The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following representatives of labor by U.S. first class mail, postage pre-paid:

The International Association of Machinists  
and Aerospace Workers  
9000 Machinists Place  
Upper Marlboro, Maryland 20772-2687

United Transportation Union/  
International Association of Sheet Metal, Air, Rail and  
Transportation Workers ("SMART") – Transportation Division  
24950 Country Club Blvd., Ste. 340  
North Olmsted, OH 44070-5333

  
\_\_\_\_\_  
Eric M. Hocky

Dated: May 15, 2015