

232633

ORIGINAL

August 1, 2012

JOHN D. HEFFNER
Direct Fax 202-742-8697
Direct Phone 202-742-8607
Email: john.heffner@strasburger.com

RECEIVED
MANAGEMENT
3/3

VIA COURIER

Ms. Cynthia A. Brown
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

AUG 01 2012

Part of
Public Record

**RE: FD 35632, Iowa Pacific Holdings, LLC, And Permian Basin Railways –
Continuance In Control Exemption – Santa Cruz and Monterey Bay
Railway Company**

**FD 35633, Santa Cruz and Monterey Bay Railway Company –
Assignment of Lease Exemption – Union Pacific Railroad Company and
Sierra Northern Railway**

Dear Ms. Brown:

On behalf of Iowa Pacific Holdings, Permian Basin Railways, and the Santa Cruz and Monterey Bay Railway Company, I am submitting the following documents:

(1) in FD 35632 an original and ten copies of a verified notice of exemption under 49 CFR §1180.2(d)(7) for Iowa Pacific Holdings, LLC, And Permian Basin Railways to continue in control of the Santa Cruz and Monterey Bay Railway Company; and

(2) in FD 35633 an original and ten copies of a verified notice of exemption under 49 CFR §1150.31 for the assignment of the lease of a railroad line to the Santa Cruz and Monterey Bay Railway Company.

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FILED

AUG 01 2012

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**SURFACE
TRANSPORTATION BOARD**

**SURFACE
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Strasburger & Price, LLP

1700 K Street, N.W., Suite 640 | Washington, D.C. 20006.3817 | 202.742.8600 tel | 202.742.8699 fax | www.strasburger.com

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4146320.2/SP/24984/0101/080112

Ms. Cynthia A. Brown

August 1, 2012

Page 2

I am enclosing a CD containing these documents in an electronic form as well as a check payable to the Board for \$3100 to cover the applicable filing fees. Please date stamp and return to me one copy of each.

Sincerely yours,



John D. Heffner

Enclosures

cc: Mr. Ed Ellis
Eric Hocky, Esq.
Mack H. Shumate, Esq.

232633
ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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STB

FD 35633

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ASSIGNMENT OF LEASE EXEMPTION—
UNION PACIFIC RAILROAD COMPANY
AND SIERRA NORTHERN RAILWAY**

ENTERED
Office of Proceedings
AUG 01 2012
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Public Record

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

FILED

AUG 01 2012

Submitted By:

**SURFACE
TRANSPORTATION BOARD**

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

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AUG 01 2012
**SURFACE
TRANSPORTATION BOARD**

Dated: August 1, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35633

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ASSIGNMENT OF LEASE EXEMPTION—
UNION PACIFIC RAILROAD COMPANY
AND SIERRA NORTHERN RAILWAY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Santa Cruz and Monterey Bay Railway Company (“SCMB”), files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) seeking authorization for the acquisition by assignment from the Sierra Northern Railway (“Sierra”) of its lease and operating rights to a rail line currently owned by the Union Pacific Railroad Company (“UP”). The line known as the Santa Cruz Branch (identified here as “the Line”) extends between milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, CA, to milepost 31.39 at the end of the line near Davenport, CA. It includes the interconnection with the Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 at Santa Cruz, CA,

and various associated siding and spur tracks. The total length of the Line is approximately 31.0 miles long and there are an additional 3.6 miles of sidings and spurs.

INFORMATION REQUIRED BY 49 CFR §1150.31

Name and Address of Applicant **49 CFR §1150.33(a)**
Santa Cruz and Monterey Bay Railway Company
c/o Iowa Pacific Holdings, LLC
118 South Clinton Street,
Suite 400
Chicago, IL 60661

Applicant's Representative **49 CFR §1150.33(b)**
John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Statement of Agreement **49 CFR §1150.33(c)**

SCMB has obtained an Assignment Agreement covering the lease between UP and Sierra. It anticipates that this will be executed on or about the time this exemption notice is filed with the Board. An unsigned copy is attached to this notice as Exhibit D.

Operator of the Property **49 CFR §1150.33(d)**

As noted above, SCMB will provide all common carrier rail operations over the Line replacing the service previously provided by Sierra.

SCMB is a noncarrier and newly formed subsidiary of short line holding companies Iowa Pacific Holdings, LLC, and Permian Basin Railway,¹ established by them for the purpose of restoring common carrier freight service over the Line. UP had originally selected Sierra to lease and operate the Line with the expectation that a local agency named the Santa Cruz County Regional Transportation Commission (“SCCRTC”) would purchase the physical assets of the railroad with Sierra to serve as SCCRTC’s operator. Towards that end, Sierra filed a class exemption notice with the Board in 2009 to lease and operate the Line pursuant to a one year agreement with UP.²

Meanwhile, in April 2011 the SCCRTC petitioned the Board for a ruling that its proposed acquisition of the physical assets constituting the rail line would not constitute a transaction subject to Board approval jurisdiction under precedents such as *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 I.C.C. 835 (1991). Roughly at the same time, Sierra filed another class exemption notice involving the Line. Through this

¹ “IPH” and “PBR” respectively.

² *Sierra Northern Railway—Lease and Operation Exemption—Union Pacific Railroad Company*, FD 35331, STB served Dec. 17, 2009. Although the lease term is over, it continues on a month-to-month basis according to its terms.

notice it sought to acquire from UP the perpetual and exclusive railroad operating easement that UP had reserved for itself from the sale of the Line to SCCRTC.³ After some initial difficulties, the Board eventually granted SCCRTC's petition paving the way for that transaction to proceed.⁴ However, by that time Sierra had lost interest in the acquisition and wanted to be relieved of its lease and operation obligation for the Line.⁵ In addition, the SCCRTC had never consummated the acquisition of the physical railroad assets.

Accordingly, the SCCRTC published a notice soliciting new operation proposals and chose the bid submitted by SCMB's corporate parent, IPH/PBR. In view of these recent developments, SCCRTC filed a new Petition for Declaratory Order on July 24, 2012.⁶ That new Petition seeks a ruling that a substantially similar transaction whereby SCCRTC would acquire UP's physical railroad assets,

³ The Board published the notice accepting Sierra's easement acquisition filing in *Sierra Northern Railway—Acquisition and Operation Exemption—Union Pacific Railroad Company*, FD 35490, STB served April 21, 2011.

⁴ *Santa Cruz Regional Transportation Commission Petition for Declaratory Order*, FD 35491, STB served Dec. 15, 2011.

⁵ Sierra never consummated its easement acquisition. On Dec. 22, 2011, Sierra notified the Board that it wanted to withdraw its acquisition exemption notice. The board granted that request in a decision served on Feb. 16, 2012, in FD 35490.

⁶ Docketed as FD 35653, *Santa Cruz Regional Transportation Commission – Petition for Declaratory Order*

but not UP's operating easement or common carrier obligation, would not constitute a transaction subject to Board approval jurisdiction under the *State of Maine* precedents. The new Petition indicates that SCMB will be the operating carrier in lieu of Sierra.

Inasmuch as Sierra desires to discontinue its service under the UP lease transaction as soon as possible and UP desires for another short line to "step into Sierra's shoes" during the Board's consideration of SCCRTC's new Petition and eventual consummation of that acquisition, SCMB is filing this class exemption notice for the assignment of the existing lease between UP and Sierra. Acceptance of this notice will ensure continuation of service on an interim basis. SCMB is attaching as Exhibit D an unexecuted copy of the Assignment Agreement between Sierra and SCMB. SCMB anticipates filing another class exemption notice in the very near future covering its acquisition of and operation over the permanent and exclusive railroad operating easement that UP is reserving from that new SCCRTC acquisition transaction.

SCMB notes that the Board has previously authorized assignment of lease and operation exemption transactions using the provisions of 49 CFR §1150.31. *See, Boise Valley Railroad, Inc., —Assignment of Lease Exemption— Union*

Pacific Railroad Company and Idaho Northern and Pacific Railroad Company,
FD 35259, STB served October 2, 2009.

Other information required

(1) The name and address of the party transferring the subject property:

No physical property will be transferred as a result of this filing; rather it entails the assignment of a lease and operations under that lease from the current lessee to a new lessee/assignee

The name and address of the assignor is:

Sierra Northern Railway
341 Industrial Way, Woodland, CA 95776

The name and address of Union Pacific is:

Union Pacific Railroad
1400 Douglas Street
Mailstop 1350
Omaha, NE 68179

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

SCRM intends to consummate this transaction at least 30 days from the effective date of this notice, probably on or about September __, 2012.

The mileposts of the subject property, including any branch lines:

The line extends between milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, CA, to milepost 31.39 at the end of the line near

Davenport, CA. It includes the interconnection with the Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 at Santa Cruz, CA, and various associated siding and spur tracks.

The total route miles to be operated:

About 31.0 miles and 3.6 miles of sidings and spurs.

Map **49 CFR §1150.33(f)**

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification **49 §CFR 1150.33(g)**

SCMB certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR §1150.33(h)**

Not applicable. There are no agreements applicable to the Line containing any provision that may limit future interchange with a third-party carrier.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10901.

Caption Summary **49 CFR §1150.34**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Related transactions

Concurrently with this filing, SCMB's corporate parents, IPH and PBR, are submitting a verified Notice of Exemption for their continuance-in-control of SCMB. That notice has been assigned docket number FD 35632. Additionally, in FD 35653, SCCRTC has petitioned the Board for a new declaratory order that its acquisition of the physical railroad assets constituting the Line does not constitute a transaction subject to Board approval jurisdiction. SCMB anticipates filing an additional verified Notice of Exemption in the very near future covering its acquisition of the permanent and exclusive rail operating easement and common carrier obligation that UP has reserved from its sale of the Line to the SCCRTC.

Environmental and Historic Preservation Data **49 CFR §1105**

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt

if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:

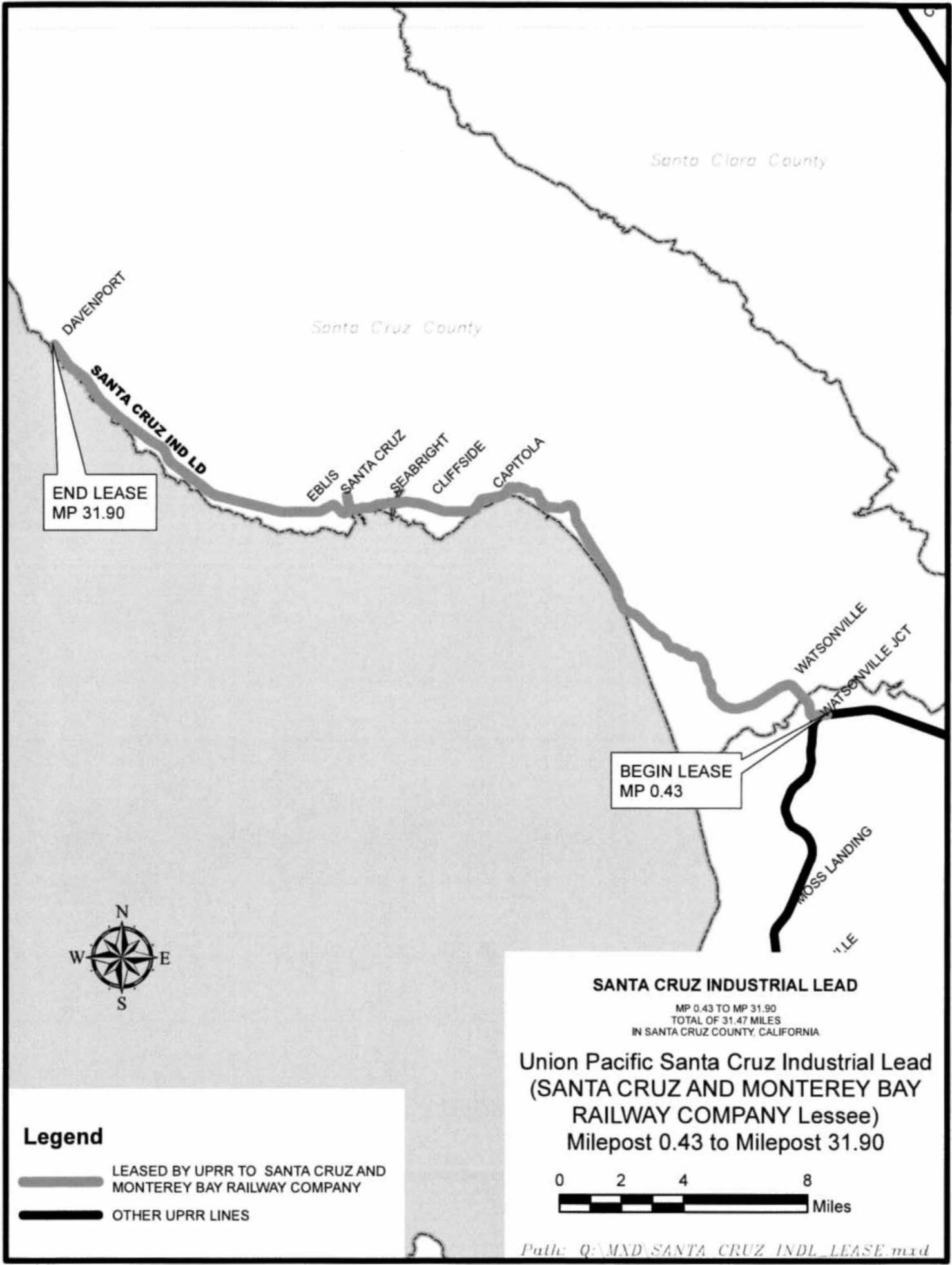


John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: August 1, 2012

EXHIBIT A



END LEASE
MP 31.90

BEGIN LEASE
MP 0.43



Legend

-  LEASED BY UPRR TO SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
-  OTHER UPRR LINES

SANTA CRUZ INDUSTRIAL LEAD

MP 0.43 TO MP 31.90
TOTAL OF 31.47 MILES
IN SANTA CRUZ COUNTY, CALIFORNIA

Union Pacific Santa Cruz Industrial Lead
(SANTA CRUZ AND MONTEREY BAY
RAILWAY COMPANY Lessee)
Milepost 0.43 to Milepost 31.90



Exhibit B

Certification

I, Kevin W. Busath, certify that I am vice president – strategic planning of Santa Cruz and Monterey Bay Railway Co. and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: August 1, 2012

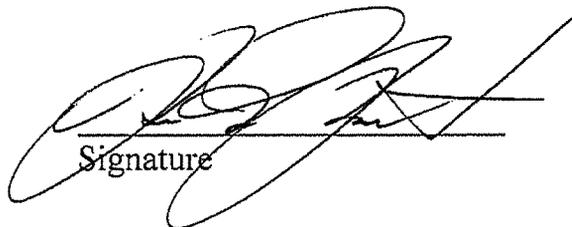

Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35633

**SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY
—ASSIGNMENT OF LEASE EXEMPTION—
UNION PACIFIC RAILROAD COMPANY
AND SIERRA NORTHERN RAILWAY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

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and various associated siding and spur tracks. The total length of the Line is approximately 31.0 miles long and there are an additional 3.6 miles of sidings and spurs.

SCMB 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.

Concurrently with this filing, SCMB's corporate parents, Iowa Pacific Holdings, LLC ("IPH"), and Permian Basin Railways ("PBR"), are submitting a verified Notice of Exemption for continuance-in-control of SCMB by IPH and PBR. That notice has been assigned docket number FD 35632. Additionally, in FD 35653, the Santa Cruz County Regional Transportation Commission ("SCCRTC"), a public agency, has petitioned the Board for a new declaratory order that its acquisition of the physical railroad assets constituting the same Line will not constitute a transaction subject to Board approval jurisdiction. SCMB anticipates filing another class exemption notice in the very near future covering its acquisition of and operation over the permanent and exclusive railroad operating easement that UP is reserving from the SCCRTC acquisition transaction.

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 August __, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35633, 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 John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607, counsel for SCMB.

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

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT D

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT is made and entered into as of this ___ day of July, 2012, by and between SIERRA NORTHERN RAILWAY, a California corporation (hereinafter the "Assignor") and SANTA CRUZ AND MONTEREY BAY RAILWAY Company, a California corporation (hereinafter the "Assignee").

RECITALS

Whereas, Assignee desires to acquire from Assignor and Assignor desires to grant to Assignee by assignment, Assignors leasehold rights and obligations under the lease agreement defined herein as the Lease and operating rights in the line of railroad covered by said Lease and defined herein as the Line: and

Whereas, this Assignment Agreement is the contractual arrangement which forms the substantive basis upon which Assignee bases its Verified Notice of Exemption in STB Docket no. FD 35633; and

Whereas, this Assignment Agreement is necessary for the closing of the transactions for which STB authority is sought in the Petition for Declaratory Order filed by the Santa Cruz Regional Transportation Commission in STB Docket No. FD 35653.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which being hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

Assignor and Assignee understand and agree that this Assignment is conditional and does not become effective until the Surface Transportation Board ("STB") issues a decision providing all necessary common carrier by railroad operating authority required for the Assignee to operate and for Assignor to cease operations of the line of railroad (the "Line") that runs from Milepost .433 near Watsonville, California to Milepost 31.90 near Davenport, California (the "STB Approval").

Assignor represents that the Lease Agreement and the amendments thereto as shown on **Exhibit 1**, collectively, (the "Lease") is the agreement between Union Pacific Railroad Company ("Union Pacific"), as Lessor, and Assignor, as Lessee, that cover Assignor's operation as a common carrier by railroad on the Line. Assignor's operation as a common carrier by railroad on the Line became effective as detailed in STB Docket No. FD 35331, on December 31, 2009.

Assignor hereby assigns all of Assignor's rights and obligations under the Lease to Assignee and Assignee hereby accepts all of Assignor's rights and obligations under the Lease upon issuance of the STB Approval.

It is further understood and agreed that, (1) Assignee shall not be responsible for any obligations of Assignor under the Lease that are attributable to the acts or omissions of Assignor prior to the effective date of this Assignment and (2) Assignor shall not be responsible for any obligations of Assignee under the Lease that are attributable to the acts or omissions of Assignee after the effective date of this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be duly executed on their behalf, as of the date first herein written.

Attest: SIERRA NORTHERN RAILWAY,
A California Corporation,

_____ By _____
Title: _____

Attest: SANTA CRUZ AND MONTEREY BAY RAILWAY,
A California Corporation,

_____ By _____
Title: _____

CONSENT TO ASSIGNMENT AGREEMENT

In accordance with Section 23.04 of the Lease, Union Pacific Railroad Company as Lessor under the Lease hereby approves and consents to this assignment by Assignor of Assignor's rights and obligations as Lessee under the Lease to the Assignee and Assignee's acceptance of the rights and obligations of Assignor as Lessee under the Lease in accordance with and subject to the terms and conditions of this Assignment Agreement.

Attest: UNION PACIFIC RAILROAD COMPANY,
A Delaware Corporation,

_____ By _____
Title: _____

EXHIBIT 1

ASSIGNMENT & ASSUMPTION AGREEMENT LIST

Agreements between Union Pacific Railroad Company and Sierra Northern Railway or their respective predecessors in interest, assigned to Santa Cruz and Monterey Bay Railway.

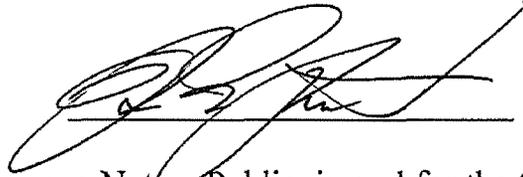
AUDIT # FOLDER # SUBJECT

1.	253675	259762	Lease Agreement with Sierra Northern Railway dated 12/18/2009 covering MP .433 to MP 31.90.
2.	253675	259762	First Amendment, dated 12/17/2010, to Lease Agreement with Sierra Northern Railway covering MP .433 to MP 31.90.
3.	253675	259762	Second Amendment, dated 04/01/2011, to Lease Agreement with Sierra Northern Railway covering MP .433 to MP 31.90.

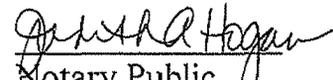
VERIFICATION

STATE OF ILLINOIS)
)
CITY OF CHICAGO) SS

Kevin W. Busath, being duly sworn according to law, hereby deposes and states that he holds the position of vice president – strategic planning with applicant/petitioner (respondent), is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois, this 1st day of August, 2012.


Notary Public

My commission expires: Jan 13 2013

