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April 21, 2009

By e-filing

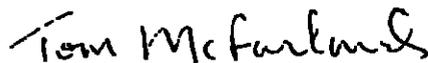
Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 1149  
Washington, DC 20024

Re Docket No AB-1022 (Sub-No 1X), *Arizona & California Railroad Company --  
Abandonment Exemption -- in San Bernardino and Riverside Counties, CA*

Dear Ms Quinlan

Hereby transmitted is a Reply In Opposition To Petition For Exemption for filing with the Board in the above referenced matter

Very truly yours,



Thomas F. McFarland  
*Attorney for Committee for Preservation  
of the Rice-Blythe-Ripley Rail Line*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ARIZONA & CALIFORNIA RAILROAD )  
COMPANY -- ABANDONMENT ) DOCKET NO AB-1022  
EXEMPTION -- IN SAN BERNARDINO ) (SUB-NO 1X)  
AND RIVERSIDE COUNTIES, CA )

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REPLY IN OPPOSITION TO  
PETITION FOR EXEMPTION

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COMMITTEE FOR PRESERVATION OF  
THE RICE-BLYTHE-RIPLEY RAIL LINE \*  
c/o THE CITY OF BLYTHE, CALIFORNIA  
235 North Broadway  
Blythe, CA 92225

Protestants

THOMAS F McFARLAND  
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Attorney for Protestants

DATE FILED April 21, 2009

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\* Members of the Committee are identified on the initial pages of this Reply in Opposition

**MEMBERS OF THE COMMITTEE FOR  
PRESERVATION OF THE RICE-BLYTHE-RIPLEY RAIL LINE**

- 1     **ARIZONA GRAIN, INC**  
601 East Main Avenue  
Casa Grande, AZ 85222

Arizona Grain, Inc shipped wheat from the rail line prior to the embargo

- 2     **CITY OF BLYTHE, CALIFORNIA**  
235 North Broadway  
Blythe, CA 92225

Blythe is a commercial center which is the largest municipality on the rail line

- 3     **COLLECTIVE ASSET PARTNERS, LLC**  
2500 West Loop South, Suite 150  
Houston, TX 77027

*Collective Asset Partners is in the process of obtaining permits for development of a calcium carbonate mine near the rail line north of Blythe, CA. This company has expressed an intent to ship as much as 10,000 carloads of calcium carbonate per year over the rail line*

- 4     **COMPTON AG SERVICES, LLC**  
19751 South Defrain Boulevard  
Blythe, CA 92225

Compton Ag received rail shipments of dry and liquid fertilizer and anhydrous ammonia prior to the embargo

- 5     **DESERT SECURITY FARMS**  
19250 South Defrain Boulevard  
Blythe, CA 92225

This company is a former rail shipper on the line

- 6     **FISHER FARMS**  
10610 Ice Plant Road  
Blythe, CA 92225

Fisher Farms has expressed interest in shipping produce and hay by rail over the subject line

- 7 HAYDAY FARMS  
1550 South Commercial  
Blythe, CA 92225

This company is a potential rail shipper of approximately 150 carloads per year of hay and alfalfa

- 8 HELENA CHEMICAL COMPANY  
10821 West 15<sup>th</sup> Avenue  
Blythe, CA 92225

Helena Chemical received fertilizer on the rail line prior to the embargo

- 9 INDUSTRIAL SOLUTION SERVICE, INC  
P O Box 1921  
Upland, CA 91786

Industrial Solution recently purchased a facility near Blythe at which it will receive fertilizer and terra nitrogen by rail

- 10 NOBLE MINE COMPANY  
c/o SUN SERVICES, INC  
6951 Sixth Avenue  
Blythe, CA 92225

Within 3 to 6 months, this company will open a permitted limestone mine north of Blythe, CA. The company plans to ship 100,000 tons (more than 1,000 carloads) per year of high-grade limestone to the Ports of Los Angeles and/or San Diego by rail. One of the main attractions for this company's selection of the location of this mine was its proximity to the rail line

- 11 PALO VERDE VALLEY COMMUNITY IMPROVEMENT FUND  
P O Box 211  
Blythe, CA 92226

This organization oversees funds provided by the Metropolitan Water District to the City of Blythe

- 12 **STANDARD MINE COMPANY**  
18034 Ventura Boulevard, #513  
Encino, CA 91316

This company owns 611 acres of patented and permitted land known as the Standard Mine in Riverside County approximately 22 miles northwest of Blythe, CA. It has 171 million tons of proven reserves of gypsum. Within the next 12 to 24 months, this company expects to ship approximately 4,000 carloads of gypsum per year over the rail line.

13. **WESTERN AREA POWER ADMINISTRATION**  
Blythe Energy  
Desert Southwest Region  
301 Hobsonway  
Blythe, CA 92225

This power plant has a two-car spur on which it receives large generators that can only be practically transported by rail.

- 14 **WILBUR ELLIS COMPANY**  
49945 Parton Highway  
Ehrenberg, AZ 85334

This company received shipments of fertilizer by rail prior to the embargo.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

ARIZONA & CALIFORNIA RAILROAD	)	
COMPANY -- ABANDONMENT	)	DOCKET NO AB-1022
EXEMPTION -- IN SAN BERNARDINO	)	(SUB-NO 1X)
AND RIVERSIDE COUNTIES, CA	)	

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**REPLY IN OPPOSITION TO  
PETITION FOR EXEMPTION**

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Pursuant to the Board's procedural decision in this proceeding served April 1, 2009, the COMMITTEE FOR PRESERVATION OF THE RICE-BLYTHE-RIPLEY RAIL LINE ("the Committee"), whose members are identified on the previous pages, hereby replies in opposition to a Petition for Exemption of abandonment of that rail line filed by ARIZONA & CALIFORNIA RAILROAD COMPANY (ARZC) on March 12, 2009 (Petition)

**STATUTORY STANDARDS AND BOARD REGULATIONS THAT  
GOVERN DISPOSITION OF PETITIONS FOR EXEMPTION OF  
ABANDONMENT**

It is provided in 49 U S C § 10502(a) that a prerequisite to a grant of an exemption from any statutory requirement in the Interstate Commerce Act, as amended, are two findings, i e

- (1) that the application in whole or in part of the statutory requirement is not necessary to carry out the transportation policy of 49 U S C § 10101,  
and
- (2) that either
  - (a) the transaction or service to be exempted is of limited scope,  
or
  - (b) the application in whole or in part of the statutory requirement is not needed to protect shippers from the abuse of market power

The "statutory requirement" with respect to a rail abandonment is that provided in 49 U S C §§ 10903(a) and (d) that in response to the filing of an abandonment application, the Board find that the proposed abandonment is required or permitted by the present or future public convenience and necessity

The rail transportation policy that is most directly placed at issue by a proposed rail abandonment is 49 U S C § 10101(4), i e , "to ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense "

There are procedural requirements for petitions for exemption of abandonment at 49 C F R § 1152.60, but there are no Board regulations that amplify the statutory standard

The determinative issue can be stated as follows does the petition for exemption show so clearly that abandonment is permitted by public convenience and necessity that an abandonment application is not required to be filed, or is the public convenience and necessity of the proposed abandonment sufficiently doubtful that the rail policy in favor of continuation of a sound rail transportation system dictates that abandonment not be authorized without the closer scrutiny provided by consideration of an abandonment application?

#### **MORE SPECIFIC STANDARDS DISCERNABLE FROM BOARD CASE LAW**

In a long line of decisions over at least the past 20 years, the Board (and its predecessor, the Interstate Commerce Commission) has denied petitions for exemption of abandonment where shippers contested the proposed abandonment, and where the revenues from their traffic were not clearly marginal compared to the cost of operating the rail line proposed for abandonment. A number of those decisions are cited here, with the most recent being listed first

- (1) *Lake Street Railway Co -- Aband. Exempt -- Rail Line in Otsego County, MI*, 2007 STB LEXIS 403 at \*12-13 (STB Docket No AB-534 [Sub-No 3X], decision served July 16, 2007),
- (2) *CSX Transp., Inc -- Aband Exempt -- (betw. Memphis and Cordova) in Shelby County, TN*, 2001 STB LEXIS 943 at \*7, STB Docket No AB-55 (Sub-No 590X), decision served Dec 12, 2001,
- (3) *The Burlington N & S F Ry Co -- Aband of Chicago Area Trackage in Cook County, IL*, 1999 STB LEXIS 553 at \*11-12, STB Docket No AB-6 (Sub-No 382X), decision served Sept 21, 1999;
- (4) *Gauley River Railroad, LLC -- Aband & Discon of Serv -- in Webster and Nicholas Counties, WV*, 1999 STB LEXIS 345 at \*14, STB Docket No AB-559 (Sub-No. 1X), decision served June 16, 1999,
- (5) *Buffalo & Pittsburgh RR, Inc -- Aband. Exempt -- in Erie and Cattaraugus Counties, NY*, 1998 STB LEXIS 247 at \*13-18, STB Docket No AB-369 (Sub-No 3X), decision served Sept 18, 1998,
- (6) *Central RR Co of Ind -- Aband Exempt -- in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN*, 1998 STB LEXIS 121 at \*26-27, STB Docket No AB-459 (Sub-No. 2X), decision served May 4, 1998,
- (7) *San Joaquin Valley R Co -- Aband Exempt. -- in Kings and Fresno Counties, CA*, 1997 STB LEXIS 114 at \*8-9, STB Docket No AB-398 (Sub-No 4X), decision served May 23, 1997, *pet to reopen den* , 1999 STB LEXIS 76, decision served March 5, 1999,
- (8) *Tulare Valley R Co -- Aband & Discon Exempt -- in Tulare and Kern Counties, CA*, 1997 STB LEXIS 37 at \*18-19, STB Docket No AB-397 (Sub-No 5X), decision served Feb 21, 1997, *pet for recons den* , 1998 STB LEXIS 76, decision served March 6, 1998,
- (9) *Boston & Maine Corp -- Aband Exempt -- in Hartford and New Haven Counties, CT*, 1996 STB LEXIS 361 at \*12-13, STB Docket No AB-32 (Sub-No 75X), decision served Dec 31, 1996,
- (10) *CSX Transp., Inc -- Aband Exempt -- in Grant, Delaware, Henry, Randolph and Wayne Counties, IN*, 1989 ICC LEXIS 297 at \*12-16, Docket No AB-55 (Sub-No 282X), decision served Oct 16, 1989

It is provided in 49 C.F.R. § 1121.3(a) that a party filing a petition for exemption is required to provide its entire case-in-chief, along with all supporting evidence, workpapers and related documents, at the time that it files its petition. Consequently, any rebuttal evidence or argument filed by a petitioner will be stricken. *Paducah & L. Ry., Inc -- Aband Exempt -- in McCracken County, KY, supra*, 2003 STB LEXIS 344 at \*2, *Central Kansas Ry, LLC -- Aband Exempt -- in Sedgwick County, KS*, 2001 STB LEXIS 356 at \*3, STB Docket No. AB-406 (Sub-No. 14X), decision served April 10, 2001. If a petition for exemption contains an inadequate record, the deficiencies cannot be corrected by means of rebuttal, the rail carrier instead must file a formal abandonment application if it continues to seek abandonment of the rail line. *Central RR Co of Ind -- Aband Exempt -- in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN, supra*, 1998 STB LEXIS 121 at '27.

**APPLICATION OF THE GOVERNING STANDARDS DICTATES DENIAL OF THE PETITION FOR EXEMPTION**

When the governing standards are applied to ARZC's Petition for Exemption, denial of the Petition is dictated. Both legal standards compel denial of the Petition, viz:

- (1) Abandonment is strenuously opposed by all shippers on the line and by other local interests through the Committee. Making application of this standard all the more compelling is the fact that ARZC acknowledges having been put on timely notice that those shippers and local interests would strongly oppose the proposed abandonment, and
- (2) The revenues from the shippers' traffic are not clearly marginal compared to the cost of operating the rail line. ARZC acknowledges a substantial forecast year

profit from operating the rail line ARZC claims that such profit is insufficient compared to opportunity costs and track rehabilitation costs, but the operating costs, opportunity costs, and track rehabilitation costs posited by ARZC are wholly unsupported and/or riddled with errors and omissions

In the present case, an additional critical factor that strongly militates against processing this proposed abandonment by means of exemption procedure is that there is substantial evidence that ARZC systematically downgraded the rail line in order to perfect a case for abandonment. Formal abandonment procedure is essential for adequate development of that issue, including discovery, review of workpapers, inspection of the rail line by hi-rail vehicle (the opportunity for which has been refused by ARZC), and oral hearing with cross-examination, all of which are not available under accelerated exemption procedure. Use of those procedural safeguards (that are available only in conjunction with formal application procedure) is required to enable the Committee to demonstrate that the historical decline in rail traffic was caused solely by inadequate ARZC rail service, rather than curtailment of rail service having been in response to declining rail traffic, as claimed by ARZC

The Committee explains its reasoning regarding application of those standards in the following pages

1. **ARZC Acknowledges Having Been Put On-Notice That Shippers And Other Local Interests Would Strongly Oppose The Proposed Abandonment**

On November 24, 2008, the City of Blythe, California sent an Environmental Comment to the Chief of the Board's Section of Environmental Analysis in regard to a Draft Environmental and Historic Report in this proceeding that had been prepared and served by ARZC. A copy of

the City's Comment was served on the attorney for ARZC. A copy of that Comment appears as Exhibit 5 of the Combined Environmental and Historic Report at pages 66-72 of Volume I of ARZC's Petition for Exemption.

The following statement appears on page 1 of the City's Environmental Comment (Petition for Exemption, Vol. I at 66)

The City is a member of an ad hoc group of shippers and other local interest(s) known as the Committee for Preservation of the Rice-Blythe-Ripley Rail Line (the Committee) that intends to oppose ARZC's abandonment application on the merits . . .

Having received a copy of the Environmental Comment in which that statement was made, and having included a copy of that Environmental Comment in its Petition for Exemption of abandonment, ARZC is not in a position to credibly deny that it was put on timely notice that shippers and other local interests would actively oppose the proposed abandonment on the merits. The first legal standard explained above thus supports use of formal application procedure rather than exemption procedure.

As the Board said in *Central Railroad Co. of Indiana -- Aband Exempt -- in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN, supra*, 1998 STB LEXIS 121 at \*27

. . . Considering the pendency of the complaint proceeding and the pre-embargo use of the line by numerous shippers, CIND should have known that its abandonment proposal would be strenuously opposed, and it should have filed a formal application under section 10903. If CIND intends to pursue abandonment of its Shelbyville Line, it should file such an application and address the issues raised herein (citations omitted).

**2. Exemption Procedure Is Inappropriate Because Detailed Analysis Of Operating Results, Opportunity Costs, And Track Rehabilitation Costs Is Required To Determine Whether Public Convenience And Necessity Permits Abandonment**

Exemption procedure is inappropriate when analysis of detailed revenue and cost analysis is required, and it is not clear that the revenue from shipper traffic is minimal compared to the cost of operating the line. As the Board said in the *CIND* case, *supra*, 1998 STB LEXIS 121 at \*26-27

The petition for exemption procedure for abandonment is primarily intended to be used to expedite decisions and minimize regulatory burdens in uncontested or noncontroversial proceedings. It should not be used in proceedings like the one before us where detailed analysis of revenues and costs is necessary. Detailed revenue and cost analysis is generally reserved for the application process, which provides for a recordbuilding process and for Board analysis by requiring workpapers and other information needed to make an informed decision. This is not a case in which it is clear that revenue from local and overhead traffic is minimal compared to the cost of operating the line. Rather, a detailed analysis of revenue and cost evidence, and the resolution of various issues enumerated above, is required to determine the profit/loss of the line . . .

The present case falls squarely within that principle. Detailed analysis is required in the case at hand to determine operating results, opportunity costs, and track rehabilitation costs. It is not at all clear from the Petition that the revenue from shippers' traffic is insufficient to cover operating costs (ARZC acknowledges a forecast year operating profit), opportunity costs, and track rehabilitation costs. We deal with those issues in turn.

**a. Operating Results**

ARZC acknowledges a forecast year operating profit of \$65,934 (Petition, Vol I at 110). However, the Committee's evidence will show a forecast year operating profit considerably

greater than that because ARZC's forecast year traffic and revenues are understated, and its forecast year avoidable costs are inadequately supported

(i) **Forecast Year Traffic And Revenues**

The forecast year traffic posited by ARZC is predicated on the 460 carloads that originated or terminated on the line in 2006 (Petition, Vol. I at 107) According to ARZC, the primary reason for its use of that traffic is that "(t)he last year of generally regular operations on the Line occurred in 2006 " (*Id* )

The alleged "generally regular operations" in 2006 clearly constituted inadequate rail service under any reasonable definition of that term Consider the following admission by ARZC at page 22 of Volume I of the Petition

. . . In 2004 operations were two to three times per week, as needed, in 2005 ARZC operated over the Line two times per week, in 2006 ARZC served the Line two to three times per month, as needed . . . (emphasis added)

That is to say that in 2006 ARZC's service was less than 25 percent of its service in prior years That hardly constitutes "generally regular operations "

The Committee's evidence will show that ARZC's forecast year traffic (and its corresponding forecast year revenues) is greatly understated, and that such traffic would be much greater than posited by ARZC if ARZC were to provide even a modicum of adequate rail service

In fact, there is a realistic prospect for shipment of thousands of carloads of additional traffic over the rail line in the foreseeable future Attached to this Reply as Appendix 1-A, Appendix 1-B, and Appendix 1-C, respectively, are letters from Standard Mine Company, dated March 24, 2009, from Collective Asset Partners, dated March 28, 2009, and from Noble Mine Company, dated March 23, 2009, attesting to the realistic prospect for shipment of thousands of

car loads of gypsum, calcium carbonate, and limestone over the rail line in the foreseeable future  
That additional traffic would substantially add to the current operating profit acknowledged by  
ARZC

(II) Forecast Year Avoidable Costs

There is no support in ARZC's Petition for any of the unit costs and service units that ARZC used in determining forecast year avoidable operating and maintenance costs. To provide one example, there is no support whatever for ARZC's allegation that a one-way train trip between Parker, AZ and Ripely, CA, plus switching on the line, takes 11 hours (Petition, Vol I at 109). It was ARZC's obligation, as the entity requesting relief from the Board, to "fully support and substantiate all forecasts of revenues, costs, and asset values." *Abandonment Regulations - Costing*, 5 ICC 2d 123, 133 (1988) (emphasis in original). Closer scrutiny under formal abandonment procedure is required to determine whether time on branch and other service units, as well as the unit costs in the Petition, have been reasonably estimated by ARZC.

(b) Opportunity Costs

ARZC's claim that opportunity costs support abandonment of the rail line overlooks the long line of agency and court decisions to the effect that where forecast year operations would be profitable and abandonment would harm local interests, abandonment is not to be authorized solely on the basis of opportunity costs. See, e.g., *Southern Pacific Transp Co v ICC*, 871 F 2d 838, 843 (9<sup>th</sup> Cir 1989), quoting from *Cartersville Elevator, Inc v ICC*, 724 F 2d 668, 675 (8<sup>th</sup> Cir 1984), ("... merely because a railroad could earn greater revenue by investing its assets elsewhere does not mean that public convenience and necessity requires abandonment..."), *The Toledo Term R Co -- Aband -- between Temperance and Gould in Lucas County, OH*, 1987

ICC LEXIS 37 at \*14-15 (Docket No AB-226 [Sub-No 2], decision entered on Dec 3, 1987), *Burlington Northern R Co -- Aband -- in Morrison County, MN*, 1985 ICC LEXIS 37 at \*11-12 (Docket No AB-6 [Sub-No 253], decision entered on Dec 18, 1985), *Burlington Northern R Co -- Aband -- in Emmons and McIntosh Counties, ND and Campbell and McPherson Counties, SD*, 1985 ICC LEXIS 331 (Docket No AB-6 [Sub-No 236], at \*34-36 decision entered on June 28, 1985)

ARZC's opportunity costs are substantially overstated in any event because the net liquidation value of the rail line assets on which such costs are primarily based is substantially overstated, as next demonstrated

(i) **Element of Net Liquidation Value for Track Materials**

The value claimed by ARZC for track materials is necessarily overstated by nearly 10 percent because ARZC failed to exclude the four miles of track materials between Milepost Nos 0 0 and 4 0 that ARZC will leave in place for use in yard operations at Rice and for car storage (Petition, Vol I at 3-4) ARZC's estimate of net liquidation value is headed "MP 4 0 to MP 49 4" (*id.* at 92), but other evidence in the Petition shows that ARZC also valued the track materials between Mileposts 0 0 and 4 0 Thus, the Blythe Sub Mile Post Chart (*id.* at 94-101) lists a total of 25,047 feet, or 4 7 miles of non-main track When added to the 49 4 miles of main track in the Line, the total track length is 54 1 miles ARZC's estimate of net liquidation value shows that ARZC valued 54 1 miles of track materials (*Id.* at 92) Thus, contrary to the heading of that Exhibit, ARZC valued the entire main tracks from Milepost 0.0, not beginning at Milepost 4 0

In addition, contrary to the agency's admonition in *Abandonment Regulations - Costing, supra*, ARZC failed to provide any support or explanation for any of its classification of the quality of track materials (e.g., reroll vis-a-vis scrap) or for any of its unit values. ARZC's valuation of reroll rail at \$700 per ton and its valuation of relay other-track-material at \$900 per ton are particularly suspect.

(ii) **Element of Net Liquidation Value for Land**

It does not appear that ARZC's land appraiser excluded land between Milepost Nos. 00 and 40 that ARZC will retain if the abandonment were to be approved (Petition, Vol. II at 11, "Subject Property Description"). However, it is not discernable from ARZC's appraisal whether any of the land within those milepost numbers is claimed to be owned in fee. Indeed, the claimed fee and less-than-fee parcels cannot be differentiated from the appraisal available to the Committee. At page 11 of Volume II of the Petition, ARZC's appraiser states that a map on page 12 of Volume II shows ARZC fee ownership in green and less-than-fee ownership in red. The appraisal available to the Committee is not colored on that page. Moreover, the reduced-size valuation maps at pages 51 to 63 of Volume II of the Petition do not differentiate in either coloring or marking between claimed fee and less-than-fee land. In other words, the Petition does not identify where the claimed fee and less-than-fee land is located.

Moreover, there is no support or explanation in the Petition for ARZC's claim of fee ownership of 221.2 acres of land in the rail line. At page 13 of Volume II of the Petition, ARZC's appraiser states that "(d)etermining whether the railroad holds fee to the property is based solely on information provided by Rail America." The deed indices on the valuation maps that appear at pages 51-63 of Volume II of the Petition might provide some evidence (but not

conclusive evidence) of quality of title, but the valuation maps have been so reduced in size that the deed indices are not legible. None of ARZC's land is entitled to valuation unless and until ARZC proves marketable fee title by means of the original deeds by which its predecessors obtained the right to use the land

(c) **Track Rehabilitation Costs**

It should be noted initially that in January, 2008, ARZC refused a request that was made in behalf of the Committee for permission to inspect the rail line by hi-rail vehicle in order to determine first-hand the line's physical condition. The Committee's inability to have traveled over all of the line to inspect it hampers the Committee's ability to rebut ARZC's claim of need for *substantial track rehabilitation* (which, no doubt, is precisely why ARZC refused the request for a hi-rail trip)

Nevertheless, there is enough in the Petition itself for ARZC to effectively rebut its own rehabilitation claim. When those factors are considered, it becomes evident that ARZC's claim of the amount required for track rehabilitation is hugely overstated

Consider, for example, the acknowledgment by ARZC Witness Bader that as of the effective date of the embargo on December 18, 2007, 90 percent of the rail line complied with FRA Class I track safety standards (i.e., all but 5.4 miles of the total of 54.1 miles of trackage) (Petition, Vol. I at 84). There have been no rail operations over the line in the intervening 16 months that could have caused wear and tear of the trackage. Presumably, therefore, 90 percent of the rail line remains in FRA Class I compliance at present. ARZC's claim that the remaining 5.4 miles of trackage requires \$4,716,480 in track rehabilitation (or \$873,422 per mile) (Petition, Vol. I at 86) is inherently incredible, to put it most kindly

More specifically, ARZC's claim that \$1,801,800 should be spent to replace 3.9 miles of 90-pound rail (Petition, Vol I at 85) is not consistent with FRA Class I track safety standards, which do not require replacement of rail according to its weight, without regard to whether such rail is located in curves or steep grades. See 49 C.F.R. § 213. In that respect, the track rehabilitation argued for by ARZC would thus exceed FRA Class I requirements. That track rehabilitation cannot be accepted by the Board because "(a rail carrier's) desire to rehabilitate to a particular level (in excess of FRA Class I) cannot govern where more broadly based considerations of public convenience and necessity are paramount." *Southern Pacific Transp Co - Abandonment*, 360 ICC 138, 144 (1979).

Where ARZC most clearly undermines its own track rehabilitation estimate is in regard to cross-tie replacement, as to which ARZC's claims a need to replace 36,480 ties at a cost of \$2,079,360 (Petition, Vol I at 86). The "Blythe Sub Mile Post Chart" at pages 94-101 of Volume I of the Petition shows that ARZC claims a need to replace cross-ties in every mile of the main track of the rail line. The cost of cross-tie replacement in the first four miles of the rail line that ARZC will retain as yard and storage track is clearly not a cost that would be avoided by the abandonment proposed by ARZC. ARZC's claim that substantial cross-tie replacement is required for FRA Class I compliance in every mile of the rail line is inherently irreconcilable with ARZC's acknowledgment that 90 percent of the rail line already complies with FRA Class I standards.

As if that were not enough to disqualify ARZC's claimed rehabilitation costs, the Blythe Sub Mile Post Chart shows conclusively that the cross-tie replacement argued for by ARZC is wildly overstated. Thus, as to eleven miles of the rail line (MP Nos 14-17 and 43-49, inclusive),

ARZC claims a need to replace 1,000 ties per mile to comply with FRA Class I requirements (Petition, Vol I at 96, 100-101) According to ARZC, there are 3,000 crossties per mile in the rail line (id at 92, total of 162,300 crossties divided by 54.1 miles = 3,000 crossties per mile) Therefore, ARZC has argued for replacement of one-third of the crossties (33.3 percent) in each of the eleven miles as to which it argues for replacement of 1,000 crossties per mile That is inherently excessive in relation to FRA Class I crosstie standards, which require that only approximately 25 percent of crossties be non-defective See 49 C F R § 213.109(c) Moreover, the crosstie replacement argued for by ARZC as to those eleven miles assumes, without a shred of supporting evidence, that there is not even a single non-defective crosstie in any of the 39-foot rail sections in those miles of trackage Even without a hi-rail inspection, the Committee has seen enough of the rail line to know that ARZC's assertion in that respect is utterly false

In sum, the track rehabilitation cost argued for by ARZC is so defective in the multiple respects explained in the foregoing as to be worthless as an evidentiary matter<sup>1/</sup>

**3. Evidence Strongly Suggests That ARZC Has Intentionally Downgraded The Rail Line In Order To Perfect A Case For Its Abandonment**

Akin to the proverbial inquiry of whether the chicken or egg was first on the scene, it is often difficult to determine whether a precipitous decline in rail traffic on a line was caused by inadequate rail service, or whether rail service was curtailed as a reasonable economizing measure in response to significantly reduced rail traffic. In the present case, the available

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<sup>1/</sup> ARZC has falsely alleged that the City of Blythe has estimated that \$5 million in track rehabilitation is required on the rail line. (Petition, Vol I at 8). The \$5 million referred to in the City of Blythe's Resolution was communicated to the City by a representative of ARZC during a meeting in City Hall. The City has not attempted to verify or disprove that figure. The City did not intend to endorse the validity of that figure by referring to it in the Resolution

evidence strongly suggests that extremely poor service chased much of the traffic off this rail line. The Committee will request discovery and oral hearing with cross-examination as the only way to get to the bottom of that important issue in the event that ARZC is required to file, and actually files, an application for abandonment authority.

First, consider the drastically curtailed service on the line beginning in 2006. In the words of ARZC itself (Petition, Vol. I at 22):

... In 2004 operations were two to three times per week, as needed. (I)n 2005 ARZC operated over the line two times per week. (I)n 2006 ARZC served the Line two to three times per month, as needed, and in 2007, service was sporadic ...

The service reduction from 2005 to 2006 was 75 percent (2 times per week minus .5 times per week = 1.5 divided by 2 = 75 percent).

There had been no large reduction in rail line traffic in 2005 that would have warranted a 75-percent service reduction in 2006. Traffic in 2005 was 660 carloads, only a 7 percent reduction from the traffic of 711 carloads in 2004 (Petition, Vol. I at 107). It was the traffic in 2006 in the face of drastically curtailed rail service that nosedived to 450 carloads, or by 32 percent from the 660 carloads in 2005 (*id.*). Then in 2007, during which ARZC acknowledges that rail service was “sporadic” (*id.* at 22), traffic nosedived even further, to 257 carloads (*id.* at 107), an additional traffic decline of 43 percent! The service and traffic evidence thus clearly shows that the traffic declined because of the service, rather than the service being reduced because of a decline in the traffic.

Secondly, there is the surcharge of \$800 per car that ARZC assessed on the Line, effective December 8, 2006, “in order to provide funds to continue to maintain the Line due to its

age” (Petition, Vol I at 5) ARZC applied that surcharge to 8 carloads in 2006 and 147 carloads in 2007, for which it received additional revenues of \$124,000 (8 + 147 = 155 x \$800 = \$124,000). There is no claim by ARZC that it spent the first dime of those funds “to maintain the Line,” as was the expressed purpose of the surcharge (*id*) Instead, ARZC pocketed those funds, and continued to so neglect track maintenance that it embargoed the Line due to “track conditions,” effective December 22, 2007, which continues at present (*id* at 129-130)

Thirdly, ARZC has refused to provide information to the City that was required to be included in applications for government funding of track rehabilitation expenses (See, e g , the City’s Resolution authorizing the filing of an application for such funding, the application could not be filed because ARZC refused to provide needed information)

Fourthly, ARZC refused to provide railcars that were ordered by Committee member Arizona Grain, Inc in December, 2008, at a time when there was no embargo of the rail line in effect ARZC acknowledged to Board staff personnel at that time that it was not able to respond to that request for rail service because it had removed rail from the line, making transportation impossible However, ARZC was legally required to replace that rail and provide the requested transportation ARZC’s failure to have done so constituted a failure to provide transportation on reasonable request in violation of 49 U S C § 11101(a)

Fifth, in July and August, 2007, before an embargo was imposed on the line, Compton Ag Service was forced to offload 16 carloads of fertilizer at Rice, CA because ARZC refused to transport them across the rail line The cars had been sitting at Rice for 14 days Compton Ag also had to reroute 9 railcars from Rice to its sister companies because there was no way to offload them at Rice ARZC has stated that Rice is available to shippers on the line for

transloading, but there is no yard, no electricity, no running water, no fence, no buildings, and no security at Rice

Sixth, Helena Chemical Company placed orders for railcars at a time that rail service on the line was not embargoed, but its vendors refused to accept its purchase orders for fertilizer because they were told by ARZC that service over the rail line was not available

Thus, ARZC's behavior in regard to rail service, use of surcharge revenues, and continuing embargo all point strongly to intentional downgrading of service by ARZC in order to perfect a case for abandonment. If ARZC were to be required to file an abandonment application if it continues to seek abandonment, and if ARZC were to file such an application, the Committee would utilize discovery, and would request an oral hearing with cross-examination, in order to investigate intentional downgrading more thoroughly

#### **ARZC'S NOTICE OF INTENT TO SEEK ABANDONMENT IS DEFECTIVE**

On March 26, 2009, ARZC filed at the Board a Proof of Publication in a newspaper of general circulation in San Bernardino County, California of its intent to file a Petition for Exemption of abandonment of the Rice-Blythe-Ripley rail line

Only a tiny segment of that rail line is located in San Bernardino County. The overwhelming majority of the rail line lies in Riverside County, California. The Petition for Exemption does not contain a Proof of Publication in a newspaper of general circulation in Riverside County, and no such Proof of Publication has been filed at the Board to date. It is now too late for notice in any such publication to be meaningful in advising the public of its rights in the matter

ARZC's failure to have timely filed a newspaper notice of the proposed abandonment in Riverside County violates a Board requirement at 49 C F R § 1105.12. That is an additional ground for denial of the Petition for Exemption.

**IF ARZC DECIDES TO FILE A FORMAL APPLICATION FOR ABANDONMENT IT SHOULD FIRST BE REQUIRED TO REMOVE THE EMBARGO, ESTABLISH A REASONABLE SCHEDULE OF SERVICE RESPONSIVE TO SHIPPER DEMAND, PUBLISH ANY SURCHARGE ON 20 DAYS' NOTICE, AND EARMARK ANY SURCHARGE REVENUES FOR TRACK MAINTENANCE**

The Committee recognizes that if ARZC's Petition for Exemption of abandonment were to be denied, ARZC could elect to file a formal application if it continues to seek abandonment of the line. However, in view of the foregoing compelling evidence of deliberate downgrading of the line, the Board should require that ARZC first take several actions before filing such an application.

ARZC should be required to first remove the embargo of the line. The embargo has been in effect for more than 16 months. That is far longer than is reasonable for any embargo due to track conditions.

ARZC should also be required to first establish a reasonable schedule of service that is responsive to shipper demand on the rail line. Service that is "sporadic" or "once-per-month-or-so" is patently unacceptable.

If ARZC intends to assess a surcharge on the line, it should be required to first publish such a surcharge on 20 day's notice as required by 49 U S C § 11101(c), so that shippers can protest it if they desire to do so. If such a surcharge were to be permitted to take effect, any

revenues from the surcharge should be required to be earmarked for track maintenance to cure the track conditions that allegedly justify such a surcharge

ARZC has mistreated the shippers on the line for too long. The above preconditions to filing for abandonment are absolutely essential to ensure that such mistreatment is brought to an end.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, the Petition for Exemption should be denied.

Respectfully submitted,

COMMITTEE FOR PRESERVATION OF  
THE RICE-BLYTHE-RIPLEY RAIL LINE  
c/o THE CITY OF BLYTHE, CALIFORNIA  
235 North Broadway  
Blythe, CA 92225

Protestants

*Thomas F McFarland*

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 Protestants

DATE FILED April 21, 2009

***Standard Mine Company***

18034 Ventura Blvd #513  
Encino, CA 91316

March 24, 2009

Committee for the Preservation of  
the Rice-Blythe-Ripley Rail Line (Committee)  
c/o  
Palo Verde Community Improvement Fund  
P O box 211  
Blythe, CA 92226

RE: Intent to Utilize Rail Transportation – Agriculture and Standard Mine

Dear Committee

*The Standard Mine Company is currently shipping gypsum from a mine north of Blythe CA. Our current volume is 20-40 trucks a day, mainly going to other California destinations. Many of our customers have inquired about rail transportation, but up to now, we have had little success in developing a rail alternative due to the loss of service on the rail line serving the mine.*

In order for Standard Mine to be competitive in the future, we need to ship by rail. Our mine can produce 400,000 tons of gypsum annually and at least 200,000 will need to go by rail. I have a current market of 50,000 – 100,000 tons to Bakersfield, CA and 100,000 tons to the State of Washington. I am in full support of the effort to save this rail line and start rail operations again. Utilizing rail represents a substantial transportation savings for the Standard Mine that will allow it to remain competitive in this very competitive market.

Sincerely,



**MIKE GALAM**

Standard Mine

E-mail to [mike@standardmine.com](mailto:mike@standardmine.com)

Phone: (818) 510-4439



COLLECTIVE ASSET PARTNERS

March 28, 2009

Committee for the Preservation of the Rice-Blythe-Ripley Rail Line (Committee)

c/o:

Palo Verde Community Improvement Fund

P.O. box 211

Blythe, CA 92226

**RE: Intent To Utilize Rail Transportation**

Dear Committee:

We are currently in the process of opening up a calcium carbonate mine north of Blythe and are seeking the necessary permits in order to begin operations. These permits are expected to be approved within 4-6 months. Our intention is to utilize the current rail line that operates from Rice to Ripley.

Collective Asset Partners anticipates producing 300,000 to 500,000 tons the first year of operations; 600,000 to 800,000 tons the second year and over 1,000,000 tons the third year. Our present markets are Los Angeles, Phoenix and the Central Valley from Bakersfield to Reading, CA. Our intent is to utilize as much rail as possible due to the substantial transportation savings.

At this point, I see a minimum of half of the production being transported by rail. In order for this mine to be competitive, rail transportation is critical. Collective Asset Partners is in full support of saving the Rice to Ripley Branch and re-instituting the use of rail service.

Sincerely,

Heath Sessions

Collective Asset Partners

**From:** Gordon Gypsum <gordongypsum@yahoo.com>

**To:** marcel cordi <swmg@earthlink.net>

**Sent:** Friday, April 10, 2009 11:43:59 AM

**Subject:** RAIL TRANSPORTATION

THE NOBLE MINE COMPANY

MARCH 23 2009

COMMITTEE FOR THE PRESERVATION OF THE RICE -BLYTHE-RIPLEY RAIL LINE  
(COMMITTEE)

C/O

PALO VERDE COMMUNITY IMPROVEMENT FUND

P O. BOX 211

BLYTHE, CA 92226

RE INTENT TO UTILIZE RAIL TRANSPORTATION- NOBLE MINE COMPANY

DEAR COMMITTEE

THE NOBLE MINE COMPANY IS IN THE PROCESS OF OPENING A LIMESTONE MINE  
NORTH OF BLYTHE, CA WITHIN 3-6 MONTHS

NOBLE MINE COMPANY WILL HAVE ALL NECESSARY PERMITS TO OPEN THE  
MINE THIS MINE OFFERS A HIGH GRADE LIMESTONE PRODUCT THAT WILL BE  
SHIPPED OVERSEAS VIA THE PORTS OF LOS ANGELES AND /OR SAN DIEGO BASED  
ON OUR PROJECTED VOLUME OF 100 000 TONS PER YEAR, WE ANTICIPATE  
HAVING TO SHIP TO THE PORTS BY RAIL RAIL TRANSPORTATION REPRESENTS A  
SIGNIFICANT COSTS SAVINGS NEEDED TO MAKE THIS MINE COMPETITIVE,

ONE OF THE MAIN ATTRACTIONS IN SELECTING THIS LOCATION WAS THAT IT  
WAS LOCATED CLOSE TO A RAIL LINE FOR TRANSPORTATION

SINCERELY

GORDON P HARTON

VICE PRESIDENT OF MINING

EMAIL [gordongypsum@yahoo.co](mailto:gordongypsum@yahoo.co)

PHONE 760 899 3016

**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2009, I served the foregoing document, Reply In Opposition To Petition For Exemption, on Louis E Gitomer, Esq., 600 Baltimore Avenue, Suite 301, The Adams Building, Towson, MD 21204-4022, by e-mail to *Lou\_Gitomer@verizon.net*, and by first-class, U S. mail, postage prepaid

*Thomas F McFarland*

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Thomas F McFarland