



February 14, 2007

**Hanson North America**  
Michael H. Hyer  
Vice President  
& General Counsel

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
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Re: STB Finance Docket Numbers 34890 and 34985

Dear Mr. Secretary:

On behalf of Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc., enclosed please find an original and ten copies of Hanson's Opposition to SAW Motion to Reopen and/or for Reconsideration of Decision Served January 24, 2007

Thank you for your assistance in this matter and please contact me with any questions in this regard.

Yours truly,

A handwritten signature in black ink, appearing to read "M. Hyer", written over a horizontal line.

Michael H. Hyer  
Counsel for Hanson Aggregates, Inc. and  
Hanson Aggregates WRP, Inc.

Enclosures

cc: South Plains Switching, Ltd  
Thomas McFarland, Esq.  
John Heffner, Esq.  
Charles H. Montange, Esq.  
William A. Mullins, Esq.  
Adrian L. Steel, Jr.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

PYCO Industries Inc, )  
Feeder Line Application ) F.D. 34890  
South Plains Switching )

Hanson Aggregates, Inc, )  
Hanson Aggregates WRP, Inc. ) F.D. 34985  
Alternative Rail Service )  
South Plains Switching )

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**Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc.**

**Opposition to SAW Motion to Reopen and/or for Reconsideration of Decision  
Served January 24, 2007**

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Hanson Aggregates Inc. and Hanson Aggregates WRP, Inc. (collectively, “Hanson”) oppose the Motion to Reopen and/or for Reconsideration of Decision Served January 24, 2007 filed by South Plains Switching, Ltd. (SAW). On December 21, 2006 Hanson requested the Board to enforce its Decision served August 3, 2006, by declaring SAW’s attempts to cancel its track lease and transfer the track as null and void and ordering SAW to provide rail service to Hanson. SAW responded to that filing on December 27, 2006. In that response SAW opposed Hanson’s request and advised that it had already transferred the track to Choo Choo Properties, Inc., (“Choo Choo”) and Choo Choo then sought to terminate the track lease. On January 12, 2007 Hanson filed Motions to Void Purported Transfer of Property Interests Motion to Stay Attempted Cancellation of Track Lease and a Petition for Alternative Rail Service under 49 CFR Part 1146, requesting expedited consideration. In its decision served January 24, 2007 granted the

relief requested in Hanson December 21, 2006 request. It is that decision that SAW now requests this Board to reopen or reconsider. For the reasons set out below, SAW's motion should be denied.

### **Argument**

1. **Alleged Procedural Defect.** SAW argues that the Decision served January 24, 2007 was procedurally defective because SAW was not allowed sufficient time to respond and was an improper *ex parte* action. The core element of Hanson's December 21, 2006 filing was a motion for the Board to apply to Hanson's track lease its earlier decision barring SAW from voiding track leases and transferring assets. SAW had a full opportunity to respond to that motion and in fact did respond on December 27, 2006. As relates to the matters decided in the Board decision served January 24, 2007, Hanson's filing on January 12, 2007, simply reiterated its earlier request, although extending its requested relief to Choo Choo (a fact which SAW had first introduced in its December response). Indeed, the Board viewed that January 12 filing as "seeking the same relief as in its December 21 request, as well as additional relief." Slip Op. at 2. (It is evident from a footnote that the additional relief referred to was Hanson's request for alternative rail service, which the Board did not decide in that decision.)

That January 12, 2007 filing does not make the Board's January 24 decision procedurally defective or deny SAW any procedural due process rights. In December SAW was fully aware of the relief Hanson was requesting from the Board (and which was eventually granted in the Board's January 24, Decision). SAW had the full opportunity at that time to argue to this Board why that relief should not be granted, including (since SAW introduced the transfer from SAW to Choo Choo in that response

as a defense to Hanson's request) why the requested relief should not be applied to Choo Choo. SAW has not been deprived of any procedural rights and the Board's January 24, 2007 decision was not in any way an *ex parte* action.

2. **Private Track.** SAW seems to interpret the Board's decision as requiring a railroad to make its track available to a shipper for use as a private track and, therefore, argues that the Decision must be in error. SAW Pet. at 3. The Board's decision simply preserved the status quo by enjoining SAW/Choo Choo from seeking to cancel Hanson's lease or to transfer that property and requiring SAW to provide rail service. The private track notion introduced by SAW in its motion is an irrelevant "red herring."

The Hanson lease was originally entered into on March 5, 1991 between The Atchison, Topeka and Santa Fe Railway Company and Western Rock Products, Inc. The rights of Hanson (as the successor to Western Rock Products, Inc.) are defined in that lease. Section 4 of that lease provides that "Lessee shall use the Premises exclusively as a site for transloading rock." Mrs. Wisener's statement that Hanson's sole activity has been to "transload aggregates directly from railcars located on Track 269 to trucks located adjacent to that Track" is, of course, not surprising, since such use is the only use permitted Hanson by that lease<sup>1</sup>. In SAW's convoluted logic, Hanson's use of the leased track for the only purpose allowed by the terms of the lease from the railroad somehow transforms that track into Hanson's private track and thereby liberates the railroad from

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<sup>1</sup> Hanson's use of the track is not exclusive. Section 10(a) of the lease provides for the railroad to have the right to use the track for other purposes, provided it doesn't interfere with the use provided in the lease, and Mr. Wisener has testified that the track is used by SAW for other purposes. *See* testimony referred to at page 9, note 5 of Hanson's January 12, 2007 filing.

any obligation to provide to Hanson the rail service contemplated by that lease. This is nonsense.

3. **Aggregates Exemption.** Referring to the exemption for rail transportation of aggregates, SAW claims the right to arbitrarily deny service to Hanson, notwithstanding the prior decisions of this Board to protect shippers such as Hanson and to preserve the status quo. The question presented is whether SAW may now use that exemption to retaliate against a shipper and thereby circumvent the Board's Decision served August 3, 2006 barring such retaliation and preserving the status quo.

At the time the issues raised in the August 3 decision were argued by the parties and the decision entered by the Board, it was known to all that aggregates was one of the commodities shipped over SAW's tracks and, in particular, that Hanson was a shipper of aggregates and had supported the PYCO petition. In other words, the August decision was intended to protect, among others, Hanson as a shipper and aggregates as a commodity, and the shipments of aggregates as part of the status quo, pending completion of the feeder line application proceedings. The exemption to which SAW refers may be modified by the Board, 49 C.F.R. § 1039.11(b), and the effect of the Board's August decision was to modify that exemption in these circumstances in order to serve the larger public interest of preserving the status quo and protecting shippers pending completion of the feeder line application proceedings. The time for SAW to have raised any concerns about the effect of the Board's rulings in August on that exemption was at that time; not now as an after the fact defense for the very retaliatory conduct against Hanson that the Board's decision had enjoined.

In the event the Board concludes that its earlier decision did not so modify this exemption, the Board should now order that the commodity exemptions claimed by SAW do not apply to the extent necessary to allow this Board to require SAW to provide service to Hanson for the shipment of aggregates, and to prevent SAW from alienating its property or terminating leases affecting Hanson. In addition, if the commodity exemption is considered an obstacle to granting Hanson's relief requested in its petition for interim alternative rail service under 49 U.S.C. 1123 and 49 C.F.R.1146, then Hanson requests that it be removed for the reasons stated above.

4. **Rational Basis.** Finally, SAW argues that there was no rational basis for the Board to void property transfer occurring before PYCO's feeder line application was actually filed, although after SAW was on notice that PYCO intended to file. When confronted with a situation, such as this, where SAW in anticipation of PYCO's filing was attempting to frustrate the Board's jurisdiction by secretly transferring assets out of SAW (but not beyond SAW's effective control), an order voiding such transfers is the only rational decision for the Board in order to preserve the integrity of the feeder line application proceedings.

5. **PYCO Opposition.** Hanson joins in the arguments in PYCO's Opposition to SAW's motion.

Respectfully submitted,



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Attorney for Petitioners Hanson Aggregates,  
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## CERTIFICATE OF SERVICE

I certify service on February 14, 2007 by deposit of copies of the foregoing with Federal Express, next business day delivery, upon the following:

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