

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
January 8, 2021
Part of
Public Record

DOCKET NO. FD 36471

**COLORADO, MIDLAND & PACIFIC RAILWAY COMPANY
– LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT – UNION PACIFIC RAILROAD COMPANY**

MOTION TO REJECT NOTICE OF EXEMPTION

Colorado Pacific Railroad, LLC (“Colorado Pacific”) and KCVN LLC (“KCVN”) hereby move the Surface Transportation Board (“Board” or “STB”) to reject the Notice of Exemption (“Notice”) filed in this proceeding by Colorado, Midland & Pacific Railway Company (“CMPR”), a non-carrier. As detailed below, the Notice contains several *prima facie* materially false and misleading statements and representations. In addition, the Notice should be rejected because the proposed transaction is obviously not the routine, non-controversial transaction that the shortened notice of exemption process was designed for, because it is not for the purpose of continuing any existing operations, is controversial, and the Notice discloses that the proposed lease agreement contains a provision that would restrict competition and rail traffic with which the CMPR may interchange for transportation over the tracks at issue,¹ which are not lines of railroad that are typically the subject of such minor transactions.

¹ Colorado Pacific is accompanying this Motion to Reject with a Motion for Access to Confidential Documents filed pursuant to 49 C.F.R. §1150.33(h)(2) for the purpose of obtaining and reviewing and analyze the lease and the terms of the interchange commitment subject to an appropriate protective order. As discussed in this Motion, the Board should delay any action on

I. IDENTITY AND INTEREST OF COLORADO PACIFIC AND KCVN

Colorado Pacific is a non-carrier, wholly owned subsidiary of KCVN LLC. Colorado Pacific owns a 121.9-mile line of railroad known historically as the Towner Line that runs between Towner, Colorado and NA Junction, Colorado, where it connects to lines of railroad owned and operated by BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”). The Towner Line historically was part of a continuous longer routing of railroad line owned by UP and its predecessors that extended from Towner to Dotsero, Colorado over the Colorado Rocky Mountains via the Tennessee Pass. In 2017, Colorado Pacific acquired the Towner Line from V AND S Railway LLC (“V&S”) through a successful “feeder line” application proceeding under 49 U.S.C. §10907. At the conclusion of that proceeding, the Board directed V & S to sell Colorado Pacific the entire Towner Line, which had fallen into disrepair and was not being used for any freight rail service.²

Since acquiring the Towner Line, Colorado Pacific and KCVN LLC have spent nearly \$10 million rehabilitating all 121.9 miles of the Towner Line to Federal Railroad Administration Class II standards. This capital investment has also included spending \$5 million in 2020 to reconstruct and expand interchange tracks at NA Junction to reestablish and facilitate the movement of grain and other commodities from central Colorado and Kansas to western destinations via joint line movements involving BNSF and/or UP and the Towner Line’s designated operator, Kansas & Oklahoma Railroad, LLC (“K&O”), a subsidiary of WATCO. Colorado Pacific’s efforts have included facilitating the successful negotiations of an interchange agreement between BNSF and

the Notice of Exemption pending the disposition of this Motion and Colorado Pacific’s review and analysis of the Lease Agreement.

² Docket No. FD 36005, *KCVN, LLC and Colorado Pacific Railroad LLC – Feeder Line Application, Line of V AND S Railway in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado* (served July 31, 2017).

K&O for operations at NA Junction, and negotiations with UP for a similar interchange agreement are ongoing.

KCVN is a grain grower and landowner in Colorado, Kansas, and other western states. It and affiliated companies own approximately 150,000 acres of farmland that produces wheat and maize, and the companies transport as much of this as possible by railroad. KCVN owns approximately 78,000 acres of farmland in Cheyenne, Kiowa, and Powers County, Colorado, all of which are located in the vicinity of the Towner Line. A KCVN affiliate is working with grain companies to facilitate the construction of new rail-served grain elevators with the idea of facilitating their grain to be transported west over the Towner Line and the tracks of BNSF and/or UP from NA Junction. The first of these was constructed by Scoular Grain Company and was completed in time to receive deliveries of milo in 2020.³ Starting in January 2021 grain shippers and the K&O will begin tendering carloads of unit grain to UP and BNSF at NA Junction for transportation to western destinations over their respective systems.⁴

II. FACTUAL BACKGROUND

By its Notice, CMPR is seeking an exemption from the regulations that would otherwise apply to its acquisition of 163.1 route miles of track owned by UP and running from Parkdale, Colorado to Sage, Colorado. The track is a subset of the 222.5-mile Tennessee Pass Line that runs from Pueblo to Dotsero, Colorado and which prior to the merger of UP and Southern Pacific Transportation Company was a fully active through route over the Rocky Mountains of Colorado. The track for which CMPR seeks authority to lease is track for which the UP was encouraged by

³ October 1, 2020 Press Release from Scoular Grain Company, Attachment A to this Motion.

⁴ BNSF's "system" for purposes of movements to destinations west of Colorado is in many places coextensive with UP's since BNSF has rights to operate over many miles of UP tracks pursuant to trackage rights granted to BNSF has a condition for the Board's approval of the UP/SP Merger.

the Board in the UP/SP Merger proceeding⁵ to seek authority to discontinue its common carrier obligations over after extensive public outcry when UP proposed to abandon and scrap this section of the Tennessee Pass line as part of its proposed merger. This 163.1 segment has been dormant for the past 24 years while UP has routed traffic over its other line through the Rocky Mountains that traverses through the Moffat Tunnel in Colorado.

The segment of the Tennessee Pass Line that runs from Pueblo to Parkdale is an active line of railroad, all but 11.4 miles of which is owned by UP (it has a reserved trackage rights easement over this segment). BNSF and the Rock & Rail Railroad (“RRRR”) operate over the tracks between Pueblo to Parkdale via trackage rights authority granted by the Board and/or its predecessor, the Interstate Commerce Commission (“ICC”). On information and belief, BNSF’s trackage rights presently end at Canon City, Colorado, which is at Milepost 160.15. The segment of the line on the other end of the Tennessee Pass from Sage to Dotsero is also an active line of railroad owned by UP.

The Notice very generally describes a transaction whereby UP would lease the 163.1 miles of discontinued track from Parkdale to Sage to CMPR, which is a railroad entity apparently being created by the Rio Grande Pacific Corporation for this purpose.⁶ However, the Notice also describes how the lease agreement between UP and CMPR contains an interchange commitment in the form of “a provision that will require CMPR to pay UP additional charges if CMPR interchanges certain traffic with a rail carrier other than UP,” and further, that “the affected

⁵ Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -Control and Merger- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company* (Decision No. 44 served August 12, 1996). 1 STB 233 (“*Decision No. 44*”).

⁶ Docket No. FD 36470, *Rio Grande Pacific Corporation – Continuance and Control Exemption – Colorado, Midland & Pacific Railway Company*.

interchange points are Parkdale, CO and Dotsero, CO.”⁷ The Notice also indicates that the interchange commitment inserted by UP into the lease will adversely affect CMPR’s ability to interchange with BNSF, which the Notice erroneously identifies as the only railroad that could physically interchange with the segment of the Tennessee Pass Line proposed to be acquired, since the RRRR can interchange with UP at Parkdale.⁸ Under the Board’s rules, the transaction will be authorized 30 days from its filing date of December 31, 2020 absent further action by the Board.

One of the routes that Colorado Pacific and KCVN have been seriously exploring for the transportation of Colorado grain and other commodities is the Tennessee Pass Line. The beginning of the line is easily reached from the Towner Line by traversing a 26-mile line of railroad running between NA Junction and Pueblo that used to be part of the overall routing but is now jointly owned by UP and BNSF. The extent of Colorado Pacific’s and KCVN’s interest in the Tennessee Pass Line as a routing for traffic coming from the Towner Line is exemplified by the recent effort by Colorado Pacific and KCVN to acquire the entire Tennessee Pass Line by seeking an order directing UP to sell the line to Colorado Pacific pursuant to another “feeder line” application,⁹ which was rejected without prejudice by the Board due to it containing insufficient information on certain factors. Colorado Pacific also approached UP with an offer to negotiate a purchase or lease of the line from Parkdale to Dotsero, which was rebuffed. Colorado Pacific and KCVN believe that reactivation of the entire Tennessee Pass Line in a manner that promotes rail competition between UP and BNSF and alternatives to rail shippers for routings over these carriers’ respective

⁷ Notice at 4.

⁸ *Id.*

⁹ Docket No. FD 36386, *KCVN, LLC And Colorado Pacific Railroad, LLC –Feeder Line Application –Line of Union Pacific Railroad Company Located in Pueblo, Fremont, Chafee, Lake, And Eagle Counties, Colorado.*

systems to western destinations would provide substantial opportunities for Colorado rail shippers and other users of the railroad.

III. ARGUMENT

A. The Notice Should be Rejected Because it Contains Material Factual Errors and Misrepresentations

The Board has very recently affirmed that “an integral component of all of the Board’s processes is candor and full disclosure, and that is particularly important to the notice-of-exemption process, which is expedited and often proceeds without opposition or input from other parties.”¹⁰ Further, “to protect the integrity of the streamlined process” issued exemptions are void *ab initio* if the submitted Notice contains “false or misleading information.”¹¹ The Board can and has also rejected a notice of exemption before it takes effect “to protect the integrity of the Board’s processes and as necessary to carry out the rail transportation policy of 49 U.S.C. 10101.”¹² The Board requires that the false and misleading information be “material.” In this proceeding, the Notice contains several examples of false and misleading information that are clearly material to the proposed transaction and whether it is in the public interest and necessary to carry out the rail transportation policy of §10901.

1. The Notice Falsely Describes the Rights Being Granted to CMPR

First, the Notice unambiguously describes how the tracks covered by the lease agreement are the 163.1 miles of UP-owned tracks from Milepost 171.90 at Parkdale, CO to Milepost 335.0

¹⁰ Docket No. FD 36592, *Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY Inc.*, and Docket No. FD 35730, *Ballard Terminal Railroad Company, LLC – Lease Exemption – Eastside Community Rail, LLC*. (served December 22, 2020).

¹¹ *Id.* at 4, *citing* 49 C.F.R. §1150.32(c).

¹² *Id.*, note 10, and cases cited therein.

near Sage, CO.¹³ As discussed above, Sage is the end of the tracks for which UP received discontinuance authority from the STB in the UP/SP merger proceeding. However, there is another 6.9-mile segment of active railroad line owned and operated by UP between Sage and Dotsero, CO (MP 341.9) which is where the end of the Tennessee Pass Line connects to other tracks owned by UP over which BNSF has trackage rights. Maintaining this 6.9-mile segment as an active rail line enabled UP in 1996 to control access to the remainder of the Tennessee Pass Line from the West. There is no indication in the Notice that UP has granted or proposes to grant CMPR any rights to use this track to bridge the gap from Sage to Dotsero. Nevertheless, the Notice expressly represents that CMPR has the capability of interchanging traffic with BNSF at *Dotsero* by stating the interchange commitment in the lease applies to such service.¹⁴ This is a materially wrong representation and internally inconsistent on the face of the Notice. Moreover, it is highly misleading because it leaves the false impression that UP's installation of CMPR over the previously discontinued tracks means that traffic could (subject to an "interchange commitment" that restricts competition) henceforth move over the entire Tennessee Pass Line from Pueblo to Dotsero.

2. The Notice Misrepresents the Ability of BNSF to Interchange at Dotsero

Second, even if UP had granted CMPR rights to operate over the tracks from Sage to Dotsero (and CMPR sought and received required Board authorization to conduct such operations), the Notice falsely implies that there are no unresolved questions about the ability of BNSF to interchange traffic at Dotsero, whether it was with UP or CMPR. The tracks that run through Dotsero are owned by UP, not BNSF. Dotsero is on the UP Glenwood Spring Subdivision,

¹³ Notice at 4.

¹⁴ *Id.*

which is part of the rail line between Denver, CO and Salt Lake City, UT. BNSF has rights to operate over these tracks pursuant to trackage rights it was granted as a condition imposed by the STB on its approval of the UP/SP merger. However, according to the STB's decisions in that proceeding these trackage rights apparently are only overhead rights to permit BNSF to transport its trains from Denver to Salt Lake City without stopping in between.¹⁵ The Board later affirmed this restriction in a subsequent decision in that proceeding stating "the basic structure of the BNSF Agreement provides BNSF only "overhead" trackage rights (also known as "bridge" trackage rights)—trackage rights that do not allow BNSF to access intermediate points on the trackage rights lines."¹⁶ The representation in the Notice that Dotsero is an active interchange location for BNSF is directly contrary to these prior decisions. Consequently, whether BNSF has the right to interchange traffic at Dotsero – and more significantly: whether the reasons in 1996 for *not* allowing such interchange are still valid and in the public interest - is not a closed issue. It is highly misleading for the Notice to imply otherwise without any attempt to reconcile the STB's prior decisions, and it obscures a potentially larger policy and legal issue that should not be glossed over by a shortened notice of exemption process.

3. The Notice is Wrong About Railroads Who Can Physically Interchange with the Leased Track at Parkdale

In addition to the foregoing errors about interchanging traffic at Dotsero, the Notice erroneously identifies BNSF as the only railroad that can physically interchange with the leased track on its other end at Parkdale. However, as stated above, it appears that presently BNSF's

¹⁵ See *Decision No. 44* at 562.

¹⁶ STB Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -Control and Merger- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company* (Decision No. 21, served December 20, 2001) at 4.

trackage rights extend only to Canon City, Colorado, so the Notice is wrong to identify BNSF as being able to physically interchange at Parkdale and this creates a material ambiguity about what the interchange commitment is intended to do and how. Further, as stated above, the RRRR possesses operating rights over the Tennessee Pass Line from Pueblo to Parkdale, over which it regularly provides freight rail service. RRRR's filings with the STB and information on its website indicate that RRRR can serve Parkdale, meaning it should be able to physically interchange with the CMPR.¹⁷ Therefore, CMPR's petition is incorrect in this respect as well, and therefore patently unclear on whether the proposed interchange commitment is intended to apply to RRRR as well. These are not immaterial errors given the admitted presence of an interchange commitment.

4. The Notice is Misleading as to CMPR's Projected Revenues

The Notice "certifies" that the projected annual revenues of the CMPR will not exceed \$5 million.¹⁸ No time frame is given for when such annual revenues would begin, nor is there any indication of how such revenues will be obtained. This is not an immaterial issue for this particular transaction, since the lease agreement for which authorization is being sought is for 163.1 miles of tracks in the mountains of Colorado that have been out of use for nearly 24 years and have fallen into disrepair at some locations. Not only is there no existing traffic from which to draw revenues, it will cost tens of millions of dollars to first rehabilitate the tracks (and probably interchange tracks on either end) in order for service to commence. CMPR has provided no indication as to how it reconciles its "certification" of annual revenues below \$5 million with this financial reality.

¹⁷ See, Docket FD No. 33608, *Rock & Rail, Inc.—Lease and Operation Exemption—Royal Gorge Express, LLC*, (served July 15, 1998); and RRRR's Motion for Partial Rejection of The Feeder Line Application Submitted By KCVN, LLC And Colorado Pacific Railroad, LLC in Docket No. FD 36386, *KCVN, LLC And Colorado Pacific Railroad, LLC –Feeder Line Application –Line of Union Pacific Railroad Company Located In Pueblo, Fremont, Chafee, Lake, And Eagle Counties, Colorado*, filed March 9, 2020.

¹⁸ Notice at 4.

Moreover, Colorado Pacific recently estimated that just the annual *operating costs* for operations over the Parkdale to Dotsero line (so, beyond Sage where CMPR's rights would end) would be approximately \$5.7 million per year based on a reasonable assumption of three roundtrip trains per week, with no passenger operations.¹⁹ This would indicate that CMPR's gross revenues would need to be well over \$5 million per year just to cover its operating costs and capital projects. In short, the CMPR's projected revenues certification is either false and made to avoid the requirements of 49 C.F.R. §1150.32(e), or it is a strong indicator that this transaction is not in the public interest because projected annual revenues of less than \$5 million for the indefinite future will mean the line remains economically unviable and unused.

B. The Notice Must Also be Rejected Because the Transaction is Inappropriate for Consideration under the Class Exemption Procedures

Even if the Board were to overlook the numerous false statements and misrepresentations summarized above that would make the requested exemption void *ab initio* and therefore justify the Notice's rejection, the class exemption procedures are not appropriate for this proposed transaction. It is well established that "the class exemption is meant to be used for routine transactions that have not attracted substantial controversy and local interests, such as transactions where new operators would be continuing an existing common carrier rail service over lines that selling carrier can no longer operate profitably."²⁰ In *Riverview*, the STB explained that [t]he class exemption procedures were adopted to serve shippers and community interests by facilitating

¹⁹ See the Verified Statement of Thomas D. Crowley at page 60 in STB Finance Docket No. 36386 *KCVN, LLC And Colorado Pacific Railroad, LLC –Feeder Line Application –Line Of Union Pacific Railroad Company Located In Pueblo, Fremont, Chafee, Lake, And Eagle Counties, Colorado*.

²⁰ STB Finance Docket No 34734, *Northeast Interchange Railway, LLC – Lease and Operation Exemption – Line in Croton-on-Hudson, NY* (served November 18, 2005) at 4 citing STB Finance Docket No. 33980, *Riverview Trenton RR Co.- Acquisition and Operation Exemption – Crown Enterprises, Inc.* (served February 15, 2002)("Riverview").

continued rail service, on lines that the selling carrier could no longer operate profitably, by new smaller carriers seeking to provide service more efficiently.”²¹ Moreover, [t]he procedures are designed to meet the need for expeditious handling of a large number of requests that are rarely opposed. In most instances the transactions under this proposal will involve resumed or continued rail service with no change in operations.”²² Furthermore, the class exemption procedure “is typically reserved for uncomplicated and noncontroversial cases.”²³

In this case, there are numerous reasons why the class exemption procedures are not appropriate for this transaction, starting with the utterly untenable notion that “CMPR is leasing the line from UP for continued rail operations.”²⁴ This obviously wrong statement is apparently offered to try to justify using the exemption procedures, but it is easily and completely refuted not only by well known facts, but also by the Notice itself, which states unequivocally no fewer than *three* times on the *same page* “there has been no traffic on the line for 20 years.” There are obviously no current rail operations for CMPR to continue. On the contrary, considerable investment will have to be made in order to even restart such operations, and CMPR has certified that its projected revenues will likely not exceed its operating costs. There are thus unresolved questions that must be resolved before the Board can act.

²¹ *Id.* at 7.

²² *Id.*, citing *Class Exemption – Acq. & Oper. Of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985).

²³ STB Finance Docket No. 34645, *The Burlington Northern and Santa Fe Railway Co. – Acquisition and Operation Exemption – State of South Dakota* (served January 14, 2005). *See also* STB Finance Docket No. 35586, *Southern San Luis Valley RR, LLC – Acquisition and Operation Exemption – Iowa Pacific Holdings*, (served February 10, 2012)(where legal questions of ownership and Board jurisdiction over a rail line made the notice of exemption process inappropriate)

²⁴ Notice at 5.

More significantly, this transaction is not suitable for the exemption procedures because it involves a transaction that could result in a material change to a rail line that was the subject of controversy before the Board in the UP/SP merger proceeding and decisions that addressed those controversies. These decisions were centered around the desire of the Board to preserve the Tennessee Pass Line as a feasible through route alternative to the Moffat Tunnel Line, and the greater preservation of competition and policy considerations that went into those decisions. The Board has continuing jurisdiction over the implementation of the conditions it placed on its approval of that merger, including the conditions it placed on the Tennessee Pass Line and adjacent lines of railroad owned and operated by UP, such as the BNSF/UP trackage rights agreement. The proposed introduction by UP of an interchange commitment that is apparently specifically designed to limit the ability of UP's largest competitor BNSF to compete with UP or otherwise provide service to rail shippers in Colorado and elsewhere through economic penalties placed on CMPR potentially may have a direct adverse effect on the policies and decisions produced by the UP/SP merger proceeding. This also makes the exemption procedures inappropriate for this particular transaction.

Finally, this transaction is not uncontroversial because the Colorado Pacific's and KCVN's deep concern that UP would try to restrict the ability of its lessee to conduct business with railroads other than UP or otherwise restrict the use of the Tennessee Pass Line was well known to Rio Grande Corporation prior to CMPR filing the Notice. This concern was most recently expressed by Colorado Pacific in an email to Rio Grande Corporation attached hereto as Exhibit B which specifically referenced the concern that UP would not grant any rights to its lessee to operate over the Sage to Dotsero segment and be able to freely interchange traffic with BNSF. Unfortunately,

Rio Grande Corporation elected to not respond to Colorado Pacific's concerns before its subsidiary filed its Notice.

Based on the foregoing, the Notice should be rejected because it contains materially false statements and representations, and because it is not the appropriate vehicle for seeking such authority. Rather, the disputed issues and controversy surrounding the proposed lease agreement Notice should be resolved through either a petition for an individual exemption under 49 C.F.R. 1121, or an application under 49 CFR 1150 Subpart A, where evidence (perhaps after appropriate discovery) can be taken and §10901 principles applied. Following these more appropriate procedures would permit all affected parties to submit relevant information and ensure the development of a full factual record upon which the Board can render a decision.

C. The Board Should Delay the Effective Date of the Notice Pending Disposition of this Motion and the Motion for Access to Confidential Documents

Finally, consistent with precedent and practice in other notice of exemption proceedings, the Board should postpone the effective date of the exemption pending (1) the Board's disposition of this Motion, (2) its disposition of the accompanying Motion for Access to Confidential Documents and analysis of the lease agreement by Colorado Pacific and KCVN once it is produced, and (3) the parties supplying the Board with any additional information and/or to provide the Board with sufficient time to fully consider the Notice and the positions of the parties.²⁵

²⁵ Docket No. FD 36384, *Sills Road Realty LLC – Acquisition Exemption – Railroad Line in the Town of Brookhaven N.Y.* and Docket No. FD 36385, *Spectrum RR Holdings, LLC – Acquisition & Operation Exemption – Line of Sills Road Realty LLC, in the Town of Brookhaven, NY* (served March 13, 2020); Docket No. FD 36376, *Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line in the Town of Brookhaven, N.Y.* (served January 17, 2020); Docket No. FD 35972, *West Belt Railway, LLC – Lease and Operation Exemption Including Interchange Commitment – Terminal Railroad Association of St Louis* (served November 20, 2015).

IV. CONCLUSION

For all the reasons stated in this Reply, the Board should reject the Notice of Exemption filed by CMPR and it should postpone the effective date of the exemption pending disposition of this Motion and the Motion for Access to Confidential Documents, to allow for the parties supplying the Board with any additional information it may require, and to provide the Board with sufficient time to fully consider the Notice and the positions of the parties.

Respectfully submitted,



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*Attorneys for Colorado Pacific Railroad LLC and
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January 8, 2021

ATTACHMENT A

NEWS RELEASE

FOR IMMEDIATE RELEASE

Oct. 1, 2020



www.scoular.com

Contact: Melissa Matczak, Senior Manager, Corporate Communications
Phone: 402-344-1325 ■ Email: mmatczak@scoular.com

The Scoular Company expands southeast Colorado and southwest Kansas capacity

Sheridan Lake, Colorado, facility set to receive grain in fall

SHERIDAN LAKE, Colo. (Oct. 1, 2020) – The Scoular Company announced Thursday that it has reached agreement with Crossroads Agriculture on a new grain-receiving facility about 6 miles east of Sheridan Lake, Colorado. Crossroads will build the facility and Scoular will lease and operate space at the location, which will be ready to unload producer trucks for fall harvest.

The site will have more than 1.6 million bushels of temporary storage capacity and can unload 20 trucks an hour through a high-speed conveyor.

“The Sheridan Lake site will be Scoular’s seventh in the region focused on providing producers fast harvest unloading and efficient market access,” said Phil Van Court, Regional Facility Manager for the Omaha, Neb.-based Scoular.

Scoular has had a presence in southwest Kansas and southeast Colorado since 2005, operating Coolidge and Tribune facilities in Kansas and a facility in Haswell, Colo. The new Sheridan Lake facility, located on the Colorado Pacific Railroad, will provide an additional marketing option to customers in the area. Scoular will lease and operate the space as part of its Coolidge business.

Crossroads Agriculture, founded by Stefan Soloviev in 1999, operates 400,000 acres of farm and ranch land in Kansas, Colorado, New Mexico and New York. Other holdings include the Colorado Pacific railroad, which runs west from the Kansas state line to the base of the Rocky Mountains near Pueblo, Colo.

The Sheridan Lake development illustrates Scoular’s ongoing commitment to farmers in southeast Colorado and southwest Kansas. “We’ve made significant investments to our facilities over the past 15 years. We hope to continue to be able to better serve our farmer customers,” Van Court said.

Please call the Scoular office in Coolidge, Kan., at (620) 372-8611 for all grain marketing needs.

Founded in the heartland of the United States, the 128-year-old Scoular has offices and facilities worldwide and more than \$4.5 billion in sales. The company provides global and diverse supply chain solutions for end-users and suppliers of grain, feed ingredients, and food ingredients. For more information, visit scoular.com.

ATTACHMENT B

From: William Osborn

Sent: Friday, December 11, 2020 1:05 PM

To: Richard D. Bertel <RDBertel@rgpc.com>; Chris A. Bertel <cabertel@rgpc.com>

Cc: Robert Bach <rbach@rgpc.com>; Michael Haeg <mhaeg@rgpc.com>

Subject: Checking in

Hello Rick and Chris,

Colorado Pacific Railroad ("CXR") seeks restoration of service over the inactive portion of the Tennessee Pass line from Parkdale, Colorado to Sage, Colorado under conditions which allow for the reasonable interchange of traffic with both UP and BNSF at Dotsero and Parkdale with service commencing in time for the 2022 grain harvest. We believe for Rio Grande to provide interchange services with BNSF at Dotsero its current lease discussions with UP must include obtaining rights to operate over UP's active rail line from Sage to Dotsero without restrictions such as interchange commitments. CXR asks if your company expects to achieve these outcomes as part of its present negotiations with UP. If you answer yes, as to both, then grain producers tributary to CXR look forward to being your shipper customers, in a jointly remunerative endeavor. CXR's principal has allied with Scoular Grain, as reported in the attached press release, and believes the ability to more easily ship grain to the West Coast by direct route will add considerably to the profitability of such operations. Western grain producers want to economically reach California flour mills, and on top of that, the China export trade is booming.

However, if the lease terms do not grant Rio Grande operating rights to Dotsero and contain other restrictions that enable UP to maintain a monopoly on traffic across the Tennessee Pass line and/or if the line is not quickly restored to service, CXR reserves its rights to oppose the Surface Transportation Board's approval of the transaction. Grain shippers in the West receive better rates and service terms when they have access to both Class I carriers, and the wording of the STB's decisions conditioning its approval of the 1996 merger between UP and SP indicated the Board would be especially vigilant to ensure the Tennessee Pass line, if reactivated, is used in the national transportation system as a through route for rail shippers in Colorado and elsewhere across the Front Range of the Rockies. CXR considers this desire to preserve competition by preserving the Tennessee Pass line as a through route to be so important as to justify a multi-year fight for it at the STB.

CXR requests that you reply to this note by the end of next month with an affirmation that (1) your reactivation of the line will be accompanied by rights to operate over UP's line from Sage to Dotsero, (2) your agreement will not contain any restrictions on your ability to interchange traffic with railroads other than UP at Dotsero and Parkdale, and (3) you will restore freight service on the Tennessee Pass line in time for the 2022 grain harvest. If so, we would welcome the opportunity to discuss possibilities for Colorado grain shipments to move over the line. If not, then, then CXR will proceed with its plans to seek appropriate relief at the Surface Transportation Board, in an effort to achieve those objectives for western grain shippers.

We have earlier asked to meet with both you and UP about these matters, and the meetings were refused. Now another year has passed. I wonder, is there any way that both your objectives and those of our client can be satisfied? Might the position your company took in the 10/24/2019 e-mail below be reconsidered, and a visit between us be allowed to happen? But by Zoom video, instead of in person, due to pandemic considerations?

Regards,

- Wm

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of January 2021, a copy of the foregoing Motion to Reject Notice of Exemption was served by email on all parties on the official Service List for Docket No. FD 36471.


Thomas W. Wilcox