B.C.D. 04-3

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EMPLOYER STATUS DETERMINATION
San Pedro Operating Company, LLC, d/b/a San Pedro Southwestern Railroad

This is the determination of the Railroad Retirement Board concerning the status of San Pedro Operating Company, LLC, d/b/a San Pedro Southwestern Railroad as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding San Pedro was provided by David L. Parkinson, Managing Member of San Pedro. According to Mr. Parkinson, San Pedro began doing business November 1, 2003. San Pedro is owned by Arizona Railroad Group, LLC, which is currently being reviewed for purposes of rendering a coverage determination under the Acts. At start up, San Pedro provided switching services to Apache Nitrogen Corporation, not a covered employer. It interchanges with the Union Pacific Railroad. It has two employees and two diesel switch engines and will operate a 67.5 mile rail line, which was acquired from SWKR Operating Company, Inc. (formerly known as San Pedro Southwestern Operating Company, LLC), a covered employer under the Acts (B.A. No. 2761) which is currently being reviewed for termination of coverage under the Acts.

In Surface Transportation Board Finance Docket No. 34430, San Pedro filed a notice of exemption to acquire and operate a rail line formerly owned by SWKR Operating Company.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that San Pedro is a carrier operating in interstate commerce. Accordingly, it is determined that San Pedro became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of November 1, 2003, the date as of which it commenced operations.

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