



Sarah W. Bailiff
Senior General Attorney

214 287

BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161-0039

2500 Lou Menk Drive, Third Floor
Fort Worth, TX 76131

Tel: 817-352-2354

Fax: 817-352-2397

E-mail: sarah.bailiff@bnsf.com

VIA UPS OVERNIGHT MAIL

July 1, 2005

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



**Re: Surface Transportation Board Finance Docket No. 34720; BNSF
Railway Company – Trackage Rights Exemption – Union Pacific
Railroad Company**

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of a Verified Notice of Exemption, and a check for \$1,000.00, covering the filing fee. An electronic copy of the filing in WordPerfect 9.0 is also enclosed on a 3.5 inch disc for the Board's use.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sarah Whitley Bailiff

FILED

JUL 5 - 2005

SWB/js
Encs.

**SURFACE
TRANSPORTATION BOARD**

cc: Mr. Bob Opal

**ENTERED
Office of Proceedings**

JUL 5 - 2005

**Part of
Public Record**

FEE RECEIVED

JUL 5 - 2005

**SURFACE
TRANSPORTATION BOARD**

214287

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY



VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED

JUL 5 - 2005

SURFACE
TRANSPORTATION BOARD

Sarah W. Bailiff
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354

FILED

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SURFACE
TRANSPORTATION BOARD

Dated: July 1, 2005

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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

1. BNSF Railway Company ("BNSF") files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7), for exemption of a modified agreement governing BNSF's existing overhead trackage rights over Union Pacific Railroad Company's ("UP") line of railroad between Crestline Street MP 163.52 and Helena Street MP 163.89, approximately 0.37 miles, on UP's Wallace Subdivision (the "Joint Trackage") in Spokane, WA, as shown on Exhibit 1. BNSF acquired the nonexclusive right to use the Joint Trackage under an agreement dated February 22, 1973 by and between the Oregon-Washington Railroad & Navigation Company, and its lessees, Union Pacific Railroad Company and Burlington Northern Inc. (BNSF's predecessors in interest) (the "Original Agreement"), as amended by a supplemental agreement dated January 21, 1974 (the "First Supplement") and further amended by a Letter Agreement dated July 27, 1988 (the "Second Supplement"), hereinafter collectively referred to as the "Agreement." The modification of trackage rights relates to BNSF's assumption of maintenance functions for a particular segment of the Joint Track. BNSF will continue to have rights to use

the line as provided in the Agreement.

Under 49 C.F.R. Section 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights modification covered by this notice is covered by the written agreement attached as Exhibit 2 and is not being filed or sought in responsive applications in a rail consolidation proceeding.

2. The following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii)

The transaction covered by this notice is the modification of the agreement governing the overhead trackage rights held by BNSF over the Joint Trackage, a distance of approximately 0.37 miles.

The carriers involved in this transaction and their business addresses are as follows:

BNSF Railway Company
2600 Lou Menk Drive
P. O. Box 961034
Fort Worth, TX 76161

Union Pacific Railroad Company
MS 1180
1400 Douglas Street
Omaha, NE 68179

Questions regarding this exemption should be sent to Sarah W. Bailiff, Senior General Attorney, BNSF Railway Company, P.O. Box 961039, Fort Worth, TX 76161-0039. The telephone number is (817) 352-2354.

Consummation of the transaction will occur on July 12, 2005, and operations under this exemption are planned to begin on that date. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

Section 1180.6(a)(5)

The trackage involved in this modified trackage rights agreement is located in the state of Washington. BNSF operates in the states of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming, and Canadian provinces of British Columbia and Manitoba.

Section 1180.6(a)(6)

The required map is attached hereto as Exhibit No. 1.

Section 1180.6(a)(7)(ii)

A copy of the modified agreement covering this transaction is attached hereto as Exhibit No. 2.

Section 1180.4(g)(1)(i)

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

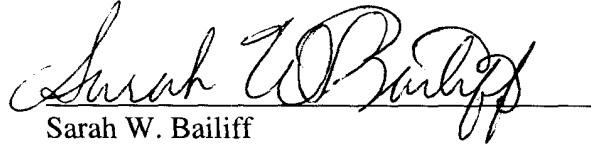
Section 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3.

Section 1180.4(g)(3)

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3) respectively.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sarah W. Bailiff", written over a horizontal line.

Sarah W. Bailiff
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354

EXHIBIT 1

**UP Trackage
.37 miles**

Union Pacific MP 163.52
BNSF Maintenance

Union Pacific MP 163.89
BNSF Maintenance

UNION PACIFIC RAILROAD
WALLACE SUBDIVISION

LEASED TRACK
UPRR
BNSF

2000-2001

UP MP 354.00

EXHIBIT 2

This **THIRD SUPPLEMENTAL AGREEMENT** made this 20th day of May, 2005, ("Execution Date") between **BNSF RAILWAY COMPANY**, formerly known as **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, UP owns and operates a line of railroad extending approximately 0.37 miles between Crestline St. MP 163.52 and Helena St. MP 163.89, on UP's Wallace Subdivision (the "Joint Trackage") in Spokane, WA, as shown on Exhibit "A", which BNSF acquired the nonexclusive right to use under an agreement dated February 22, 1973 by and between the Oregon-Washington Railroad & Navigation Company, and its lessee, Union Pacific Railroad Company and Burlington Northern Inc., UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as amended by a supplemental agreement dated January 21, 1974 (the "First Supplement") and further amended by a Letter Agreement dated July 27, 1988 (the "Second Supplement"), hereinafter collectively referred to as the "Agreement"); and

WHEREAS, BNSF has requested the right to provide maintenance for the Joint Trackage and UP is willing to allow BNSF to provide maintenance for the Joint Trackage under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. Effective as of the Effective Date (as such term is defined in Section 8, below), UP hereby grants to BNSF, and BNSF hereby accepts from UP, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, including all signal systems that are within the limits of the Joint Trackage, under this Third Supplemental Agreement, to FRA Class 1 standards.
2. The annual flat rate maintenance cost established by Letter Agreement dated July 27, 1988, and charges to BNSF under Sections 2 and 7 of the Agreement shall be deleted in

their entirety and the following language substituted in their place: "BNSF will be responsible for taxes and assessments levied upon, assessed against or fairly assigned to the joint line". The taxes and assessments shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of payment of the taxes and assessments.

3. The following sections of the Agreement are hereby amended by (a) deleting the word "Union Pacific" and substituting in its place the word "Northern" and (b) deleting the word "Northern" and substituting in its place the word "Union Pacific", wherever they appear in such sections: the first four sentences of Section 5, Section 6, and Section 8 except for the last sentence in its subsection (d).
4. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Third Supplemental Agreement.
5. Notwithstanding any provision to the contrary in the Agreement, UP agrees that BNSF shall be allowed to make (the) changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by BNSF's and UP's respective Engineering Departments. All changes, additions, capital maintenance, improvements or betterments desired by BNSF shall be made at BNSF's sole cost and expense unless so requested to be made by UP or a third party.

Catastrophic expenses, to the extent it is required to maintain the Joint Trackage to FRA Class 1 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Notwithstanding any provision to the contrary, the costs of any work required by proper governmental authority to be performed by BNSF on the railroad bridge crossings of Napa Street or Trent Avenue shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

6. This Third Supplemental Agreement and any rights granted hereunder may not be assigned by BNSF in whole or in part without the prior written consent of UP except as such may occur as a result of a merger, corporate reorganization, consolidation, change of control or sale of all or substantially all of BNSF's assets. This Third Supplemental Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.
7. This Third Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. After the initial 25 year term, this Second Supplemental Agreement shall remain in full force and effect until such time that either party terminates this Second Supplemental Agreement with one year's written notice to the other. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Third Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Third Supplemental Agreement, for whatever reason, BNSF shall fully cooperate, consent, participate and jointly file with UP to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Third Supplemental Agreement. BNSF shall assist and support UP's filing and any associated proceedings to facilitate any termination or expiration, which shall include without

limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in UP's sole discretion, be prepared and made at any time after this Third Supplemental Agreement has been terminated or expired. Such filing shall be coordinated by and at the expense of UP. Upon termination of the Third Supplement, the Original Agreement, as supplemented other than as by the Third Supplement, shall once again be in full force and effect. Any liability created under the Third Supplement shall survive any termination of the Third Supplement.

8. Other than as specifically modified herein, the Agreement shall remain in full force and effect.
9. This Third Supplemental Agreement also serves as notification of termination in accord with Section 19 of the agreement dated February 22, 1973 covering an at grade railroad crossing that is no longer in existence near Hogan Street in Spokane.

IN WITNESS WHEREOF, the parties hereto have executed this Third Supplemental Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

UNION PACIFIC RAILROAD COMPANY

By: D. B. Valentine

By: MC Giersch

Printed: D. B. Valentine

Printed: MC Giersch

Title: APP CONTRACTS & JINT FACILITIES Title: Director Joint Facilities

Date: 6/02/05

Date: 5/20/05

EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company ("UP") has agreed to a modified trackage rights agreement governing the overhead trackage rights held by BNSF Railway Company ("BNSF") between Crestline Street MP 163.52 and Helena Street MP 163.89 on UP's Wallace Subdivision (the "Joint Trackage") in Spokane, WA , a distance of approximately 0.37 miles. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

The trackage rights will be effective on July 12, 2005, and operations under this exemption are planned to begin on that date.

This notice is filed under §1180.2(d)(7). 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 stay the transaction.

Dated:
By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah W. Bailiff, Senior General Attorney of BNSF Railway Company, under penalty of perjury, declares and verifies that she has read the foregoing Notice of Exemption in Finance Docket No. 34720, knows the facts stated therein, and that said facts are true as stated.

Dated: July 1, 2005.


Sarah W. Bailiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Notice of Exemption was served on the following person via UPS Overnight Mail on July 1, 2005:

Bob Opal
Union Pacific Railroad Company
MS 1180
1400 Douglas Street
Omaha, NE 68179

A handwritten signature in cursive script, reading "Sarah W. Bauliff". The signature is written in dark ink and is positioned in the lower right area of the document.



Sarah W. Bailiff
Senior General Attorney

214 287

BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161-0039

2500 Lou Menk Drive, Third Floor
Fort Worth, TX 76131

Tel: 817-352-2354

Fax: 817-352-2397

E-mail: sarah.bailiff@bnsf.com

VIA UPS OVERNIGHT MAIL

July 1, 2005

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



**Re: Surface Transportation Board Finance Docket No. 34720; BNSF
Railway Company – Trackage Rights Exemption – Union Pacific
Railroad Company**

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of a Verified Notice of Exemption, and a check for \$1,000.00, covering the filing fee. An electronic copy of the filing in WordPerfect 9.0 is also enclosed on a 3.5 inch disc for the Board's use.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sarah Whitley Bailiff

FILED

JUL 5 - 2005

SWB/js
Encs.

**SURFACE
TRANSPORTATION BOARD**

cc: Mr. Bob Opal

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214287

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY



VERIFIED NOTICE OF EXEMPTION

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SURFACE
TRANSPORTATION BOARD

Sarah W. Bailiff
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354

FILED

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Dated: July 1, 2005

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BEFORE THE
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STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

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the line as provided in the Agreement.

Under 49 C.F.R. Section 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights modification covered by this notice is covered by the written agreement attached as Exhibit 2 and is not being filed or sought in responsive applications in a rail consolidation proceeding.

2. The following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii)

The transaction covered by this notice is the modification of the agreement governing the overhead trackage rights held by BNSF over the Joint Trackage, a distance of approximately 0.37 miles.

The carriers involved in this transaction and their business addresses are as follows:

BNSF Railway Company
2600 Lou Menk Drive
P. O. Box 961034
Fort Worth, TX 76161

Union Pacific Railroad Company
MS 1180
1400 Douglas Street
Omaha, NE 68179

Questions regarding this exemption should be sent to Sarah W. Bailiff, Senior General Attorney, BNSF Railway Company, P.O. Box 961039, Fort Worth, TX 76161-0039. The telephone number is (817) 352-2354.

Consummation of the transaction will occur on July 12, 2005, and operations under this exemption are planned to begin on that date. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

Section 1180.6(a)(5)

The trackage involved in this modified trackage rights agreement is located in the state of Washington. BNSF operates in the states of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming, and Canadian provinces of British Columbia and Manitoba.

Section 1180.6(a)(6)

The required map is attached hereto as Exhibit No. 1.

Section 1180.6(a)(7)(ii)

A copy of the modified agreement covering this transaction is attached hereto as Exhibit No. 2.

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The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

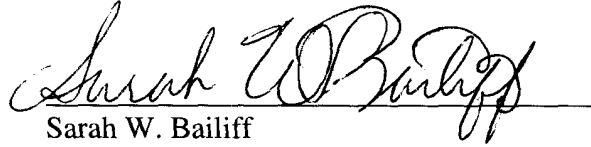
Section 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3.

Section 1180.4(g)(3)

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3) respectively.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sarah W. Bailiff", written over a horizontal line.

Sarah W. Bailiff
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354

EXHIBIT 1

**UP Trackage
.37 miles**

Union Pacific MP 163.52
BNSF Maintenance

Union Pacific MP 163.89
BNSF Maintenance

UNION PACIFIC RAILROAD
WALLACE SUBDIVISION
EXHIBIT "A"

LEASED TRACK	████████████████████
UPRR	_____
BNSF	+++++

1. *How many people are there in your family?*
 2. *What are their names?*

EXHIBIT 2

This **THIRD SUPPLEMENTAL AGREEMENT** made this 20th day of May, 2005, ("Execution Date") between **BNSF RAILWAY COMPANY**, formerly known as **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "**BNSF**", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "**UP**".

WITNESSETH:

WHEREAS, UP owns and operates a line of railroad extending approximately 0.37 miles between Crestline St. MP 163.52 and Helena St. MP 163.89, on UP's Wallace Subdivision (the "Joint Trackage") in Spokane, WA, as shown on Exhibit "A", which BNSF acquired the nonexclusive right to use under an agreement dated February 22, 1973 by and between the Oregon-Washington Railroad & Navigation Company, and its lessee, Union Pacific Railroad Company and Burlington Northern Inc., UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as amended by a supplemental agreement dated January 21, 1974 (the "First Supplement") and further amended by a Letter Agreement dated July 27, 1988 (the "Second Supplement"), hereinafter collectively referred to as the "Agreement"); and

WHEREAS, BNSF has requested the right to provide maintenance for the Joint Trackage and UP is willing to allow BNSF to provide maintenance for the Joint Trackage under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. Effective as of the Effective Date (as such term is defined in Section 8, below), UP hereby grants to BNSF, and BNSF hereby accepts from UP, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, including all signal systems that are within the limits of the Joint Trackage, under this Third Supplemental Agreement, to FRA Class 1 standards.
2. The annual flat rate maintenance cost established by Letter Agreement dated July 27, 1988, and charges to BNSF under Sections 2 and 7 of the Agreement shall be deleted in

their entirety and the following language substituted in their place: "BNSF will be responsible for taxes and assessments levied upon, assessed against or fairly assigned to the joint line". The taxes and assessments shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of payment of the taxes and assessments.

3. The following sections of the Agreement are hereby amended by (a) deleting the word "Union Pacific" and substituting in its place the word "Northern" and (b) deleting the word "Northern" and substituting in its place the word "Union Pacific", wherever they appear in such sections: the first four sentences of Section 5, Section 6, and Section 8 except for the last sentence in its subsection (d).
4. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Third Supplemental Agreement.
5. Notwithstanding any provision to the contrary in the Agreement, UP agrees that BNSF shall be allowed to make (the) changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by BNSF's and UP's respective Engineering Departments. All changes, additions, capital maintenance, improvements or betterments desired by BNSF shall be made at BNSF's sole cost and expense unless so requested to be made by UP or a third party.

Catastrophic expenses, to the extent it is required to maintain the Joint Trackage to FRA Class 1 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

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6. This Third Supplemental Agreement and any rights granted hereunder may not be assigned by BNSF in whole or in part without the prior written consent of UP except as such may occur as a result of a merger, corporate reorganization, consolidation, change of control or sale of all or substantially all of BNSF's assets. This Third Supplemental Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.
7. This Third Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. After the initial 25 year term, this Second Supplemental Agreement shall remain in full force and effect until such time that either party terminates this Second Supplemental Agreement with one year's written notice to the other. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Third Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Third Supplemental Agreement, for whatever reason, BNSF shall fully cooperate, consent, participate and jointly file with UP to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Third Supplemental Agreement. BNSF shall assist and support UP's filing and any associated proceedings to facilitate any termination or expiration, which shall include without

limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in UP's sole discretion, be prepared and made at any time after this Third Supplemental Agreement has been terminated or expired. Such filing shall be coordinated by and at the expense of UP. Upon termination of the Third Supplement, the Original Agreement, as supplemented other than as by the Third Supplement, shall once again be in full force and effect. Any liability created under the Third Supplement shall survive any termination of the Third Supplement.

8. Other than as specifically modified herein, the Agreement shall remain in full force and effect.
9. This Third Supplemental Agreement also serves as notification of termination in accord with Section 19 of the agreement dated February 22, 1973 covering an at grade railroad crossing that is no longer in existence near Hogan Street in Spokane.

IN WITNESS WHEREOF, the parties hereto have executed this Third Supplemental Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

UNION PACIFIC RAILROAD COMPANY

By: D. B. Valentine

By: MC Giersch

Printed: D. B. Valentine

Printed: MC Giersch

Title: APP CONTRACTS & BINT FACILITIES Title: Director Joint Facilities

Date: 6/02/05

Date: 5/20/05

EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34720

BNSF RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company ("UP") has agreed to a modified trackage rights agreement governing the overhead trackage rights held by BNSF Railway Company ("BNSF") between Crestline Street MP 163.52 and Helena Street MP 163.89 on UP's Wallace Subdivision (the "Joint Trackage") in Spokane, WA , a distance of approximately 0.37 miles. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

The trackage rights will be effective on July 12, 2005, and operations under this exemption are planned to begin on that date.

This notice is filed under §1180.2(d)(7). 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 stay the transaction.

Dated:
By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah W. Bailiff, Senior General Attorney of BNSF Railway Company, under penalty of perjury, declares and verifies that she has read the foregoing Notice of Exemption in Finance Docket No. 34720, knows the facts stated therein, and that said facts are true as stated.

Dated: July 1, 2005.


Sarah W. Bailiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Notice of Exemption was served on the following person via UPS Overnight Mail on July 1, 2005:

Bob Opal
Union Pacific Railroad Company
MS 1180
1400 Douglas Street
Omaha, NE 68179

A handwritten signature in cursive script, reading "Sarah W. Bauliff". The signature is written in dark ink and is positioned in the lower right area of the document.