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March 22, 2004

210366

BY HAND DELIVERY

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

FILED

MAR 22 2004

**SURFACE
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 34458
*The Kansas City Southern Railway Company--Trackage Rights Exemption--
The Burlington Northern And Santa Fe Railway Company*

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and 10 copies of the Verified Notice of Exemption (the "Notice") of The Kansas City Southern Railway Company ("KCS"), pursuant to 49 C.F.R. § 1180.2(d)(7). A check in the amount of \$950.00 is enclosed to cover the cost of processing the Notice of Exemption.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our courier.

Very truly yours,

William A. Mullins

Enclosures

cc: Thomas J. Healey, Esq

FEE RECEIVED

MAR 22 2004

**SURFACE
TRANSPORTATION BOARD**

FILED
MAR 22 2004
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34458



THE KANSAS CITY SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

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SURFACE
TRANSPORTATION BOARD

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KANSAS CITY SOUTHERN
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Fax: (816) 983-1227

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BAKER AND MILLER, PLLC
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Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

March 22, 2004

Attorneys for The Kansas City Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34458

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

The Kansas City Southern Railway Company (hereinafter referred to as "User" or "KCS") hereby submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), from the prior approval and authorization requirements of 49 U.S.C. § 11323 to permit it to implement operations pursuant to non-exclusive overhead trackage rights using approximately 93.01 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company ("BNSF" or "Owner"). In support of this Notice of Exemption and in compliance with 49 C.F.R. § 1180.4 (g), KCS states the following:

***49 C.F.R. § 1180.6(a)(1)(i)
Description of the proposed transaction***

Pursuant to negotiations between KCS and BNSF, BNSF has agreed to provide KCS with non-exclusive trackage rights over a portion of railroad of BNSF on BNSF's Fort Worth subdivision between milepost 386.80 near Metro Junction, Denton County, Texas and BNSF's Red Rock subdivision, milepost 479.81 near Davis, Murray County, Oklahoma, a total distance of approximately 93.01 miles (as shown on Exhibit 1 – Map, and hereinafter referred to as the "Subject Trackage") for the sole purpose of allowing KCS to handle its own non-revenue, company material ballast trains, using its own power and crews, over the Subject Trackage to

and from the ballast facility currently operated by Martin Marietta near Davis, Oklahoma. The rights are overhead rights only and KCS has no rights to (1) set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; (2) handle any traffic other than KCS company material ballast trains; (3) serve any industry, team or house track now existing or constructed in the future along the Subject Trackage; or (4) permit or admit any third party to the use of all or any portion of the Subject Trackage.

The full name and address of the applicant carrier is:

The Kansas City Southern Railway Company
Cathedral Square
427 West 12th Street
Kansas City, MO 64105
Tel: (816) 983-1303

The representative of The Kansas City Southern Railway Company to receive correspondence in this matter is:

William A. Mullins
Baker and Miller, PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

49 C.F.R. 1180.6(a)(1)(ii)
Proposed Time Schedule For Consummation

It is anticipated the proposed transaction will be consummated on or about March 29, 2004.

49 C.F.R. 1180.6(a)(1)(iii)
Purpose Sought to be Accomplished

The sole purpose for the trackage rights is to allow KCS to handle its own non-revenue, company material ballast trains, using its own power and crews, over the Subject Trackage to and from the ballast facility currently operated by Martin Marietta near Davis, Oklahoma. The rights are overhead rights only and KCS has no rights to (1) set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; (2) handle any traffic other than KCS company material ballast trains; (3) serve any industry, team or house track now existing or constructed in the future along the Subject Trackage; or (4) permit or admit any third party to the use of all or any portion of the Subject Trackage.

49 C.F.R. 1180.6(a)(5)
States in Which Applicant's Property is Located

User owns rail property located in the States of: AL, IL, MO, KS, OK, AR, TX, MS, LA, and TN.

Owner owns rail property located in the States of AL, MS, TN, LA, AR, MO, IL, IA, WI, MN, ND, SD, NE, KS, OK, TX, NM, CO, WY, MT, ID, UT, AZ, NV, CA, OR and WA.

49 C.F.R. 1180.6(a)(6)
Map - Exhibit 1

A map of the rail line over which KCS proposes to acquire trackage rights is attached hereto as Exhibit 1.

49 C.F.R. 1180.6(a)(7)(ii)
Agreement - Exhibit 2

A copy of the proposed draft trackage rights agreement is attached as Exhibit 2. KCS expects the final signed agreement to be very similar to the draft agreement and believes its

should be finalized and signed within the next few weeks.

49 C.F.R. §1180.4(g)(i)
Labor Protection

KCS anticipates that any employees adversely affected by this transaction will be afforded the level of protection set forth 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).

49 C.F.R. 1180.4(g)(2)(i)
Caption Summary

In accordance with §1180.4(g)(2)(i), a caption summary suitable for publication in the Federal Register is attached to this Notice of Exemption as Exhibit 3.

49 C.F.R. 1180.4(g)(3)
Environmental and historic reporting requirements

The proposed trackage rights operations will not result in any significant changes in User's operations and thus environmental documentation does not need to be prepared in accordance with 49 C.F.R. §1105.6(c)(4). In addition, because KCS's exercise of the subject trackage rights will not have a substantial, adverse effect on the maintenance level of the Subject Trackage, a historic report is not required for this filing. 49 C.F.R. §1105.8(b)(3).

Respectfully submitted,

Thomas J. Healey
KANSAS CITY SOUTHERN
Cathedral Square
427 West 12th Street
Kansas City, MO 64105
Tel: (816) 983-1392
Fax: (816) 983-1227


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Suite 300
Washington, D.C. 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

Dated: March 22, 2004

Attorneys for The Kansas City Southern
Railway Company

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

VERIFICATION

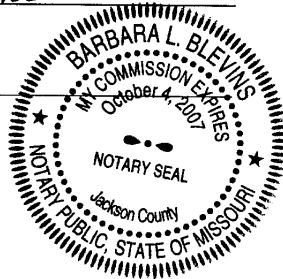
Gerald K. Davies, being duly sworn, deposes and says that he is the Executive Vice President and Chief Operating Officer of The Kansas City Southern Railway Company, he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

Gerald K. Davies

SUBSCRIBED AND SWORN TO
before me this 18th day of March, 2004

Barbara L. Blevins
Notary Public

My Commission expires: _____



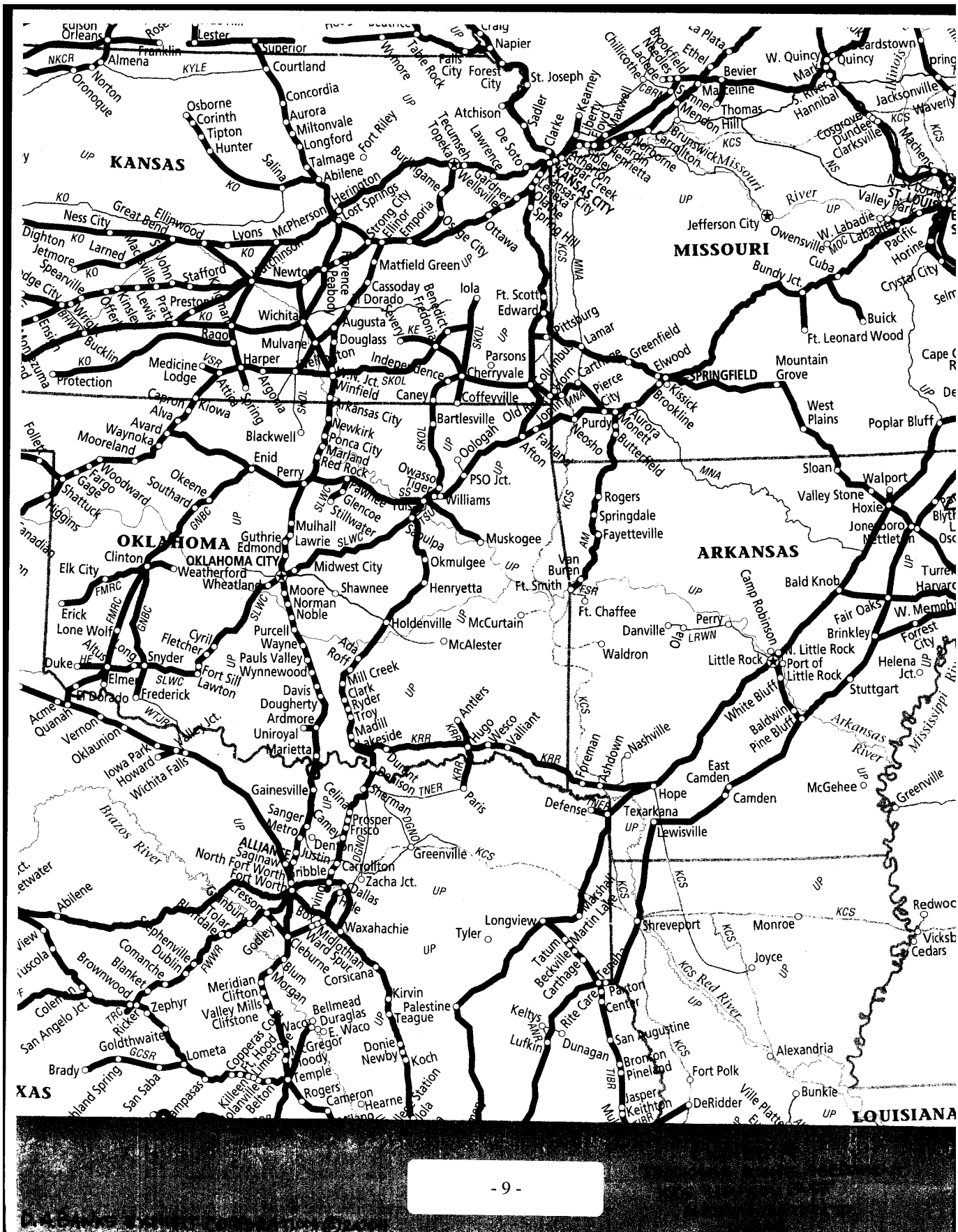
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

FINANCE DOCKET NO. 34458

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

EXHIBIT 1

MAP



**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

FINANCE DOCKET NO. 34458

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

EXHIBIT 2

DRAFT TRACKAGE RIGHTS AGREEMENT

Metro Junction, Texas to Davis, Oklahoma
Trackage Rights Agreement

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2004, (Effective Date) by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, hereinafter referred to as "BNSF" or "Owner", and **THE KANSAS CITY SOUTHERN RAILWAY COMPANY**, hereinafter referred to as "KCS" or "User".

W I T N E S S E T H :

WHEREAS, KCS desires to acquire nonexclusive trackage rights over a portion of railroad of BNSF on BNSF's Fort Worth subdivision between milepost 386.80 near Metro Junction, Denton County, Texas and BNSF's Red Rock subdivision, milepost 479.81 near Davis, Murray County, Oklahoma, a total distance of approximately 93.01 miles, as shown in red on Exhibit A hereto (hereinafter referred to as the "Joint Trackage") for the sole purpose of allowing KCS to handle its own non-revenue, company material ballast trains, using its own power and crews, over the Joint Trackage to and from the ballast facility currently operated by Martin Marietta near Davis, Oklahoma; and

WHEREAS, BNSF is agreeable to granting such nonexclusive overhead trackage rights to KCS as aforesaid, subject, however, to the terms and conditions as hereinafter provided.

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

Section 1. **TRackage SUBJECT TO AGREEMENT.**

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a print, which depicts the Joint Trackage, as further defined in Exhibit "B" of this Agreement, attached hereto and by this reference incorporated herein.

Section 2. **GRANT OF TRackage RIGHTS.**

The General Conditions covering the grant of trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this Agreement shall arise, the provisions of this Agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this Agreement, and KCS's agreement to file a "Notice of Exemption" filing for the trackage rights with the STB, BNSF grants to KCS the nonexclusive trackage rights, herein granted, for the sole purpose of User using same for the movement of KCS company material ballast trains (the "Ballast Trains"), loaded and empty, on the Joint Trackage to and from the ballast facility currently operated by Martin Marietta near Davis, Oklahoma. Any other use of the Joint Trackage by User is prohibited unless prior written approval is granted by Owner.

It is understood and agreed that KCS shall not have a right to:

- (a) set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or

- (b) handle any traffic other than Ballast Trains over the Joint Trackage;
or
- (c) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage; or
- (d) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of KCS.

Section 3. **MAINTENANCE AND OPERATION OF TRACKAGE.**

BNSF, at its expense, shall maintain the Joint Trackage. In the event that for operating convenience, necessity or emergency, BNSF permits or directs KCS to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. **LIMITATIONS OF TRACKAGE RIGHTS TRAINS.**

KCS and BNSF agree that KCS's use of the trackage rights granted herein shall be for a maximum of two (2) KCS train per day, in either direction collectively unless otherwise agreed to by BNSF's General Transportation Superintendent or that person's designee. Request for additional trains will be made in writing by KCS and will be subject to the written consent and approval of BNSF, which approvals may be granted or withheld in BNSF's sole and absolute discretion for any reason or no reason whatsoever. Trains will be limited to 7200 feet excluding locomotives and will require a minimum of 1.0 HPT.

Section 5. **COMPENSATION.**

KCS agrees to pay BNSF on a monthly basis \$____ per car mile, loaded or empty, for each car KCS moves over the Joint Trackage.

These charges shall be subject to annual increase or decrease commencing on _____, 2005, and _____ of each year thereafter, based on the percentage of change in _____

_____.

Section 6. **ADDITIONS BETTERMENTS AND CAPITAL IMPROVEMENTS**

In addition to the charges provided for in Section 5 – Compensation, KCS agrees to pay for any Additions, Betterments or Capital Improvements to the Joint Track based upon its proportion of usage. The proportion of usage will be derived by dividing the total cars the KCS moves over the Joint Track by the total cars all Users moved over the Joint Track for the immediately preceding twelve (12) month period in which construction of the Additions, Betterments or Capital Improvements commences. BNSF shall provide to KCS at least ninety (90) days advance written notice of any Additions, Betterments or Capital Improvements for which KCS will be required to participate in the cost of under the terms of this Agreement.

Section 7. **LIABILITY**

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto.

Section 8. **ENGINEER CERTIFICATION**

KCS shall submit its written program for certifying the qualifications of locomotive engineers per CFR 49 part 240.101. Such written program shall be approved by BNSF prior to KCS commencing operations as contemplated herein.

Section 9. **APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state of Texas without regard to its conflicts of laws provisions.

Section 10. **DEFAULT, TERM AND TERMINATION.**

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this Agreement shall become effective on the "Effective Date", subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to both parties. Once effective, the default, term and termination provisions are as follows:

- (a) In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the rights granted hereunder and User's use of the Joint Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.
- (b) The term of this Agreement shall commence on the date first written above and shall remain in force and effect until terminated by one party serving on the other party thirty (30) days written notice to terminate.

- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed (including but not limited to obligations to defend, indemnify, save and hold harmless) or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.
- (d) Should this Agreement expire or be terminated by either party for any reason, KCS agrees, at its expense, to promptly seek and use its best efforts to secure approval from the STB or other governmental agency or department of competent authority, for discontinuance or abandonment authority for the trackage rights herein granted.

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

WITNESS:

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

By: _____

Printed: _____

Title: _____

Date: _____

WITNESS:

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

By: _____

Printed: _____

Title: _____

Date: _____

EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B".

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, end of train devices vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Annual" shall mean a calendar year.

1.7 "Car" shall mean one (1) rail car; however, in the case of an articulated rail car of two (2) or more platforms, each platform shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology and each locomotive shall be counted as two (2) cars.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions, Betterments and/or Capital Improvements" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of the Agreement.

1.10 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right- of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right- of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefore, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefore in accordance with Section 4 of these General Conditions.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Sections 2.11 and 2.12 of these General Conditions.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner

related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner to assist in operating trains of User over the Joint Trackage.

2.15 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefore shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefore.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off

track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit "B".

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefore. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the

greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in Accordance with 49 U.S.C. Section 11161 et seq. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-3, et seq.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, Owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, and User shall, upon written demand of Owner, pursue and obtain any required regulatory filings to discontinue use of the Joint Track; provided that failure to make any disputed payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, a cause for forfeiture hereunder.

Owner may agree to waive a default by User, but no such action shall be deemed to waive any rights to pursue a remedy for subsequent defaults of User or otherwise impair any rights of Owner for the future as a result of such written waiver.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as

amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6 below) as between the parties shall be borne as follows:

a) User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, Attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its

contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefore pursuant to the allocation of liability in Section 5 of this Exhibit "B".

Section 5. LIABILITY

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the operation by the parties to the Agreement on the Joint Trackage.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property (as hereinafter defined) or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in and/or Additions thereto for the benefit of all the parties

hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the Parties hereto. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the parties whose Sole Employees and/or Sole Property contributed to the same shall bear all of the costs of such Loss or Damage equally.

Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent, or otherwise of Sole Employees and/or by defects in the Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property contributed to the same, or equally if more than one party's Sole Employee and/or Sole Property shall have contributed to the same. Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned equally among all of the parties.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint Employees

engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purpose of this Section 5.

Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefore, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice

to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the American Arbitration Association, or its successor entity, from a nationally recognized roster of distinguished neutral dispute resolution professionals upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 User shall, at its own 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 the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall, concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to make appropriate application to secure all necessary governmental authority, if any may be required, for such abandonment. In such event, User shall not oppose any such abandonment directly or indirectly. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage and prosecute same to conclusion. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and

conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 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 the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and permitted assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld, in the event of assignment by way of a sale of all or substantially all of User's assets pursuant to merger, sale, consolidation, combination, or order or decree of court.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 All notices, demands, requests, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the AVP-Contracts & Joint Facilities for the BNSF, and the Director -Joint Facilities and Contracts of the KCS.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

END OF GENERAL CONDITIONS

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

FINANCE DOCKET NO. 34458

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

EXHIBIT 3

CAPTION SUMMARY

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34458

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern And Santa Fe Railway Company ("BNSF") will agree to grant nonexclusive trackage rights to The Kansas City Southern Railway Company ("KCS") over a portion of railroad of BNSF on BNSF's Fort Worth subdivision between milepost 386.80 near Metro Junction, Denton County, Texas and BNSF's Red Rock subdivision, milepost 479.81 near Davis, Murray County, Oklahoma, a total distance of approximately 93.01 miles (the "Subject Trackage") for the sole purpose of allowing KCS to handle its own non-revenue, company material ballast trains, using its own power and crews, over the Subject Trackage to and from the ballast facility currently operated by Martin Marietta near Davis, Oklahoma. The rights are overhead rights only and KCS has no rights to (1) set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; (2) handle any traffic other than KCS company material ballast trains; (3) serve any industry, team or house track now existing or constructed in the future along the Subject Trackage; or (4) permit or admit any third party to the use of all or any portion of the Subject Trackage.

The trackage rights are anticipated to become effective March 29, 2004.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under

49 U.S.C. 10502(d) may be filed at anytime. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams,
Secretary

CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of March, 2004, I caused the foregoing
"Verified Notice of Exemption of The Kansas City Southern Railway Company pursuant to
49 C.F.R. § 1180.2(d)(7)" in STB Finance Docket No. 34458 to be served on the following by
first class mail:

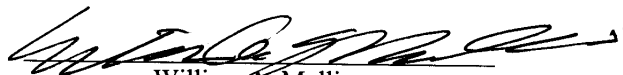
The Honorable John Ashcroft
Attorney General of the U.S.A.
(Re: STB F.D. 34458)
U.S. Department of Justice
10th Street & Constitution Avenue, NW
Washington, DC 20530

The Honorable Norman Mineta
(Re: STB F.D. 34458)
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

The Honorable Brad Henry
Governor
(Re: STB F.D. 34458)
State Capitol Building - Room 212
2300 North Lincoln Boulevard
Oklahoma City, OK 73105

The Honorable Rick Perry
Governor
(Re: STB F.D. 34458)
P.O. Box 12428
Austin, TX 78711-2428

Federal Trade Commission
(Re: STB F.D. 34458)
CRC-240
Washington, DC 20580


William A. Mullins