



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307
f 202.783.6947

SEP 19 2012
RECEIVED

September 19, 2012

Karl Morell
Of Counsel
kmorell@balljanik.com

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

232 991

Re: STB Docket No. AB 433 (Sub-No. 4X), Idaho Northern &
Pacific Railroad Company – Discontinuance of Trackage
Rights Exemption -- In Canyon, Payette and Washington
Counties, Idaho

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U.S.C. § 10502. Also attached are two checks
covering the \$6,500 filing fee.

Please time and date stamp the extra copy of the Petition and
return it with our messenger.

If you have any questions, please call me.

FILED

Sincerely,

SEP 19 2012

Karl Morell
Of Counsel

**SURFACE
TRANSPORTATION BOARD**

Enclosures

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Part of
Public Record

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-433 (SUB-NO. 4X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN CANYON, PAYETTE AND WASHINGTON COUNTIES, IDAHO

PETITION FOR EXEMPTION

Karl Morell
Of Counsel
Ball Janik LLP
655 Fifteenth Street., N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for: IDAHO NORTHERN &
PACIFIC RAILROAD COMPANY

Dated: September 19, 2012

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-433 (SUB-NO. 4X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN CANYON, PAYETTE AND WASHINGTON COUNTIES, IDAHO

PETITION FOR EXEMPTION

Idaho Northern & Pacific Railroad Company ("INPR") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, INPR's discontinuance of overhead trackage rights over a 53.09-mile rail line owned by Union Pacific Railroad Company ("UP") and located in Canyon, Payette and Washington Counties, Idaho.

PROPOSED TRANSACTION

INPR proposes to discontinue its overhead trackage rights over the UP rail line located between milepost 519.0, at Weiser, and milepost 465.91, at Caldwell Junction, in Canyon, Payette and Washington Counties, Idaho (the "Line"). The Line traverses U.S. Postal Service Zip Codes 83605, 83607, 83660, 83661, 83672, and 97914. A map of the Line is attached as Exhibit A.

Based on information in INPR's possession, it appears that the Line does contain some federally granted right-of-way. Any documentation in INPR's possession will be made available to those requesting it.

STATEMENT OF FACTS

INPR acquired the overhead trackage rights in 1993. *See* Finance Docket No. 32370, *Idaho Northern & Pacific Railroad Company – Lease, Acquisition and Operation Exemption – Union Pacific Railroad Company* (not printed), served December 7, 1993. The portion of the trackage rights located between milepost 465.91, at Caldwell Junction, and milepost 454.0, at Nampa were assigned to Boise Valley Railroad, Inc (“BVR”). *See* STB Finance Docket No. 35259, *Boise Valley Railroad, Inc. – Assignment of Lease Exemption – Union Pacific Railroad Company and Idaho Northern & Pacific Railroad Company* (not printed), served October 2, 2009.

Initially, the overhead trackage rights between Weiser and Payette were used to move lumber from the New Meadows Branch to the Payette Branch. After the New Meadows Branch was abandoned, those overhead trackage rights were no longer needed. Starting in 1999, the overhead trackage rights between Payette and Caldwell Junction were used primarily to move INPR locomotives between INPR’s Payette Branch and the Boise Cut-Off leased by INPR from UP. Once the lease of the Boise Cut-Off was assigned to BVR, INPR no longer had any need for any of the overhead trackage rights. Consequently, INPR has not used the overhead trackage rights between Weiser and Payette for around 17 years and the rights between Payette and Caldwell Junction for nearly three years.

EXEMPTION REQUESTED

A rail carrier may not discontinue trackage rights operations without the prior approval of the Board. 49 U.S.C. § 10903(d); *see also Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope; or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat.

803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application and expedite regulatory decisions [49 U.S.C. § 10101(2)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). Because the overhead trackage rights are no longer needed by INPR, granting the exemption will foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.,* STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since INPR does not serve any shippers on the Line and the former overhead traffic no longer moves because INPR assigned the lease of the Boise Cut-Off to BVR.

Where, as here, the trackage rights are simply overhead and no local service is affected, the Board and its predecessor, the Interstate Commerce Commission (“ICC”), have consistently

held that formal regulation of the discontinuance is not necessary to carry out the rail transportation policy. *See, e.g.,* Docket No. AB-102 (Sub-No. 25X), *Missouri-Kansas-Texas R. Co. – Exemption – Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS* (not printed), served February 9, 1990. *See also* Docket No. AB-6 (Sub-No. 347X), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctow, Washington and Mobile, AL* (not printed), served July 6, 1993; Docket No. AB-6 (Sub-No. 340X), *Burlington Northern R. Co. – Discontinuance of Trackage Rights Exemption – Between East Dubuque, IL and Dubuque, IA* (not printed), served September 1, 1992.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.,* Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub-No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is clearly of limited scope. INPR is seeking to discontinue overhead trackage rights over a 53.09-mile rail line. Moreover, INPR is unable to serve any shippers located on the Line given the nature of the trackage rights. The shortness of the Line, the limited geographic area involved, and the lack of ability to provide local service demonstrate the limited scope of the proposed discontinuance. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties,*

CA (not printed), served February 9, 1995; Finance Docket No. 31088 and Docket No. AB-43 (Sub-No. 148X), *Southern Ry. Co. and Norfolk Southern Corp. – Purchase – Illinois Central R. Co. Line between Fulton, KY and Haleyville, AL – And Trackage Rights – Illinois Central R. Co. Line between Fulton, KY and Centralia, IL* (not printed), served May 9, 1988 (discontinuance of overhead trackage rights limited in scope).

C. This Transaction Will Not Result In An Abuse of Market Power

The proposed discontinuance will not reduce the number of competitive rail options available to any shipper. Because the trackage rights were overhead in nature, INPR was not able to serve any local shippers on the Line. The overhead traffic has not moved in three years because the lease of the Boise Cut-OFF was assigned to BVR. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.*, STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

The proposed discontinuance poses no threat of market power abuse by INPR or any other carrier. *See, e.g.*, Docket No. AB-6 (Sub-No. 302X), *Burlington Northern R. – Trackage Rights Termination and Discontinuance of Operations Exemption – In Tulsa, Wagoner, and Muskogee Counties, OK* (not printed), served December 21, 1988 (regulation not necessary to protect shippers from the abuse of market power where carrier provided overhead service only and all shippers would continue to receive service).

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(6) (discontinuance of trackage rights where the line will continue to be operated) and from historic reporting requirements under 49 C.F.R. § 1105.8(b)(3). *See* STB Docket No. AB-156 (Sub-No. 25X), *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights – In Susquehanna County, Pa and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY* (not printed), served January 19, 2005.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

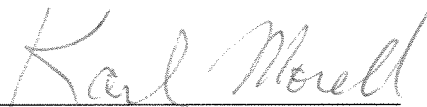
LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, the proposed discontinuance is of limited scope. Accordingly, INPR respectfully urges the Board to grant the discontinuance.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell", written in dark ink.

Karl Morell
Of Counsel
Ball Janik LLP
655 Fifteenth Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for: IDAHO NORTHERN &
PACIFIC RAILROAD COMPANY

Dated: September 19, 2012

EXHIBIT A

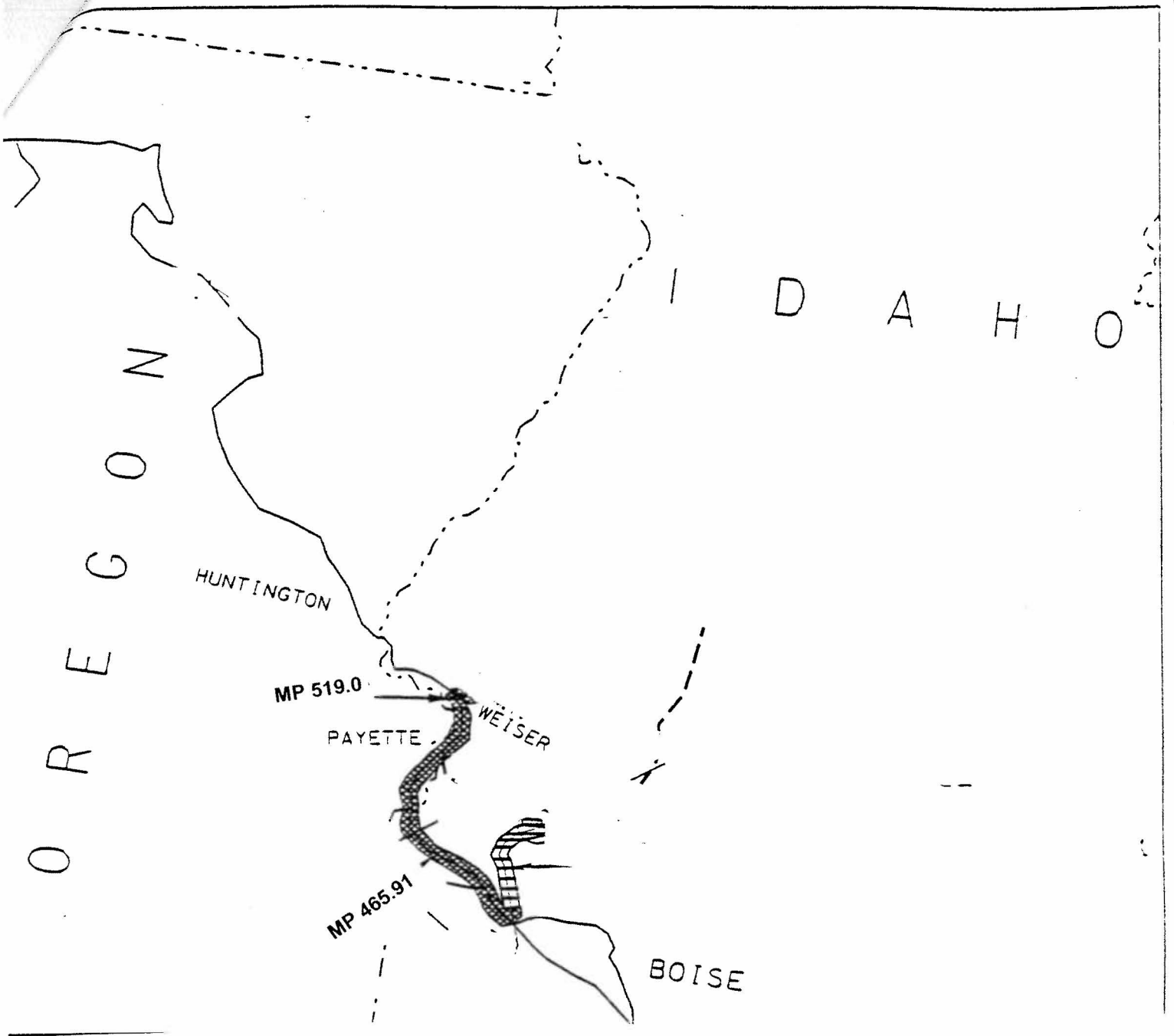


EXHIBIT B

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-433 (Sub-No. 4X)

**IDAHO NORTHERN & PACIFIC RAILROAD COMPANY
--DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION--
IN CANYON, PAYETTE AND WASHINGTON COUNTIES, IDAHO**

On September 19, 2012, Idaho Northern & Pacific Railroad Company (INPR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for INPR to discontinue overhead trackage rights over approximately 53.09 miles of railroad line owned and operated by Union Pacific Railroad Company located between milepost 519.0, at Weiser, and milepost 465.91, at Caldwell Junction, in Canyon, Payette and Washington Counties, Idaho. The line traverses U.S. Postal Service Zip Codes 83605, 83607, 83660, 83661, 83672 and 97914.

The line contains some federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by _____.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

Any offer of financial assistance for subsidy under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer

of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600.
See 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB-433 (Sub-No. 4X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before _____, 2012.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance at (202) 245-0230 or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305 [TDD for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

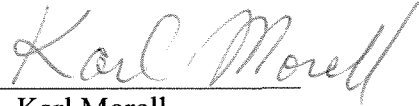
Decided: _____ 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of September, 2012, I caused the foregoing Petition for Exemption to be served by first class mail, postage pre-paid on the following parties:

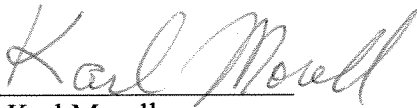
State Public Service Commission Idaho State Clearinghouse Idaho Public Utilities Commission Commission Secretary P.O. Box 83720 Boise ID 83720-0074 Military Traffic Management Command Military Surface Deployment & Distribution Command ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225-5006	National Park Service Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service National Park Service One Jackson Center 1111 Jackson Street, Suite 700 Oakland, CA 94607 U.S. Department of Agriculture U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14 th Street, S.W. Washington, DC 20250
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Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in Docket No. AB-433 (Sub-No. 4X) was published on August 30, 2012, in the Idaho Press-Tribune, a newspaper of general circulation in Canyon County, Idaho, and on September 14, 2012, in the Argus Observer, a newspaper of general circulation in Payette and Washington Counties, Idaho as required by 49 C.F.R. § 1105.12.

Dated: September 19, 2012



Karl Morell