

WEINER BRODSKY SIDMAN KIDER PC

1300 19TH STREET, NW
FIFTH FLOOR
WASHINGTON, DC 20036-1609
TEL 202 628 2000
FAX 202 628 2011

September 25, 2006

BY HAND

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

217628



Re: STB Finance Docket No. 34919, Montana Rail Link, Inc. -- Trackage Rights
Exemption -- BNSF 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 Montana Rail Link, Inc. ("MRL"), pursuant to 49 C.F.R. § 1180.2(d)(7). In accordance with 49 C.F.R. § 1180.6(a)(6), also enclosed for filing in this proceeding are an additional 20 unbound copies of each map exhibit attached to the Notice. Finally, enclosed is a check in the amount of \$1,000 to cover the cost of the filing.

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

FILED

SEP 25 2006

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

A handwritten signature in black ink, appearing to read "Troy Garriss".

Troy Garriss

Enclosures

M:\7985\1\Trackagerights.exemptionletter.mossmain.doc

FEE RECEIVED

SEP 25 2006

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

SEP 25 2006

**Part of
Public Record**

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34919

**Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company**



**ENTERED
Office of Proceedings**

SEP 25 2006

**Part of
Public Record**

Applicant's name, address and telephone number:

49 C.F.R. § 1180.6(a)(1)(i)

Montana Rail Link, Inc.
101 International Way
Post Office Box 16390
Missoula, Montana 59808-6390
(406) 523-1500

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**SURFACE
TRANSPORTATION BOARD**

Applicant's representative to receive correspondence:

49 C.F.R. § 1180.6(a)(1)(i)

Troy W. Garriss
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
(202) 628-2000

FILED
SEP 25 2006
**SURFACE
TRANSPORTATION BOARD**

Brief Summary of the proposed transaction:

49 C.F.R. § 1180.6(a)(1)(i)

Applicant files with the Surface Transportation Board (the "Board") this Verified Notice of Exemption, under 49 C.F.R. § 1180.2(d)(7), with respect to the grant to applicant of overhead trackage rights by BNSF Railway Company ("BNSF"). There are two segments to the subject trackage rights. The first segment extends for approximately 0.83 miles at or near Spokane, WA (from approximately milepost 68.17 to approximately milepost 69.0). The second segment

extends for approximately 0.26 miles at or near Moss Main, MT (from approximately milepost 0.74 to approximately milepost 1.0).¹ Both segments connect to track over which applicant already operates.

Proposed time schedule for consummation:

49 C.F.R. §1180.6(1)(ii)

The subject transaction is expected to be consummated on or after October 2, 2006.

Purpose sought to be accomplished:

49 C.F.R. §1180.6(a)(iii)

The proposed trackage rights would provide additional operating room to promote better efficiency and service, including service to at least one customer relocating from a point on applicant's lines to a point on one of the trackage rights segments.

States in which applicant's property is located:

49 C.F.R. §1180.6(a)(5)

Applicant rail property is located in the States of Montana, Idaho and Washington.

A map of the rail line :

49 C.F.R. §1180.6(a)(6)

A map of the subject trackage rights segments is attached hereto as Exhibit A-1. Also, pursuant to 49 C.F.R. § 1180.6(a)(6), twenty additional, unbound copies of the maps have been provided.

A copy of the relevant agreement:

49 C.F.R. §1180.6(a)(7)

A redacted version of the trackage rights agreement between applicant and BNSF, dated August 2, 2006 (the "Agreement") is attached hereto as Exhibit B. Concurrent with the filing of this Verified Notice of Exemption, applicant has filed with the Board (i) a Motion for Protective

¹ Concurrent with this filing, applicant has filed under separate cover a letter correcting the milepost number in the August 24, 1987 notice in Finance Docket No. 31089, which should have been 0.74 instead of 0.5.

Order with respect to the Agreement (the "Motion"), and (ii) an unredacted version of the Agreement, which is being filed "under seal," subject to the Motion.

Labor Protection:

49 C.F.R. §1180.4(g)(i)

With regard to any employees adversely affected by this transaction, applicant anticipates that the Board would impose 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).

Environmental and historic reporting requirements:

49 C.F.R. §§ 1105.6, 1105.7, 1105.8

Environmental documentation normally need not be prepared for an acquisition of trackage rights. *See* 49 C.F.R. §1105.6(c)(4). In addition, trackage rights transactions are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a), if such transactions "will not substantially change the level of maintenance of railroad property." *See* 49 C.F.R. §1105.8(b)(3). Applicant's exercise of the subject trackage rights will not have a substantial, adverse effect on the maintenance level of the trackage. Accordingly, a historic report is not required for this filing.

Respectfully submitted,



Troy W. Garris
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W.
Fifth Floor
Washington D.C. 20036

Attorneys for:

Montana Rail Link, Inc.

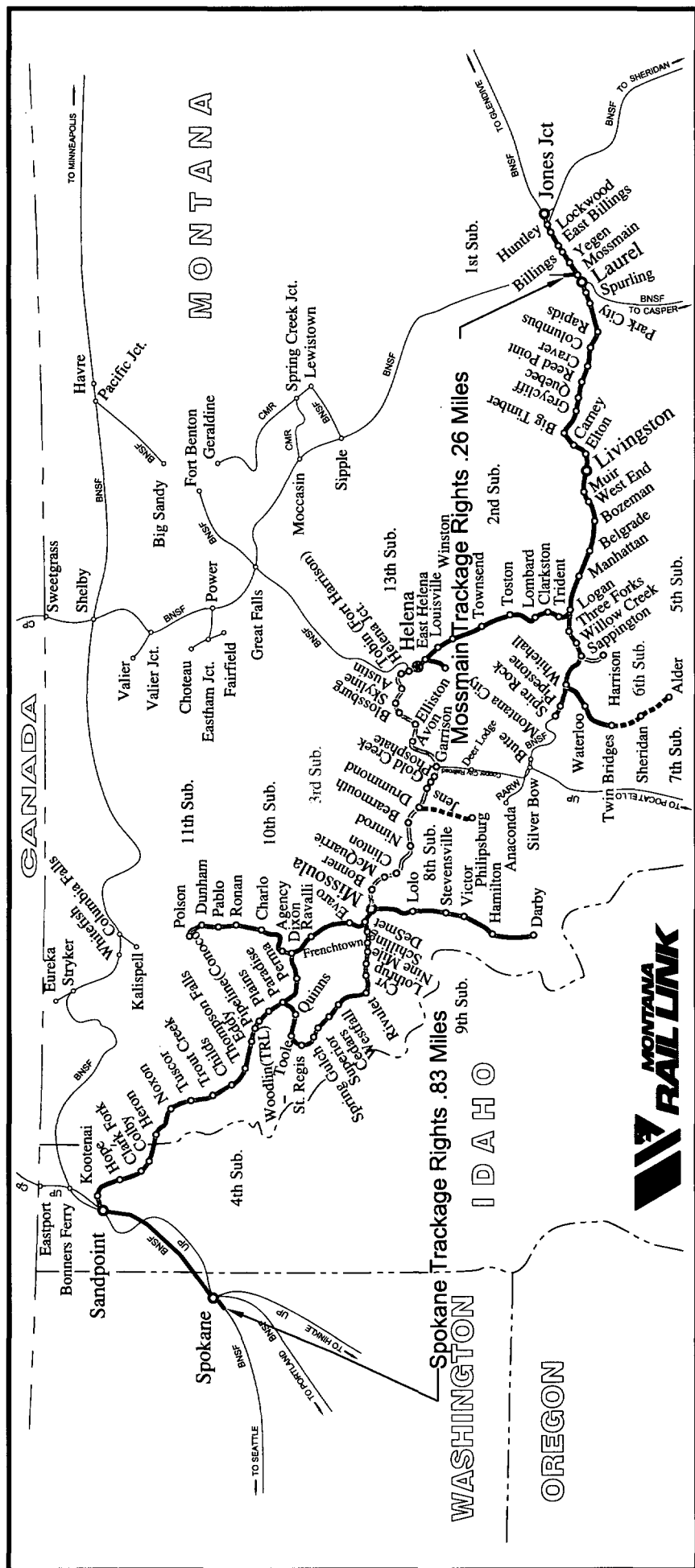
Dated: September 25, 2006

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

STB Finance Docket No. 34919
Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT A-1

MAP OF TRACKAGE RIGHTS LINE



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

STB Finance Docket No. 34919

Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT B

AMENDMENT TO TRACKAGE RIGHTS AGREEMENT

**AMENDMENT TO
TRACKAGE RIGHTS AGREEMENT**

THIS AMENDMENT is made and entered into as of the 2nd day of August, 2006, ("Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation, successor in interest to Burlington Northern Railroad ("BNSF") and MONTANA RAIL LINK, INC., a Montana corporation, ("MRL"), BNSF and MRL sometimes referred to individually herein as a "Party" and together as the "Parties".

WHEREAS, MRL purchased and leased from BNSF certain lines of railroad in the States of Montana and Idaho, pursuant to that Agreement between the Parties dated as of July 21, 1987 as amended ("Acquisition Agreement"); and

WHEREAS, in connection with the Acquisition Agreement, the Parties entered into that Trackage Rights Agreement, dated as of July 21, 1987, constituting Appendix D-1, which agreement was amended by amendments dated as of October 30, 1987, May 24, 2001 and May 2, 2006 (the latter never having become effective) and which agreement, as amended, provides for the rights and responsibilities of the parties pursuant to trackage rights over BNSF as granted to MRL (together, the "Trackage Rights Agreement"); and

WHEREAS, MRL leased from BNSF certain additional lines of railroad in the State of Montana, pursuant to that Lease Agreement between the Parties, dated as of August 25, 1992; and

WHEREAS, the Parties desire to correct the definition of "Joint Facilities" in the Trackage Rights Agreement to reflect the original intent of the Parties;

NOW, THEREFORE, in consideration of the following mutual promises, covenants and agreements, the Parties do hereby agree as follows:

A. Section 1.1 of the Trackage Rights Agreement shall be amended to add the following new sentence at the end thereof:

Those portions of BNSF's railroad consisting of track and support structures for freight train movements only between Milepost 0.74 and Milepost 1.0 of BNSF's Laurel Subdivision at Mossmain, Montana is hereafter referred to as the Mossmain Joint Facilities.

B. The Trackage Rights Agreement is further amended by changing the approximate distance identified in Section 1.1 thereof from "65.4 miles" to "66.23" miles.

C. The Trackage Rights Agreement is further amended as follows: all references to the ending M.P. "68.17" at Spokane shall be changed to M.P. "69.0".

D. There shall be added a new Section 1.3.1 as follows:

BNSF hereby grants to MRL, subject to all the terms and conditions herein stated, the non-exclusive right to use the Mossmain Joint Facilities for the sole and exclusive purpose of originating or terminating traffic at Brenntag's (or its successor's) rail-served facility at or near Milepost 0.73.

E. All references to the Spokane and/or Phosphate Joint Facilities and all references to the Spokane and Phosphate Joint Facilities collectively in the Trackage Rights Agreement shall also include a collective reference to the Mossmain Joint Facilities as well.

F. Promptly after the execution and delivery of this Amendment, MRL shall prepare and file with any federal, state or local regulatory agency or department having jurisdiction over the transaction contemplated in this Amendment, in whole or in part, all applications, petitions, requests, notices or any other filings, and MRL shall do and take all such actions necessary and prudent to obtain the requisite approvals, other authorization or exemptions from such approvals at the earliest practicable date. Securing appropriate federal, state or local regulatory agency or departmental approvals, other authorizations or exemptions from approvals of the transaction contemplated by this Amendment constitutes a condition which must be satisfied, or this Amendment shall be deemed null and void. BNSF agrees to cooperate with MRL in connection with such filings and to make such further filings as may be required by law, regulation or order.

G. This Amendment shall become effective as of the Effective Date, or if governmental approvals may be required, as of the date it is approved or authorized by any applicable governmental authority and shall remain in effect for a term coterminous with the Trackage Rights Agreement.

H. Upon becoming effective, this Amendment shall supercede and revoke those amendments to the Trackage Rights Agreement dated May 24, 2001 and May 2, 2006, insofar as they are applicable to such Trackage Rights Agreement.

I. All other provisions of the Trackage Rights Agreement, as previously amended, shall remain in full force and effect without amendment thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Trackage Rights Agreement on the day and year first written above.

Agreed and Accepted:

BNSF RAILWAY COMPANY

AMS Hunt AVP

MONTANA RAIL LINK, INC.

J. J. Walsh President

SURFACE TRANSPORTATION BOARD

Verified Notice of Exemption

STB Finance Docket No. 34919

Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

BNSF Railway Company has agreed to grant overhead trackage rights to Montana Rail Link, Inc. over two rail segments. The first segment extends for approximately 0.83 miles at or near Spokane, WA (from approximately milepost 68.17 to approximately milepost 69.0). The second segment extends for approximately 0.26 miles at or near Moss Main, MT (from approximately milepost 0.74 to approximately milepost 1.0). Both segments connect to track over which applicant already operates. The subject transaction is expected to be consummated on or after October 2, 2006.

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

I, Thomas Walsh, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this Verified Notice of Exemption to be filed.



Thomas Walsh, President
Montana Rail Link, Inc.

Dated: September 12, 2006