



April 19, 2004

210645

**Via Fax (202) 565-9004**

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

FILED

APR 20 2004

**SURFACE
TRANSPORTATION BOARD**

**Re: Finance Docket No. 34499; Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company**

**ENTERED
Office of Proceedings**

Dear Mr. Williams:

APR 20 2004

Enclosed for filing in the above proceeding are the following:

Part of
Public Record

1. A Verified Notice of Exemption and Caption Summary pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).

This filing is being made by fax pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail Via Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice"). As required by the 1989 Notice, an original and ten (10) copies of the attached filing, and an additional twenty (20) copies of the Exhibit 1 map are being provided to the Board by overnight delivery under separate cover.

Very truly yours,

FEE RECEIVED

APR 20 2004

**SURFACE
TRANSPORTATION BOARD**

Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

Law Department

UNION PACIFIC RAILROAD
1416 Dodge Street, Rm. 830, Omaha, NE 68179-0001
fx. (402) 271-5610



April 19, 2004

**Via UPS Next Day Air**

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

FEE RECEIVED

APR 20 2004

SURFACE
TRANSPORTATION BOARD

**Re: Finance Docket No. 34499; Union Pacific Railroad Company – Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company**

Dear Mr. Williams:

This refers to the notice of exemption in the above proceeding which was filed by fax on April 19, 2004 pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail by Fax, 54 Fed. Reg. 52857, December 22, 1989 ("1989 Notice").

As required by the 1989 Notice, enclosed with this letter are the following materials:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. The original of the payment form which was included with the April 19, 2004 fax filing.
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

FILED

APR 20 2004

SURFACE
TRANSPORTATION BOARD

Very truly yours,

[Signature]
Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610

ENTERED
Office of Proceedings

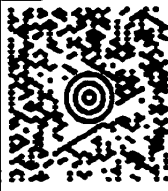
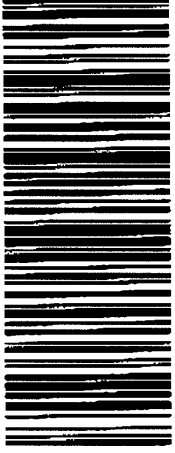
APR 20 2004

Part of
Public Record

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

Law Department

UNION PACIFIC RAILROAD
1416 Dodge Street, Rm. 830, Omaha, NE 68179-0001
fx. (402) 271-5610

R. T. OPAL, ESQ. 402-271-2242 OMAHA-LAW 1416 DODGE STREET, ROOM 830 OMAHA NE 68179		2 LBS	1 OF 1
SHIP TO: HON. VERNON A. WILLIAMS SURFACE TRANSPORTATION BOARD 1925 K STREET N.W. WASHINGTON DC 20006-1101			
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UPS NEXT DAY AIR TRACKING #: 1Z E4P 408 01 9518 6298		1 	
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34499

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRackage RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

Dated and Filed: April 19, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34499

**UNION PACIFIC RAILROAD COMPANY
--TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(8), for exemption of overhead temporary trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company between BNSF Milepost 6.1 near Fort Worth, TX and BNSF Milepost 218.1 near Temple, TX, a distance of approximately 129.2 miles¹. The temporary rights are to facilitate maintenance work on UP lines, and are intended to expire on or about May 8, 2004.

Under 49 C.F.R. § 1180.2(d)(8), the acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is

¹ The trackage rights involve BNSF subdivisions with non-contiguous mileposts. As such, total mileage does not correspond to the milepost designations of the endpoints.

exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidations proceedings, (iii) for overhead operations only, and (iv) scheduled to expire on a specific date not to exceed one (1) year from the effective date of the exemption. The trackage rights covered by this notice are (i) covered by the written agreement attached as Exhibit 2, (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding, (iii) for overhead operations only, and (iv) will expire on or about May 8, 2004, which is less than one (1) year from the effective date of the exemption. As such, the § 1180.2(d)(8) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of temporary, overhead trackage rights by UP over approximately 129.2 miles of BNSF trackage extending from BNSF Milepost 6.1 near Fort Worth, TX and BNSF Milepost 218.1 near Temple, TX.

§ 1180.6(a)(1)(i) Summary of the proposed transaction.

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(i) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
Tel. (402) 271-3072
Fax (402) 271-5610

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on April 26, 2004.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The trackage rights are temporary rights, to facilitate maintenance work on UP lines, and are intended to expire on or about May 8, 2004.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A draft of the trackage rights agreement containing the significant terms proposed is attached as Exhibit 2.²

² A copy of the executed agreement will be provided to the Board after it is finalized and executed.

§ 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions for the acquisition of the temporary trackage rights are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980). The applicable labor protective conditions for the discontinuance of the temporary trackage rights are those imposed in Oregon Short Line Railroad Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979)

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

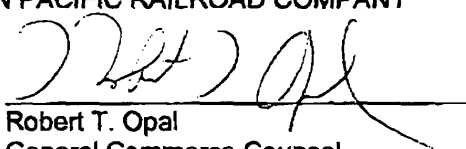
A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

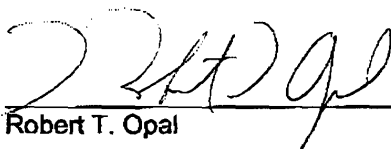
By: 

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption, knows the facts stated therein, and that said facts are true as stated.

Dated: April 19, 2004.


Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by First Class United States Mail.

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 19th day of April, 2004.

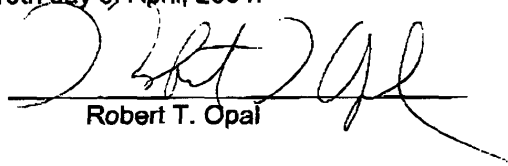
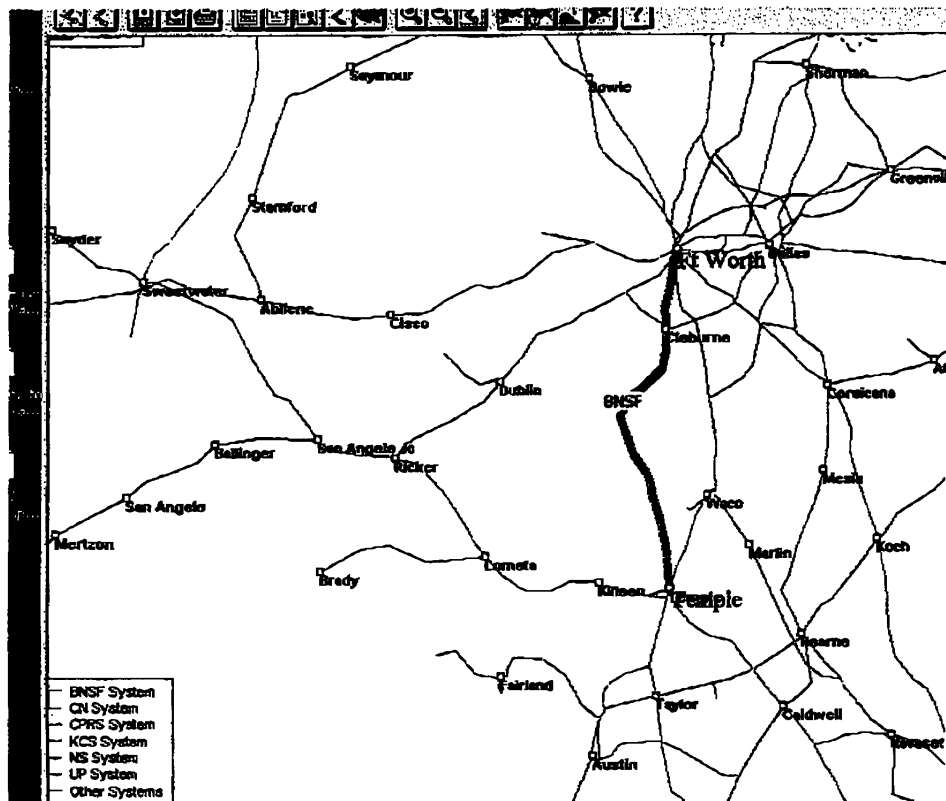

Robert T. Opal

EXHIBIT 1

**TEMPORARY TRACKAGE RIGHTS AGREEMENT
TEMPLE, TX TO FORT WORTH, TX (Tower 55)
APRIL 26, 2004 TO MAY 8, 2004**

THIS AGREEMENT, made and entered into this 12th day of February, 2004 by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User".

WITNESSETH:

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between UP connections over BNSF's railroad system; and

WHEREAS, UP desires to obtain temporary overhead trackage rights upon certain lines of BNSF's railroad, for the sole purpose of bridging its train service while UP's main lines are out of service due to certain programmed track, roadbed and structural maintenance; and

WHEREAS, BNSF is agreeable to said temporary trackage rights but only on the terms and conditions hereinafter set forth.

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

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibits "A", and by this reference incorporated herein, is a print which depicts the portion of line of railroad of BNSF over which UP will be granted temporary trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF TEMPORARY TRACKAGE RIGHTS.

The General Conditions covering the grant of temporary bridge 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, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage for the operation by its employees of the Equipment (as defined in Exhibit "B" of this agreement) that is in its account while moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this agreement.

UP and BNSF agree that UP's use of the temporary trackage rights granted herein by BNSF shall be limited to two (2) north bound empty coal trains per day, departure time Temple between 1900 and 0300 HRS. Movement of any additional UP trains over the Joint Trackage shall be at the sole discretion of BNSF. Said grant of rights shall be between Temple, TX and

Fort Worth, TX, a distance of 129.2 miles for the period of April 26, 2004 through May 8, 2004. The train will be limited to 7000 feet including locomotives with 2.0 HPT.

It is understood and agreed that UP shall not have the right to:

(a) set out, pick up 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) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by UP; or

(c) 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 UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement; or

(d) UP shall notify BNSF Chief Dispatcher, Fort Worth, TX, (817-234-2332) of the request for movement six (6) hours prior to the scheduled departure time.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

BNSF, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and shall permit UP to operate at such speeds unless by mutual written agreement a different standard is provided. In the event that for, operating convenience, necessity or emergency, BNSF permits or directs UP 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. MEASUREMENT OF TRACKAGE RIGHTS TRAINS.

In exchange for the aforementioned temporary trackage rights UP agrees to grant similar temporary trackage rights to BNSF, as identified under separate agreement. UP and BNSF agree to utilize train miles as the unit of measurement for equalization of temporary trackage rights trains

Section 5. CONNECTIONS AND ADDITIONS.

The entire cost of construction of any connection or other track work necessary for the implementation of the temporary trackage rights granted in this Agreement shall be at UP's sole cost, expense and risk. BNSF, at UP's expense, shall construct, relocate, retire, upgrade and maintain,

during the term of this Agreement, that part of any track construction or work necessary to implement the trackage rights granted herein that is located on BNSF property and is not under lease to UP. UP, at its sole cost and expense, shall construct, relocate, retire, upgrade, and maintain that part of any track construction or work necessary to implement the trackage rights granted herein that is located on UP property or property that is leased by BNSF to UP in order to implement the trackage rights granted herein.

Section 6. 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.

Any liability for loss, damage, injury or death which arises during the term of this Agreement from the construction, relocation, upgrade, or maintenance of the connections covered in this Agreement under Section 5, shall be assumed, settled and paid by UP.

Section 7. TERM AND TERMINATION.

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this agreement shall become effective upon the date UP first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to BNSF, and shall remain in effect for the period of time specified in Section 2 hereof.

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**

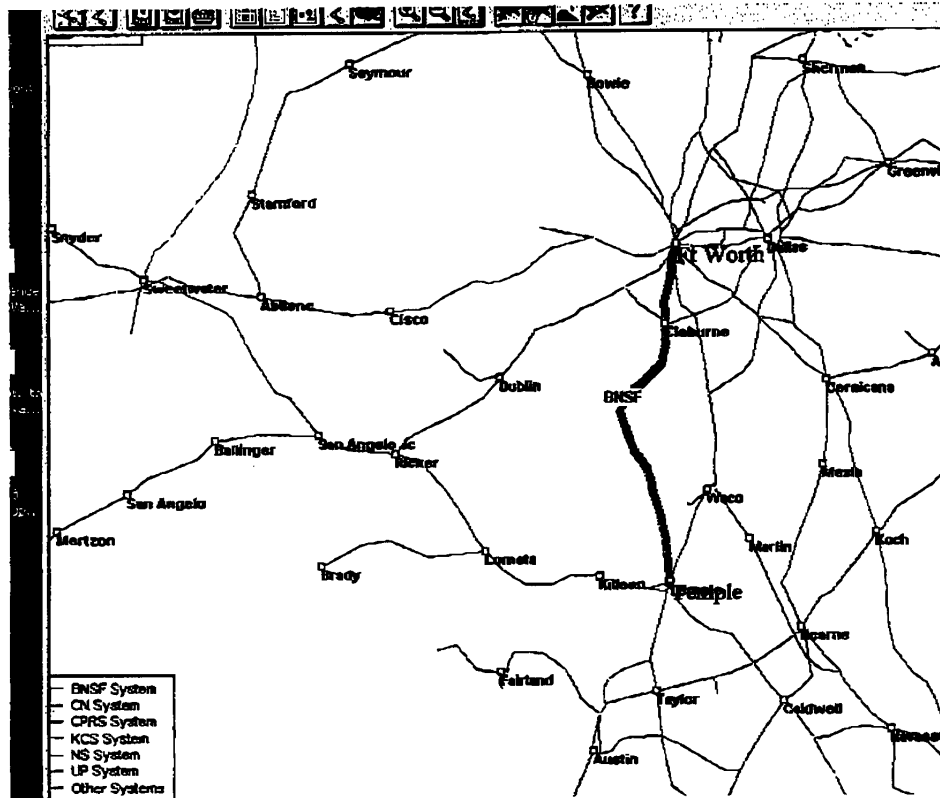
By: _____
Title:

WITNESS:

UNION PACIFIC RAILROAD COMPANY

M. B. Shelton

By: A. M. Stur
Title: General Manager JT. Facilities



EXHIBITS A & B

Exhibits A and B to the trackage rights agreement will be filed with the final,
executed copy of the agreement.

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34499**

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern and Santa Fe Railway Company will agree to grant overhead trackage rights to Union Pacific Railroad Company for a total distance of approximately 129.2 miles between BNSF Milepost 6.1 near Fort Worth, TX and BNSF Milepost 218.1 near Temple, TX. The temporary trackage rights will be effective on April 26, 2004. The authorization will expire on or about May 8, 2004.

This Notice is filed under 49 C.F.R. § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. § 10505(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

**UNION PACIFIC RAILROAD COMPANY
FACSIMILE TRANSMISSION**

Law Department
Room 830

1416 Dodge Street
Omaha, NE 68179

Deliver to: Vernon A. Williams (202) 565-9004 **Co./Dept:** STB - Secretary
From: Bob Opal **Phone:** (402) 271-3072
Date: April 19, 2004 **Fax:** (402) 271-5610

No. of Pages Transmitted: 16 + Cover

COMMENTS: Finance Docket No. 34499, Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company



Transmitting From

Fax No. (402) 271-5610
(402) 271-5625

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(402) 271-3072**

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