



Sarah W. Bailiff
Senior General Attorney

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

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

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VIA UPS OVERNIGHT MAIL

August 29, 2005

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



Re: Surface Transportation Board Finance Docket No. 34732; Union Pacific Railroad Company - Trackage Rights Exemption - BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of a Verified Notice of Exemption pertaining to modification of an existing trackage rights agreement between UP and BNSF, and a check for \$1,000.00, covering the filing fee. An electronic copy of the filing in WordPerfect 9.0 is also enclosed on a 3.5 inch disc for the Board's use.

In view of the time sensitivity of the filing and UP counsel's travel schedule, BNSF instead of UP is proceeding with the filing of this exemption to expedite matters. I have conferred with UP's counsel, and UP's counsel has indicated it has no objection to BNSF filing the referenced exemption for the parties in this docket.

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

FILED

AUG 30 2005

**SURFACE
TRANSPORTATION BOARD**

SWB/js
Enclosures

FEE RECEIVED

AUG 30 2005

**SURFACE
TRANSPORTATION BOARD**

Sincerely,

Sarah W. Bailiff

**ENTERED
Office of Proceedings**

AUG 30 2005

Part of
Public Record

cc: Mr. Bob Opal, Union Pacific Railroad Company

214625

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34732

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

FEE RECEIVED

AUG 30 2005

VERIFIED NOTICE OF EXEMPTION SURFACE
TRANSPORTATION BOARD

FILED

AUG 30 2005

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings

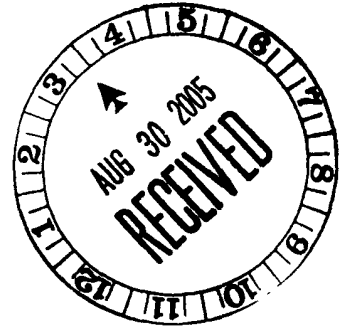
AUG 30 2005

Part of
Public Record

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

Dated: August 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34732

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

VERIFIED NOTICE OF EXEMPTION

1. BNSF Railway Company ("BNSF") files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7), for exemption of a modified agreement governing Union Pacific Railroad Company's ("UP") existing overhead trackage rights over BNSF's line of railroad between MP 365.85 at UP Jct., WA and MP 365.14 at Fish Lake, WA, approximately 0.70 miles, on BNSF's Spokane Subdivision (the "Joint Trackage") as shown on Exhibit 1, and which is a portion of the "joint line" for which UP acquired the non-exclusive right to use under an agreement dated January 27, 1972 by and between the Oregon-Washington Railroad & Navigation Company, and its lessee, Union Pacific Railroad Company and Burlington Northern, Inc., UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as provided under ICC Finance Docket No 27011; and as amended by a supplemental agreement dated May 6, 1982 (the "First Supplement"). The Original Agreement and the First Supplement are hereinafter collectively referred to as the "Agreement." The modification of trackage rights relates to UP's assumption of maintenance functions for a particular segment of the Joint

Trackage, except signal maintenance which will continue to be the responsibility of BNSF. UP will continue to have rights to use the line as provided in the Agreement.

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

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

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

The transaction covered by this notice is the modification of the agreement governing the overhead trackage rights held by UP over the Joint Trackage, a distance of approximately 0.70 miles.

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

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

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

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

Consummation of the transaction will occur on September 6, 2005, and operations under this exemption are planned to begin on that date. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better

align the parties' maintenance obligations relative to usage.

Section 1180.6(a)(5)

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

Section 1180.6(a)(6)

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

Section 1180.6(a)(7)(ii)

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

Section 1180.4(g)(1)(i)

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

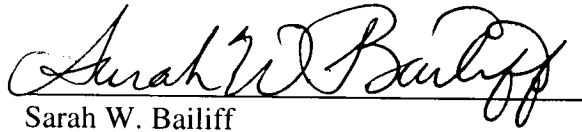
Section 1180.4(g)(2)(i)

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

Section 1180.4(g)(3)

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

Respectfully submitted,

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

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

EXHIBIT 1

Exhibit "A"

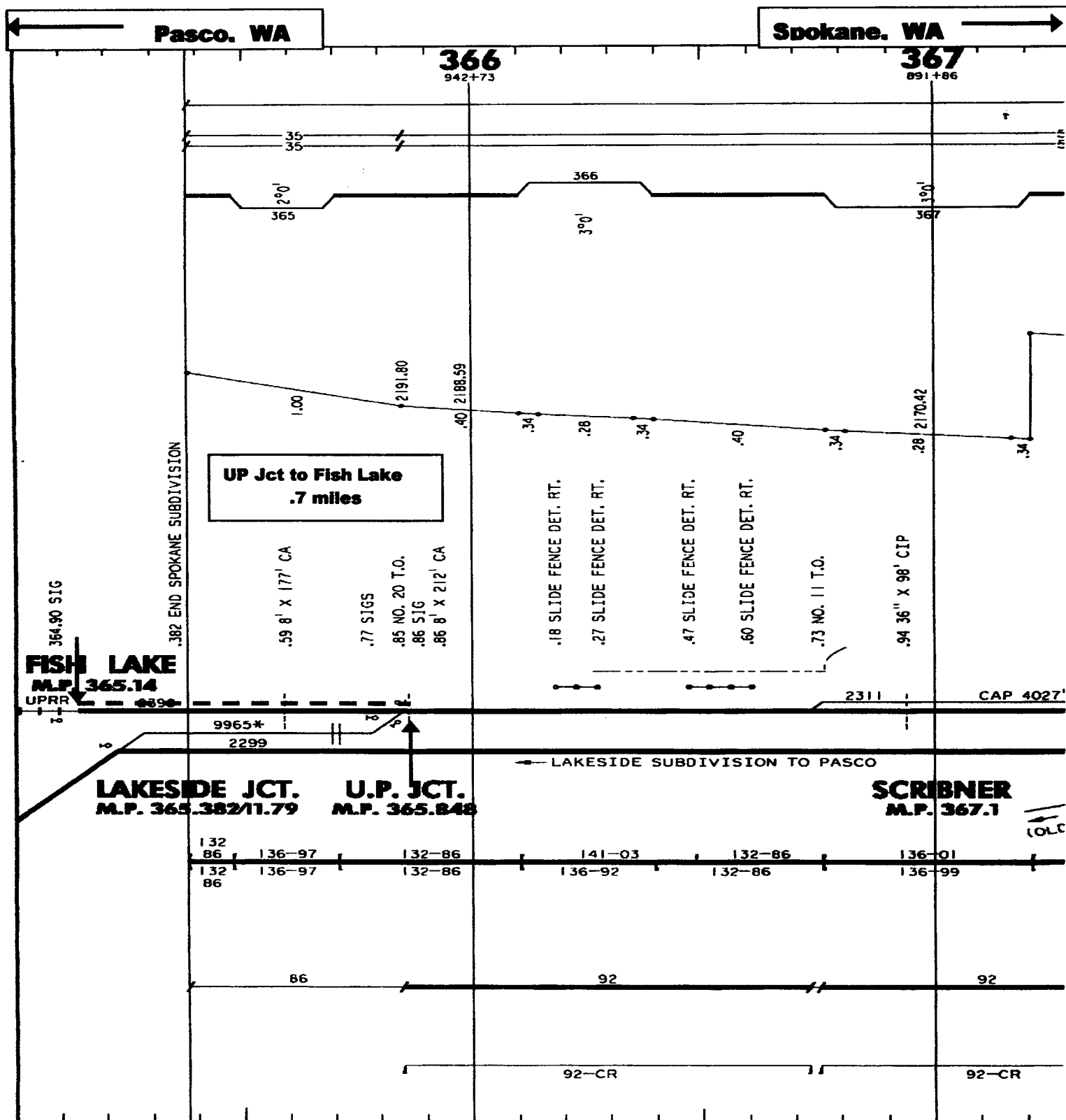


EXHIBIT 2

This **SECOND SUPPLEMENTAL AGREEMENT** made this 20th day of May 2005, ("Execution Date") between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, BNSF owns and operates a line of railroad extending approximately 0.70 miles between MP 365.85 at UP Jct., WA and MP 365.14 at Fish Lake, WA, on BNSF's Spokane Subdivision (the "Joint Trackage"), as shown on Exhibit "A", and which is a portion of the "joint line" for which UP acquired the nonexclusive right to use under an agreement dated January 27, 1972 by and between the Oregon-Washington Railroad & Navigation Company, and its lessee, Union Pacific Railroad Company and Burlington Northern Inc., UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as provided under ICC Finance Docket No. 27011; and as amended by a supplemental agreement dated May 6, 1982 (the "First Supplement"). The Original Agreement and the First Supplement are hereinafter collectively referred to as the "Agreement"; and

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

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

1. Effective as of the Effective Date (as such term is defined in Section 6, below), BNSF hereby grants to UP, and UP hereby accepts from BNSF, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, except signal maintenance which will continue to be the responsibility of BNSF, under this Second Supplemental Agreement to FRA Class 2 standards.

2. As regards to the Joint Trackage portion of the "joint track" the following sections of the Agreement are hereby amended by (a) deleting the word "Union Pacific" and substituting in its place the word "Northern" and (b) deleting the word "Northern" and substituting in its place the word "Union Pacific", wherever they appear in such sections: Section 6 excluding the last sentence of that Section 6, and Section 11 subsections (a) through (d).
3. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Second Supplemental Agreement.
4. Notwithstanding any provision to the contrary in the Agreement, BNSF agrees that UP is allowed to make the changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by BNSF's and UP's respective Engineering Departments. Except as expressly provided otherwise herein and as provided for below in the event of catastrophic expense, all changes, additions, capital maintenance, improvements or betterments shall be made solely at UP's cost and expense unless so requested to be made by BNSF or a third party.

Catastrophic expense, to the extent it is required to maintain the Joint Trackage to FRA Class 2 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be apportioned between BNSF and UP on the basis that the parties respective car miles over the Joint Trackage bear to the total car miles operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

5. This Second Supplemental Agreement and any rights granted hereunder may not be assigned by UP in whole or in part without the prior written consent of BNSF except as such may occur as a result of a merger, corporate reorganization, consolidation, change of control or sale of all or substantially all of UP's assets. This Second Supplemental

Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.

6. This Second Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. After the initial 25 year term, this Second Supplemental Agreement shall remain in full force and effect until such time that either party terminates this Second Supplemental Agreement with one year's written notice to the other. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Second Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Second Supplemental Agreement, for whatever reason, UP shall fully cooperate, consent, participate and jointly file with BNSF to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Second Supplemental Agreement. UP shall assist and support BNSF's filing and any associated proceedings to facilitate any termination or expiration, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in BNSF's sole discretion, be prepared and made at any time after this Second Supplemental Agreement has been terminated or expired. Such filing shall be coordinated by and at the expense of BNSF. Upon termination of the Second Supplement, the Original Agreement, as supplemented other than as by the Second Supplement, shall once again be in full force and effect. Any liability created under the Second Supplement shall survive any termination of the Second Supplement.

7. Other than as specifically modified herein, the Agreement shall remain in full force and effect.

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

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: MC Gier

By: D.B. Valentine

Printed: MC Gier sch

Printed: D.B. VALENTINE

Title: Director Joint Facilities

Title: UP CONTRACTS + JOINT FACILITIES

Date: 5/20/05

Date: 6/03/05

EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34732

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

BNSF Railway Company ("BNSF") has agreed to a modified trackage rights agreement governing the overhead trackage rights held by Union Pacific Railroad Company ("UP") between MP 365.85 at UP Jct., WA and MP 365.14 at Fish Lake, WA, on BNSF's Spokane Subdivision (the "Joint Trackage"), a distance of approximately 0.70 miles. The modified agreement will change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

The trackage rights will be effective on September 6, 2005, and operations under this exemption are planned to begin on that date.

This notice is filed under §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah W. Bailiff, Senior General Attorney of BNSF Railway Company, under penalty of perjury, declares and verifies that she has read the foregoing Notice of Exemption in Finance Docket No. 34732, knows the facts stated therein, and that said facts are true as stated.

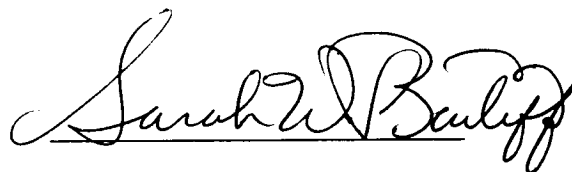
Dated: August 29, 2005.


Sarah W. Bailiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Notice of Exemption was served on the following person via UPS Overnight Mail on August 29, 2005:

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

A handwritten signature in black ink, reading "Sarah W. Bauliff". The signature is written in a cursive style with a horizontal line underneath the name.