

Karl Morell & Associates

655 15th Street, NW, Suite 225
Washington, DC 20005
(202) 595-9045
karlm@karlmorell.com

242986

ENTERED
Office of Proceedings
April 26, 2017
Part of
Public Record

April 26, 2017

BY HAND DELIVERY

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

**Re: Docket No. AB 6 (Sub-No. 495X), BNSF Railway Company –
Abandonment Exemption – in Flathead County, Montana**

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of BNSF Railway Company's Petition for Exemption under 49 U.S.C. § 10502. Also enclosed is a check covering the \$6,900 filing fee.

If you have any questions, please call me.

Sincerely,



Karl Morell

Enclosures



FILED
April 26, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 26, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY	)	
ABANDONMENT EXEMPTION	)	DOCKET NO. AB-6
IN FLATHEAD COUNTY, MONTANA	)	(SUB-NO. 495X)

PETITION FOR EXEMPTION

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
P.O. Box 96157
Fort Worth, TX 76161-0057

James M. Mecone
Assistant General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Karl Morell
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: April 26, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY	)	
ABANDONMENT EXEMPTION	)	DOCKET NO. AB-6
IN FLATHEAD COUNTY, MONTANA	)	(SUB-NO. 495X)

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") 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, BNSF's abandonment of approximately 2.7 miles of rail line located in Flathead County, Montana.

PROPOSED TRANSACTION

BNSF proposes to abandon approximately 2.7 miles of track from Milepost 1225.19 to the south end of the line at Milepost 1227.58 and to the west end of the line at Engineering Station 189+36 (Milepost 1227.10) in Kalispell, Flathead County, Montana (the "Line"). The Line traverses U.S. Postal Service Zip Code 59901. A map of the Line is attached as **Exhibit A**.

Based on information in BNSF's possession, the Line does not contain federally granted rights of way. Any documentation in BNSF's possession will be made available to those requesting it.

STATEMENT OF FACTS

BNSF owns approximately 2.7 miles of track from Milepost 1225.19 to the south end of the line at Milepost 1227.58 and to the west end of the line at Engineering Station 189+36 (Milepost 1227.10) in Kalispell, Flathead County, Montana. BNSF intends to exercise the abandonment authority.

In STB Finance Docket No. 34634, *Mission Mountain Railroad, Inc. – Acquisition and Lease Exemption – The Burlington Northern And Santa Fe Railway Company* (not printed), served January 19, 2005, Mission Mountain Railroad, L.L.C. (“MMT”) was, among other things, authorized to lease the Line. Since that time, MMT has provided local service to two customers on the Line. MMT will seek discontinuance authority over the Line in Docket No. AB 1009 (Sub-No. 1X).

The two customers on the Line, Northwest Drywall & Building Supply and CHS Inc., do not oppose the abandonment of this Line and will be relocating to Glacier Rail Park. Letters of support from Northwest Drywall & Building Supply and CHS Inc. are attached hereto as **Exhibit B**. A letter of support from the City of Kalispell is attached hereto as **Exhibit C**. There is no overhead traffic on the portion of the Line proposed for abandonment.

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 2.7-mile rail line.

Under 49 U.S.C. § 10502, the STB 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 use liberally 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 abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *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*”). By abandoning the Line, BNSF will be able to avoid the significant opportunity costs associated with retaining this Line. Granting the exemption will

thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, 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; 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.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected as the two customers on the Line, Northwest Drywall & Building Supply and CHS Inc., do not oppose the abandonment and will be relocating to Glacier Rail Park.

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-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993; 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.

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon a 2.7-mile line that traverses city streets in Kalispell, Montana. The shortness of the Line and the limited geographic area involved demonstrate the limited scope of the proposed abandonment. *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.

C. This Transaction Will Not Result in an Abuse of Market Power

There are only two shippers on the Line. The last two remaining customers on the Line, Northwest Drywall & Building Supply and CHS Inc., do not oppose the abandonment and will be relocating to Glacier Rail Park. 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*.

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on March 8, 2017.

CERTIFICATES OF SERVICE

The Certificate of Service of the Environmental and Historic Reports is attached to the Petition as **Exhibit D**. The Certificate of Service for this Petition for Exemption is attached as **Exhibit E**.

CERTIFICATE OF PUBLICATION

The Certificate of Publication is attached as **Exhibit F**.

FEDERAL REGISTER NOTICE

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

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment 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 an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition.

Respectfully submitted,



James M. Mecone
Assistant General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Karl Morell
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: April 26, 2017

Kalispell, MT Abandonment Map

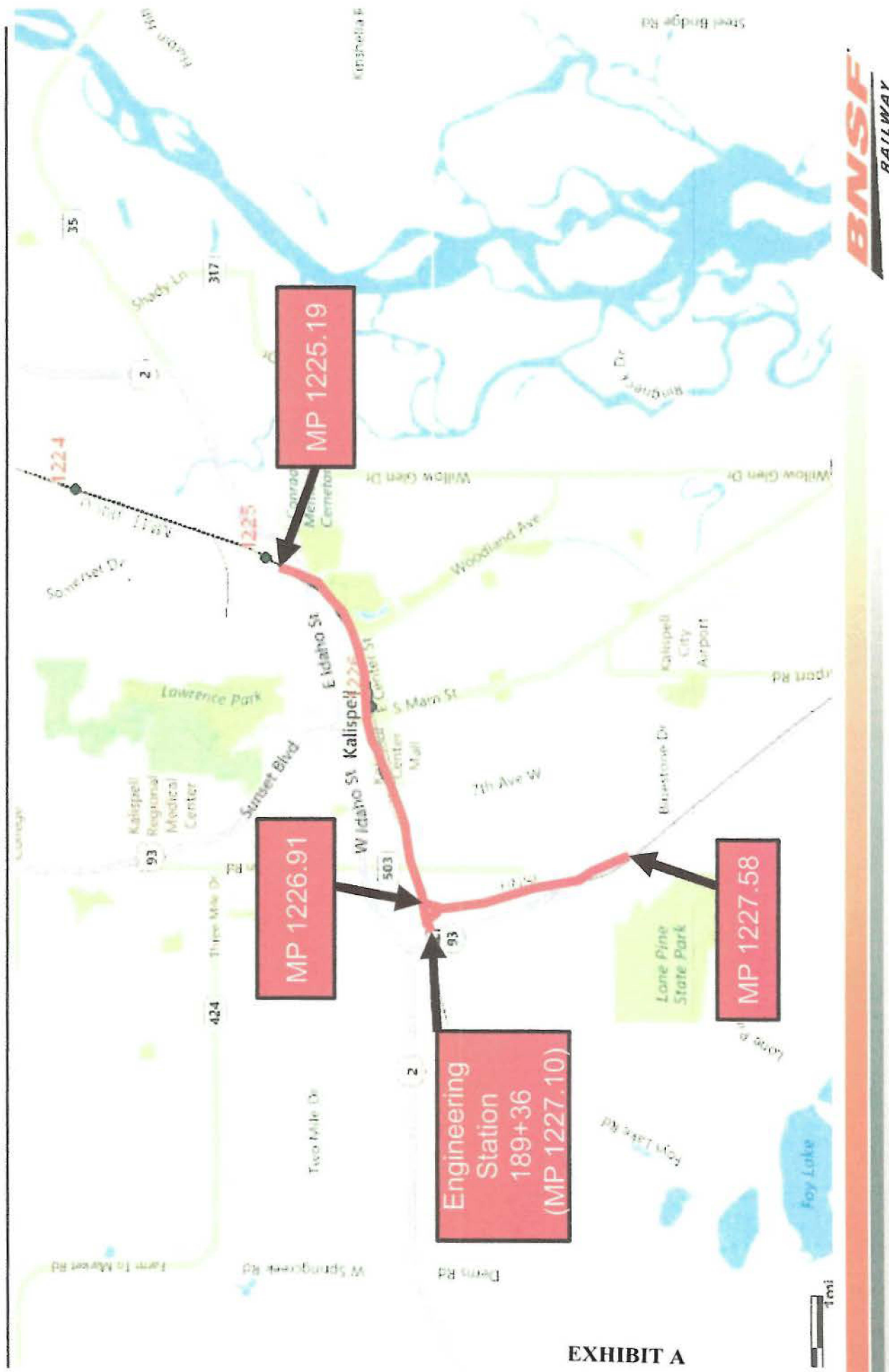


EXHIBIT A



160 8th Avenue WN • PO Box 7817 • Kalispell, Montana 59904
(406) 752-2644 • FAX (406) 756-5958
nw-drywall.com

March 24, 2017

Ms. Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: BNSF Abandonment of Rail Line in City of Kalispell

Dear Ms. Brown,

On behalf of Northwest Drywall, I submit this letter in support of the BNSF Petition for Exemption to abandon the line of railroad extending from Milepost 1225.19 on the north end of the city of Kalispell, Montana, to Milepost 1227.58 to the south and Milepost 1227.10 to the west.

Northwest Drywall has long operated on the rail line in the area recommended for abandonment and has recently successfully negotiated with the City of Kalispell and Flathead County Economic Development Authority (FCEDA) to relocate our business into a new facility to be built in the new rail park owned by FCEDA. The relocation of our business to this new site just north of Kalispell will allow for safer train service and termination of the tracks outside of the busy core area of the city. We understand that the tracks would not be removed until such time as our business is relocated and reopened at the new rail park so that our rail service will not be interrupted.

Please approve the abandonment of this section of track described above and in accordance with the BNSF request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pamela Mower', is written over a horizontal line.

Pamela Mower
Secretary
Northwest Drywall

Customer Service is Our Specialty



P.O. Box 579
150 1st Avenue WN
Kalispell, MT
59903
406-755-7400
Fax 406-755-7478

April 20, 2017

Ms. Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: BNSF Abandonment of Rail Line in City of Kalispell

Dear Ms. Brown,

On behalf of CHS Inc., I submit this letter of conditional support for BNSF's Petition for Exemption to abandon the line of railroad extending from Milepost 1225.19 on the north end of the City of Kalispell, Montana, to Milepost 1227.58 to the south and Milepost 1227.10 to the west, to meet the requirements of the City's TIGER grant.

CHS and our CHS Mountain West Coop service center in Kalispell agree with abandonment on the condition that the City and the Flathead County Economic Development Authority (FCEDA) provide the funding required to move us to a new location. Although the City and FCEDA have indicated that they will provide relocation funding for CHS based on the previous construction cost estimates, construction costs have risen sharply during the Federal Railroad Administration's lengthy TIGER grant approval process. Final construction costs will not be known until the end of June. Due to this situation, we ask that the STB defer its final abandonment decision on BNSF's petition until after final construction costs are known and CHS executes definitive agreements enabling the relocation. CHS expects to execute such agreements by June 30, 2017. At that time CHS will be able to give an unconditional statement on the abandonment of the track.

CHS is the current name of a long line of farmer's cooperatives that have utilized railroad tracks in Kalispell since before Kalispell was a city. This strong historic presence in Kalispell is indicative of the agricultural roots of the community and we continue to serve farmers in this valley and surrounding area. Moving out of down town Kalispell will better serve our customers and the residents of Kalispell. CHS has been planning for its relocation to the new rail park on the northern edge of Kalispell with our partners, the City of Kalispell and the FCEDA, for a number of years. The relocation of our business to this new site will allow for reduced interactions between grain and fertilizer trucks and resident or tourist vehicles, particularly during the height of harvest and planting season. We understand that the



P.O. Box 579
150 1st Avenue WN
Kalispell, MT
59903
406-755-7400
Fax 406-755-7478

tracks would not be removed until such time as our business is relocated and reopened at the new rail park. Thus, our rail service will not be interrupted as part of this process.

Sincerely,

A handwritten signature in blue ink that reads "Mark D. Lalum".

Mark D Lalum
Assistant General Manager
Mountain West Coop
Kalispell, Montana

Cc:

Katharine Thompson, City of Kalispell
Naomi Moore, Senior Legal Counsel CHS
Dan Mack, Vice President Transportation and Terminal Operations CHS
Brock Lautenschlager, Rail Services Director CHS
David Cobb, Federal Affairs CHS
Chuck Thompson, General Manager Mountain West Coop
Tim Miller, Vice President Mountain Region CHS



City of Kalispell
OFFICE OF THE CITY MANAGER
201 First Avenue East
Kalispell, MT 59903

April 4, 2017

Ms. Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: BNSF Abandonment of Rail Line in City of Kalispell

Dear Ms. Brown,

On behalf of the City of Kalispell, please accept this letter in full support of the BNSF's Petition for Exemption to abandon a line of railroad extending from Milepost 1225.19 on the north end of the city to Milepost 1227.58 to the south and Milepost 1227.10 to the west end. The City of Kalispell's City Council requested that BNSF take this action in Resolution #5799 passed unanimously on January 17, 2017.

The City of Kalispell was awarded a TIGER grant from the USDOT in October 2015 to build a new industrial rail park and track turnaround on the northern edge of the City allowing for the subsequent removal of nearly two miles of existing rail line to be replaced by a bike and pedestrian trail. This project is the outgrowth of an intensive multi-year public engagement process and relocation plans with two current rail users, CHS and Northwest Drywall. The rail abandonment and removal is intended to be complete following the relocation of these rail served businesses to the new rail park. This project has included substantial community planning, public involvement, business engagement, and public-private partnership for the betterment of the community stakeholders. We are very proud of this community's perseverance and hard work to achieve multiple community goals in this transformative project where Kalispell retains and expands its rail access at the same time that it reduces the negative impacts of the old line that bifurcates the city.

This request for rail abandonment is part of Kalispell's USDOT TIGER grant project. As such, timely approval of the abandonment is critical. The Federal Rail Administration is working with the City of Kalispell to complete the obligation of grant funds in advance of the September 30, 2017, deadline. That being said, it is of great import that the Surface Transportation Board review this request at its earliest convenience.

We encourage the Surface Transportation Board to act in support of our request to abandon this section of railroad track in an expeditious manner.

Sincerely,


Doug Russell
City Manager

EXHIBIT D
CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS

The undersigned hereby certifies that, in Docket No. AB-6 (Sub-No. 495X), the transmittal letter required by 49 C.F.R. § 1105.11, was mailed to all agencies listed in 49 C.F.R. § 1105.7(b), via first class mail on the 8th day of March, 2017.

The undersigned hereby certifies that a copy of the Environmental and/or Historic Reports in Docket No. AB-6 (Sub-No. 495X) was served by first class mail on the 8th day of March, 2017 on the following:

Ms. Victoria Rutson
Chief, Office of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Tom Jentz
City of Kalispell Planning Department
201 1st Avenue East
Kalispell, MT 59901

Mark Mussman
Flathead County
Department of Planning and Zoning
40 11th Street West, Suite 220
Kalispell, MT 59901

Simon Monroe
Room 9452
National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910-3282

Dylan Hickey
U.S. Army Corps of Engineers
Omaha District
Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena, MT 59626

Chris Boone
U.S. Department of the Interior
Bureau of Land Management
Montana-Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

U.S. EPA Region 8
8OC-EISC
1595 Wynkoop Street
Denver, CO 80202-1129

David Allen
U.S. Fish and Wildlife Service Region 6
585 Shepard Way, Suite I
Helena, MT 59601

Sue Masica, Regional Director
National Park Service
Intermountain Region
12795 Alameda Parkway
Denver, CO 80225

Jay Brooker
NRCS Montana State Office
3550 Mullan Road, Suite 106
Missoula, MT 59808

Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 5620-0901

State of Montana Public Service Commission
1701 Prospect Ave.
P.O. Box 202601
Helena, MT 59620

Jessica Bush
Montana State Historic Preservation Office
P.O. Box 20120
225 N. Roberts
Helena, MT 59620


KARL MORELL
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: April 26, 2017

EXHIBIT E

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-6 (Sub-No. 495X) was mailed via first class mail on April 21, 2017, to the following parties:

State Public Service Commission

State of Montana Public Service Commission
1701 Prospect Ave.
P.O. Box 202601
Helena, MT 59620

Military Traffic Management Command

Military Surface Deployment and Distribution Command Transportation
Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, Illinois 62225-5006

National Park Service

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

Sue Masica, Regional Director
National Park Service
Intermountain Region
12795 Alameda Parkway
Denver, CO 80225

U.S. Department of Agriculture

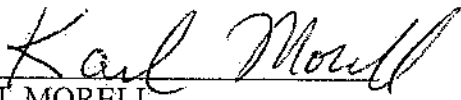
U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, SW
Washington, DC 20250

Shippers

Northwest Drywall & Building Supply
Mike Mower, President
160 8th Ave W N
Kalispell, MT 59901

CHS Inc.
150 1st Ave W N
Kalispell, MT 59903

CHS Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077

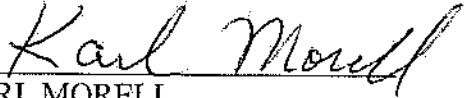

KARL MORELL
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: April 26, 2017

EXHIBIT F

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-6 (Sub-No. 495X) was published on March 28, 2017, in the Daily Inter Lake, a newspaper of general circulation in Flathead County, Montana as required by 49 C.F.R. § 1105.12.



KARL MORELL

Karl Morell & Associates

Suite 225

655 Fifteenth Street, N.W.

Washington, D.C. 20005

(202) 595-9045

Dated: April 26, 2017

EXHIBIT G
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-6 (Sub-No. 495X)

BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
FLATHEAD COUNTY, MONTANA

On April 26, 2017, BNSF Railway Company ("BNSF") filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to abandon approximately 2.7 miles of track from Milepost 1225.19 to the south end of the line at Milepost 1227.58 and to the west end of the line at Engineering Station 189+36 (Milepost 1227.10) in Kalispell, Flathead County, Montana (the "Line"). The Line traverses U.S. Postal Service Zip Code 59901.

The line does not contain 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 within 90 days (by _____, 2017).

Any offer of financial assistance 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 \$1,700. *See* 49 C.F.R. 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking

under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$300 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB-6 (Sub-No. 495X) 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) James M. Mecone, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131-2828.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment 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) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS)), if necessary prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: _____ 2017.

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