

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

300212

DOCKET NO. FD 36372

ENTERED
Office of Proceedings
December 23, 2019
Part of
Public Record

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

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Jeremy M. Berman
1400 Douglas Street, Stop 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-0129 (FAX)
jmberman@up.com

FEE RECEIVED
December 23, 2019
SURFACE TRANSPORTATION BOARD

Dated: December 23, 2019

FILED
December 23, 2019
SURFACE TRANSPORTATION BOARD

**BEFORE THE
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DOCKET NO. FD 36372

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
BNSF 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 temporary overhead trackage rights over a line of railroad of BNSF Railway Company ("BNSF") between Milepost 579.3 near Mill Creek, Oklahoma on BNSF's Creek Subdivision and Milepost 631.0 near Joe Junction, Texas on BNSF's Madill Subdivision for a total distance of approximately 51.7 miles.

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 exempt if the rights are (i) based on written agreements, (ii) not filed or sought in responsive applications in rail consolidation proceedings, (iii) for overhead operations only, and (iv) scheduled to expire on a specific date not to exceed 1 year from the effective date of the exemption. The trackage rights covered by this Notice: (i) are based on a written agreement, (ii) are not filed or sought a responsive application in a rail consolidation proceeding, (iii) are for overheard operations only,

and (iv) will expire on December 31, 2020, a date that does not exceed 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 the Proposed Transaction

The transaction covered by this Notice is the acquisition of temporary overhead trackage rights by UP over approximately 51.7 miles of BNSF's trackage extending between Mill Creek, Oklahoma (Milepost 579.3 on BNSF's Creek Subdivision) and Joe Junction, Texas (Milepost 631.0 on BNSF's Madill Subdivision). These temporary trackage rights are granted for the sole purpose of allowing UP to move loaded and empty unit ballast trains. The ballast will be solely used for UP maintenance of way projects, have no commercial value and cannot be interchanged with another railroad.

§ 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
1400 Douglas Street
Omaha, NE 68179

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

Jeremy Berman
1400 Douglas Street

Union Pacific Railroad Company
STOP 1580
Omaha, NE 68179
(402) 544-4735
jmbberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated sometime after the effective date of this Notice of Exemption.

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

The temporary overhead trackage rights covered by this Notice will allow UP to move loaded and empty unit ballast trains to be used for UP maintenance of way projects.

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

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, 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 copy of the executed temporary trackage rights agreement between UP and BNSF is attached as Exhibit 2.

§ 1180.4(g)(1)(i) Labor Protection

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). The applicable labor protective conditions for the

discontinuance component of the temporary trackage rights are those set forth in Oregon Short Line R.R. 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). UP's proposed temporary trackage rights acquisition also is exempt from historic preservation reporting requirements. See 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

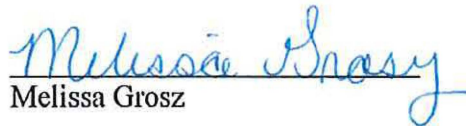
A handwritten signature in black ink, appearing to read 'J. Berman', is written over a horizontal line.

Jeremy M. Berman
1400 Douglas Street, Stop 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-0129 (FAX)
jmberman@up.com

VERIFICATION

I, Melissa Grosz, Director Joint Facilities for Union Pacific Railroad Company, under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated to the best of my knowledge, information and belief.

Dated: December 13, 2019


Melissa Grosz

SUBSCRIBED AND SWORN TO
before me this 20th day
of December, 2019.


Notary Public

SARAH J RIEF
GENERAL NOTARY
STATE OF NEBRASKA
My Commission Expires May 15, 2021

My Commission expires: May 15, 2021

Exhibit 1

FD 36372

Temporary Trackage Rights - UP on BNSF

Mill Creek, OK to Joe Junction, TX

January 1, 2020 through December 31, 2020



Temporary Trackage Rights Agreement

Joe Junction, TX and Mill Creek, OK

January 1, 2020 through December 31, 2020

THIS AGREEMENT made and entered into this 31st day of December, 2019 by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "**BNSF**" or "**Owner**," and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "**UP**" or "**User**."

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between Joe Junction, TX and Mill Creek, OK over BNSF's railroad system;

WHEREAS, BNSF and UP are parties to that certain Maintenance Materials Transportation Agreement ("**MMTA**"), dated January 2, 2004, as amended from time to time;

WHEREAS, UP desires to obtain temporary trackage rights upon certain lines of BNSF'S railroad, for the sole purpose of handling unit ballast trains of company material for use in the maintenance of UP's tracks; 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 "Exhibit A" and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad 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 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, BNSF grants to UP the temporary, nonexclusive right to use the Joint Trackage for Equipment (as defined in Exhibit B) 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. Except as expressly provided

- (f) UP locomotives shall have sufficient fuel for the entire movement on BNSF and UP will be responsible for the 1,000- or 1,500-mile inspection of their trains.
- (g) UP shall notify the BNSF Texas Chief Dispatcher of the request to operate temporary trackage trains under this Agreement. All UP train movements will be coordinated with the BNSF Fort Worth Dispatching Office.

Section 3. COMPENSATION

UP shall pay to BNSF, in addition to other payments to be made under this Agreement, for the use of Joint Trackage in operation of its trains thereover, the rate prescribed in Section 2 of the MMTA.

Section 4. 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 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 5. LIMITATIONS AND MEASUREMENT OF TEMPORARY TRACKAGE RIGHTS TRAINS

UP and BNSF agree that UP's use of the trackage rights granted herein shall be for a maximum of three (3) UP unit ballast trains of company material per week. Trains will be limited to 6,000 feet (including locomotives) and must have a minimum of 1.0 HPT. BNSF will not accept UP trains with less than 1.0 HPT.

There may be situations where BNSF will not be able to allow UP train operation on the Joint Trackage including during windows and outages due to the Tower 55 construction project. In the event of refusal to grant such UP train operation on the Joint Trackage, UP shall have no claim of any nature against the BNSF by reason of such refusal.

Section 6. CONNECTIONS AND ADDITIONS

The entire cost of construction of any connection necessary for the implementation of the temporary trackage rights granted in this Agreement shall be at UP's expense. BNSF, at UP's expense, shall construct, own and maintain the part of any connection on BNSF's property.

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

WITNESS:

Dwain Edson

BNSF RAILWAY COMPANY

By:

Sarah W. Bailiff

WITNESS:

John Byrne

UNION PACIFIC RAILROAD COMPANY

By:

Melissa Crosby

EXHIBIT B GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit B is appended. The term "Agreement" will include this Exhibit B.

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right of way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right of way for purpose of the maintenance or repair thereof.

1.6 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right of way of User and to the clearance point in right of way of Owner. Owner grants to User a license over that portion of Owner's property between right of way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right of way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any changes in and/or additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any changes in and/or

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User provided there shall at all time be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 4 of this Exhibit B.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Section 4 of this Exhibit B.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train

track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit B.

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "**derailment**" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "**Hazardous Materials**" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days

or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

- a) User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.
- b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, Attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right of way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

facilities furnished by Owner, or otherwise, it being understood and agreed that all risk of such delays, loss, damage, injury and death shall be and is hereby assumed by User, and User shall and will hold harmless Owner from and against all liabilities or claims for all such delay, loss, damage, injury and death and shall and will execute and deliver, or cause to be executed and delivered, to Owner, upon request, a full and complete release, satisfaction and discharge of all claims therefor, and will pay, or cause to be paid, all costs and expenses incurred by either party in the clearing of wrecks and repairs to equipment, track and property in which by reason of such movement covered by this Agreement the engines, trains, or cars of User are concerned, expenses and attorney's fees incurred in defending any action which may be brought against the Owner on account of any such claim or liability and any judgment which may be rendered against the Owner on account thereof. User shall pay all fines, penalties, costs and expenses imposed upon or incurred by Owner by reason of any violation by User of the Safety Appliance or other State or Federal Laws, and hold Owner harmless therefrom.

5.2 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of User is involved.

5.3 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages. In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expensed of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment

application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if even in number, shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL, ABANDONMENT

7.1 User shall, at its own 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 the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit B and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

End of Exhibit B

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36372**

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

BNSF Railway Company ("BNSF") has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company ("UP") between Mill Creek, Oklahoma (BNSF Creek Subdivision Milepost 579.3) and Joe Junction, Texas (BNSF Madill Subdivision Milepost 631.0), a distance of approximately 51.7 miles. The temporary overhead trackage rights covered by this Notice are being granted solely to allow UP to move loaded and empty unit ballast trains to be used for UP maintenance of way projects.

The temporary trackage rights will become effective on or after January __, 2020. The trackage rights are temporary in nature and will expire at midnight on December 31, 2020.

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: January __, 2020

By the Board,

Rachael D. Campbell
Director, Office of Proceedings