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ENTERED
Office of Proceedings
March 31, 2020
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Public Record

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March 31, 2020

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Docket No. FD 36391
Portland & Western Railroad, Inc.
-Lease and Operation Exemption
Including Interchange Commitment-
BNSF Railway Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Portland & Western Railroad, Inc. is a Notice of Exemption being filed under 49 USC 10902 and 49 CFR 1150.41. The filing fee of \$2,100 was paid using Pay.gov.

Please let me know if there are any questions regarding this filing.

**FEE RECEIVED
March 31, 2020
SURFACE
TRANSPORTATION BOARD**

Enclosures

Sincerely,



Justin J. Marks
Counsel for Portland & Western Railroad, Inc.

**FILED
March 31, 2020
SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36391

**PORTLAND & WESTERN RAILROAD, INC.
– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT–
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

(includes color images)

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*Attorneys for Portland & Western
Railroad, Inc.*

Dated: March 31, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36391

PORTLAND & WESTERN RAILROAD, INC.
– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT–
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Portland & Western Railroad, Inc. (“PNWR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, PNWR’s entry into a lease agreement (the “New Lease”) to supersede and replace the lease agreement effective January 1, 2003, as amended (the “Original Lease”), with BNSF Railway Company (“BNSF”), and to govern the lease of a line of railroad between Milepost 64.70 (located on main track between Quinaby and Salem, Oregon) and Milepost 141.45 at the end of track near Eugene, Oregon (the “Line”), as shown on the map attached as Exhibit A.

Notice

In accordance with 49 C.F.R. §1150.43, PNWR hereby provides the following information:

(a) The full name and address of Applicant is: Portland & Western Railroad, Inc., 3220 State Street, Suite 200, Salem, OR 97301.

(b) Applicant's Representatives:

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Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8500

Justin J. Marks
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Washington, DC 20004
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(c) PNWR is currently the operator of the Line under the Original Lease. *See Portland & Western Railroad, Inc. – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Co.*, STB Finance Docket 34255 (served Jan. 3, 2003)(exempting the Original Lease). The Original Lease expired on February 29, 2020, and the parties have entered into a new lease, effective March 1, 2020, which will supersede and replace the Original Lease. The New Lease extends the term for an additional 10 years with an automatic renewal date for an additional ten-year term and makes other commercial changes. PNWR will continue to operate under the terms of the Original Lease until the New Lease is authorized.

(d) The current operator of the Line is PNWR, and PNWR will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction:

PNWR and BNSF entered into the Original Lease effective January 1, 2003, to allow PNWR to operate the Line. PNWR has been the exclusive freight operator of the Line since the Original Lease became effective. The Original Lease expired on February 29, 2020 and PNWR and BNSF have now reached agreement on the New Lease, which will supersede and replace the

Original Lease and extend the term for an additional 10 years with an automatic renewal date for an additional ten-year term. The New Lease includes an interchange commitment that is similar in structure to the interchange commitment that was included in the Original Lease.

(1) The name and address of the railroad leasing the Line: BNSF Railway Company, 2650 Lou Menk Drive, Fort Worth, Texas 76131.

(2) PNWR and BNSF executed the New Lease effective March 1, 2020, subject to STB authorization or exemption. PNWR will continue to operate under the terms of the Original Lease until the New Lease is authorized.

(3) The mileposts of the Line are between Milepost 64.70 (located on main track between Quinaby and Salem, Oregon) and Milepost 141.45 at the end of track near Eugene, Oregon.

(4) The total route miles to be leased and operated are approximately 76.75 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Line.

(g) PNWR certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

(h) PNWR certifies that the New Lease contains an interchange commitment that is similar in structure to the interchange commitment that was included in the Original Lease. The following additional information is provided by PNWR with respect to the interchange commitment:

(i) The New Lease (like the Original Lease) contains an interchange commitment that affects interchange with carriers other than BNSF at the interchange point shown on the map attached as Exhibit A.

(ii) A confidential complete version of the New Lease¹ is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).

(iii) A list of the shippers who currently use or who have used the Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.

(iv) The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.

(v) PNWR hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.

(vi) Willamette & Pacific Railroad, Inc., an affiliated railroad of PNWR, Albany & Eastern Railroad Company, BNSF, Coos Bay Railway, Central Oregon & Pacific Railroad² and Union Pacific Railroad Company could physically interchange with the Line.

(vii) PNWR does not have the information to estimate the difference between the rent with and without the interchange agreement. Accordingly, PNWR requested an estimate of the difference from BNSF as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the PNWR request and the BNSF response are included in the Confidential Appendix.

¹ Because the New Lease supersedes all prior leases, only the New Lease is being provided. Additionally, the New Lease is being provided without the exhibits since the interchange commitment is included in the New Lease.

² The PNWR interchange with Central Oregon & Pacific Railroad is indirect.

(viii) The caption of this proceeding reflects the existence of the interchange commitment.

(i) In addition to the information set forth above, PNWR certifies that its revenues currently exceed \$5,000,000. However, since PNWR will continue to be the operator of the Line both before and after the transaction, PNWR is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

PNWR is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since PNWR is already the operator of the Line, there will be no employees adversely affected by the new lease arrangements.

Environmental and Historic Reports

This is an extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for PNWR to discontinue (or for BNSF to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, PNWR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), PNWR would be required to give sixty days' notice to

employees working on the Line (and the national offices of their collective bargaining representatives). However, the Board has held: “The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.” *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* (“*Advanced Notice of proposed Transactions*”), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, PNWR should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Line. PNWR already leases the rail facilities and has been the sole common carrier operator of the Line since 2003. The New Lease extends the term of PNWR’s lease and PNWR will continue to be the sole common carrier operator of the Line. No employees of the transferring carrier, BNSF or its predecessor, have worked on the Line since 2003, and there are no employees of BNSF who will be affected or have to make any career choices as a result of the sale. Posting notices on the Line would not provide notice to any BNSF employees since none work on the Line. Further, there will be no operational changes, and no employees of PNWR will be affected.³ Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the

³ Notwithstanding that there will be no effect on employees of PNWR, PNWR is providing notice of the New Lease to the national office of the union that represents employees working on the Line by serving it with a copy of this Notice of Exemption.

purposes of the rule and should be waived. Granting PNWR a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016); *San Joaquin Valley Railroad Co. – Lease Amendment and Operation Exemption including Interchange Commitment – BNSF Railway Company*, STB Docket No. FD 35772 (served May 28, 2015).

PNWR asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, PNWR requests that the Board grant the waiver and permit the transaction to close at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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jmarks@clarkhill.com

*Attorneys for Portland & Western
Railroad, Inc.*

Dated: March 31, 2020

VERIFICATION

I hereby verify on behalf of Portland & Western Railroad, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

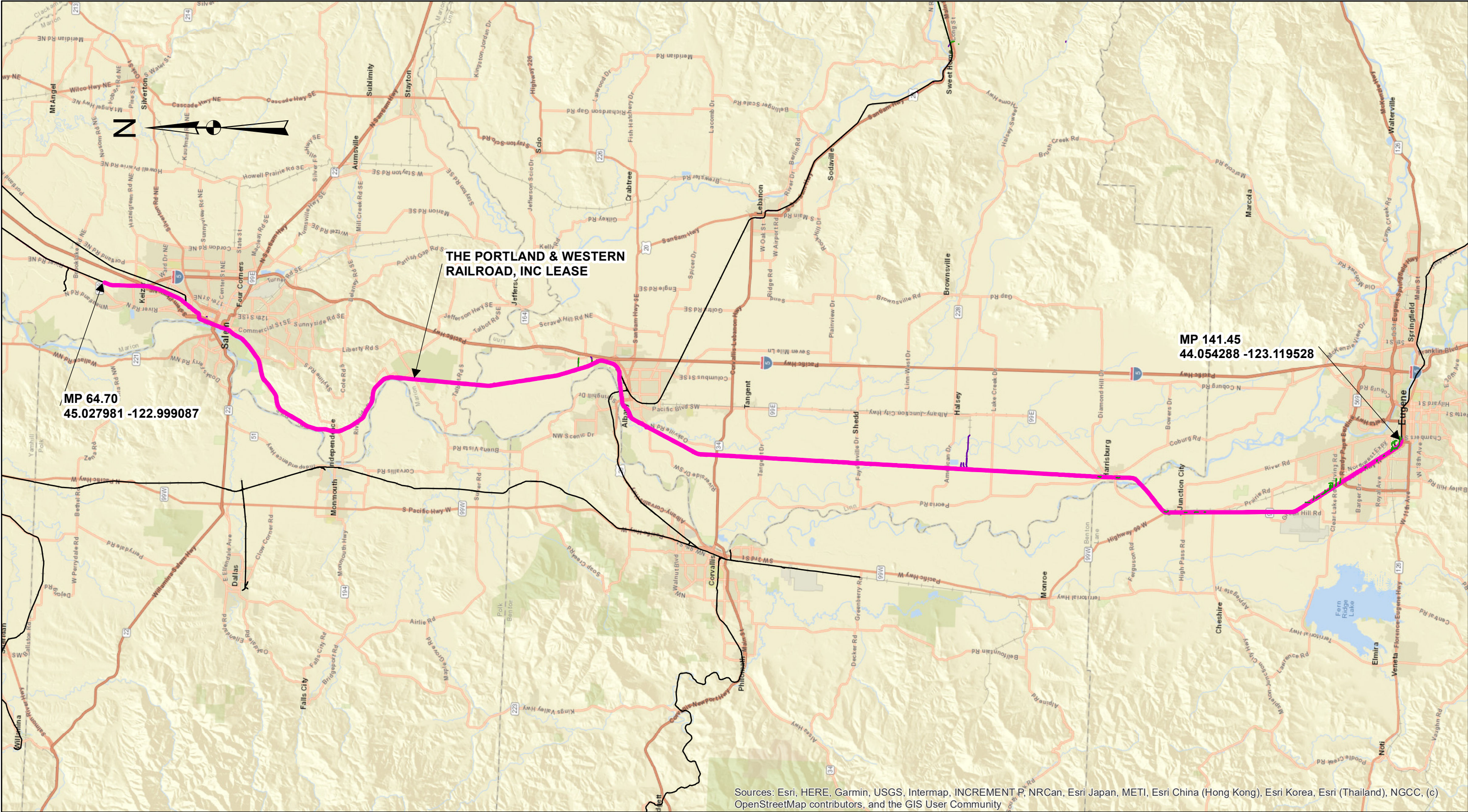
Executed on 03/31/2020



J. Bradley Ovitt, President

EXHIBIT A

MAP



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

#	DATE	DESCRIPTION	BY



EUGENE-SALEM, OR

PROJECT NO:	DATE:	DRAWING NO:
12196.030	12/13/2019	
DRAWN BY:	SCALE:	SHEET NO:
TR	1 INCH = 25,000 FEET	
CHECKED BY:		1 OF 1
DDG		

EXHIBIT B

LIST OF SHIPPERS

AERC 263 Industrial Way Lebanon, OR 97355	M&P Reload 15 N Garfield St. Eugene, OR 97402
Alpine Lumber 93495 Highway 99 S. Junction City, OR 97448	Murphy Plywood 2350 Prairie Rd. Eugene, OR 97402
CAMCO 3075 Arnold Rd NE Albany, OR 97321	NW Reload 110 Cleveland Street Eugene, OR 97402
Carson Oil - Eugene 2690 Prairie Road Eugene, OR 97402	Oregon Cascade Building Materials 93495 OR-99 Junction City, OR 97448
Cascade Pacific Pulp 30480 American Dr. Halsey, OR 97348	Oregon Precision 1680 Irving Rd. Eugene, OR 97402
Cascade Warehouse-Junction City 283 W 1st Ave Junction City, OR 97448	Puentes Brothers 1660 Salem Industrial Dr. NE Salem, OR 97301
Cascade Warehouse-Salem 1330 Salem Industrial Dr NE Salem, OR 97301	R.S. Bagg 29975 1st St. Shedd, OR 97377
CHS Nutrition 815 S 2nd St Harrisburg, OR 97446	Roseburg Forest Products 93747 OR-99 Junction City, OR 97448
Corvallis Feed 30685 OR-34 Albany, OR 97321	Schnitizer Steel 111 State Hwy 99 N Eugene, OR 97402
Duraflake/Flakeboard 2550 Old Salem Rd NE Albany, OR 97321	Seneca Sawmill 90201 State Hwy 99 N Eugene, OR 97402
Eagle Veneer 215 W 16th Ave. Junction City, OR 97448	Smith Seed 26890 Powerline Rd. Halsey, OR 97348
Farwest Commodities 1734 12th St #208D Springfield, OR 97477	Specialty Laminates 1730 W 5th Ave. Eugene, OR 97402
Ferrel Gas 1801 State Hwy 99 N Eugene, OR 97402	States Industries 29545 E Enid Rd. Eugene, OR 97402
Fitzmaurice 4195 Salem Industrial Dr NE Salem, OR 97301	Trust Joist 2812 Old Salem Rd. NE Albany, OR 97321
Forbes Seed 94904 OR-99E Junction City, OR 97448	Tyree Oil 1355 W 1st Ave Eugene, OR 97402
Georgia Pacific-American	Ventura Foods

30470 American Dr. Halsey, OR 97348	3371 Portland Rd NE Salem, OR 97301
Georgia Pacific-Bethel 2665 State Hwy 99 N Eugene, OR 97402	West Coast Seed (Purina) 102 Se Booth Bend Rd. McMinnville, OR 97128-9306
Hayworth Warehouse 23460 OR-99E Harrisburg, OR 97446	Van Beek 26405 McFarland Rd. Monroe, OR 97456
Hunton Warehouse 355 State Hwy 99 N Junction City, OR 97448	Weatherly's 15 Wallis St. Eugene, OR 97402
Knife River-Harrisburg 230 Sommerville Ave, Harrisburg, OR 97446	Willamette Ag 420 Territorial St. Harrisburg, OR 97446
Lafarge 90725 Highway 99 N Eugene, OR 97402	Woodbury Energy P.O. Box 41390 Eugene, OR 97404
LD McFarland 90049 State Hwy 99 N Eugene, OR 97402	Zip-O-Log 2235 W 6th Ave. Eugene, OR 97402

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36391

**PORTLAND & WESTERN RAILROAD, INC.
– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT–
BNSF RAILWAY COMPANY**

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The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following national representative of PNWR employees working on the Line:

Mr. Steve Leyshon
BLET – General Chairman
7331 W. Charleston Blvd.
Suite 120
Las Vegas, NV 89117

and on the shippers shown on the attached list.



Justin J. Marks

Dated: March 31, 2020

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