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Office of Proceedings
December 30, 2020
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Public Record

December 30, 2020

By e-filing

Ms. Allison C. Davis, Director
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 36478, *Dakota Northern Railroad, Inc. -- Lease and
Operation Exemption -- Rail Lines of BNSF Railway Company*

Dear Ms. Davis:

Hereby transmitted is a Verified Notice Of Exemption Under 49 C.F.R. § 1150.41 for
filing with the Board in the above referenced matter.

The filing fee of \$2,200 is being paid electronically via *pay.gov*.

Respectfully submitted,

/s/ Thomas F. McFarland
Thomas F. McFarland
*Attorney for Dakota Northern
Railroad, Inc.*

TMcF:mg:887\efSTB1

FILED
December 30, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 30, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD,)
INC. -- LEASE AND OPERATION) FINANCE DOCKET
EXEMPTION -- RAIL LINES OF BNSF) NO. 36478
RAILWAY COMPANY)

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41**

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60422-1336
(708) 704-7679
mcfarland@aol.com

Attorney for Applicant

DATE FILED: December 30, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD,	)	
INC. -- LEASE AND OPERATION	)	FINANCE DOCKET
EXEMPTION -- RAIL LINES OF BNSF	)	NO. 36478
RAILWAY COMPANY	)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41**

Pursuant to 49 U.S.C. § 1150.41, *et seq.*, DAKOTA NORTHERN RAILROAD, INC. (DN) hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its lease from BNSF Railway Company (BNSF) and operation of the following rail lines:

- (1) between point of connection to BNSF Milepost 0.0 at or near Grafton, ND and the end of the line at Milepost 48.38 at or near Walhalla, ND; and
- (2) between Milepost 38.79 at or near Grafton, ND and the end of the line at Milepost 50.25 at or near St. Thomas, ND (the Rail Lines).

The subject rail lines are shaded in yellow on a map that is attached to this Notice as Appendix 1.

BACKGROUND

The proposed lease and operation would be a continuation of a current lease and operation of the Rail Line. See *Dakota Northern Railroad, Inc. -- Lease and Operation Exemption -- Rail Lines of BNSF Railway Company*, 2006 WL 207789 (Finance Docket No. 34816, 71 F.R. 9835, January 27, 2006). The current lease is scheduled to expire on January 31, 2021.

Although the proposed lease would be a continuation of an existing DN-BNSF lease, it would not be a renewal of that lease because the terms of the proposed lease differ from those in the current lease. That being the case, the proposed lease does not qualify for the class exemption for lease renewals at 49 C.F.R. § 1180.2(d)(4). Exemption under 49 C.F.R. § 1150.41 is required.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the Class III rail carrier applicant;

Applicant is Dakota Northern Railroad, Inc., P.O. Box 705, Crookston, MN 56716.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicant's representative for receipt of correspondence is Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, (708) 704-7679, mcfarland@aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

The parties anticipate reaching agreement on a continuation of a lease of the Rail Line in the near future. A signed lease continuation is expected well before expiration of the current lease on January 31, 2021.

(d) The operator of the property;

DN would operate the Rail Lines under continuation of the lease.

(e) A brief summary of the proposed transaction, including;

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

The lessor of the Rail Lines is BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131.

(2) The proposed time schedule for consummation of the transaction;

The proposed lease and operation will not be consummated until a Board exemption for them becomes effective.

(3) The mileposts of the subject property, including any branch lines;

The Milepost of the Rail Lines are:

(i) between point of connection to BNSF at Milepost 0.0 at or near Grafton, ND and the end of line at Milepost 48.38 at or near Walhalla, ND; and

(ii) between Milepost 38.79 at or near Grafton, ND and the end of line at Milepost 50.25 at or near St. Thomas. ND.

(4) The total route miles being leased and operated;

There are 59.84 route miles proposed for lease and operation.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states;

A map of the Rail Lines shaded in yellow is attached to this Notice as Appendix 1.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45;

Attached as Appendix 2 is a Verification of DN's Manager of Operations, Jason Bierwerth, that DN would not become a Class I or Class II rail carrier as a result of the proposed lease and operation.

(h) Interchange Commitments.

The agreement between DN and BNSF will not contain any interchange commitments. It is physically impossible for DN to interchange with any rail carrier other than BNSF because the Rail Lines connect only to BNSF and any other rail carrier is located far distant from the Rail Lines. The current DN-BNSF lease agreement does not contain an interchange commitment.

REVENUES LESS THAN \$5 MILLION PER YEAR

Jason Bierwerth's verification attached as Appendix 2 contains a verification that as a result of the proposed lease and operation, DN's revenues would not exceed \$5 million per year. Mr. Bierwerth's verification encompasses all factual allegations in the Notice.

CAPTION SUMMARY

Attached to this Notice as Appendix 3 is a Caption Summary of the proposed transaction in the form required by 49 C.F.R. § 1150.44.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902(c), no labor protective conditions are to be imposed in regard to the proposed lease and operation.

ENVIRONMENTAL & HISTORIC REPORTING

By virtue of 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1), no environmental or historic reporting is required for the proposed lease and operation.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should publish this Notice in the Federal Register as notice to the public.

Respectfully submitted,

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

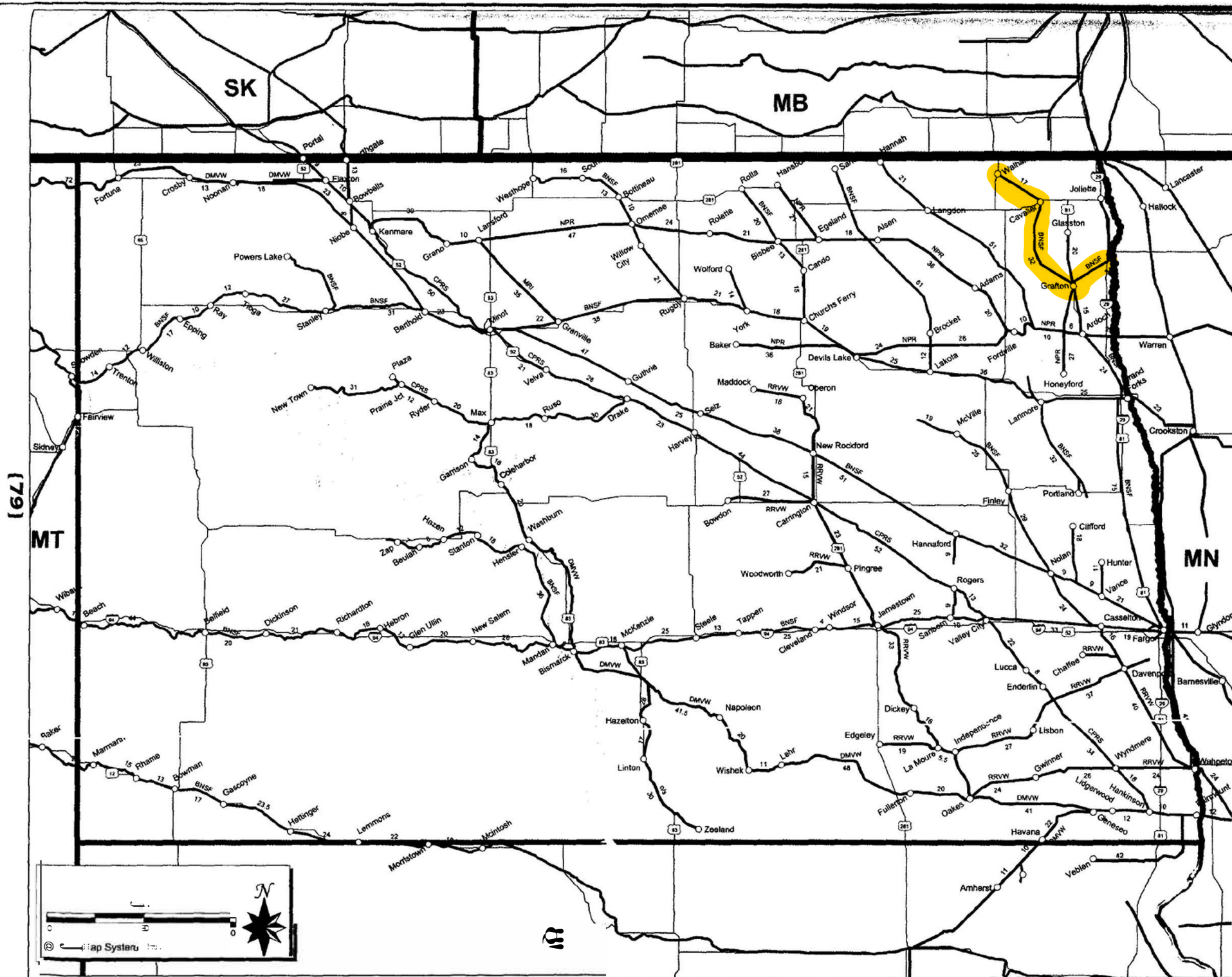
Applicant

/s/ Thomas F. McFarland

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Attorney for Applicant

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APPENDIX 2

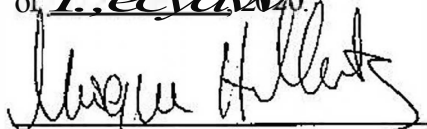
STATE OF MINNESOTA)
) SS:
 COUNTY OF POLK)

VERIFICATION

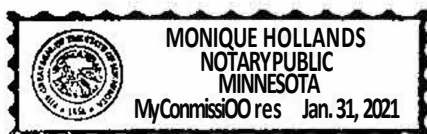
JASON BIERWERTH, being duly sworn, states that he is an authorized representative of Dakota Northern Railroad, Inc. (DN); that he has read the foregoing Notice of Exemption; that the projected annual revenues from the lease, together with DN's annual revenues, do not exceed \$5 million; that DN's projected revenues as a result of the proposed lease will not result in the creation of a Class I or Class II rail carrier; and that all allegations of fact contained in DN's Notice of Exemption are true and correct.


 JASON BIERWERTH

SUBSCRIBED & SWORN to
 before me this 15th day
 of February, 2020.


 Notary Public

My Commission Expires:



APPENDIX 3

CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION**

(STB Finance Docket No. 36478)

**DAKOTA NORTHERN RAILROAD, INC. -- LEASE AND
OPERATION EXEMPTION -- RAIL LINES OF BNSF RAILWAY COMPANY**

DAKOTA NORTHERN RAILROAD, INC. (DN) has filed a Notice of Exemption to lease from BNSF Railway Company and to operate BNSF's rail lines (1) between point of connection to BNSF at Milepost 0.00 at or near Grafton, ND and the end of line at Milepost 48.38 at or near Walhalla, ND; and (2) between Milepost 38.79 at or near Grafton, ND and the end of line at Milepost 50.25 at or near St. Thomas, ND.

DN's representative for receipt of correspondence is Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, (708) 704-7679, *mcfarland@aol.com*.

This Notice of Exemption is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.