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May 6, 2021

302267

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
May 6, 2021
Part of
Public Record

Re: **FD 36502**
Lubbock & Western Railway, L.L.C. — Lease and Operation
Exemption with Interchange Commitment —
BNSF Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of the Lubbock & Western Railway, L.L.C. Pursuant to 49 C.F.R. § 1150.42** dated May 6, 2021. A confidential version has been filed separately. The filing fee for this matter has been tendered electronically via Pay.gov.

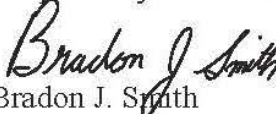
If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

FILED
May 6, 2021
SURFACE
TRANSPORTATION BOARD

BJS:bs

Attachments

Respectfully submitted,


Bradon J. Smith

Attorney for Lubbock & Western Railway, L.L.C.

FEE RECEIVED
May 6, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36502

LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
LUBBOCK & WESTERN RAILWAY, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Bradon J. Smith
Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR LUBBOCK & WESTERN
RAILWAY, L.L.C.**

Dated: May 6, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36502

LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
LUBBOCK & WESTERN RAILWAY, L.L.C
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. Part 1150, Subpart E, Lubbock & Western Railway, L.L.C. (“LWR”), a Class III rail carrier, hereby files this Verified Notice of Exemption (the “Notice”) to lease from the BNSF Railway Company (“BNSF”) a line of railroad between milepost 330.100 and milepost 327.155 in Plainview, Texas, a portion of the “Dimmit Spur” subdivision (the “Line”). In accordance with the requirements of 49 C.F.R. § 1150.43, LWR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

The full name and address of the applicant herein is as follows:

Lubbock & Western Railway, L.L.C.
315 W. Third Street
Pittsburg, KS 66782

Applicant's Representative: 49 C.F.R. § 1150.43(b)

LWR's representative to whom correspondence regarding this transaction should be sent is as follows:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

LWR and BNSF have entered into a "Lease of Rail Operations and Real and Personal Property" (the "Lease Agreement"), attached as Confidential Exhibit B, to govern the subject transaction.

Operator of the Property: 49 C.F.R. § 1150.43(d)

LWR will operate and provide all rail common carrier service to shippers on the Line.

Background and Summary of the Transaction: 49 C.F.R. § 1150.43(e)

The Line LWR will lease from BNSF adjoins an existing LWR-operated railroad line at milepost 330.100. *See Lubbock & Western Railway L.L.C. — Acquisition and Lease Exemption — West Texas and Lubbock Railway Company, Inc. and West Texas and Lubbock Railroad Company, Inc.* FD 35932 (STB served Jun. 5, 2015).

The name and address of the railroad leasing the Line to LWR is:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131

The parties intend the Lease Agreement to be effective on June 7, 2021 (pending receipt of all necessary regulatory approvals), at which point LWR expects to consummate the lease transaction and commence common carrier operations on the Line. Confidential Exhibit B at 3. LWR will lease the Line, which extends between mileposts 330.100 and 327.155, a total of 2.945 route miles.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Line is attached as Exhibit A to this Notice.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

The projected revenues will not result in LWR becoming a Class I or II rail carrier. A certification to this effect is made with the verification of this Notice.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

(i) The Lease includes an interchange commitment. There are, however, no affected interchanges.

(ii) A complete, confidential version of the Lease Agreement to govern the transaction that is subject to this Notice is filed under seal as Exhibit B.

(iii) Martin Resources is the sole customer currently on the Line.

(iv) The confidential aggregate number of carloads originated or terminated on the Lines by the above-listed shippers is as follows:

2019: ■ -

2020: ■

(v) LWR certifies that it has provided notice of the proposed transaction and interchange commitment to the above-listed customers (see example transmittal letter attached as Exhibit C).

(vi) As there are no affected interchanges, there are no third-party carriers known to LWR affected by the interchange commitment.

(vii) BNSF has informed LWR that BNSF would not undertake the proposed lease transaction absent the interchange commitment, and thus the value of the interchange commitment is inestimable.

(viii) LWR has noted the existence of an interchange commitment in the caption.

Advance Notice: 49 C.F.R. § 1150.42(e)

LWR is an existing Class III carrier with rail revenues in excess of \$5 million annually. *Watco Holdings, Inc. — Continuance in Control Exemption — Lubbock & Western Railway, L.L.C.*, FD 35933 (STB served June 5, 2015); *Lubbock & Western Railway, L.L.C. — Acquisition and Lease Exemption — West Texas and Lubbock Railway Company, Inc. and West Texas and Lubbock Railroad Company, Inc.* FD 35932 (STB served Jun. 25, 2015) (granting partial waiver of labor notice requirement under 49 C.F.R. § 1150.32(e) on transferor request). Accordingly, LWR certified to the Board it has complied with 49 C.F.R. § 1150.42(e) in time to permit for a June 7, 2021 lease closing date. LWR Certification filed in this docket on April 7, 2021. LWR intends to consummate the Lease on or shortly after the effective date of the subject class exemption.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), this transaction is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1) the transaction—which is intended for the purpose of continued rail operations—is exempt from historic preservation reporting requirements. Separate Surface Transportation Board approval is required to discontinue service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.42(a)

A caption summary in appropriate form is attached as Exhibit D to this Notice.

Respectfully submitted,

By: 

Bradon J. Smith
Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR LUBBOCK & WESTERN
RAILWAY, L.L.C**

Dated: May 6, 2021

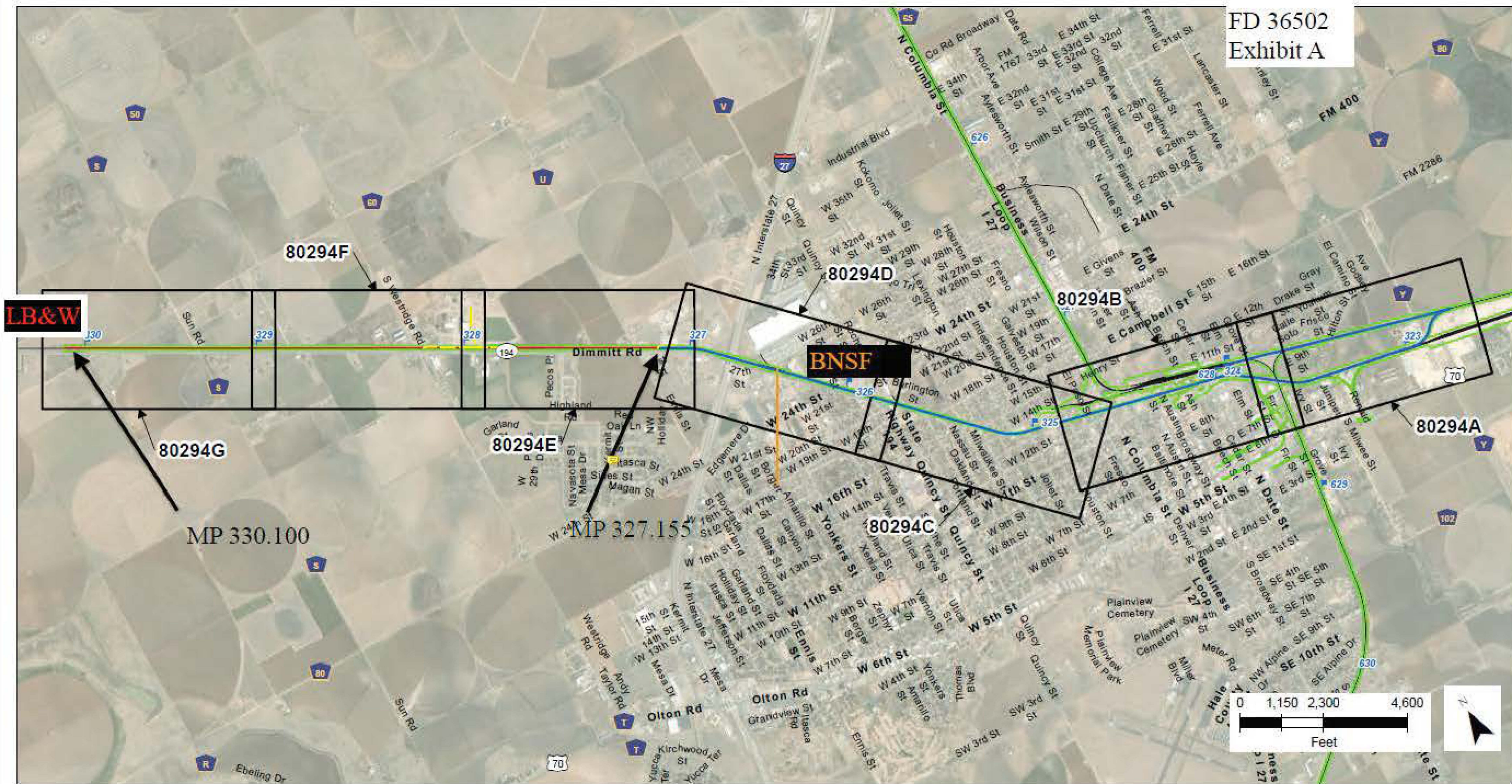
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36502

**LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY**

EXHIBIT A

MAP



ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
LBWR
PLAINVIEW, TX



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36502

**LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY**

CONFIDENTIAL EXHIBIT B

TRANSACTION DOCUMENTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36502

**LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY**

EXHIBIT C

NOTICE TO CUSTOMERS

May 6, 2021

Re: **FD 36502**
Lubbock & Western Railway, L.L.C. — Lease Exemption with Interchange
Commitment — BNSF Railway Company

Dear Sirs:

Lubbock & Western Railway, L.L.C. (“LWR”) has filed a Notice of Exemption (the “Notice”) with the Surface Transportation Board (“STB”) to lease from BNSF Railway Company (“BNSF”) a line of railroad between milepost 330.100 and milepost 327.155 in Plainview, Texas, a portion of the “Dimmit Spur” subdivision (the “Line”). Upon the effectiveness of the Notice (expected on or about June 7, 2021), or as soon thereafter as possible, LWR will begin providing rail service to your facility on the Line.

We are providing you with this information in keeping with STB shipper-notice requirements. You are not required to respond or to this letter or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

Bradon J. Smith
Attorney for Lubbock & Western Railway, L.L.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36502

**LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY**

EXHIBIT D

FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

LUBBOCK & WESTERN RAILWAY, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY

Lubbock & Western Railway, L.L.C., a Class III carrier, has filed a notice of exemption (the “Notice”) to lease from BNSF Railway Company a line of railroad between milepost 330.100 and milepost 327.155 in Plainview, Texas, a portion of the “Dimmit Spur” subdivision.

Comments must be filed with the Board and served on:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

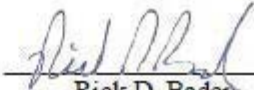
The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION AND VERIFICATION

Rick D. Baden hereby certifies and verifies under penalty of perjury as follows:

1. I am the Executive Vice President and Chief Financial Officer of the Lubbock & Western Railway, L.L.C. ("LBW").
2. The annual rail revenues of LBW will not result in LBW becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: May 6, 2021



Rick D. Baden