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October 29, 2021

Via E-Filing

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

ENTERED
Office of Proceedings
October 29, 2021
Part of
Public Record

Re: STB Docket No. FD 36556
Union Pacific Railroad Company--Trackage Rights Exemption--BNSF Railway Company

Dear Ms. Brown:

Enclosed for filing in the above proceeding are: (1) a notice of exemption pursuant to the temporary trackage rights class exemption at 49 C.F.R. § 1180.2(d)(7); and (2) a motion for protective order and unredacted version of the trackage rights agreement.

The filing fees of \$1,400 for the notice of exemption was paid using Pay.gov. Please feel free to contact if you have any questions.

Sincerely,

/s/ Jeremy Berman

Jeremy M. Berman

FEE RECEIVED
October 29, 2021
SURFACE
TRANSPORTATION BOARD

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October 29, 2021
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36556

**UNION PACIFIC RAILROAD COMPANY
-- 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
jmberman@up.com

Dated: October 29, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36556

**UNION PACIFIC RAILROAD COMPANY
-- 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)(7) for exemption of trackage rights over a line of railroad of BNSF Railway Company (“BNSF”) between Milepost 9 plus 1487.0 feet and Milepost 10 plus 3570.0 feet for a total distance of approximately 1.39 miles in or near Riverside, California.

UP originally acquired these trackage rights pursuant to an agreement dated July 10, 1984.¹ The original agreement was set to expire on its own terms as of August 13, 2014. UP and BNSF agreed to negotiate for an extension of the agreement and operations under the agreement continued. UP and BNSF have now executed an amendment to the agreement to extend the term. Under the amendment, operations will continue as they have since 1984 without material change.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition or renewal of 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, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice: (i) are based on a written

¹ UP’s acquisition of the trackage rights was authorized in *Union Pacific and Los Angeles & Salt Lake RR Co.—Abandonment and Acquisition of Trackage Rights Over ATSF Rwy. Co.*, FD 30015 (ICC served Sept. 10, 1982).

agreement, and (ii) are not filed or sought a responsive application in a rail consolidation proceeding. As such, the § 1180.2(d)(7) 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 renewal of trackage rights by UP over approximately 1.39 miles of BNSF's trackage between Milepost 9 plus 1487.0 feet and Milepost 10 plus 3570.0 feet in or near Riverside, California. Renewal of these trackage rights will allow operations to continue as they have since 1984 without material change.

§ 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
jmberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

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

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

Renewal of the trackage rights covered by this Notice will allow UP to continue operating as it has since 1984.

§ 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)

An executed copy of the trackage rights agreement 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 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 trackage rights renewal also is exempt from historic preservation reporting requirements. *See* 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: /s/ Jeremy Berman

Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
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: October 27, 2021

/s/ Melissa Grosz

Melissa Grosz

Trackage Rights - UP on BNSF

Riverside



**AMENDMENT TO
RIVERSIDE TO WEST RIVERSIDE, CA
TRACKAGE RIGHTS AGREEMENT**

THIS AMENDMENT, (hereinafter called "**Amendment**") is entered this 25th day of June, 2021 ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, and successor to The Atchison, Topeka and Santa Fe Railway Company, (hereinafter called "**BNSF**") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, successor to **LOS ANGELES AND SALT LAKE RAILROAD COMPANY** and **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation, (hereinafter referred to as "**UP**").

RECITALS:

WHEREAS, BNSF and UP are parties to an agreement dated July 10, 1984 whereby UP requested bridging rights over Santa Fe facilities commencing from the west limits of the Riverside Junction-Daggett Joint Line near M.P. 9 plus 1487.0 feet to M.P. 10 plus 3570.0 feet ("**Agreement**"); and

WHEREAS, the Agreement had an original termination date that was coterminous with the Riverside to Daggett trackage rights agreement between BNSF and UP effective February 1, 1916; and

WHEREAS, the Riverside to Daggett trackage rights agreement was set to expire by its terms as of August 13, 2014; and

WHEREAS, BNSF and UP now desire to extend the term of the Agreement.

AGREEMENT:

NOW, THEREFORE, the parties mutually agree as follows:

1. Name of Parties. The term "Santa Fe" shall be deleted as it appears in the Agreement and shall be replaced by the term "BNSF".

2. Effective Date and Term.

Subject to and conditioned upon approval of the Surface Transportation Board ("**STB**"), if required, this Amendment shall renew and extend the Agreement as amended herein and shall apply retroactively to August 14, 2014 ("**Application Date**") and shall remain in effect for a period of twenty-five (25) years from the Effective Date of this Amendment (hereinafter called "**Term**"). After the initial Term, the Agreement, as amended by this Amendment, shall automatically renew for one year terms thereafter unless terminated by either party giving at least

twelve (12) months' advance written notice of that party's desire to not renew the term. This section shall supersede Article XXVIII.B of the Agreement.

3. **Ratification.** Except as amended by this Amendment, all of the terms and provisions of the Agreement are hereby reaffirmed and remain in full force and effect and apply to the terms of this Amendment. If there is a conflict between the terms and provisions of the Agreement and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

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

BNSF RAILWAY COMPANY

By: Paul Duncan

Printed: Paul Duncan

Title: VP Service Design

UNION PACIFIC RAILROAD COMPANY

By: John W. Turner

Printed: John W. Turner

Title: UP Network Planning + Ops.

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36556**

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

BNSF Railway Company (“BNSF”) has agreed to a grant and renew trackage rights to Union Pacific Railroad Company (“UP”) between Milepost 9 plus 1487.0 feet and Milepost 10 plus 3570.0 feet for a total distance of approximately 1.39 miles in or near Riverside, California. The trackage rights covered by this Notice are being granted and renewed to allow for UP’s continued operations.

The trackage rights renewal will become effective on or after November 28, 2021

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). 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: November 18, 2021

By the Board,

Director, Office of Proceedings