



306187

ENTERED
Office of Proceedings
February 21, 2023
Part of
Public Record

Eric M. Hocky
T (215) 640-8523
F (215) 640-8501
Email: ehocky@clarkhill.com

Clark Hill
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
T (215) 640-8500
F (215) 640-8501

February 21, 2023

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 Finance Docket Nos. 36486 (Sub-No. 4) and 36486 (Sub-No. 5)
Grainbelt Corporation - Trackage Rights Exemption -
BNSF Railway Company

Dear Ms. Brown:

Enclosed for filing in the above referenced Sub-No. 4 docket is a Trackage Rights Notice of Exemption for Grainbelt Corporation ("GNBC"). In addition, GNBC is filing in Finance Docket 36486 (Sub-No. 5) a Petition for Partial Revocation to permit the partial revocation of the trackage rights.

The filing fees have been paid via pay.gov. If there are any questions related to this filing, please contact me.

Respectfully,

CLARK HILL

/s/ *Eric M. Hocky*

Eric M. Hocky
Counsel for Grainbelt Corporation

EMH:e
Enclosures

FILED
February 21, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 21, 2023
SURFACE
TRANSPORTATION BOARD

clarkhill.com

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36486 (Sub-No. 4)

GRAINBELT CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY COMPANY

NOTICE OF EXEMPTION

(color image included)

ERIC M. HOCKY
CLARK HILL PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

JUSTIN J. MARKS
CLARK HILL PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Grainbelt Corporation

Dated: February 21, 2023

Before the
SURFACE TRANSPORTATION BOARD
36486
STB Docket No. FD ~~36580~~ (Sub-No. 4)

GRAINBELT CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY COMPANY

NOTICE OF EXEMPTION

Grainbelt Corporation (“GNBC”), a Class III railroad, files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) to exempt from the provisions of 49 U.S.C. §11323, the grant of an extension of the term of previously amended local trackage rights – known as the “PCCA Trackage Rights” – by BNSF Railway Company (“BNSF”). The PCCA Trackage Rights allow GNBC: (1) to operate over the Joint Facilities¹ across and to the Plains Cotton Cooperative Association facility near BNSF Chickasha Subdivision MP 688.6 at Altus, Oklahoma; and (2) to operate additional trains on BNSF/GNBC Joint Facilities in addition to its current rights to provide service between Snyder, Oklahoma, and Quanah, Texas.² The current amendment to the PCCA Trackage Rights is based on a written agreement and is not being filed or sought in a responsive application.

This filing is related to the Petition for Partial Revocation to Permit Expiration of Amended Trackage Rights being filed simultaneously in Sub-No. 5 in this docket which seeks to permit the

¹ The Joint Facilities are defined as trackage between Long, OK (approximate MP 668.73) and Quanah, TX (approximate MP 723.3). *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad Company*, STB Finance Docket No. 35332 (served December 17, 2009).

² The PCCA Trackage Rights were originally authorized by the Board in *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (served March 12, 2021) and the Board granted authorization for an extension of the PCCA Trackage Rights in STB Docket No. FD 36486 (Sub-No. 2) (served March 8, 2022).

PCCA Trackage Rights to expire automatically on March 31, 2024, the termination date set forth in the amended trackage rights agreement.

Required Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), GNBC provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) GNBC holds overhead trackage rights granted by the predecessor of BNSF between Snyder Yard, milepost 664.00 and Quanah, Texas, milepost 723.30 (the “original trackage rights”), under which GNBC has the right to interchange at Quanah with BNSF and with Union Pacific Railroad (as the successor to Southern Pacific Railroad). BNSF subsequently sold a portion of the subject trackage to Stillwater Central Railroad, LLC f/k/a Stillwater Central Railroad, Inc. The original overhead trackage rights have been amended over the years to allow various local services to be provided.

In 2021, BNSF and GNBC amended the trackage rights again to include the PCCA Trackage Rights allowing: (1) GNBC to use the Joint Facilities to deliver and pull cars to and from the existing Plains Cotton Cooperative Association facility near BNSF Chickasha Subdivision MP 688.6 at Altus, OK, for the purpose of building unit trains with distributive power. These rights also permit GNBC to operate on BNSF's mainline (the Joint Facilities) as necessary; and (2) GNBC to operate additional trains on the Joint Facilities in order to accommodate the movement of trains transporting BNSF Customers' railcars (loaded or empty) located along the Joint Facilities, to unit train facilities on the Joint Facilities. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (served March 12, 2021). Subsequently, in STB Docket No. FD 36486 (Sub-No. 1) (served April 20, 2021), the Board granted GNBC a

petition for partial revocation of the PCCA Trackage Rights exemption to allow them to expire on March 28, 2022.

In 2022, the Board approved a notice of exemption permitting BNSF and GNBC to enter into an amendment to extend the PCCA Trackage Rights. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 2) (served March 8, 2022). As it did in 2021, the Board subsequently granted GNBC a petition for partial revocation of the PCCA Trackage Rights exemption to allow them to expire on March 28, 2023. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 3) (served April 6, 2022).

BNSF and GNBC have now entered into an amendment to extend the PCCA Trackage Rights until March 31, 2024.

The name, business address and telephone number of Applicant are: Grainbelt Corporation, 1601 Gary Blvd., PO Box 1750, Clinton, OK 73601-1750; (580) 323-1234.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin Marks
Clark Hill PLC
1001 Pennsylvania Ave., N.W.
Suite 1300 South
Washington, D.C. 20004
(202) 772-0916
jmarks@clarkhill.com

(a)(1)(ii) GNBC intends to commence operations under the amended PCCA Trackage Rights agreement upon the earliest possible time following the effective date of this exemption (thirty days after filing).

(a)(1)(iii) The extension provided by the amendment will allow GNBC to continue to use the PCCA Trackage Rights beyond their current expiration date.

(a)(5) GNBC currently operates in the State of Oklahoma. It also has the right to operate over trackage rights in the State of Texas. The Joint Facilities under the PCCA Trackage Rights agreement are located in the states of Oklahoma and Texas.

(a)(6) A map showing the original trackage rights line which includes the tracks in Altus where the PCCA Trackage Rights are effective is attached as Exhibit A.

(a)(7)(ii) The trackage rights amendment extending the term of the PCCA Trackage Rights is attached as Exhibit B.

Labor Protection

Applicant understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

Environmental and Historic Reports

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(i).

Conclusion

Based on the information provided above, GNBC requests that the Board issue a notice of exemption to extend the term of the amended trackage rights that are the subject of this notice.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

JUSTIN J. MARKS
CLARK HILL PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Grainbelt Corporation

February 21, 2023

VERIFICATION

I, Richard Eric Betke, Executive Director of Grainbelt Corporation, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.
Executed on February 21, 2023.

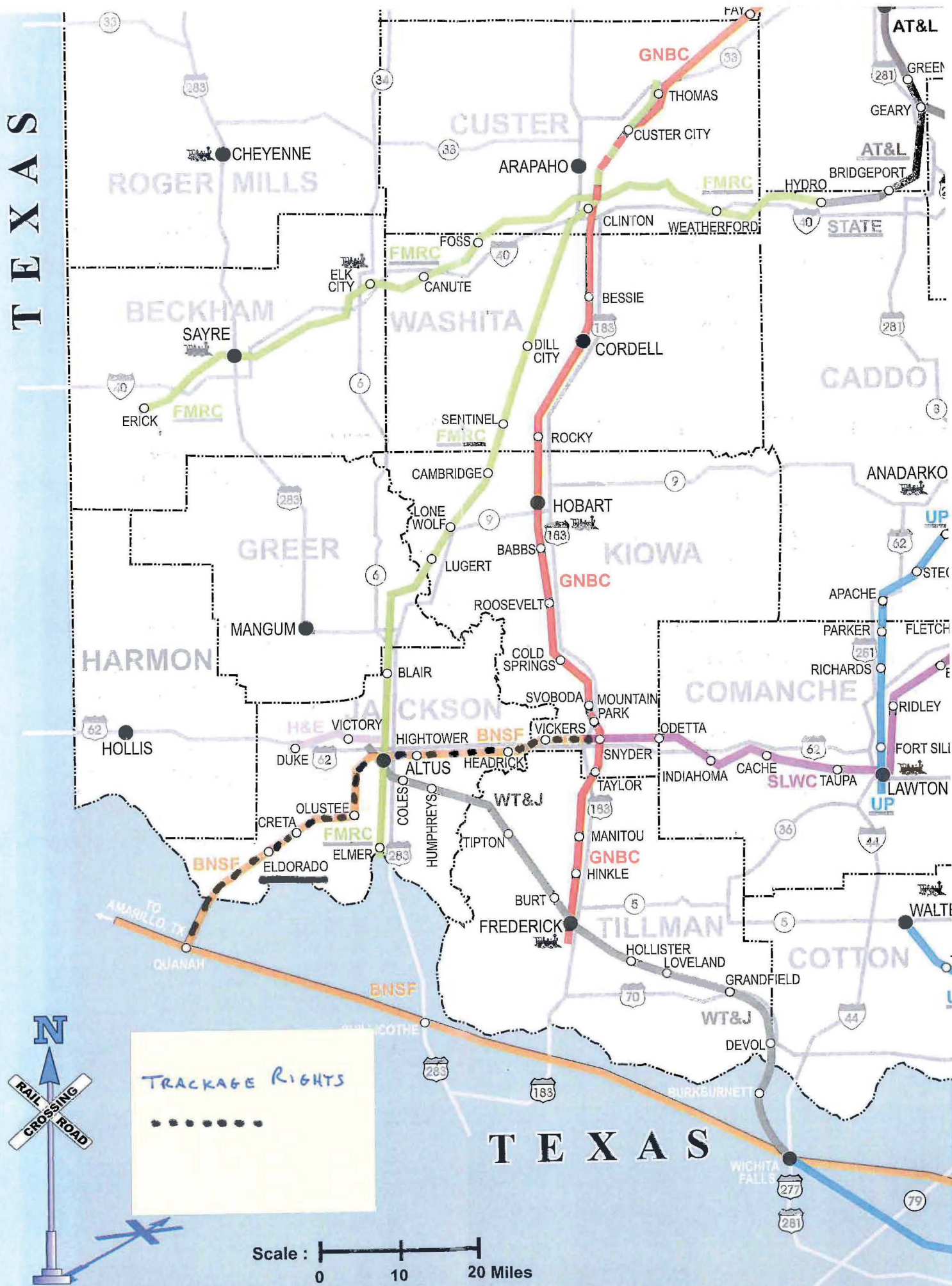
A handwritten signature in cursive script, reading "Richard Eric Betke", is written over a horizontal line.

Richard Eric Betke

EXHIBIT A

MAP

TEXAS



This map, printed by University of Oklahoma Printing Services, is issued by the Oklahoma Department of Transportation as authorized by the Director of Transportation. 10,000 copies have been printed and distributed at a cost of approximately \$0.4295 per copy.

EXHIBIT B
AGREEMENT

**AMENDMENT NO. 6 TO TRACKAGE RIGHTS AGREEMENT
BETWEEN LONG, OK AND QUANAH, TX**

This Amendment No. 6 to the Trackage Rights Agreement, as amended and/or supplemented, between Long, OK and Quanah, TX is entered into effective as of this 28th day of March, 2023, (the "**Execution Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, ("**BNSF**") and **GRAINBELT CORPORATION**, a Delaware corporation ("**GNBC**"). Capitalized terms used herein and not otherwise defined herein shall have the same meaning as provided for in the Trackage Rights Agreement, as defined below.

WITNESSETH:

WHEREAS, BNSF and GNBC entered into a Trackage Rights Agreement dated August 20, 1987, as amended (the "**Original Trackage Rights Agreement**"), whereby BNSF granted trackage rights to GNBC between Snyder, OK (approximate MP 664.0) and Quanah, TX (approximate MP 723.3);

WHEREAS, BNSF and GNBC entered into a fifth amendment of the Original Trackage Rights Agreement, as amended, dated January 27, 2022 (the "**Amendment No. 5**") to allow GNBC to perform certain local services at Altus, OK, and to clarify the operation and method of compensation;

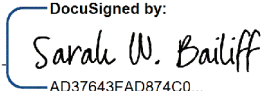
WHEREAS, BNSF and GNBC wish to further amend the Trackage Rights Agreement to extend the term of Amendment No. 5 as set forth below;

NOW THEREFORE, in consideration of the covenants and conditions herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. The termination date under Article I of Amendment No. 5 shall be extended to March 31, 2024.
- II. Except as provided herein, the Trackage Rights Agreement shall remain in full force and effect, and nothing herein is intended to alter or supplement any rights or obligations of any party other than BNSF and GNBC.
- III. GNBC shall be responsible for filing with the Surface Transportation Board ("STB") a notice of exemption approving the terms of this Amendment No. 6 pursuant to 49 CFR 1 180.2(d)(7) and a petition for partial revocation of the Amendment No. 6 class exemption so that the Amendment No. 6 rights set forth herein automatically expire March 31, 2024. The terms herein shall be subject to and conditioned upon and shall not become effective until the later of i) the effective date of the notice of exemption ("**Effective Date**"); or ii) the filing of the petition for partial revocation of the Amendment No. 6 exemption. Additionally, the rights set forth herein shall not become effective if the STB imposes conditions upon the trackage rights which are not acceptable to either party unless the parties agree otherwise.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 6 effective as of the day and year first written above.

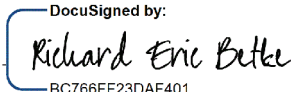
BNSF RAILWAY COMPANY, a Delaware Corporation

By:  _____
AD37643FAD874C0...

Name: Sarah W. Bailiff

Title: AVP Contracts & Joint Facilities

GRAINBELT CORPORATION, a Delaware Corporation

By:  _____
BC766FF23DAF401...

Name: Richard Eric Betke

Title: Executive Director

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

36486

STB DOCKET NO. FD ~~36580~~ (Sub-No. 4)

GRAINBELT CORPORATION - TRACKAGE RIGHTS EXEMPTION - BNSF RAILWAY COMPANY

Grainbelt Corporation (“GNBC”), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) to extend the term of the previously amended local trackage rights on trackage owned by BNSF Railway Company (“BNSF”) between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, TX (the Line), allowing GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers’ railcars (loaded or empty) located along the Line, to unit train facilities on the Line (collectively, the PCCA Trackage Rights). GNBC and BNSF have entered into an amendment to extend the PCCA Trackage Rights until March 31, 2024. The notice of exemption is related to the petition for partial revocation being filed by GNBC in Docket No. FD 36486 (Sub-No. 5).

The Notice is filed under 49 C.F.R. §1180.2(d)(7). 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.

All pleadings, referring to Docket No. FD 36486 (Sub-No. 4), should be filed with the Surface Transportation Board via e-filing on the Board’s website. In addition, a copy of each

pleading must be served on GNBC's representative, Eric M. Hocky, Clark Hill PLC, Two
Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

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

Decided: _____

By the Board,

Mai Dinh, Director, Office of Proceedings