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August 23, 2023

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Red River Valley & Western Railroad Company—Acquisition and Operation
Exemption— Rail Line Of BNSF Railway Company,
Finance Docket No. 36719

Dear Ms. Brown:

Red River Valley & Western Railroad Company is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 related to the acquisition of a .5-mile rail line, extending from milepost 54.55 to milepost 54.95 (at Casselton, ND) in Cass County, North Dakota. Pursuant to 49 CFR §1002.2(f)(14)(ii), a filing fee of \$2,200 has been paid via Pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: wmullins@bakerandmiller.com. If I am unavailable, you may contact Spencer Naake, who can be reached at (202) 663-7829 or by e-mail at snaake@bakerandmiller.com.

FILED
August 23, 2023
SURFACE
TRANSPORTATION BOARD

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Red River Valley & Western
Railroad Company

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SURFACE
TRANSPORTATION BOARD

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

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**Attorneys for Red River & Western
Railroad Company**

August 23, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 U.S.C. § 10902 and the class exemption at 49 C.F.R. § 1150.41, *et seq.*, Red River Valley Western & Railroad Company (“RRVW”), a Class III rail carrier, files this Verified Notice of Exemption seeking after the fact regulatory approval for RRVW’s 2006 acquisition of the common carrier rights and obligations of a rail line that had previously been owned and operated by BNSF Railway Company (“BNSF”). The former BNSF rail line extends from approximately milepost 54.55 to milepost 54.95 in Casselton, ND (the “Line”). RRVW acquired the Line in 2006 to support a connection track to an RRVW customer but did not obtain Surface Transportation Board (“STB” or “Board”) approval. In accordance with the requirements of 49 C.F.R. § 1150.43, RRVW submits the following information:

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

The full name and address of the rail carrier applicant herein is as follows: Red River Valley Western & Railroad Company, 209 Dakota Ave, Wahpeton, ND 58075.

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

Any correspondence concerning this Notice should be sent to counsel for RRVW at the following address: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave, N.W., Washington D.C. 20037, 202-663-7823.

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

RRVW, an existing class III short line rail carrier, reached an agreement with BNSF in 2006 for the acquisition and operation of the Line. The acquisition and operation transaction involved the purchase and operation of approximately .5 miles of track between milepost 54.55 to milepost 54.95 that had been part of the BNSF mainline. The transaction was consummated in 2006, and RRVW has been operating the Line since then.

RRVW has recently discovered that it never obtained STB authority to acquire the Line. RRVW's failure to file for the Board's authority was unintentional. Accordingly, to remedy the failure to obtain STB authority, RRVW now seeks after-the-fact authorization for the acquisition and operation of the Line.

The Board has customarily granted such "after-the-fact" exemptions when, upon learning of the need for regulatory approval, the applicants acting in good faith have sought Board approval (or an exemption from approval). See Adrian & Blissfield Rail Road Company—Acquisition and Operation Exemption—Tecumseh Branch Connecting Railroad Company, FD 35035 (STB served October 20, 2009) (Authority for a Class III rail carrier to acquire and operate a 1.3-mile rail line that it had acquired in 2001 as a result of a corporate restructuring granted even though its notice of exemption was not filed until 2009. The Board noted in its decision that "the class exemption invoked... does not provide for retroactive effectiveness."); see also Horsehead Corporation—Petition for Acquisition and Operation Exemption—Chestnut

Ridge, FD 34481, slip opinion at 2 (STB served March 12, 2004) (Authority for a Class III rail carrier to acquire and operate a 6.6 mile rail line, that it purchased in 2003, granted despite that it inadvertently failed to seek authority for the transaction until 2004. The Board noted that “[w]hile retroactive exemptions are generally to be avoided, the agency has granted them on occasion when the failure to seek approval was unintentional.”).¹

RRVW accepts the fact that the exemption it seeks here will not be effective for at least 30 days from the date of filing this notice.

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

In all cases anticipated by this Notice of Exemption, and as described in the transaction summary provided below, RRVW had held itself out since 2006 as providing common carrier rail freight service over the Line and will continue to do so after the exemption takes effect.

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

In 1987, RRVW received authority from the Board’s predecessor, the Interstate Commerce Commission, to acquire the tracks, physical assets, and common carrier obligation for 656 miles of various rail lines from BNSF.² The Line was not part of that original transaction. In 2006, BNSF agreed to transfer the Line to RRVW. BNSF and RRVW consummated the line purchase in 2006. RRVW unintentionally did not obtain STB authority for the transaction. To

¹ RRVW does not seek retroactive authority but rather seeks “after-the-fact” authority to remedy the failure to obtain authority in 2006 and to ensure that RRVW is in regulatory compliance going forward. Because it does not seek retroactive authority, RRVW is filing a notice of exemption rather than a petition for exemption. See Arkansas-Oklahoma Railroad Company—Acquisition and Operation Exemption—State of Oklahoma, FD 36323 (STB served September 18, 2019) (Class III rail carrier elected to file a petition for an individual exemption under 49 U.S.C. § 10502 and 49 C.F.R. § 1121 because it sought retroactive effect for the exemption.).

² See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (ICC served July 22, 1987).

remedy that failure, RRVW now seeks the Board's after-the-fact authority to acquire and operate the Line. The Line is approximately 0.5 miles in length and terminates in Casselton, ND. The Line connects to the lines that RRVW acquired from BNSF in 1987.³ RRVW's acquisition and operation of the Line in 2006 allowed it to connect with a connection track to RRVW's customer, Tharaldson Ethanol. RRVW has been serving the customer since that time.

The 2006 acquisition and operation of the Line did not, and will not, result in RRVW becoming a Class II or Class I carrier. Accordingly, an exemption from 49 U.S.C. § 10902 under 49 C.F.R. § 1150.41, et seq., is appropriate for this after-the-fact acquisition and operation. See, e.g., Eastern Maine Railway Company – Acquisition and Operation Exemption – Central Maine & Quebec Railway US Inc., d/b/a Canadian Pacific, FD 36641 (STB served October 31, 2022) (acquisition and operation of a rail line by a Class III Carrier granted by the Board as it did not limit future interchange with a third-party connecting carrier or result in the rail carrier becoming a Class II or Class I rail carrier).

The railroad transferring the rights which are the subject of this notice of exemption is BNSF Railway Company, with its address at 2650 Lou Menk Drive, Fort Worth, Texas 76131.

The transaction is expected to be consummated following approval of RRVW's petition for waiver concurrently filed in this docket, but in no event earlier than thirty days after this Notice of Exemption is filed with the Board.

The Line is approximately .5 miles long, extending from milepost 54.55 to milepost 54.95 in Casselton, ND in Cass County, ND.

³ Id. (The 1987 acquisition included a rail line from Wahpeton Junction, N.D. (milepost 1.40) to Casselton, N.D. (milepost 54.55)).

Map: 49 C.F.R. 1150.43(f)

A map showing the rail line which is the subject of this notice of exemption is attached as Exhibit A. The .5-mile rail line is shown in red on that map.

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

RRVW certifies that, with this acquisition, its projected annual revenues will not result in the creation of a Class II or Class I rail carrier. A certificate complying with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this notice.

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

RRVW certifies that the transaction did not involve any interchange commitments.

Labor Protection

Under 49 U.S.C. 10902, the imposition of labor protective conditions is not authorized for a Class III railroad acquisition and thus none should be imposed in this transaction.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data: 49 CFR § 1105

Pursuant to 49 C.F.R. 1105.6(c)(1), the proposed transaction is exempt from environmental review under 49 C.F.R. 1105.6(c)(1)(i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5). In addition, this transaction is exempt from historic review under 1105.8(b)(1). Under this section, a sale, lease, or transfer of a rail line is exempt if rail operations will continue, and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. Rail operations will continue and RRVW has no plans to dispose or alter properties subject to STB jurisdiction that are 50 years old or older.

Conclusion

For the foregoing reasons, RRVW requests that the Board, under 49 C.F.R. § 1150.41, *et seq.*, exempt its acquisition and operation of the Line from regulation under 49 U.S.C. §10902.

Respectfully submitted,

/s/ *William A. Mullins*

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August 23, 2023

Attorneys for Red River Valley & Western
Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

**EXHIBIT A
MAP**



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

**EXHIBIT B
CERTIFICATE OF REVENUE AND VERIFICATION**

CERTIFICATE OF REVENUE AND VERIFICATION

In accordance with 49 C.F.R. § 1150.43(g), I, Victor Meyers, do hereby certify that I am President of Red River Valley & Western Railroad Company, and 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.

I further certify under penalty of perjury that the foregoing Notice of Exemption is true and correct to the best of my knowledge, information, and belief.



Victor Meyers, President
Red River Valley & Western Railroad
Company

Dated 08/23/2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –**

VERIFIED NOTICE OF EXEMPTION

**EXHIBIT C
CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION
STB FINANCE DOCKET NO. 36719

Red River Valley & Western Railroad Company–Acquisition and Operation Exemption–Rail
Line Of BNSF Railway Company

Red River Valley & Western Railroad Company (“RRVW”), a class III rail carrier, has filed a notice of exemption, pursuant to 49 C.F.R. § 1150.41, to acquire from BNSF Railway Company (“BNSF”), and to operate an approximate 0.5-mile rail line extending from approximately milepost 54.55 to milepost 54.95 in Casselton, ND in Cass County, ND (the “Line”). RRVW acquired the Line in 2006 and has operated it since that time. RRVW has recently discovered that it did not receive Surface Transportation Board (“STB”) approval for the 2006 transaction. RRVW now seeks after-the-fact STB acquisition and operation approval.

RRVW certifies that the acquisition of the Line does not involve any interchange commitments. RRVW further 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.

Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, RRVW has filed a request for partial waiver of the 60-day advance labor notice requirements to allow the transaction to proceed as soon as the waiver is granted but no earlier than 30 days' after the filing of this notice of exemption. RRVW’s waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

Comments must be filed with the Surface Transportation Board, Office of Secretary, 395 E Street, S.W., Washington D.C. 20423-0001 and served on William A. Mullins, Esq., Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Washington D.C. 20037, 202-663-7823.

This 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.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: _____.

By the Board, _____, Director, Office of Proceedings.