

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

Spencer M. Naake

Direct Dial: (202) 663-7829
snaake@bakerandmiller.com

ENTERED
Office of Proceedings
September 1, 2023
Part of
Public Record

September 1, 2023

VIA E-FILING

Cynthia T. Brown
Chief of the 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:

Enclosed for filing in the above-referenced matter is an errata containing pages that correct a discrepancy between the mileage of the line indicated and the mileposts provided in the Verified Notice of Exemption filed on behalf of the Red River Valley & Western Railroad Company on August 23, 2023. If there are questions concerning this e-filing, please contact me by telephone at (202) 663-7829 or by e-mail at snaake@bakerandmiller.com. If I am unavailable you may contact William A. Mullins, who can be reached at (202) 663-7823 or by email at wmullins@bakerandmiller.com.

Sincerely,

/s/ Spencer M. Naake

Spencer M. Naake
Attorney for Red River Valley & Western Railroad
Company

Enclosures
cc: Parties of Record

**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**

**ERRATA TO AUGUST 23, 2023 ACQUISITION AND
OPERATION EXEMPTION**

**William A. Mullins
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7831
Fax: (202) 663-7849**

September 1, 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**

**ERRATA TO AUGUST 23, 2023 ACQUISITION AND
OPERATION EXEMPTION**

Since submitting Red River Valley & Western Railroad Company’s (“RRVW”) verified notice of exemption (“Notice”) on August 23, 2023,¹ counsel for RRVW was informed by Board staff that there was a discrepancy between the mileage of the line indicated and the mileposts provided. The Notice incorrectly indicates that the former BNSF rail line which extends “from approximately milepost 54.55 to milepost 54.95 in Casselton, ND (the “Line”)” is a 0.5-mile rail line. Upon examination and further research, the mileposts are correct. Accordingly, the Line is a “0.4-mile line” not a “0.5-mile line.” RRVW is submitting this errata to correct the 0.5-mile references. RRVW respectfully requests that the Board substitute the following pages in the Notice: pages 4, 6, 7 and 14.² Please feel free to contact me should you have any questions regarding this errata.

¹ RRVW concurrently filed a Petition for Waiver related to the Notice on August 23, 2023, but the mileage of the rail line was not indicated within the Petition itself.

² Corrected mileage is in red on the replacement pages.

Respectfully Submitted,

/s/ Spencer M. Naake

Spencer M. Naake
Attorney for Red River Valley & Western Railroad
Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Red River Valley & Western Railroad Company's Errata to August 23, 2023, Acquisition and Operation Exemption, served September 1, 2023, in the above-captioned proceeding was served by first-class mail, postage prepaid, or by a more expeditious manner, this 1st day of September 2023, on all Parties of Record.

/s/ **Spencer M. Naake**

Spencer M. Naake
Attorney for Red River Valley & Western Railway

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 0.4 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

remedy that failure, RRVW now seeks the Board's after-the-fact authority to acquire and operate the Line. The Line is approximately 0.4 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 0.4 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 0.4-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.

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 0.4-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.