

246742

LAW OFFICES
JAMES H. M. SAVAGE, ESQ.
22 ROCKINGHAM COURT
GERMANTOWN, MD 20874
jsavagelaw@aim.com

ENTERED
Office of Proceedings
November 5, 2018
Part of
Public Record

Admitted to Practice
DC & New Jersey

Tel: (908) 361-7097
Fax: (301) 972-5743

November 5, 2018

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

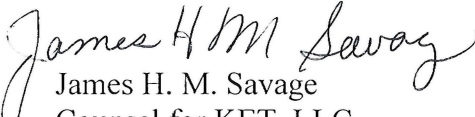
**Re: STB Finance Docket No. 36244 KET, LLC- Operation Exemption-Rail Lines in
Benton County, WA**

Dear Ms. Brown:

On behalf of KET, LLC, Petitioner, I am filing an original and ten copies of a Verified Notice of Exemption under 49 U.S.C. 10901 and 49 CFR 1150.31 in the above-captioned proceeding. I am enclosing with this filing a check for \$2,000 to cover the applicable filing fee as well as a copy of the filing on a computer disk formatted for MS word and pdf.

Also enclosed please find a duplicate copy of this letter to be stamped with the filing date and returned to the undersigned. If there are any questions about this matter, please contact me directly, either by telephone at (908) 361-7097 or by email to jsavagelaw@aim.com.

Respectfully submitted,


James H. M. Savage
Counsel for KET, LLC

Enc. -
Service cert. (attached)

FILED
November 5, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
November 5, 2018
SURFACE
TRANSPORTATION BOARD

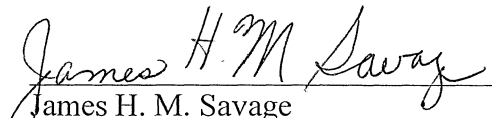


CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this 5th day of November 2018, by electronic mail a true copy of the within pleading upon the following persons:

Justin Barager
Joint Facilities
Union Pacific Railroad
1400 Douglas St., Stop 1120
Omaha, NE 68179
jbarager@up.com

Jared York
Joint Facilities: NW & Montana Divisions
BNSF Railway
2650 Lou Menk Dr.
Fort Worth, TX 76131
jared.york@bnsf.com


James H. M. Savage



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36244

**KET, LLC
- OPERATION EXEMPTION -
LINES OF RAILROAD IN BENTON COUNTY, WA**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

INFORMATION REQUIRED BY 49 CFR 1150.33

KET, LLC (“KET”), a non-carrier, hereby files this Verified Notice of Exemption under 49 CFR 1150.31, et seq., to operate as common carrier lines of railroad, two disconnected industrial spurs acquired by KET on July 23, 2013 from the Port of Kennewick Washington (“POK”) and thereafter managed by KET as non-regulated industrial track.

The track to be so operated is described as follows: in the City of Kennewick, WA a main industrial rail spur originating at the connection with the Union Pacific Railroad Company (“UP”) 'City Lead' (connecting at its west end to UP Kalan Industrial Lead) from east edge of Washington St., and running along the line of Bruneau Ave. extending in an easterly direction and terminating east of

the intersection of Bruneau Ave. and Kingwood St. in Kennewick, WA. The main industrial rail spur travels a distance of 3,694 feet (0.7 miles).

The main industrial rail spur also connects with the BNSF Railway (“BNSF”) along Bruneau Ave. west of the intersection with N. Elm St. in Kennewick, WA.

A branch spur (“Ash Grove Spur”) diverges from the main industrial rail spur along the line extending east on Bruneau Ave., east of its intersection with N. Gum St. and proceeding in a northeasterly direction terminating on the property of the Ash Grove Cement Co. at 633 N. Ivy Street in Kennewick, WA. The branch spur travels a distance of 1,476 feet (0.28 miles).

The total length of the Kennewick industrial rail spur trackage is 5,170 feet (0.98 miles). A map of the Kennewick track is attached as Exhibit A1.

The Hedges track, in Benton County, WA, originates at the connection with the UP and running southeast to the property line of Nutrien Chemical Company, a distance of approximately 1,600 feet (0.30 miles). A map of the Hedges track is attached as Exhibit A2.

This transaction is similar to Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL, STB Docket No. 41986 (Decided Sept. 8, 1997) wherein Petitioner sought to convert “switch track”, formerly used as an industrial spur, to a line of railroad. The Board found the transaction to fall within the exercise of its entry jurisdiction. KET, like Petitioner

in Effingham, will become a new carrier upon this Exemption taking effect and this line of railroad will constitute its entire operation, both of which factors strongly support a finding of Board jurisdiction.

Another factor strongly supporting a finding of Board jurisdiction is the ICC holding, in Finance Docket No. 27628, Oregon-Washington Railroad & Navigation Company—Construction and Operation—Construction, Near Hedges, Benton County, Washington, that a distal stub-ended UP spur *was* regulated track. Thus, a finding of jurisdiction would connect the orphan UP spur to the national rail system.

Name and Address of Applicant

49 CFR 1150.33(a)

KET, LLC
1104 Dell Ave.
Walla Walla, WA 99362

Applicant's Representative

49 CFR 1150.33(b)

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
(908) 361-7097

Statement of Agreements

49 CFR 1150.33(c)

KET expects to execute interchange agreements with UP and BNSF to provide continued service at Kennewick and Hedges. KET further expects to provide via agreement for UP's continued access to its isolated ICC-licensed

Hedges Lead running from a connection with the KET Hedges track southeast to the former Phillips property east of Finley, WA.

Operator of the Property

49 CFR 1150.33(d)

In all cases anticipated by this Notice, and as described in the transaction summary provided below, applicant will hold itself out to provide common carrier Railroad freight service over the subject Railroad Line.

Brief Summary of Transaction

49 CFR 1150.33(e)

This transaction involves the proposed operation by KET, a non-carrier which will become a Class III short line railroad carrier upon this exemption taking effect, of two existing industrial spurs to be converted to common carrier lines of railroad connecting with existing UP and BNSF railroad lines.

UP and BNSF, and their respective predecessors, have provided railroad service at Kennewick since 1953 and at Hedges since 1960. Class I service was originally by Agreement with POK and, since 2014, has been by Agreement with KET.

(1) Name and address of incumbent railroad

Applicant is the incumbent. In all cases anticipated by this Notice, and as described in the transaction summary provided below, applicant will hold itself out to provide common carrier Railroad freight service over the subject Railroad Line.

(2) Proposed time schedule for consummation of transaction.

KET plans to commence common carrier operations as soon as possible after this Exemption takes effect, but in any event at least 30 days after the filing of this Notice.

(3) Mileposts of the subject property.

The existing industrial spurs applicant seeks to convert to common carrier lines of railroad will have no Mileposts.

(4) Total Route Miles.

By this transaction applicant seeks to operate railroad property comprising a total of 1.28 route miles.

Map of Area to be Served

49 CFR 1150.33(f)

Two maps clearly indicating the area to be served, including origins, termini, stations, cities, counties, and states, are attached as Exhibits A1 (Kennewick, WA) and A2 (Hedges, WA).

Certificate of Carrier Classification

49 CFR 1150.33(g)

Applicant certifies that following this transaction taking effect, its projected annual revenues will remain less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments

49 CFR 1150.33(h)

Not applicable, as no interchange commitments are contemplated for this transaction.

Caption Summary **49 CFR 1150.34**

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

Environmental and Historic Preservation Data

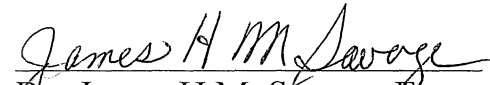
49 CFR 1105

Under 49 CFR 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes exceeding the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b)(1). The proposed transaction is for the purpose of continued railroad operations, further Board approval would be required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Respectfully submitted,

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
Tel. (908) 361-7097


By: James H.M. Savage, Esq.

Attorney for Applicant
KET, LLC

Dated: November 5, 2018

Exhibit C – Caption Summary

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 36244

**KET, LLC
- OPERATION EXEMPTION -
LINES OF RAILROAD IN BENTON COUNTY, WA**

NOTICE OF OPERATION OF RAILROAD LINE

KET, LLC (“KET”), a non-carrier, has filed a Verified Notice of Exemption under 49 CFR 1150.31 to operate as common carrier lines of railroad two existing industrial spurs, totaling 1.28 route miles in length, consisting of the Kennewick track, originating at the connection with the Union Pacific Railroad Company (“UP”) 'City Lead' (connecting at its west end to UP Kalan Industrial Lead) from east edge of Washington St., and running along the line of Bruneau Ave. extending in an easterly direction and terminating east of the intersection of Bruneau Ave. and Kingwood St. in Kennewick, WA. The main industrial rail spur travels a distance of 3,694 feet (0.7 miles). The main industrial rail spur also connects with the BNSF Railway (“BNSF”) along Bruneau Ave. west of the intersection with N. Elm St. in Kennewick, WA.

A branch spur (“Ash Grove Spur”) diverges from the main industrial rail spur along the line extending east on Bruneau Ave., east of its intersection with N. Gum St. and proceeding in a northeasterly direction terminating on the property of the Ash Grove Cement Co. at 633 N. Ivy Street in Kennewick, WA. The branch spur travels a distance of 1,476 feet (0.28 miles).

Additionally, applicant seeks to operate the Hedges track, in Benton County, WA, extending from the connection with the Union Pacific Railroad Company (“UP”) and running southeast to the property line of Nutrien Chemical Company, a distance of approximately 1,600 feet (0.30 miles).

KET plans to consummate this transaction as soon as possible after this Exemption takes effect, but in any event at least thirty (30) days after the filing of this Notice.

Comments must be filed with the Board and served on:

James H. M. Savage, Esq.
22 Rockingham Court
Germantown, MD 20874
Telephone: (908) 361-7097
Email: jsavagelaw@aim.com

This notice is filed under 49 C.F.R. 1150.31. 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 effectiveness of the exemption.

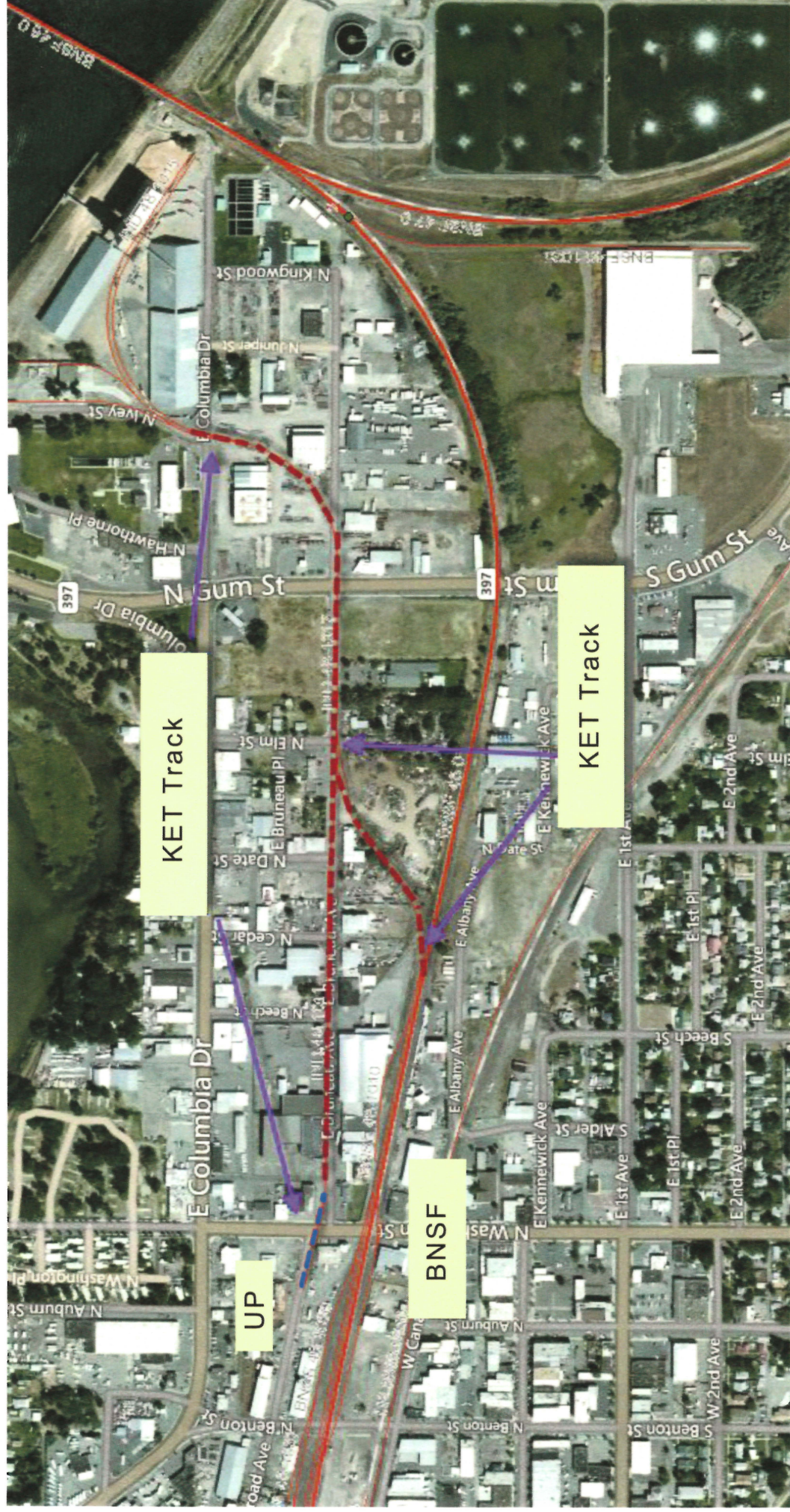
Petitions to stay must be filed no later than _____, 2018 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Finance Docket No. 35433, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on James H. M. Savage, Esq., 22 Rockingham Ct., Germantown, MD 20874, Telephone: (908) 361-7097.

(seal)

Cynthia T. Brown,
Chief, Section of Administration

Exhibit A1 Kennewick



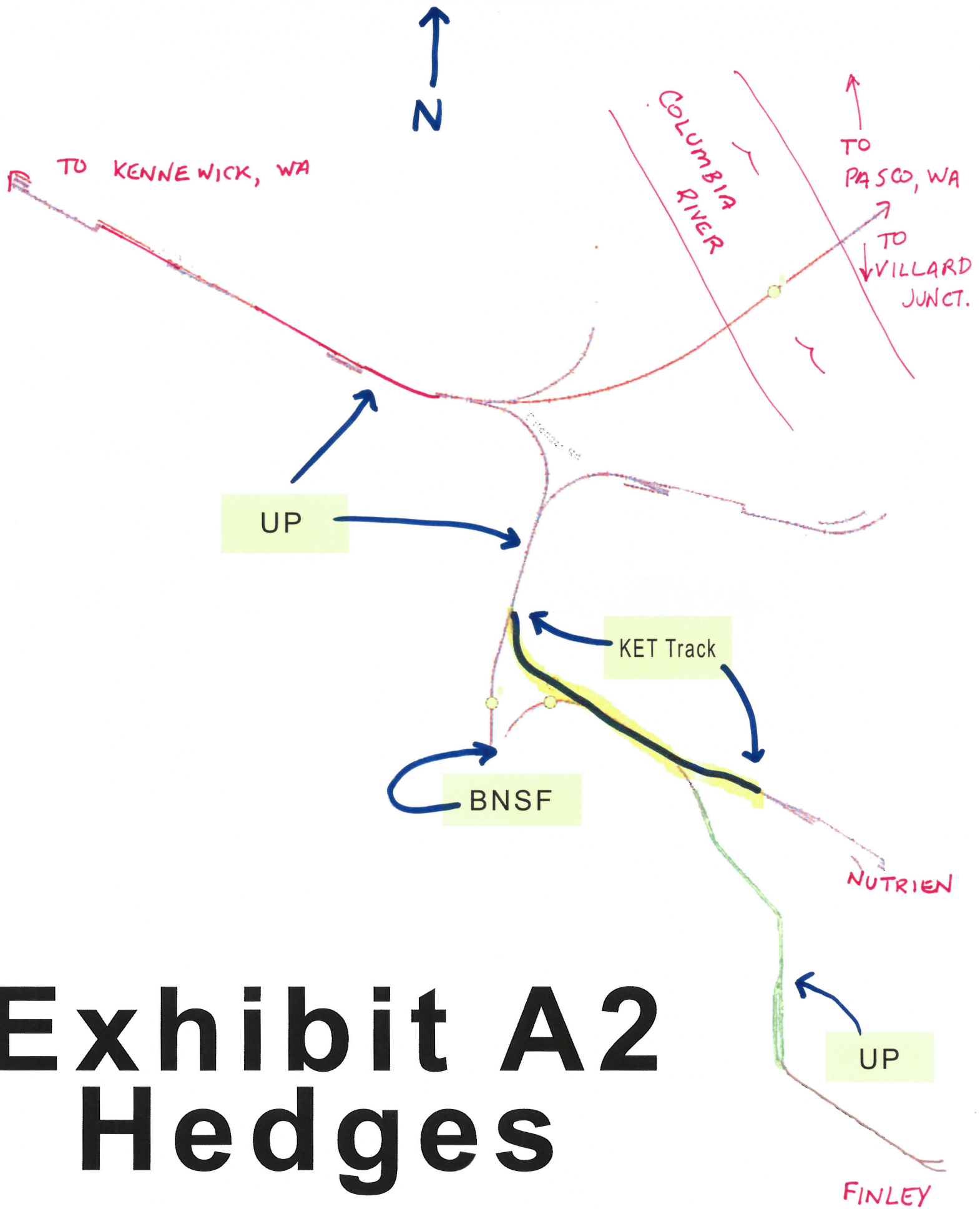
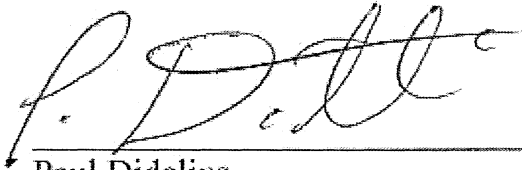


Exhibit A2 Hedges

VERIFICATION AND CERTIFICATE OF COMPLIANCE

I, Paul Didelius, declare under penalty of perjury that I am the Owner of KET, LLC, that I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this notice.

I also hereby certify that KET's projected annual revenues will not as a consequence of this transaction result in KET becoming a Class II or Class I rail carrier so as to require processing of the foregoing notice of exemption under 49 C.F.R. § 1150.35, and that KET's projected annual revenue for the lines to be operated pursuant to this notice does not exceed \$5 million dollars.



Paul Didelius
Owner, KET, LLC

Dated: November 5, 2018