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FILED

FEB 20 2002

**SURFACE
TRANSPORTATION BOARD**
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KARL MORELL

February 15, 2002

DID# 0101891001

BY MESSENGER

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001



Re: STB Finance Docket No. 34168, West Texas & Lubbock Railroad
Company and The Burlington Northern and Santa Fe Railway
Company -- Joint Relocation Project Exemption -- In Lubbock, TX

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. 1180.2(d)(5) and a check covering the \$1,700 filing fee.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

FEE RECEIVED

FEB 20 2002

Sincerely,

Karl Morell

**SURFACE
TRANSPORTATION BOARD**
KM:KM

DND# 010/89/001

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BEFORE THE

SURFACE TRANSPORTATION BOARD

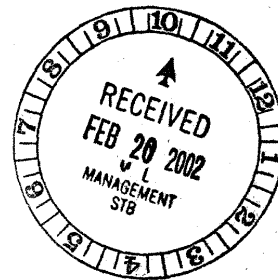
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FINANCE DOCKET NO. 34168

WEST TEXAS & LUBBOCK RAILROAD COMPANY AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--JOINT RELOCATION PROJECT EXEMPTION--
IN LUBBOCK, TX

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(5)



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Attorneys for:
WEST TEXAS & LUBBOCK
RAILROAD COMPANY, INC.

Dated: February 15, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34168



WEST TEXAS & LUBBOCK RAILROAD COMPANY AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--JOINT RELOCATION PROJECT EXEMPTION--
IN LUBBOCK, TX

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(5)

West Texas & Lubbock Railroad Company, Inc. ("WTLR") files this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(5), for a joint relocation project in the City of Lubbock, Lubbock County, TX (the "City" or "Lubbock"). The joint relocation project involves: (1) a grant of overhead trackage rights to WTLR by The Burlington Northern and Santa Fe Railway Company ("BNSF"); (2) the construction on behalf of WTLR of a new connecting track with BNSF's main line in the City; and (3) the incidental abandonment of approximately 6.1 miles of WTLR's line in the City. The joint relocation project will not disrupt service to shippers.

The joint relocation project will facilitate the upgrade of U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. The proposed freeway is intended to meet the City's east-west traffic needs in the 21st century by providing a high-capacity, high speed link between southwest Lubbock and Interstate Highway 27 in the northeast portion of the City. To accommodate the freeway construction, the 6.1-mile segment of WTLR's line in

downtown Lubbock, which is located directly adjacent to existing U.S. Highway 82, needs to be relocated. The new connecting track and the trackage rights will replace operations over the 6.1-mile rail line and enable WTLR to continue to connect its rail lines extending south and southwest of Lubbock with the BNSF yard in downtown Lubbock.

In support of this Notice of Exemption, WTLR submits the following information as required by 49 C.F.R. § 1180.4(g):

Section 1180.6(a)

- (1) A description of the proposed transaction.
 - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.

In 1989, the State of Texas and the City agreed to upgrade U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. To accommodate the freeway construction, WTLR's rail line located between Milepost 7.2 and Milepost 1.1 in the City (the "Line"), which is located directly adjacent to existing U.S. Highway 82, needs to be relocated.

On February 12, 1991, the State of Texas and the City entered into an agreement whereby the City is responsible for, among other things, relocating the Line, and affecting the conveyance of the corridor underlying the Line to the State of Texas. On March 8, 1991, the City and WTLR's predecessor entered into an agreement providing for the relocation of the Line (the "Relocation Agreement"). Pursuant to the Relocation Agreement, WTLR's predecessor agreed to convey to the State of Texas all of the railroad's right, title and interest in the real property underlying the Line in exchange for the City conveying to the railroad fee title to a new right-of-way that would enable the railroad to connect with BNSF in Lubbock.

On June 28, 2000, the Relocation Agreement was modified by the parties to reflect that:

(1) WTLR is the new owner of the Line; (2) WTLR is to obtain trackage rights from the BNSF between the point of interchange of the relocated line and the BNSF line, on the one hand, and, on the other, the current point of interchange between the Line and the BNSF line in downtown Lubbock; (3) the right-of-way underlying the Line is to be transferred to the State of Texas pursuant to the provisions of the Conveyance Agreement; and (4) WTLR has elected to salvage the Line after the relocation project is completed.

Pursuant to the Conveyance Agreement, the State of Texas acquired from WTLR, by quitclaim deed, all of WTLR's interest in the real property underlying the Line. In STB Finance Docket No. 33889, *State Of Texas (Acting By And Through The Texas Department Of Transportation) – Acquisition Exemption – West Texas & Lubbock Railroad Company, Inc.* (not printed), served March 6, 2001, the Surface Transportation Board ("Board") concluded that the acquisition of the Line's underlying real property by the State of Texas was not subject to the Board's jurisdiction.

The relocation project involves: (1) the relocation of the Line from its current location between WTLR Milepost 7.2 and WTLR Milepost 1.1 to its relocated location between WTLR Milepost 7.2 and BNSF Milepost 83.6; (2) BNSF's grant to WTLR of overhead trackage rights over BNSF's line extending from Milepost 83.6 to Milepost 88.6 in Lubbock; and (3) WTLR's incidental abandonment of the Line.

The proposed joint relocation project will not disrupt service to shippers. There are no shippers located on the WTLR line being abandoned. Also, the relocated line and trackage rights will not involve an expansion of service by WTLR into a new territory. The relocated line and trackage rights will simply enable WTLR to preserve its current connection with BNSF in

BNSF's yard in downtown Lubbock once the Line is abandoned. Accordingly, the proposed joint relocation project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5).

The Board will exercise jurisdiction over the abandonment or construction component of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Also, line relocation projects may embrace trackage rights transactions. *See D.T.&I.R.--Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction and trackage rights components of this relocation project require no separate approval or exemption since the project will not disrupt service to shippers or expand WTLR's service into a new territory and, therefore, qualifies for the class exemption at Section 1180.2(d)(5).

The name and business address of Applicant are as follows:

West Texas & Lubbock Railroad Company
6010 Brownfield Highway
Lubbock, TX 79407

Applicant's representative:

Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

(ii) The proposed time schedule for consummation of the proposed transaction.

The transaction will be consummated sometime after February 22, 2002.

(iii) The purpose sought to be accomplished by the proposed transaction.

The proposed relocation will facilitate the upgrade of U.S. Highway 82 in downtown Lubbock.

- (5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

WTLR conducts rail operations in the State of Texas.

- (6) Map.

A map illustrating the location of the trackage rights, the construction of the new connecting track and the incidental abandonment is attached as Exhibit 1.

- (7)(ii) Agreement.

A copy of the agreements between the State of Texas, the City of Lubbock and WTLR governing the relocation project was filed by the State of Texas in Finance Docket No. 33889. A copy of the trackage rights agreement between WTLR and BNSF is attached as Exhibit 2.

WTLR is agreeable to the labor protection conditions imposed in trackage rights proceedings as found 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 – California Western Railroad*, 360 I.C.C. 653 (1980).

This action will not significantly affect either the quality of the human environment or energy conservation. Environmental impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4). The incidental abandonment and construction of a new connecting track is a transaction which is not subject to the Board's jurisdiction in this proposed relocation project.

Respectfully submitted,



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Of Counsel
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(561) 994-6015

Attorneys for:
WEST TEXAS & LUBBOCK
RAILROAD COMPANY, INC.

Dated: February 15, 2002

EXHIBIT 1

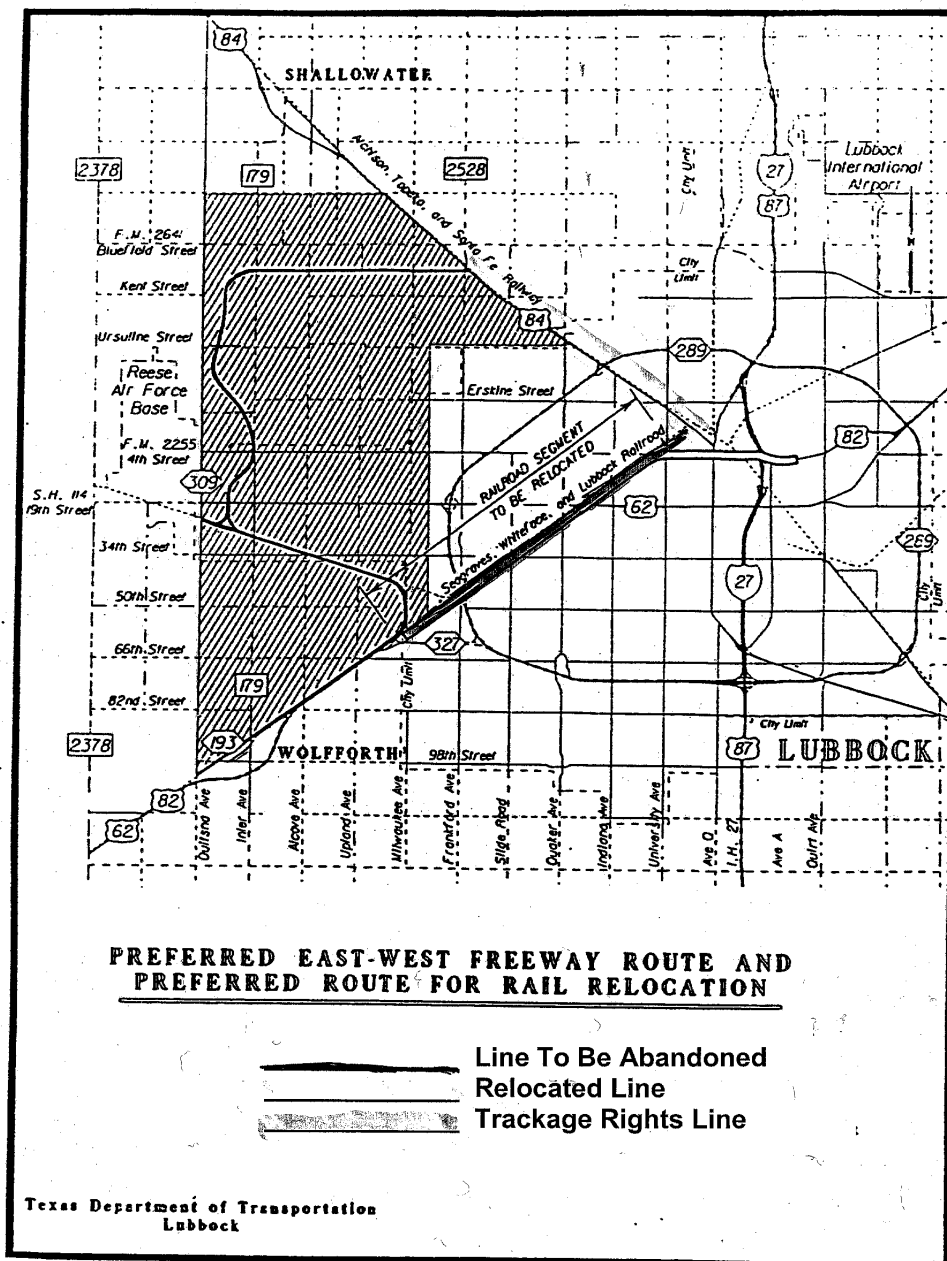


EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

AGREEMENT made this 28th day of August, 2000, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, Delaware corporation, hereinafter referred to as "BNSF" and WEST TEXAS & LUBBOCK RAILROAD, hereinafter called "WTLR".

WITNESSETH:

WHEREAS, WTLR, currently connects with BNSF at Canyon Jct. (MP 88.6) and proceeds over BNSF trackage approximately 1.5 miles to deliver and receive the BNSF interchange of rail cars.

The Texas Department of Transportation of the State of Texas have plans to construct a controlled access highway in the city of Lubbock, Texas. In order to construct this highway, the State of Texas, has acquired a portion of the WTLR's right-of-way and trackage in the city of Lubbock. Acquiring this right-of-way and trackage severed the WTLR's connection with the BNSF therefore the State of Texas and city of Lubbock agreed to relocate the WTLR's connection with the BNSF.

The plans for the WTLR's alternative right-of-way call for the construction of trackage southwest of Loop 289, through or adjacent to Reese Air Force Base and connecting with BNSF main line trackage at Broadview, TX, (MP 83.6).

WHEREAS, BNSF, sometimes referred to as "Owner", owns a line of railway which extends from BNSF Mile Post 88.6 identified as Canyon Jct., Texas to BNSF Mile Post 83.6 identified as Broadview, Texas, a distance of approximately 5 miles, as shown in solid line on Exhibit "A" dated March 20, 2000, attached hereto and made a part hereof, and

WHEREAS, WTLR, sometimes referred to as "User", desires to use the aforesaid trackage for handling its locomotives and cars, and

WHEREAS, BNSF is willing to allow such use on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties:

Section 1. GRANT OF RIGHTS

1.1 The WTLR will only utilize the trackage between BNSF M.P. 83.6 and 88.6 (hereafter referred to as Joint Trackage) in the performance of delivering and receiving of interchange rail cars from and to the BNSF in Lubbock, Texas.

1.2 Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of its trains, locomotives, cabooses and cars with its own employees and equipment in its account over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage, it being understood and agreed that User shall not have the right to:

- (a) set out, pick up or store cars, or switch industries upon the Joint Trackage, or any part thereof, except as necessary for handling locomotives, cabooses or cars bad ordered en route; or
- (b) serve any industry, team or house track now existing or hereafter located along the Joint Trackage.
- (c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement.

Section 2. COMPENSATION

The cost for use of the Joint Trackage shall be paid by WTLR to BNSF the amount of One Dollar (\$1.00) per year and valuable considerations.

Section 3. MAINTENANCE, RENEWALS, CHANGES AND ADDITIONS

During the term of this Agreement, BNSF shall have exclusive control of the inspecting, maintaining, repairing and renewal of the Joint Trackage.

Section 4. OPERATIONS AND CONTROL

During the term of this Agreement, the management and operation of the Joint Trackage shall be under the exclusive direction and control of BNSF with all WTLR employees qualified under the BNSF General Code of Operations.

Section 5. LIABILITY

For inbound WTLR trains from the point of entrance onto BNSF trackage until the WTLR train crew places and properly secures the train in the BNSF interchange tracks WTLR shall indemnify and hold harmless BNSF (and its agents, employees and contractors) for and from all cost and liability for injury to or death of any person, and for loss of, damage to, or destruction of any property (including trackage and signals), arising out of activities conducted under this Agreement, regardless of the negligence of BNSF, except to the extent that such injury, death, loss, damage, or destruction is caused solely by the willful misconduct of BNSF or its agents, employees or contractors.

Outbound WTLR trains from point of departure of BNSF Interchange tracks to departure from the Joint Trackage at approximately Mile Post 83.6, the WTLR shall indemnify and hold harmless BNSF (and its agents, employees and contractors) for and from all cost and liability for injury to or death of any person, and for loss of, damage to, or destruction of any property (including trackage and signals), arising out of activities conducted under this Agreement, regardless of the negligence of BNSF, except to the extent that such injury, death, loss, damage, or destruction is caused solely by the willful misconduct of BNSF or its agents, employees or contractors.

Section 6. GOVERNMENTAL APPROVAL

WTLR shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of this Agreement and the operations to be carried on by WTLR thereunder.

Section 7. ASSIGNMENT AND SUCCESSION

Except as otherwise expressly provided herein, WTLR may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the BNSF hereto except that no such consent shall be: (a) required where assignment is to a successor in interest of such party, or a purchaser or assignee of substantially all of the assets of such party by way of merger, consolidation, transfer, or sale or lease of substantially all of its assets, divestiture pursuant to an order or decree of court, or similar court reorganization; PROVIDED, HOWEVER, that no such assignment shall be effective unless and until such assignee shall assume in writing the obligations of the assignor.

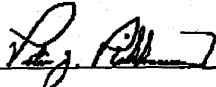
Section 8.

EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date WTLR first commences operation over the Joint Trackage pursuant to this Agreement subject to having secured all necessary consent, approval or authority from the appropriate governmental agency, or agencies upon terms and conditions satisfactory to WTLR and BNSF, and shall remain in effect until January 1, 2020. Failure of WTLR to utilize the trackage rights granted in this Agreement in any thirty (30) consecutive day period will automatically terminate this Agreement. Liabilities created under this Agreement shall survive such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By 

Title Vice President, Network Development

WEST TEXAS & LUBBOCK RAILROAD

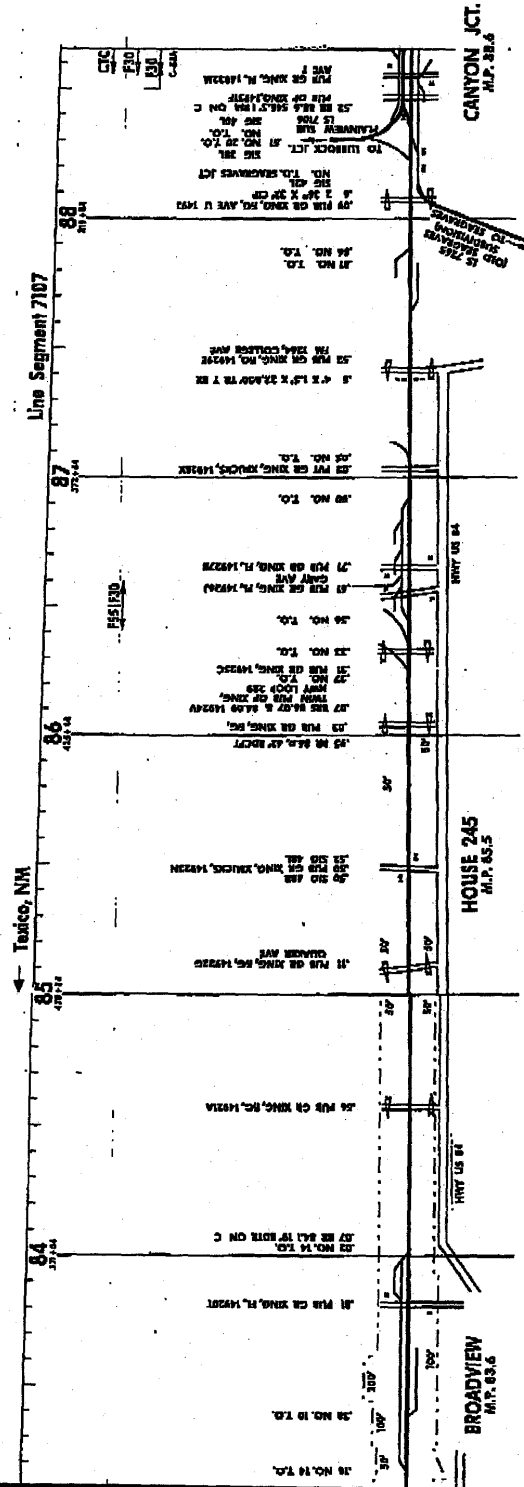
By 

Title Vice President - Leasing & Development

EXHIBIT "A"

May 10, 2000

Rah



WTLR Trackage Rights Over BNSF Trackage
Between
Approximately Mile Post 83.6 and Mile Post 88.6

COUNTY OF DALLAS

SS.

Paul E. Pearson

David C. Eyermann

My Commission Expires: 2-11-02

Sandra Price-Cox
Notary Public

Notary Public

