

Law Department

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

ENTERED
Office of Proceedings

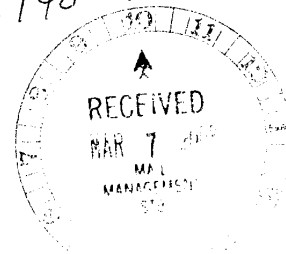


MAR 7 2003

March 6, 2003

Part of
Public Record

DIP# 010214809



207362

Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No.34321; Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company

Dear Mr. Williams:

I am enclosing the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$900.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610

FEE RECEIVED

MAR 7 - 2003

**SURFACE
TRANSPORTATION BOARD**

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

FILED

MAR 7 - 2003

**SURFACE
TRANSPORTATION BOARD**

DD # 0102148001 CONTAINS COLOR IMAGES

BEFORE THE
SURFACE TRANSPORTATION BOARD

FILED

MAR 7 - 2003

SURFACE
TRANSPORTATION BOARD

FINANCE DOCKET NO. 34321



207362

UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

MAR 7 2003

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Public Record

FEE RECEIVED

MAR 7 - 2003

SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072

Dated: March 6, 2003
Filed: March 7, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FILED

MAR 7 - 2003

SURFACE
TRANSPORTATION BOARD

FINANCE DOCKET NO. 34321

UNION PACIFIC RAILROAD COMPANY
--TEMPORARY TRackage RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

ENTERED
Office of Proceedings

FEE RECEIVED

MAR 7 - 2003

VERIFIED NOTICE OF EXEMPTION

MAR 7 2003

Part of
Public Record

SURFACE
TRANSPORTATION BOARD

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of overhead trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company between BNSF Milepost 143.2 near Los Angeles, California and BNSF Milepost 10.5 near Riverside, California, a distance of approximately 52.2 miles. The rights are temporary rights to facilitate maintenance work on UP lines, and are intended to expire on or about May 12, 2003.¹

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive

¹ UP is filing a separate petition for partial revocation of the exemption to permit the trackage rights to expire as provided in the underlying agreement.

applications in rail consolidations proceedings. The trackage rights covered by this notice are covered by the written agreement attached as Exhibit 2, and are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of temporary, overhead trackage rights by UP over approximately 52.2 miles of BNSF trackage extending from BNSF Milepost 143.2 near Los Angeles, CA and BNSF Milepost 10.5 near Riverside, CA.

§ 1180.6(a)(1)(I) Summary of the proposed transaction.

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(I) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
Tel. (402) 271-3072
Fax (402) 271-5610

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on March 14, 2003.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The trackage rights are temporary rights, to facilitate maintenance work on UP lines, and are intended to expire on or about May 12, 2003.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A draft of the trackage rights agreement containing the significant terms proposed is attached as Exhibit 2.²

² As provided in 49 C.F.R 1180.6(a)(7)(Note 3), a copy of the executed agreement will be provided to the Board after it is finalized and executed

§ 1180.4(g)(1)(I) Labor Protection

The applicable labor protection conditions are those imposed 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, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

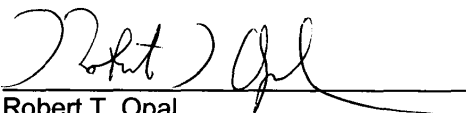
A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

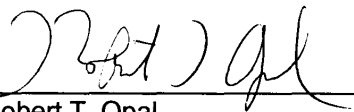
UNION PACIFIC RAILROAD COMPANY

By: 
Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072

VERIFICATION

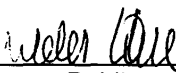
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption in Finance Docket No. 34321 knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



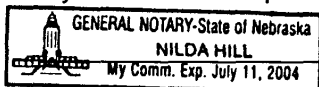
Robert T. Opal

Subscribed and sworn to before me this 6th day of March, 2003.



Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by first class United States mail.

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 6th day of March, 2003.

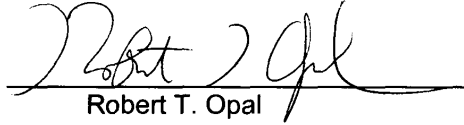
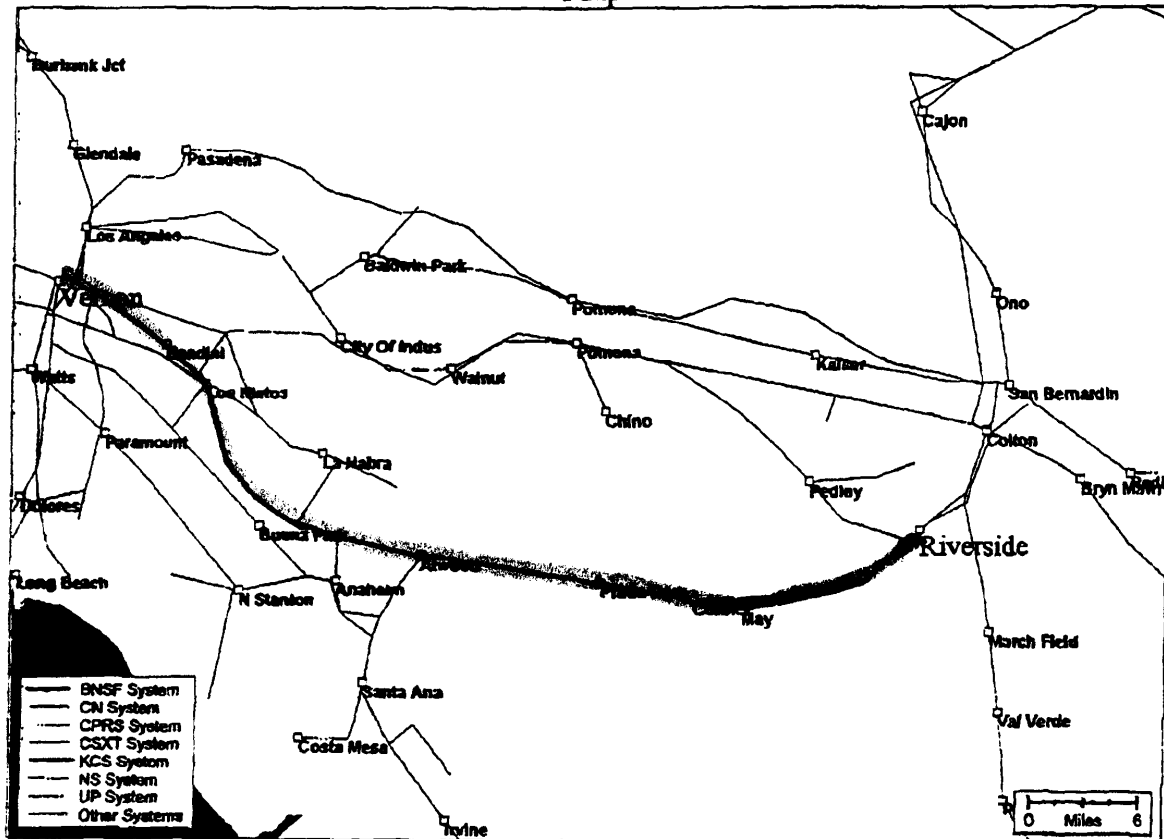

Robert T. Opal

EXHIBIT 1

Map



PC[®]RAIL for Windows © ALK Associates, Inc. 2000 3/6/2003

DRAFT

**MOW TEMPORARY TRACKAGE RIGHTS AGREEMENT
LOS ANGELES, CA (Alameda Corridor Connection) to RIVERSIDE, CA
March 13, 2003 through May 12, 2003**

THIS AGREEMENT, made and entered into this 10th day of February, 2003 by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User", and **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner".

WITNESSETH:

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between UP connections over BNSF's railroad system; and

WHEREAS, UP desires to obtain temporary overhead trackage rights upon certain lines of BNSF's railroad, for the sole purpose of bridging its train service while UP's main lines are out of service due to certain programmed track, roadbed and structural maintenance; and

WHEREAS, BNSF is agreeable to said temporary trackage rights but only on the terms and conditions hereinafter set forth.

WHEREAS, in addition to other payments to be made under the Standard Detour Agreement by and between the parties dated July 1, 1978, but in lieu of the \$9.00 per train mile rate specified in the Standard Detour Agreement, BNSF and UP agree to utilize train miles as the unit of measurement for equalization of maintenance miles.

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

Section 1. **TRACKAGE SUBJECT TO AGREEMENT.**

Attached hereto, marked Exhibits, "A", and by this reference incorporated herein, is a print which depicts the portion of line of railroad of BNSF over which UP will be granted temporary trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this Agreement, attached hereto and by this reference incorporated herein).

Section 2. **GRANT OF TRACKAGE RIGHTS.**

The General Conditions covering the grant of temporary bridge trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this Agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this Agreement, and UP's agreement to file a "Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights", which requests revocation of the temporary trackage rights on the dates indicated in this Section 2, jointly with its "Notice of Exemption" filing for the trackage rights with the STB, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage for the operation by its employees of the Equipment (as defined in Exhibit "B" of this agreement) that is in its account while moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this Agreement.

BNSF and UP agree that UP's use of the temporary trackage rights granted herein by BNSF shall be limited to three (3) trains per day east bound only. Movement of any additional UP trains over the Joint Trackage shall be at the sole discretion of BNSF. Said grant of rights shall be between Los Angeles, California, BNSF Milepost 143.2 and Riverside, California, BNSF Milepost 10.5, a distance of 52.2 miles.

The temporary trackage rights granted to UP herein shall begin on March 13, 2003 and shall terminate on May 12, 2003.

It is understood and agreed that UP shall not have the right to:

(a) set out, pick up or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or

(b) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by UP; or

(c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement.

(d) temporary trackage rights trains will be manned by qualified UP crews. Temporary trackage rights trains must be powered with no less than 2.5 HPT; maximum length with locomotives is 8000 feet. Trains must be made up to comply with BNSF timetable and special instructions. The trains will not be authorized to operate to conflict with the commuter train operation. Trains operating east of Colton, California on BNSF pursuant to UP's trackage right agreement dated August 13, 1915 must comply with the Cajon Subdivision locomotive requirements.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

BNSF, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and shall permit UP to operate at such speeds unless by mutual written agreement a different standard is permitted. . In the event that for, operating convenience, necessity or emergency, BNSF permits or directs UP to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. MEASUREMENT OF TRACKAGE RIGHTS TRAINS.

In exchange for the aforementioned temporary trackage rights UP agrees to grant similar temporary trackage rights to BNSF, at locations mutually agreed to by the parties as provided for by separate agreement. BNSF and UP agree to utilize train miles as the unit of measurement for equalization of temporary trackage rights trains under any temporary maintenance of way trackage rights agreements where so specified.

Section 5. CONNECTIONS AND ADDITIONS.

The entire cost of construction of any connection or other track work necessary for the implementation of the temporary trackage rights granted in this Agreement shall be at UP's sole cost, expense and risk. BNSF, at UP's expense, shall construct, relocate, retire, upgrade and maintain, during the term of this Agreement, that part of any track construction or work necessary to implement the trackage rights granted herein that is located on BNSF property and is not under lease to UP. UP, at its sole cost and expense, shall construct, relocate, retire, upgrade, and maintain that part of any track construction or work necessary to implement the trackage rights granted herein that is located on UP property or property that is leased by BNSF to UP in order to implement the trackage rights granted herein.

Section 6. **LIABILITY.**

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto.

Any liability for loss, damage, injury or death which arises during the term of this Agreement from the construction, relocation, upgrade, or maintenance of the connections covered in this Agreement under Section 5, shall be assumed, settled and paid by UP.

Section 7. **TERM AND TERMINATION.**

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this agreement shall become effective upon the date UP first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to UP, and shall remain in effect for the period of time specified in Section 2 hereof.

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

WITNESS:

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

By: _____
Title: AVP Contracts and Joint Facilities

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: Director Joint Facilities

**Exhibits A and B to trackage rights agreement
to be supplied with final copy of agreement**

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34321**

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern and Santa Fe Railway Company will agree to grant overhead trackage rights to Union Pacific Railroad Company for a total distance of approximately 52.2 miles between BNSF Milepost 143.2 near Los Angeles, CA and BNSF Milepost 10.5 near Riverside, CA. The trackage rights will be effective on March 14, 2003. The rights are temporary rights, to facilitate maintenance work on UP lines, and are intended to expire on or about May 12, 2003.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams,
Secretary