

Law Department

UNION PACIFIC RAILROAD COMPANY



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

October 22, 2003

FEE RECEIVED

OCT 23 2003

**SURFACE
TRANSPORTATION BOARD**



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. 34426; Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company (Dallas-Houston, TX)

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 pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty 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.

**ENTERED
Office of Proceedings**

OCT 23 2003

**Part of
Public Record**

Very truly yours,

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

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

FILED

OCT 23 2003

**SURFACE
TRANSPORTATION BOARD**

209186
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34426



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

FILED
OCT 23 2003
SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED
OCT 23 2003
SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings
OCT 23 2003
Part of
Public Record

UNION PACIFIC RAILROAD COMPANY

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

Dated: October 22, 2003
Filed: October 23, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34426



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

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(8), for exemption of overhead temporary trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company between BNSF Milepost 768.89 near Dallas (Forest Avenue), TX and BNSF Milepost 60.6 near Houston (Belt Junction), TX, a distance of approximately 247.5 miles¹. The temporary rights are to facilitate maintenance work on UP lines, and are intended to expire on or about December 23, 2003.

Under 49 C.F.R. § 1180.2(d)(8), the acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is

¹ The trackage rights involve BNSF subdivisions with non-contiguous mileposts. As such, total mileage does not correspond to the milepost designations of the endpoints.

exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings, (iii) for overhead operations only, and (iv) scheduled to expire on a specific date not to exceed one (1) year from the effective date of the exemption. The trackage rights covered by this notice are (i) covered by the written agreement attached as Exhibit 2, (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding, (iii) for overhead operations only, and (iv) will expire on or about December 23, 2003, which is less than one (1) year from the effective date of the exemption. As such, the § 1180.2(d)(8) 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 247.5 miles of BNSF trackage extending from BNSF Milepost 768.89 near Dallas (Forest Avenue), TX and BNSF Milepost 60.6 near Houston (Belt Junction), TX.

§ 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 November 1, 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 December 23, 2003.

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

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, 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 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.

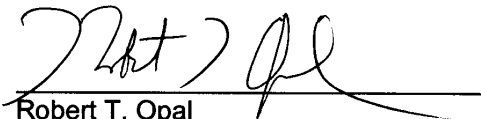
§ 1180.4(g)(3) Environmental Documentation

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:

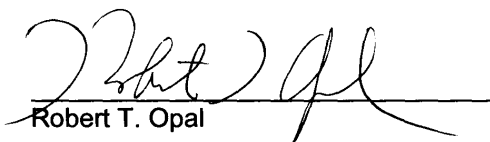


Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34426, knows the facts stated therein, and that said facts are true as stated.

Dated: October 22, 2003.


Robert T. Opal

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 22nd day of October, 2003.

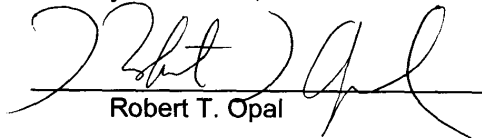
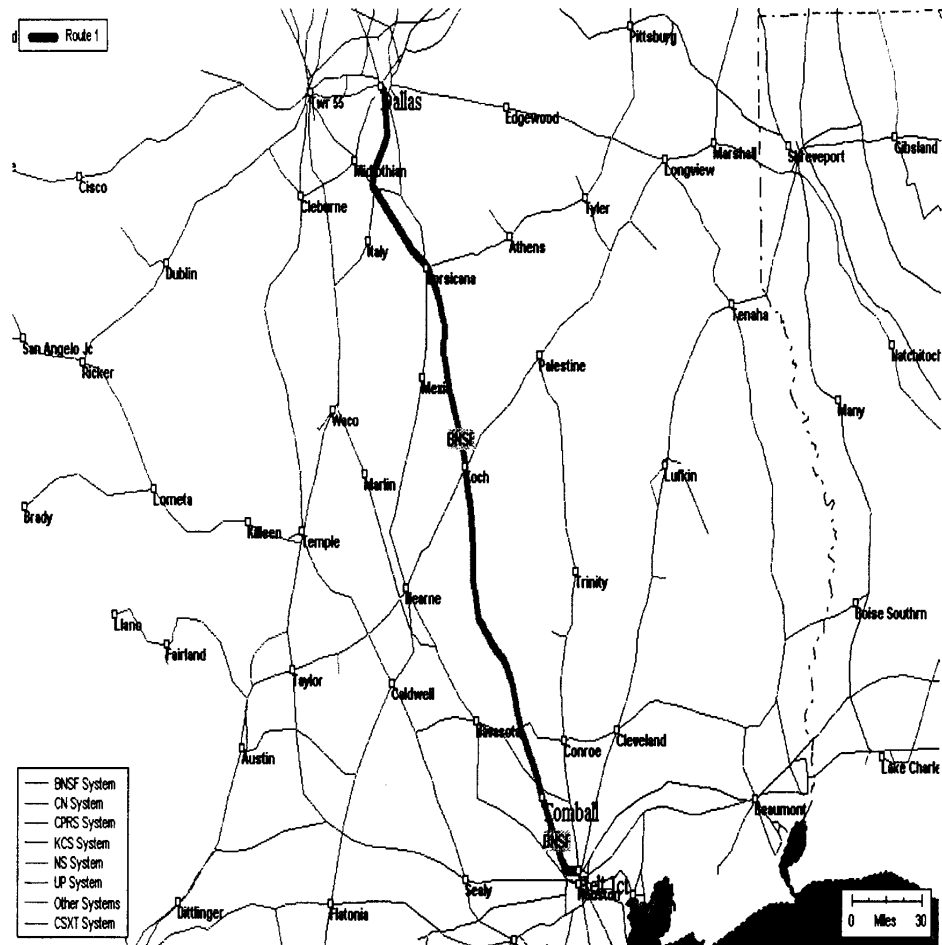

Robert T. Opal

EXHIBIT 1

Dallas (Forest Ave MP 768.89), TX to Houston (Belt Jct. MP 60.6), TX 247.5 miles



**MOW Temporary Trackage Rights Agreement
Dallas, TX to Houston, TX November 1, 2003 to December 23, 2003**

THIS AGREEMENT, made and entered into this 17th day of October, 2003 by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User".

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 MOW 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 MOW Trackage Rights but only on the terms and conditions hereinafter set forth.

WHEREAS, In addition to other payments to be made under the Standard Trackage Rights Agreement but in lieu of the \$9.00 per train mile rate, 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 Exhibit "A" and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad 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 TEMPORARY TRackage RIGHTS RIGHTS.

The General Conditions covering the grant of temporary 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, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage (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. Said grant of rights shall be between Dallas (Forest Ave), Texas, BNSF'S Milepost 768.89 and Houston (Belt Jct), Texas, BNSF'S Milepost 60.6, a distance of 247.5 miles for the period of November 1, 2003 through December 23, 2003. Consideration will be given to extending the time frame if conditions allow.

It is understood and agreed that:

(a) UP shall not have the right to set out, pickup 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) to 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 Trackage Rights 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) UPRR shall deliver UPRR trains to the BNSF'S trackage at Dallas, TX and Houston, TX with UPRR locomotives and qualified UP train crews.

(e) UPRR locomotives shall have sufficient fuel for the entire movement on BNSF and UPRR will be responsible for the 1,000 mile inspection of their trains.

(f) The UP shall notify the Service Interruption Desk (817-234-2352) of the request for detour 6 hours prior to their scheduled departure time.

(g) Detour period shall be limited to November 1, 2003 through December 23, 2003.

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 permit UP to operate at such speeds unless by mutual written agreement a different standard is provided. 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. **LIMITATIONS AND MEASUREMENT OF TEMPORARY TRACKAGE RIGHTS TRAINS.**

UP will be limited to two (2) northbound trains per day with a departure window by Belt Jct. between 0100 and 1201 between Dallas, TX and Houston, TX from November 1, 2003 through December 23, 2003. Trains will be limited to 6500 feet including locomotives with 1.5 HPT. Trains

with less than 1.2 HPT will not be accepted. UPRR trains will need to be spaced not less the (4) hours apart. All Trains will receive fair and equitable dispatching.

In exchange for the aforementioned temporary Trackage Rights UP agrees to grant similar temporary Trackage Rights to BNSF, as identified under separate agreement. UP and BNSF agree to utilize train miles as the unit of measurement for equalization of temporary Trackage Rights trains

Section 5. **CONNECTIONS AND ADDITIONS.**

The entire cost of construction of any connection necessary for the implementation of the Temporary Trackage Rights granted in this Agreement shall be at UP's expense. BNSF, at UP's expense, shall construct, own and maintain the part of any connection on BNSF's property.

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.

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: _____

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: _____

Exhibit "A"

Dallas (Forest Ave MP 768.89), TX to Houston (Belt Jct. MP 60.6), TX 247.5 miles

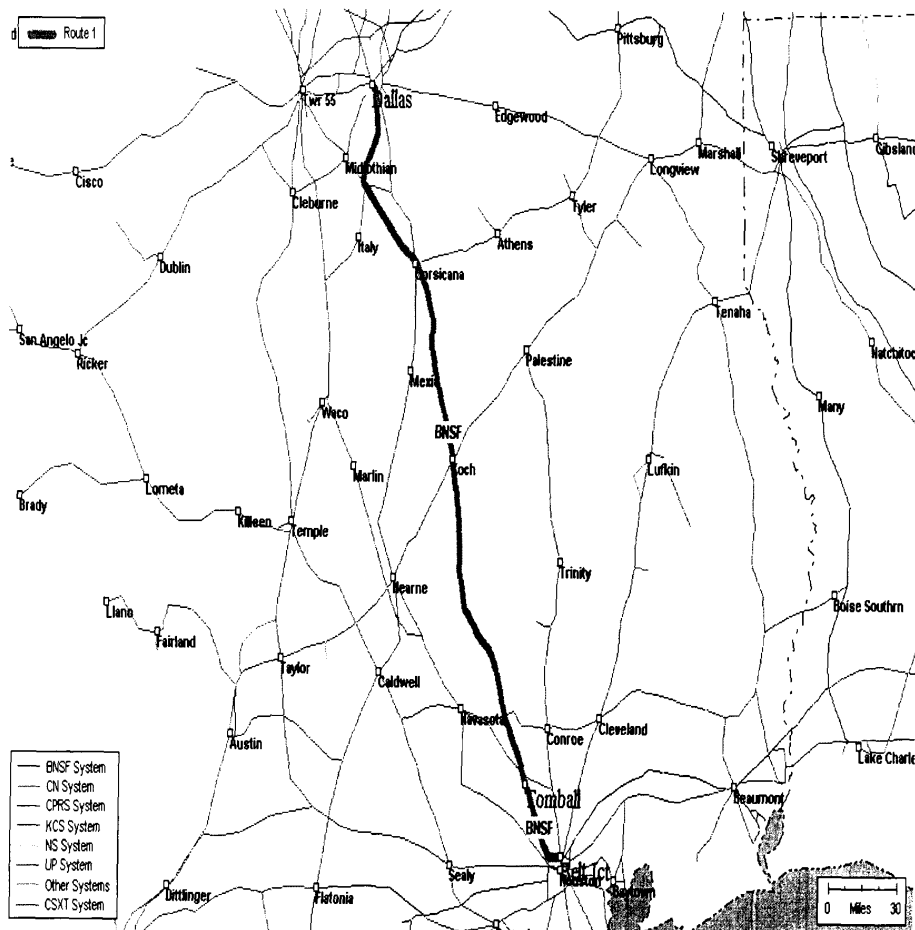


Exhibit “B”

[To be included with executed copy of agreement]

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34426**

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

The Burlington Northern and Santa Fe Railway Company has agreed to grant overhead trackage rights to Union Pacific Railroad Company for a total distance of approximately 247.5 miles between BNSF Milepost 768.89 near Dallas (Forest Avenue), TX and BNSF Milepost 60.6 near Houston (Belt Junction), TX. The temporary trackage rights will be effective on November 1, 2003. The authorization will expire on or about December 23, 2003.

This Notice is filed under 49 C.F.R. § 1180.2(d)(8). 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