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BEFORE THE
SURFACE TRANSPORTATION BOARD



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NOV 12 2003

STB Finance Docket No. 34436

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

VERIFIED NOTICE OF EXEMPTION

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Sarah W. Bailiff
Senior General Attorney
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354
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Dated: November 11, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34436

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

VERIFIED NOTICE OF EXEMPTION

1. The Burlington Northern and Santa Fe Railway Company ("BNSF") files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7). Under this notice BNSF will utilize certain trackage rights from Union Pacific Railroad Company ("UP") between Gibbs, Idaho, at Coeur d'Alene Industrial Lead MP 7.40 and Coeur d'Alene, Idaho, at Coeur d'Alene Industrial Lead MP 8.79, a distance of approximately 1.4 miles, as shown on the attached map ("Joint Trackage"). BNSF requires utilization of the trackage rights in order to facilitate provision of contractual haulage services for UP between Spokane, Washington and Coeur d'Alene, Idaho and for the sole purpose of delivering and receiving rail cars from the Stimson Lumber facility at Coeur d'Alene.

The utilization of these trackage rights is based on a written agreement and is not filed or sought in responsive applications in a rail consolidation proceeding.

2. The following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii).

UP has granted trackage rights to BNSF from between Gibbs, Idaho, at Coeur d'Alene, Industrial Lead MP 7.40 and Coeur d'Alene, Idaho at Coeur d'Alene Industrial Lead MP 8.79 over the Joint Trackage described above. BNSF will operate its own trains with its own crews over the Joint Trackage.

The carriers involved in this transaction and their business addresses are as follows:

Sarah W. Bailiff, Senior General Attorney
The Burlington Northern and Santa Fe Railway Company
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, Texas 76161-0039

Executive Vice President- Operation
Union Pacific Railroad Company
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

Questions regarding this exemption should be sent to Sarah W. Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161-0039. The phone number is (817) 352-2354.

Consummation of the transaction will occur on November 19, 2003, and operations under this exemption will begin immediately upon consummation. The purpose of the trackage rights is to allow BNSF to deliver and receive rail cars from the Stimson Lumber facility at Coeur d'Alene, Idaho, as part of BNSF's agreement to provide haulage services for UP between Spokane, Washington and Coeur d'Alene, Idaho pursuant to a haulage agreement dated October 23, 2003.

Section 1180.6(a)(5).

The trackage involved in the trackage rights agreement is located in the State of Idaho.

Section 1180.6(a)(6).

The required map is attached hereto as Exhibit "1."

Section 1180.6(a)(7)(ii).

A copy of the Trackage Rights Agreement covering this transaction is attached hereto as Exhibit "2."

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to 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).

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3) respectively.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sarah W. Bailiff", is written over a horizontal line.

Sarah W. Bailiff
Senior General Attorney
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354 - Telephone
(817) 352-2397 - Fax

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34436

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

Union Pacific Railroad Company ("UP") has agreed to grant trackage rights to The Burlington Northern and Santa Fe Railway Company ("BNSF") between Gibbs, Idaho, at Coeur d'Alene Industrial Lead MP 7.40 and Coeur d'Alene, Idaho, at Coeur d'Alene Industrial Lead MP 8.79 as shown on the attached map. The trackage rights grant covers a total distance of approximately 1.4 miles.

The trackage rights will be effective on November 19, 2003, and operations under this exemption will begin immediately upon consummation.

This notice is filed under §1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

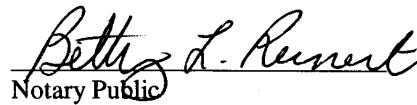
THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah W. Bailiff being duly sworn, deposes and says that she has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of her knowledge and belief.


Sarah W. Bailiff

Subscribed and sworn to before me this 11th day of November, 2003.




Notary Public

My Commission expires:

EXHIBIT "1"

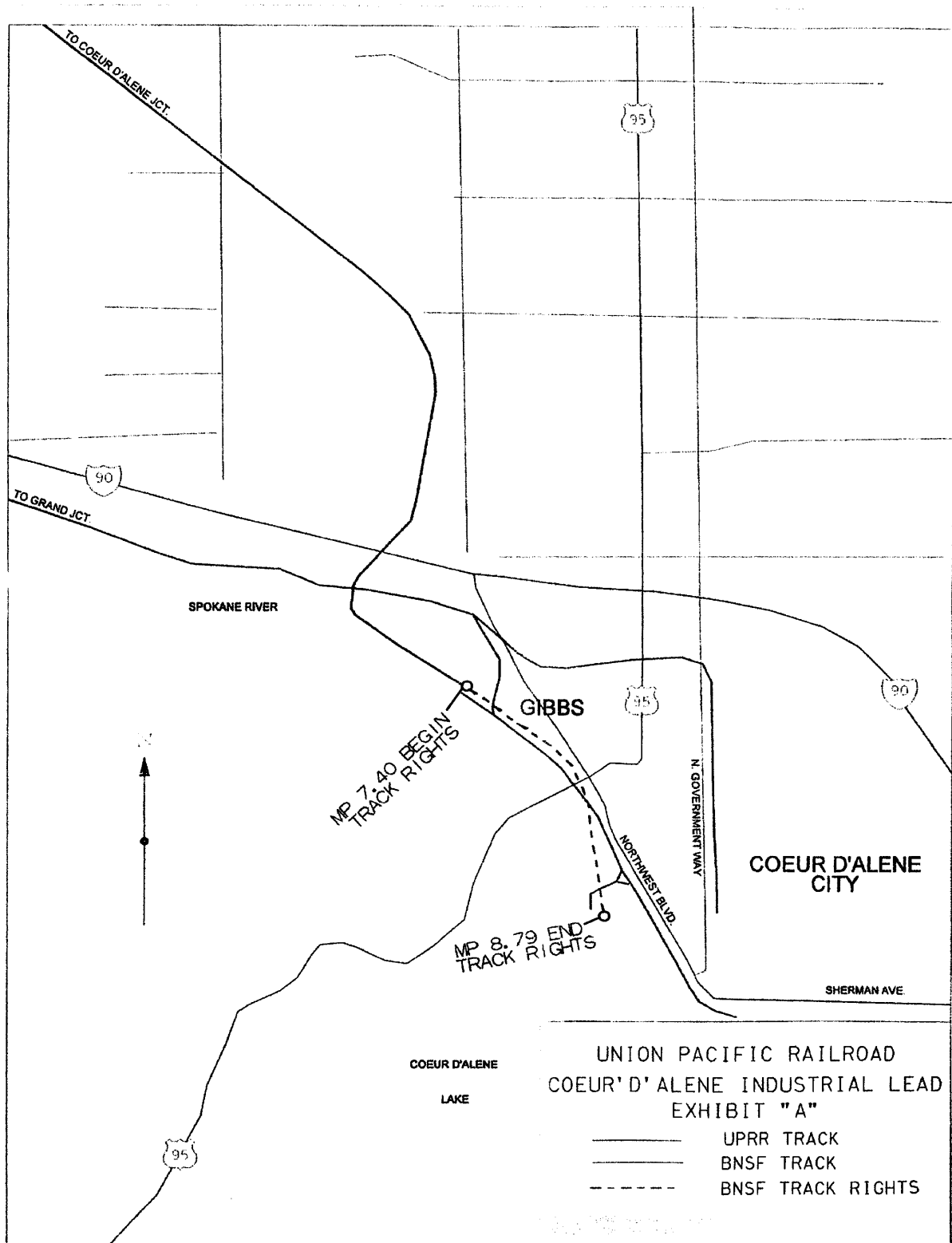


EXHIBIT "2"

**TRACKAGE RIGHTS AGREEMENT
BETWEEN
GIBBS AND COEUR D'ALENE, IDAHO**

THIS AGREEMENT, made and entered into this 23rd day of October, 2003, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as "UP"), and **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "BNSF").

WITNESSETH:

WHEREAS, UP is the owner of approximately 1.4 miles of rail line between Gibbs, Idaho (Coeur d'Alene Industrial Lead MP 7.40) and Coeur d'Alene, Idaho (Coeur d'Alene Industrial Lead MP 8.79); and

WHEREAS, BNSF has agreed to provide haulage services for UP between Spokane, Washington and Coeur d'Alene, Idaho pursuant to that certain haulage agreement dated October 23, 2003 ("Haulage Agreement"), attached hereto, marked Exhibit "B"; and

WHEREAS, haulage services provided by BNSF require utilization of the UP owned track between Gibbs, Idaho and Coeur d'Alene, Idaho.

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 with a dashed red line which depicts the portion of line of railroad of UP over which BNSF will be granted trackage rights, hereinafter referred to as the "Joint Trackage".

Section 2. Grant of Trackage Rights

UP hereby grants BNSF the right to operate over the Joint Trackage for the sole purpose of delivering and receiving rail cars from the Stimson Lumber facility at Coeur d'Alene, ID.

Section 3. Maintenance and Operation of Trackage.

BNSF will assume all maintenance responsibility for the Joint Trackage.

Section 4. 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 pursuant to the liability provisions of the Haulage Agreement.

Section 5. Arbitration

If at any time a question or controversy shall arise between the parties hereto in connection with this Trackage Rights Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties will be handled as provided pursuant to the arbitration provisions of the Haulage Agreement.

Section 6. Assignment.

Except as provided in the following sentence, this Trackage Rights Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of the other party. This Trackage Rights Agreement may be assigned by any party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets. In the event of an authorized assignment, this Trackage Rights Agreement and the operating rights thereunder shall be binding upon the successors and assigns of the parties.

Section 7. Term.

This Trackage Rights Agreement shall be effective beginning as of the date above written and shall continue in full force and effect for a period of 25 years, or upon termination of the Haulage Agreement, or upon the cessation of service to the Stimson Lumber facility at Coeur d'Alene, ID. Any termination, however, shall not relieve either party from any liability, which may have accrued prior to the date of termination.

Section 8. Notices.

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Trackage Rights Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid and addressed to such other party at the address listed below:

If intended for UPRR:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for BNSF:

Vice President Network Development
2500 Lou Menk Drive
Fort Worth, Texas 76131

With a copy to:

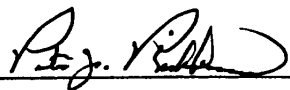
AVP Contracts and Joint Facilities
2600 Lou Menk Drive
Fort Worth, Texas 76131

IN WITNESS WHEREOF, the parties hereto have caused this Trackage Rights Agreement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: 
Director - Joint Facilities

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

By: 
Its: VP, Network Development

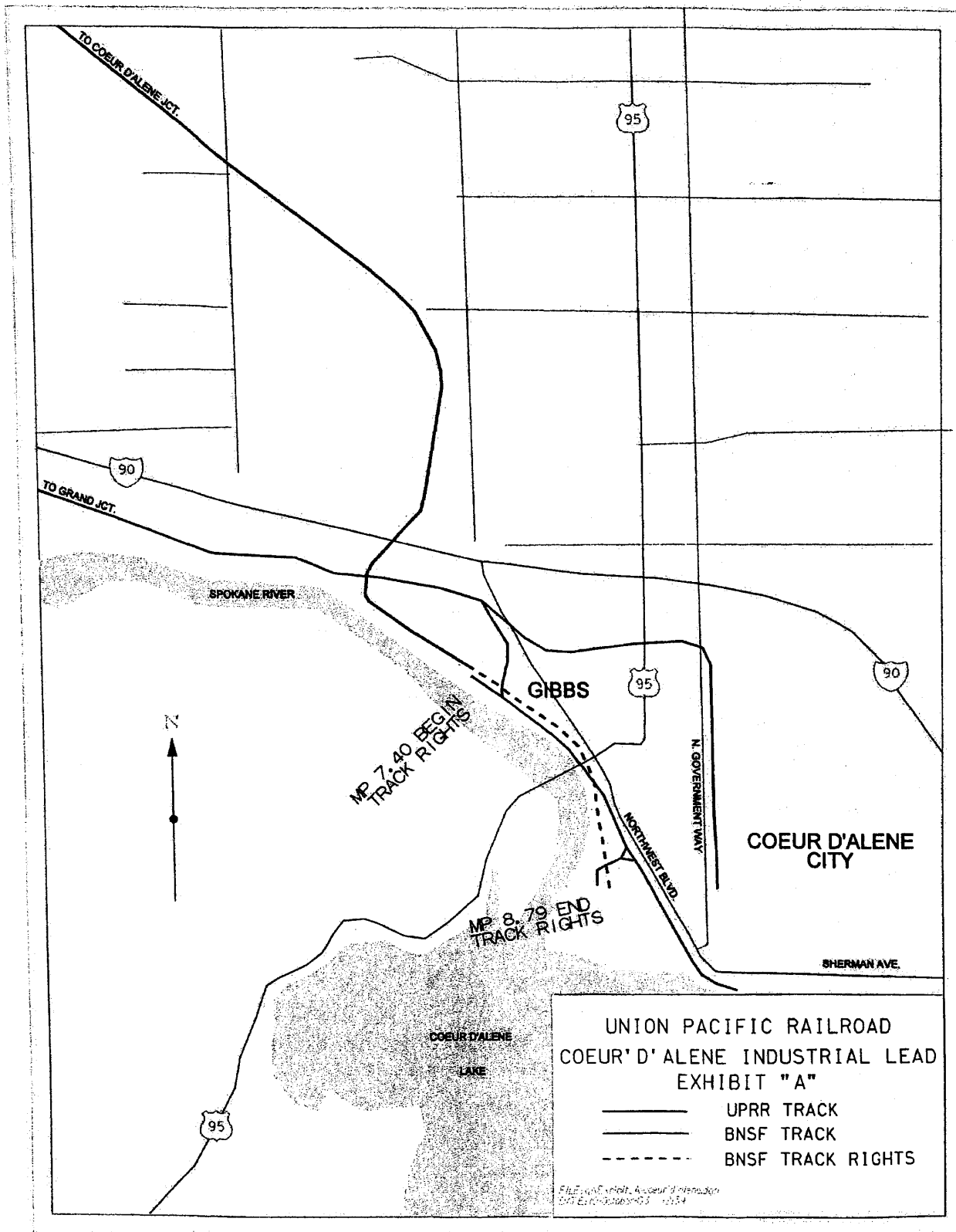


EXHIBIT B

HAULAGE AGREEMENT BETWEEN SPOKANE, WA AND COEUR D'ALENE, ID KLAMATH FALLS, OR AND MOUNT SHASTA, CA

THIS HAULAGE AGREEMENT, made and entered into this 23rd day of October, 2003, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as "UP"), and **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "BNSF").

WITNESSETH:

WHEREAS, UP (hereinafter referred to as "Owner" on those lines of railroad hereinafter described which it owns and as "User" on those lines of railroad hereinafter described which are owned by BNSF), and BNSF (hereinafter referred to as "Owner" on those lines of railroad hereinafter described which it owns and except as provided in item 3 below, as "User" on those lines of railroad hereinafter described which are owned by UP) each own certain lines of railroad accessible to User as follows:

- 1) UP owns a line of railroad (hereinafter referred to as "UP Corridor") which extends between Klamath Falls, Oregon (UP's Black Butte Subdivision Milepost 430.00) and Mount Shasta, California (UP's Black Butte Subdivision MP 337.00) as outlined in attached Exhibit "A-1"; and
- 2) BNSF owns a line of railroad (hereinafter referred to as "BNSF Corridor") which extends, between Spokane, Washington (BNSF's Kootenai River Subdivision MP 51.45 to MP 71.50) and Coeur d'Alene, Idaho (BNSF's Coeur d'Alene Subdivision MP 0.00 to MP 12.20) as outlined in attached Exhibit "A-2"; and
- 3) UP is the owner of a segment of approximately 1.4 miles of rail line between Gibbs, Idaho, (UP's Coeur d'Alene Industrial Lead MP 7.40) and Coeur d'Alene, Idaho (UP's Coeur d'Alene Industrial Lead MP 8.79). BNSF shall be granted trackage rights over this segment, pursuant to an agreement dated October 23, 2003, attached hereto, marked Exhibit "A-3". For the purposes of this Haulage Agreement only, BNSF will be considered as Owner of this trackage; and

WHEREAS, User desires for Owner to move rail cars in User's account, loaded or empty, in each direction, in Owner's trains as outlined in attached Exhibit "B" and

WHEREAS, Owner is agreeable to such haulage of User's rail traffic under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the parties hereto covenant and agree as follows:

Section 1. Haulage Rights.

(A) User hereby hires and confirms Owner as its agent to provide haulage services for loaded and empty rail cars over Owner's haulage corridor ("Haulage Services") and Owner agrees to perform such Haulage Services solely as User's agent, and in each case pursuant to the following terms and conditions:

- i. Haulage Services for rail cars shall be provided on a per rail car basis only.
- ii. Haulage Services shall apply to all commodities.
- iii. User agrees that where blocking is requested by User, it shall enter into a separate written agreement with Owner setting forth, among other things, the number of blocks required and Owner's cost to provide such blocking. User understands and agrees that Owner shall have the sole discretion in deciding whether to enter into any such blocking agreement.
- iv. User shall be required to furnish a 417 haulage waybill for each car and a 418 advance consist list of each car.
- v. It is expressly understood by the parties that any Haulage Services provided by Owner shall, at Owner's option, be on a train load basis or using Owner's existing train service and capacity, in both cases using Owner's locomotives and crews.
- vi. For such Haulage Services, User shall be permitted to quote line haul rates in contracts, quotations, or appropriate publications.
- vii. Owner and User agree that this Haulage Agreement shall be for the sole purpose of Owner handling User's line haul traffic. The parties recognize the following:
 - a) BNSF and UP jointly serve Stimson Lumber at Coeur d'Alene, Idaho. BNSF will now provide Haulage Service for UP between Spokane, WA and Coeur d'Alene, ID and commence industry switching of Stimson Lumber on behalf of UP on either BNSF or UP trackage, at Coeur d'Alene.
 - b) BNSF serves Stimson Lumber at Atlas, ID and provides reciprocal

switch service for UP to this facility. BNSF will now provide Haulage Service for UP between Spokane, WA and Atlas, ID and continue to provide reciprocal switch service for UP to Stimson Lumber at Atlas.

- c) BNSF and UP both connect with the McCloud Railway Company ("MCR"). UP will now transport BNSF line haul traffic between the UP-MCR interchange track at Mount Shasta, California and the UP-BNSF interchange track at Klamath Falls, Oregon. BNSF traffic handled under this Haulage Agreement must originate or terminate at MCR stations.
- viii. While performing such Haulage Services, Owner shall not be a connecting or intermediate carrier and shall not be entitled to any division of line haul rates established by User. Rail cars being so moved shall remain in User's car hire account as applicable.
- ix. Nothing in this Agreement is meant to change the existing reciprocal switching arrangement between Owner and User.

(B) The management, operation, dispatching and maintenance of the haulage corridors shall, at all times, be under the exclusive direction and control of its respective Owner, and the movement of rail cars over and along the haulage corridor shall at all times be subject to the direction and control of corridor Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time-to-time institute, but in the management, operation, dispatching and maintenance of the haulage corridor, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of rail cars over the haulage corridor shall be made on a nondiscriminatory basis, without reference to ownership, and customary priorities shall be accorded differing classes of traffic (i.e. bulk commodities, manifest, intermodal, etc.) irrespective of whether the traffic is that of Owner or User. The foregoing shall include, without limitation, decisions as to terminal departure times, destination terminal receiving times, enroute delays, track maintenance and the scheduling of maintenance windows.

Section 2. Pick Up and Delivery Tracks.

The location of tracks designated for pickup and for delivery of the rail cars of User at Klamath Falls, Oregon, Roseville, California, and Spokane, Washington, in connection with the provision of Haulage Services, shall be as mutually agreed upon by the authorized representatives of the parties hereto from time-to-time.

Section 3. Receipt and Delivery of Rail Cars.

Rail cars shall be deemed received from User when Owner couples into such rail cars. Rail cars shall be deemed delivered to User when set out, and the locomotives of

Owner are uncoupled therefrom, on agreed to tracks. All the rules governing the interchange of cars of the Association of American Railroads, except as provided to the contrary in this Agreement, shall apply. It is agreed that no car shall exceed Owner's maximum weight restriction of 286,000 lbs. Gross weight on the rail.

Section 4. Compensation for Haulage Services.

As compensation for the Haulage Services as above set forth, User shall pay to Owner, in addition to other payments to be made under this Haulage Agreement, for each loaded or empty rail car movement the amount set forth in attached Exhibit "C".

The haulage fees shown in Exhibit "C" shall be subject to adjustment annually beginning on January 1, 2004 to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the Association of American Railroads ("AAR") or successor agency or other organization. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 12 of this Haulage Agreement. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 2003 shall be developed, and the Haulage Rates shall be increased or decreased in direct proportion to such ratio. Provided, however, under no circumstances shall the rates for cars moved under this Agreement ever be less than the rates provided for in the UP/SP-BNSF Settlement Agreement dated September 25, 1995.

With respect to articulated units, the number of cars shall be determined by the AAR Car type Code as defined in the UMLER Specifications Manual. The second character in the Car Type Code field will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five (5) wells capable of handling 40' to 48' containers in each well. Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.

Upon every fifth anniversary of this Haulage Agreement ("Anniversary Date"), either party may request on ninety (90) days' written notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such re-negotiation, any party may request binding arbitration under Section 12 of this Haulage Agreement. It is the intention of the parties that the Haulage Rates reflect the same basic relationship to operating costs as upon execution of this Haulage Agreement.

Section 5. Bad Ordered Rail Cars.

If a rail car of User is bad ordered en route on the Haulage Corridor and it is

necessary that it be set out, such bad ordered rail car shall, after being promptly repaired, be promptly picked up and delivered to User. Unless otherwise agreed, Owner shall, at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered rail car safe for movement. The employees and equipment of Owner while in any manner so engaged or while en route to, or returning to Owner's terminal from, such an assignment shall be considered sole User employees and sole User equipment. However, should Owner's employees after repairing such bad ordered rail cars for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability shall end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner for rail cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the AAR, hereinafter called "Interchange Rules," in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the rail car owners for rail car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to rail cars that are User's rail car owner responsibility items as determined under said Interchange Rules should said rail car owner refuse or otherwise fail to make payment therefor.

Section 6. Billing.

(A) Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. For charges other than Haulage Rates, billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by this Haulage Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

(B) Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Surface Transportation Board ("STB") or retroactive adjustment of wage rates and settlement of wage claims.

(C) So much of the books, accounts and records of each party hereto as are related to the subject matter of this Haulage Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

(D) Either party hereto may assign any receivables due it under this Haulage Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under this Haulage Agreement

Section 7. Liability and Indemnification.

Except as otherwise provided, each party assumes and agrees to settle or pay all claims for loss or damage to property, including rail cars, empty and loaded, handled for each party's sole account as follows:

(A) User agrees to indemnify and hold Owner harmless of and from any and all loss or damage to rail cars in User's account, or the contents thereof (including damages for delay to freight and damage to patrons or property caused by the freight), arising out of Owner's handling of such rail cars pursuant to this Haulage Agreement. In the event claim is made against Owner for any such loss, damage or delay, User agrees to defend, process, adjust, settle, or pay any such claim (whichever is or are applicable), to appear and defend any suit brought to enforce such claim, and to pay all expenses, costs and judgments obtained or incurred in any such suit.

(B) User shall also assume and bear liability for all damage to or loss of Owner's property used in handling rail cars in User's account, including locomotives, cabooses, and end-of-train devices ("ETDs"), tracks and appurtenances, and injury (including death) to Owner's employees or third persons, or damage to or loss of the property of such employees or third persons, suffered as a result of the handling of rail cars in User's account hereunder in that proportion which the number of rail cars in User's account in the train containing such rail cars shall bear to the total number of rail cars in such train (excluding locomotives and cabooses); provided that User shall not bear any portion of damage to or loss of rail cars in Owner's account or the contents thereof which may result from such operation.

(C) It is mutually agreed that the provisions of Subsection (B) of this Section 7 shall not be applicable in the event of a collision between a train of Owner's that contains rail cars in User's account and a train of Owner that does not contain rail cars in User's account, when such collision is caused solely by negligence in the operation of the Owner train that does not contain rail cars in User's account. Then, in such event, Owner shall bear solely the loss of and damage to rail cars in User's account and the contents thereof, and shall bear any other liability for damage, injury (including death) or loss suffered by User or a third party as a result of such collision.

(D) All employees of Owner from time to time engaged in handling rail cars in User's account which are in a train of Owner also involving rail cars in Owner's account shall, for the purpose of this Haulage Agreement, be regarded as joint employees of the parties hereto while so engaged. An employee or employees of a party while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party shall be deemed the sole employee(s) of such party. As between the parties hereto, each party shall assume, bear, settle and pay all loss, costs, or damage which its rail cars or other property, rail cars handled for its account, or freight in its custody as a common carrier, or otherwise, shall suffer by reason of the actions of said joint employees while engaged in joint rail car handling. All damage to property jointly used in handling rail cars, including locomotives, cabooses, ETDs, tracks and appurtenances, and in the performance of any of the services as aforesaid, and all damages or injury (including death) to third persons, or to property of third persons, and all loss, cost and damage or injury (including death) such joint employees may suffer as a result of such joint handling operation (except to the extent caused by the freight), or the performance of such other duties as aforesaid, shall be treated as a common expense incident thereto. Such common expense shall be divided between the parties hereto in proportion that the number of rail cars being handled for User by Owner bears to the total number of rail cars being handled by Owner in such joint rail car handling operation related to such loss, damage or injury (including death) at the time such loss, damage or injury (including death) occurs.

(E) THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS HAULAGE AGREEMENT, SUCH INDEMNITY SHALL INCLUDE INDEMNITY FOR (1) THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 8. Hazardous Materials.

(A) In the event any accident, bad ordered rail car, derailment, vandalism or wreck (hereinafter for the purposes only of this Section 8 called, collectively, "derailment") involving rail cars in the account of User carrying hazardous materials, substances or

wastes as defined pursuant to Federal or State law (hereinafter called "Hazardous Materials") shall occur on any segment of the Haulage Corridor, Owner shall notify User of such incident and any report required by Federal, State, or local authorities shall be the responsibility of User. User shall then advise the owner/shipper of Hazardous Materials in rail cars in User's account involved in the derailment and shall immediately furnish Owner with all necessary information related to the Hazardous Materials.

(B) Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's rail cars on Owner's property in accordance with all Federal, State, or local regulatory requirements. User, at its sole cost and expense and risk, may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of any Hazardous Materials released and the cleanup effort. Such clean up costs shall be borne in accordance with Section 7 of this Haulage Agreement.

(C) If a Hazardous Materials release from User's rail cars results in contamination of real property or water adjacent to Owner's property, Owner shall assume responsibility for emergency clean up conducted to prevent further damage. User shall be responsible for performing clean up efforts thereafter. Any costs associated with cleaning up real property or water adjacent to Owner's property contaminated by Hazardous Materials shall be borne as provided in Section 7 of this Haulage Agreement.

(D) If Hazardous Materials released from User's rail cars must be transferred to undamaged rail cars, User shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged rail cars that are blocking the Haulage Corridor, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne as provided in Section 7 of this Haulage Agreement. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

(E) The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Haulage Corridor or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 7 of this Haulage Agreement.

Section 9. Acts of God.

Whenever a period of time is provided in this Haulage Agreement for any party to do or perform any act or thing other than the payment of money for Haulage Services, said party shall not be liable or responsible for any delays due to strikes, extraordinary weather conditions, lockouts, casualties, acts of God, war, court orders, work stoppages, riots, public disorders, criminal acts of other entities, governmental regulations or control or other such causes beyond the reasonable control of said party. In any such event, any time period shall be extended for the amount of time said party is so delayed; provided that this Section 9 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such delays have been removed.

Section 10. No Third Party Beneficiaries.

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective successors and assigns any right or benefit under or by reason of this Haulage Agreement.

Section 11. Governmental Approvals.

The parties agree to cooperate in seeking any necessary governmental approvals or authority for operations under this Haulage Agreement at any time during its term to the extent such approval or authority may be required under then applicable laws or regulations.

Section 12. Arbitration.

(A) If at any time a question or controversy shall arise between the parties hereto in connection with this Haulage Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 12 shall be governed by the rules and procedures set forth in this Section 12.

(B) If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretobefore stated.

(C) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and

hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

(D) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Haulage Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

(E) Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

(F) The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(G) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 14. Assignment.

Except as provided in Section 6(D) and in the following sentence, this Haulage Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of the other party. This Haulage Agreement may be assigned by any party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets. In the event of an authorized assignment, this Haulage Agreement and the operating rights thereunder shall be binding upon the successors and assigns of the parties.

Section 15. Term.

This Haulage Agreement shall be effective beginning as of the date above written and shall continue in full force and effect for a period of 25 years. This Agreement shall not be cancelled or terminated by any one party, except that by mutual consent, the parties may agree to terminate this Agreement prior to the date of termination. After the 25 year term has elapsed, this Agreement shall continue to remain in full force and effect until cancelled by either party with a 30 day written notice to the other party. Any termination, however, shall not relieve either party from any liability, which may have accrued prior to the date of termination.

Section 16. Default.

(A) Notwithstanding the provisions of Section 6 of this Haulage Agreement, either party hereto claiming default of any of the provisions of this Haulage Agreement shall furnish written notice and demand to the other party for performance or compliance with the covenant or condition of this Haulage Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of this Haulage Agreement under which such claim of default is made.

(B) If the default shall continue for an additional period of thirty (30) days after receipt of such written notice, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of this Haulage Agreement, either party may resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate this Haulage Agreement.

(C) Failure of a party to claim a default shall not constitute waiver of such default. Either party hereto entitled to claim default may waive any such default in writing, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 17. Severability.

If any part of this Haulage Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Haulage Agreement and the remaining parts of this Haulage Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 18. Notices.

All notices, demands, requests, submissions and other communications which are

required or permitted to be given pursuant to this Haulage Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid and addressed to such other party at the address listed below:

If intended for UPRR:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for BNSF:

Vice President Network Development
2500 Lou Menk Drive
Fort Worth, Texas 76131

With a copy to:

AVP Contracts and Joint Facilities
2600 Lou Menk Drive
Fort Worth, Texas 76131

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Director - Joint Facilities

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

By: _____

Its: _____

EXHIBIT "B"
HAULAGE AGREEMENT OPERATION

SPOKANE, WA. - COEUR D'ALENE, ID.

1. BNSF will provide Haulage Services for UP between Spokane, WA and Coeur d'Alene, ID over BNSF's Kootenai River Subdivision between MP 51.45 and MP 71.50, BNSF's Coeur d'Alene Subdivision between MP 0.00 and MP 12.20 and UP's Coeur d'Alene Industrial Lead between MP 7.40 and MP 8.79.
2. BNSF will interchange with UP at Spokane, WA for traffic destined to or originating from Stimson Lumber at Coeur d'Alene or Atlas, ID.
3. BNSF will provide switching service for the UP at Stimson Lumber on the same basis as it does for its own traffic but no less than three days per week. This service will be reviewed periodically and may be modified by mutual agreement between authorized personnel of BNSF and UP, but in no case will UP's service level fall below BNSF's service level.
4. The delivery of rail cars to the Stimson Lumber facility requires BNSF to operate over approximately 1.4 miles of UP's Coeur d'Alene Industrial Lead between MP 7.40 and MP 8.79. UP hereby grants BNSF the right to operate over this trackage for the sole purpose of delivering and receiving rail cars from the Stimson Lumber facility in accordance with a separate Trackage Rights Agreement dated October 23, 2003.
5. BNSF will assume maintenance responsibility for UP's Coeur d'Alene Industrial Lead trackage between MP 7.40 and MP 8.79 pursuant to the Trackage Rights Agreement, referenced in item 4 above.

KLAMATH FALLS, OR. - MOUNT SHASTA, CA.

1. UP will provide Haulage Services for BNSF between Klamath Falls, OR, and Mount Shasta, CA over UP's Black Butte Subdivision between MP 430.00 and MP 337.00.
2. UP will interchange with BNSF at Klamath Falls, OR for traffic destined to or originating from the MCR interchanged at Mount Shasta, CA.
3. UP will provide Haulage Services to BNSF on the same basis as it does for its own traffic but no less than three days per week. This service will be reviewed periodically and may be modified by mutual agreement between authorized personnel of UP and BNSF, but in no case will BNSF's service level fall below UP's service level.
4. BNSF will endeavor to deliver empty cars destined to MCR to UP at Roseville, CA. Compensation for empty cars delivered by BNSF to UP at Roseville, CA. will be treated as if empty cars were delivered by BNSF to UP at Klamath Falls, OR.

EXHIBIT "C"
HAULAGE AGREEMENT COMPENSATION RATES

SPOKANE, WA. - COEUR D'ALENE, ID.

A. Between Spokane, WA. and Coeur d'Alene, Id in either direction (loaded or empty).

Miles:	31	<u>Single Car</u>
1. Interchange of Rail Car to or from BNSF at Spokane		\$ 53.29
2. Movement of Rail Car between Spokane and Coeur d'Alene (\$.53 per mile x 31 miles)		\$ 16.43
3. Reciprocal Switch at Atlas or Industry Switch at Coeur d'Alene		\$ 138.57
Total Round Trip		\$ 278.01

KLAMATH FALLS, OR. - MOUNT SHASTA, CA.

B. Between Klamath Falls, OR. and Mount Shasta, CA. In either direction (loaded or empty).

Miles:	93	<u>Single Car</u>
1. Interchange of Rail Car to or from UP at Klamath Falls		\$ 53.29
2. Interchange of Rail Car to or from MCR at Mt. Shasta		\$ 53.29
3. Movement of Rail Car between Klamath Falls and Mt. Shasta (\$.53 per mile x 93 miles)		\$ 49.29
Total Round Trip		\$311.74