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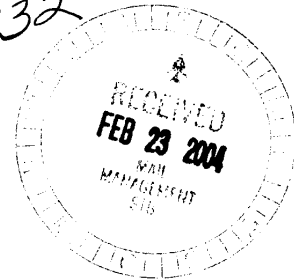
BEFORE THE
SURFACE TRANSPORTATION BOARD

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Office of Proceedings
FEB 23 2004

Part of
Public Record

FINANCE DOCKET NO. 34478



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

VERIFIED NOTICE OF EXEMPTION

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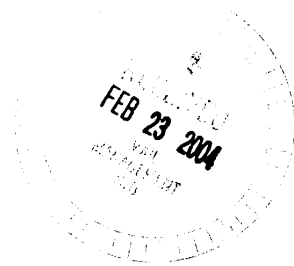
UNION PACIFIC RAILROAD COMPANY

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

Dated and Filed: February 23, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34478



**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 ("BNSF") between BNSF Milepost 5.7 near Villard Junction, WA and BNSF Milepost 11.98 near Washington Junction, WA, a distance of approximately 139.3 miles¹. The temporary rights are to facilitate maintenance work on UP lines, and are intended to expire on or about March 29, 2004.

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 March 29, 2004, 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 139.3 miles of BNSF trackage extending from BNSF Milepost 5.7 near Villard Junction, WA, and BNSF Milepost 11.98 near Lakeside Junction, WA.

§ 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 1, 2004.

§ 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 March 29, 2004.

§ 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

§ 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)

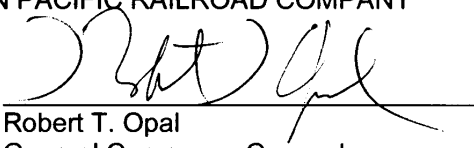
A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 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: 

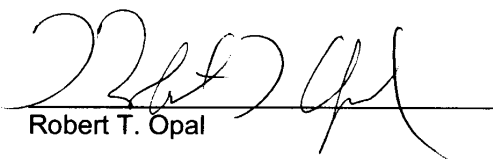
Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

² A copy of the executed agreement will be provided to the Board after it is finalized and executed.

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. 34478, knows the facts stated therein, and that said facts are true as stated.

Dated: February 23, 2004.


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 23rd day of February, 2004.

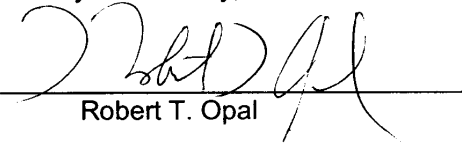
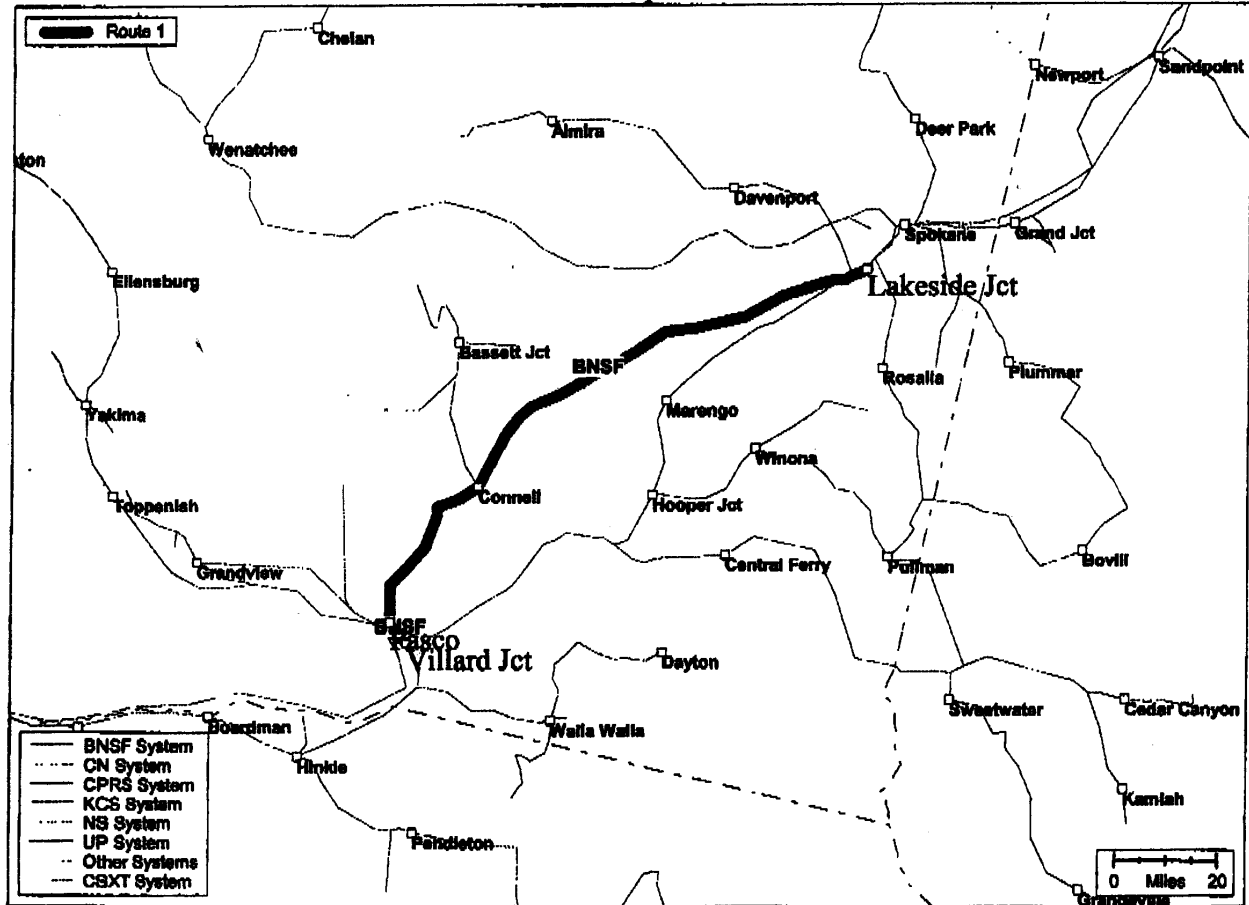

Robert T. Opal

EXHIBIT 1

Map



PC*RAIL for Windows © ALK Technologies, Inc. 2001 2/20/2004

**TEMPORARY TRACKAGE RIGHTS AGREEMENT
VILLARD JUNCTION, WA TO LAKESIDE JUNCTION, WA
MARCH 1, 2004 TO MARCH 29, 2004**

THIS AGREEMENT, made and entered into this 12th day of February, 2004 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".

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.

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 TEMPORARY 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, 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.

UP and BNSF agree that UP's use of the temporary trackage rights granted herein by BNSF shall be limited to four (4) trains per day, five (5) days per week (Monday – Friday) eastbound direction. 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 Villard Junction, WA BNSF's Milepost 5.7 and Lakeside Junction, WA, BNSF's Milepost 11.98, a distance of 139.3 miles for the period of March 1, 2004 through March 29, 2004. The train will be limited to 7000 feet including locomotives with 2.0 HPT. The train will receive fair and equitable dispatching.

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; or

(d) UP shall notify BNSF Chief Dispatcher, Fort Worth, TX, (817-234-1300) of the request for movement six (6) hours prior to the scheduled departure time.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

UP, 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 BNSF 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, UP permits or directs BNSF to use adjacent UP 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, 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 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 BNSF, 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:

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: _____
Title:

Map

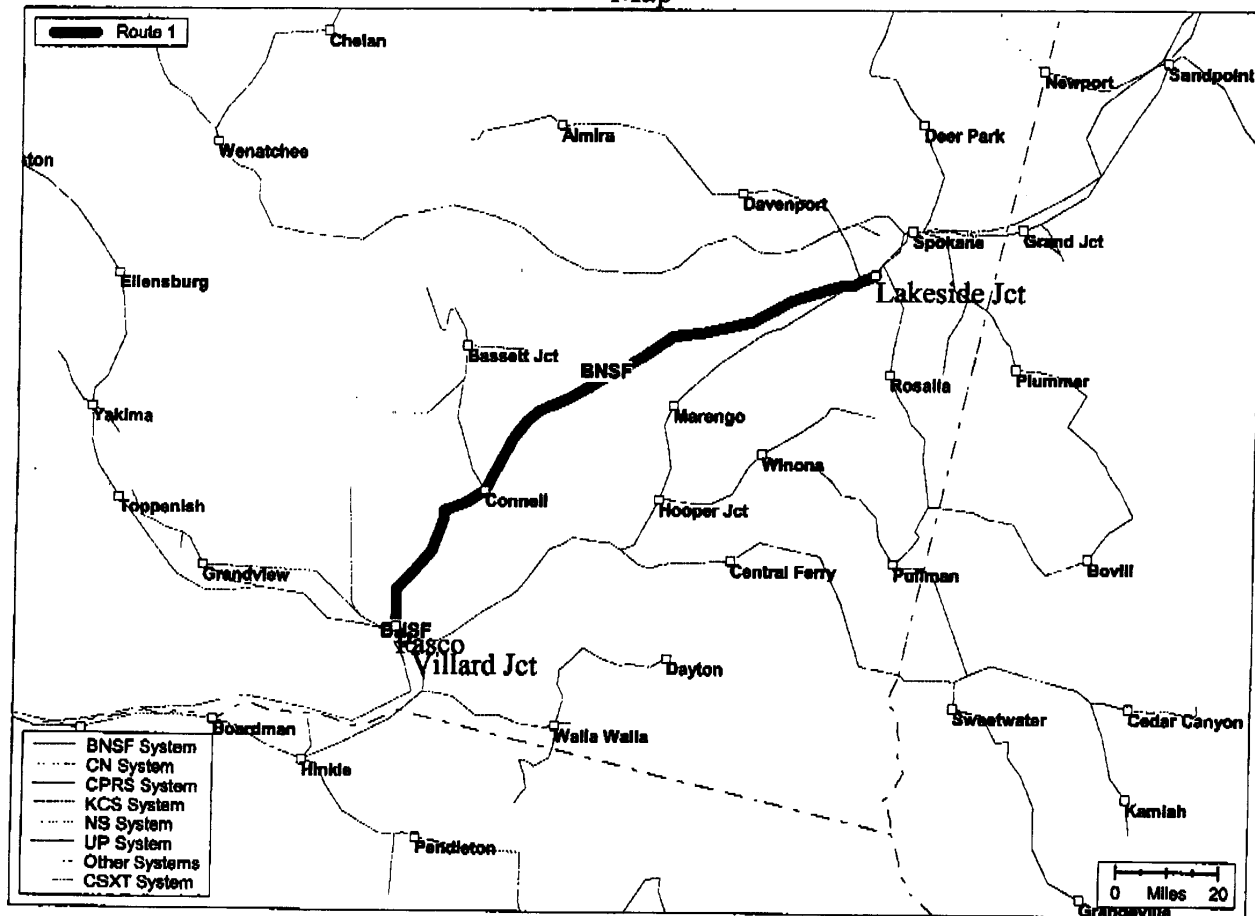


EXHIBIT B

Exhibit B to the trackage rights agreement will be filed with the final, executed copy of the agreement.

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34478**

**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 139.3 miles between BNSF Milepost 5.7 near Villard Junction, WA and BNSF Milepost 11.98 near Lakeside Junction, WA. ¹ The temporary trackage rights will be effective on March 1, 2004. The authorization will expire on or about March 29, 2004.

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

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.