



July 23, 2004

Via Fax (202) 565-9004

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

ENTERED
Office of Proceedings

JUL 23 2004

Part of
Public Record

FEE RECEIVED

JUL 23 2004

SURFACE
TRANSPORTATION BOARD

**Re: Finance Docket No. 34526; Union Pacific Railroad Company -- Trackage
Rights Exemption -- The Burlington Northern and Santa Fe Railway
Company**

Dear Mr. Williams:

Enclosed for filing in the above proceeding are the following:

1. 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).

This filing is being made by fax pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail Via Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice"). As required by the 1989 Notice, an original and ten (10) copies of the attached filing, and an additional twenty (20) copies of the Exhibit 1 map are being provided to the Board by overnight delivery under separate cover.

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

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

FILED

JUL 23 2004

SURFACE
TRANSPORTATION BOARD

Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

CONTAINS COLOR IMAGES

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34526



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

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (Fax)

Dated: July 23, 2004
Filed July 23, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34526

**UNION PACIFIC RAILROAD COMPANY
– 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)(7), for exemption of a modified agreement governing UP's existing overhead trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company ("BNSF") between Sandpoint and Dover ID.¹ The line extends between BNSF Milepost 1406.3 near Dover and BNSF Milepost 1402.41, including to ES 49+88.2, a distance of approximately 5.24 miles. The modifications shown in the agreement attached as Exhibit 2 change terms of the 1992 Agreement which relate to compensation and maintenance. BNSF will continue to have unrestricted rights to use the line as provided in the agreement.

¹ The trackage rights were originally exempted in Finance Docket No. 32081, Union Pacific R. Co and Burlington Northern R. Co – Joint Relocation Project Exemption served July 2, 1992.

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 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 modification of the agreement governing the overhead trackage rights held by UP between BNSF Milepost 1406.3 near Dover and BNSF Milepost 1402.41 near Sandpoint, including to ES 49+88.2, a distance of approximately 5.24 miles.

§ 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
1400 Douglas Street
Omaha, Nebraska 68179

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

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel. (402) 544-3072
Fax (402) 501-0132

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on July 30, 2004.

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

The modified agreement will change the compensation and maintenance terms of the prior 1992 Agreement (UP already has dispatching authority for the line). BNSF will continue to have unrestricted rights to use the line as provided in the agreement.

§ 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 modified 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:



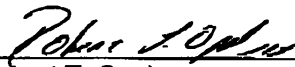
Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132

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.

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. 34526, knows the facts stated therein, and that said facts are true as stated.

Dated: July 23, 2004.



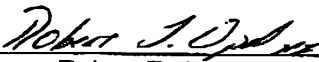
Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon the following by UPS Overnight.

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 July, 2004.


Robert T. Opal

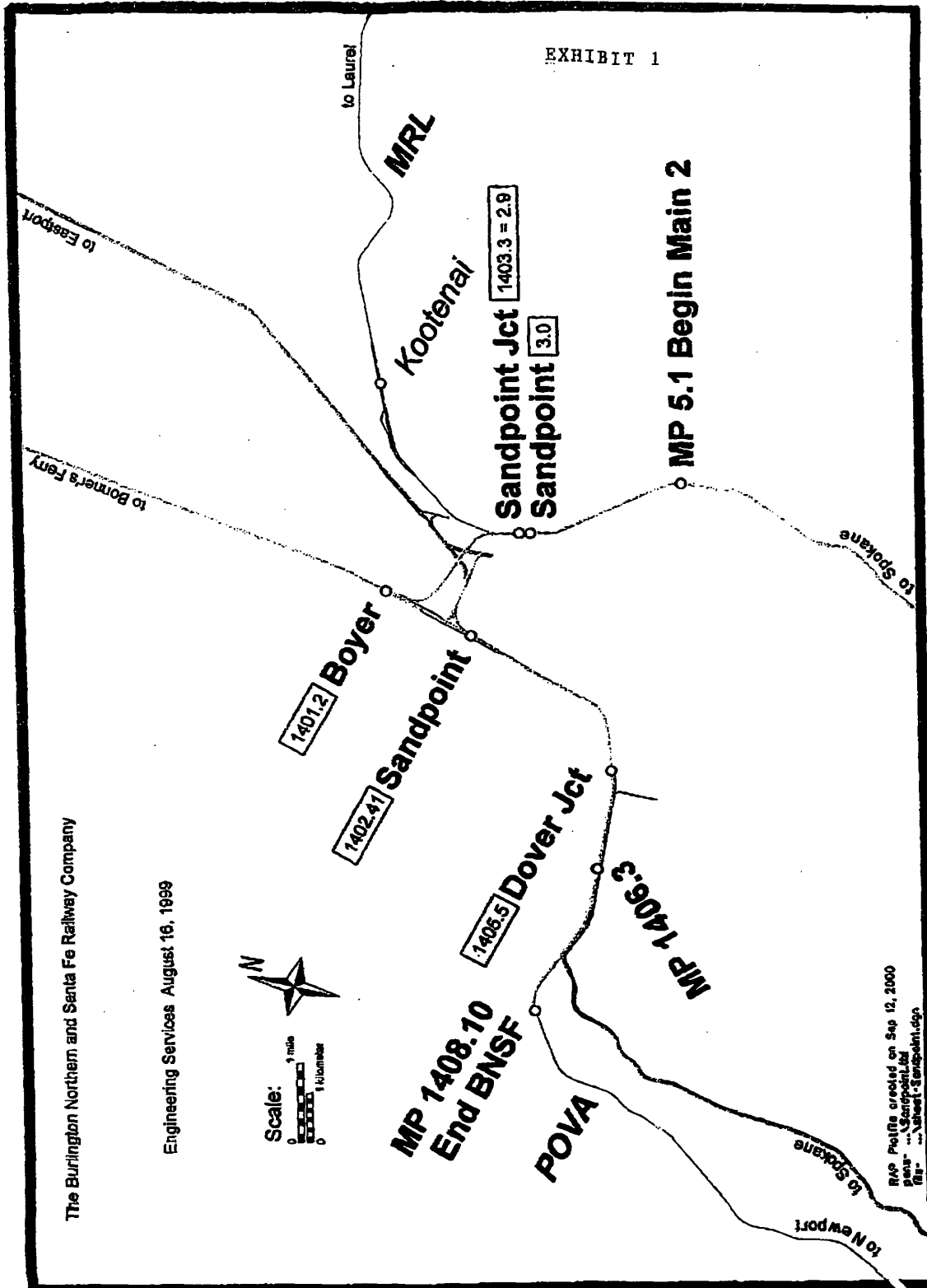


EXHIBIT 2

This **THIRD SUPPLEMENTAL AGREEMENT** made this ____ day of July, 2004, ("Execution Date") between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, BNSF owns and operates a line of railroad extending approximately 5.24 miles between Dover, MP 1406.3, and Sandpoint, Idaho, MP 1402.41, including to ES 49+88.2 (the "Joint Trackage"), as shown on Exhibit "A", which UP acquired the nonexclusive right to use under an agreement dated October 24, 1986, by and between Spokane International Railroad Company and Burlington Northern Railroad Company, UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as amended by supplemental agreements dated September 11, 1992 (the "First Supplement"), and September 13, 2000 (the "Second Supplement") with the (the Original Agreement, the First Supplement and the Second Supplement are hereinafter collectively referred to as the "Agreement"); and

WHEREAS, UP has requested the right to provide maintenance for the Joint Trackage and BNSF is willing to allow UP to provide maintenance for the Joint Trackage under the terms and conditions hereinafter set forth.

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

1. Effective as of the Effective Date (as such term is defined in Section 8, below), BNSF hereby grants to UP, and UP hereby accepts from BNSF, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, including all signal systems that are within the limits of the Joint Trackage, under the Agreement to FRA Class 2 standards.

UP shall also reimburse BNSF for any costs that BNSF may incur on property adjacent to the Joint Trackage as a result of UP's maintenance of the Joint Trackage, such as but not limited to, signal or communications costs.

2. Sections 3.A. and 3.B. of the Original Agreement, as amended, shall be deleted in their entirety and the following language substituted in their place:

As interest rental, UP agrees to pay BNSF monthly payments of \$12,104.00. Said amount may be subject to revision by BNSF upon thirty (30) days' written notice to UP prior to each anniversary of the Effective Date of this Agreement. In the event of early termination of this Agreement, prepaid payments shall not be pro-rated.

3. Section 3.D. of the Original Agreement, as amended, shall be deleted in its entirety and the following language shall be substituted in its place:

Except as provided for below in the event of catastrophic expense, during the term of this Third Supplement, UP agrees to maintain the Joint Trackage for the use of both parties at its own sole cost and expense.

Catastrophic expense, to the extent it is required to maintain the Joint Trackage to FRA Class 2 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be billed and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

4. The following sections of the Agreement's General Conditions are hereby amended by (a) deleting the word "Owner" and substituting in its place the word "User" and (b) deleting the word "User" and substituting in its place the word "Owner", wherever they appear in such sections: Sections 2.2, 2.3, 2.4, 2.5, 2.8, 2.11, 2.12, 2.13 and 2.14.
5. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Third Supplemental Agreement.
6. Notwithstanding Section 2 of the Second Supplemental Agreement, all dispatching decisions by UP affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols then in effect between BNSF and UP.
7. Notwithstanding any provision to the contrary in the Agreement, BNSF agrees that UP is allowed to make the changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by UP and BNSF's respective Engineering Departments. All changes, additions, capital maintenance, improvements or betterments shall be made solely at UP's cost and expense unless so requested to be made by BNSF.

The Automatic Equipment Identification ("AEI") reader located on BNSF's right of way on the Joint Trackage shall continue to be monitored and maintained by BNSF employees.

8. This Third Supplemental Agreement and any rights granted hereunder may not be assigned by UP in whole or in part without the prior written consent of BNSF except as such may occur as a result of a merger, corporate reorganization, consolidation, change of

control or sale of all or substantially all of UP's assets. This Third Supplemental Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.

9. This Third Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Third Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Third Supplement, for whatever reason, UP shall fully cooperate, consent, participate and jointly file with BNSF to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Third Supplement. UP shall assist and support BNSF's filing and any associated proceedings to facilitate any termination or expiration, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in BNSF's sole discretion, be prepared and made at any time after this Third Supplement has been terminated or expired. Such filing shall be coordinated by and at the expense of BNSF. Upon termination of the Third Supplement, the Original Agreement, as supplemented other than as by the Third Supplement, shall once again be in full force and effect. Any liability created under the Third Supplement shall survive any termination of the Third Supplement.

10. Other than as specifically modified herein, the Agreement shall remain in full force and effect.

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

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

By: _____

Printed: _____

Title: _____

Date: _____

UNION PACIFIC RAILROAD COMPANY

By: _____

Printed: _____

Title: General Manager Joint Facilities

Date: _____

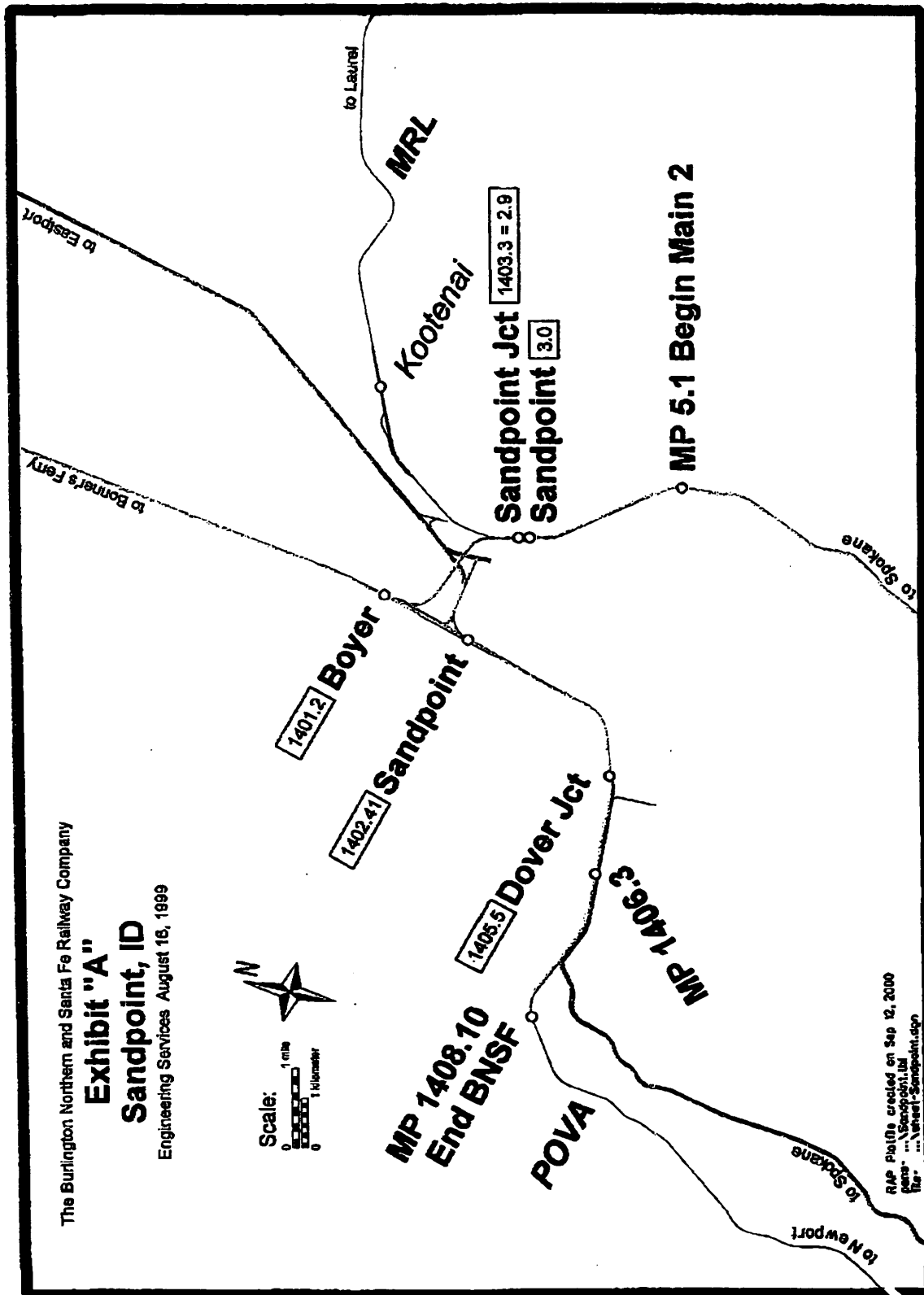


EXHIBIT 3

**CAPTION SUMMARY
SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34526**



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

The Burlington Northern and Santa Fe Railway Company ("BNSF") will agree to a modified trackage rights agreement governing the overhead trackage rights held by Union Pacific Railroad between BNSF Milepost 1406.3 near Dover, ID and BNSF Milepost 1402.41 near Sandpoint, ID, including to ES 49+88.2, a total distance of approximately 5.24 miles. The trackage rights will be effective on July 30, 2004.

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

JUL 23 '04 12:26 FR

7107 TO 912025659004

P.01/17

**UNION PACIFIC RAILROAD COMPANY
FACSIMILE TRANSMISSION**



Law Department
STOP 1580



Deliver to: The Honorable Vernon A. Williams
Secretary, Surface Transportation Board

Fax No.: 202-565-9004

Date: July 23, 2004

From: Robert T. Opal

Phone: 402-544-3072

No. of Pages Transmitted 16 + Cover

COMMENTS:

Transmitting From

Fax No. (402) 501-0127

**IF YOU DO NOT RECEIVE ALL PAGES
CALL US AS SOON AS POSSIBLE
(402) 544-2022**

This facsimile message may be a privileged and confidential communication and is intended for the use of the person to whom it was sent. If you have received this message in error, please notify us immediately at (402) 544-2022. This message should not be disseminated or copied if you are not the intended recipient, but should be returned to the above address by mail or destroyed. THANK YOU.



211646



July 23, 2004

Via Fax (202) 565-9004

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

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Office of Proceedings

JUL 23 2004

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Public Record

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SURFACE
TRANSPORTATION BOARD

Re: Finance Docket No. 34526; Union Pacific Railroad Company -- Trackage
Rights Exemption -- The Burlington Northern and Santa Fe Railway
Company

Dear Mr. Williams:

Enclosed for filing in the above proceeding are the following:

1. 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).

This filing is being made by fax pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail Via Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice"). As required by the 1989 Notice, an original and ten (10) copies of the attached filing, and an additional twenty (20) copies of the Exhibit 1 map are being provided to the Board by overnight delivery under separate cover.

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

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

FILED

JUL 23 2004

SURFACE
TRANSPORTATION BOARD

Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

CONTAINS COLOR IMAGES

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34526



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

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (Fax)

Dated: July 23, 2004
Filed July 23, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34526

**UNION PACIFIC RAILROAD COMPANY
– 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)(7), for exemption of a modified agreement governing UP's existing overhead trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company ("BNSF") between Sandpoint and Dover ID.¹ The line extends between BNSF Milepost 1406.3 near Dover and BNSF Milepost 1402.41, including to ES 49+88.2, a distance of approximately 5.24 miles. The modifications shown in the agreement attached as Exhibit 2 change terms of the 1992 Agreement which relate to compensation and maintenance. BNSF will continue to have unrestricted rights to use the line as provided in the agreement.

¹ The trackage rights were originally exempted in Finance Docket No. 32081, Union Pacific R. Co and Burlington Northern R. Co – Joint Relocation Project Exemption served July 2, 1992.

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 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 modification of the agreement governing the overhead trackage rights held by UP between BNSF Milepost 1406.3 near Dover and BNSF Milepost 1402.41 near Sandpoint, including to ES 49+88.2, a distance of approximately 5.24 miles.

§ 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
1400 Douglas Street
Omaha, Nebraska 68179

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

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel. (402) 544-3072
Fax (402) 501-0132

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on July 30, 2004.

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

The modified agreement will change the compensation and maintenance terms of the prior 1992 Agreement (UP already has dispatching authority for the line). BNSF will continue to have unrestricted rights to use the line as provided in the agreement.

§ 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 modified 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:



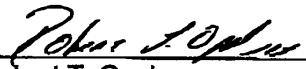
Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132

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.

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. 34526, knows the facts stated therein, and that said facts are true as stated.

Dated: July 23, 2004.

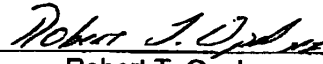

Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by UPS Overnight.

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 July, 2004.


Robert T. Opal

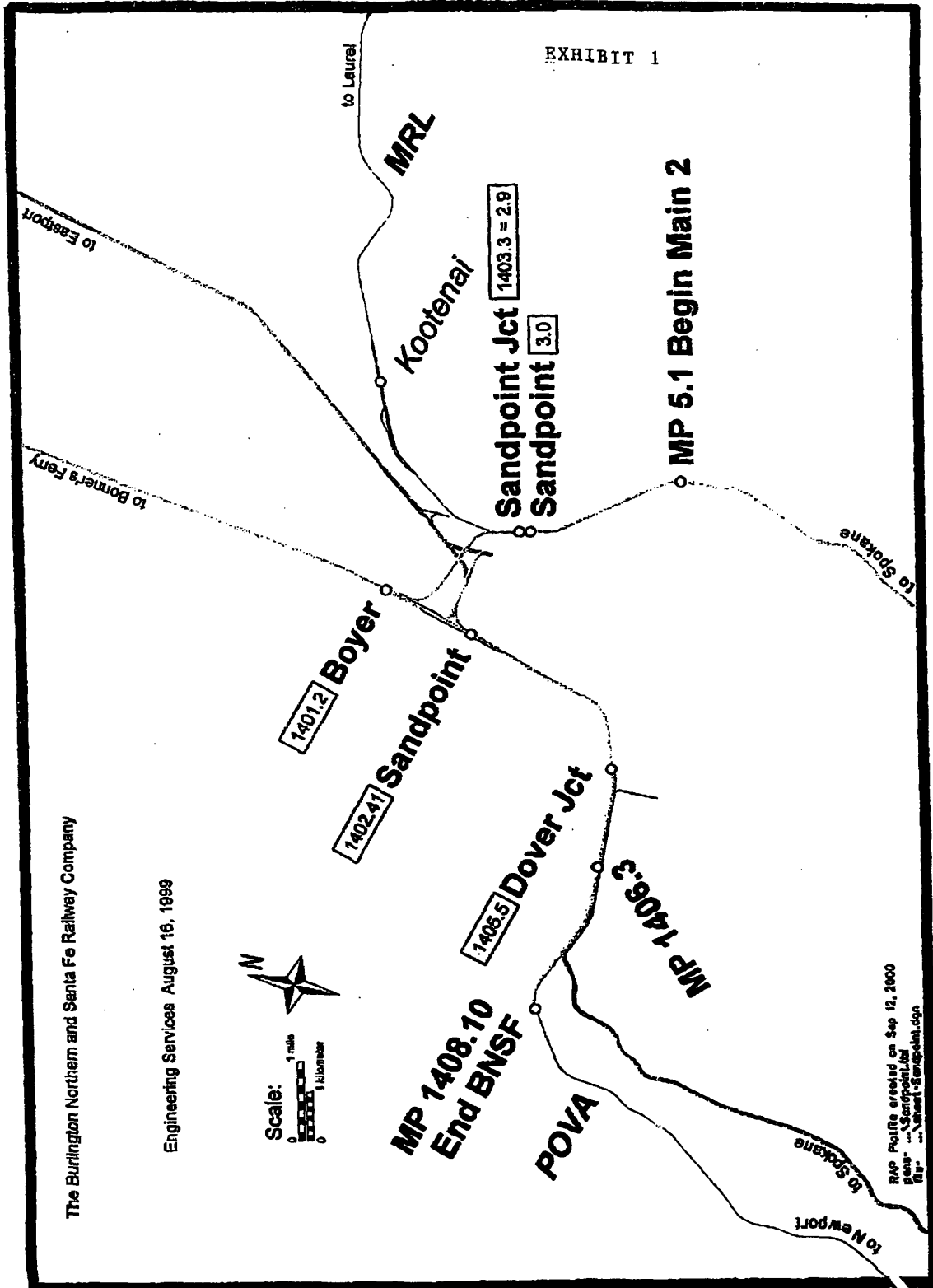


EXHIBIT 2

This **THIRD SUPPLEMENTAL AGREEMENT** made this ____ day of July, 2004, ("Execution Date") between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, BNSF owns and operates a line of railroad extending approximately 5.24 miles between Dover, MP 1406.3, and Sandpoint, Idaho, MP 1402.41, including to ES 49+88.2 (the "Joint Trackage"), as shown on Exhibit "A", which UP acquired the nonexclusive right to use under an agreement dated October 24, 1986, by and between Spokane International Railroad Company and Burlington Northern Railroad Company, UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as amended by supplemental agreements dated September 11, 1992 (the "First Supplement"), and September 13, 2000 (the "Second Supplement") with the (the Original Agreement, the First Supplement and the Second Supplement are hereinafter collectively referred to as the "Agreement"); and

WHEREAS, UP has requested the right to provide maintenance for the Joint Trackage and BNSF is willing to allow UP to provide maintenance for the Joint Trackage under the terms and conditions hereinafter set forth.

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

1. Effective as of the Effective Date (as such term is defined in Section 8, below), BNSF hereby grants to UP, and UP hereby accepts from BNSF, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, including all signal systems that are within the limits of the Joint Trackage, under the Agreement to FRA Class 2 standards.

UP shall also reimburse BNSF for any costs that BNSF may incur on property adjacent to the Joint Trackage as a result of UP's maintenance of the Joint Trackage, such as but not limited to, signal or communications costs.

2. Sections 3.A. and 3.B. of the Original Agreement, as amended, shall be deleted in their entirety and the following language substituted in their place:

As interest rental, UP agrees to pay BNSF monthly payments of \$12,104.00. Said amount may be subject to revision by BNSF upon thirty (30) days' written notice to UP prior to each anniversary of the Effective Date of this Agreement. In the event of early termination of this Agreement, prepaid payments shall not be pro-rated.

3. Section 3.D. of the Original Agreement, as amended, shall be deleted in its entirety and the following language shall be substituted in its place:

Except as provided for below in the event of catastrophic expense, during the term of this Third Supplement, UP agrees to maintain the Joint Trackage for the use of both parties at its own sole cost and expense.

Catastrophic expense, to the extent it is required to maintain the Joint Trackage to FRA Class 2 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be billed and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

4. The following sections of the Agreement's General Conditions are hereby amended by (a) deleting the word "Owner" and substituting in its place the word "User" and (b) deleting the word "User" and substituting in its place the word "Owner", wherever they appear in such sections: Sections 2.2, 2.3, 2.4, 2.5, 2.8, 2.11, 2.12, 2.13 and 2.14.
5. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Third Supplemental Agreement.
6. Notwithstanding Section 2 of the Second Supplemental Agreement, all dispatching decisions by UP affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols then in effect between BNSF and UP.
7. Notwithstanding any provision to the contrary in the Agreement, BNSF agrees that UP is allowed to make the changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by UP and BNSF's respective Engineering Departments. All changes, additions, capital maintenance, improvements or betterments shall be made solely at UP's cost and expense unless so requested to be made by BNSF.

The Automatic Equipment Identification ("AEI") reader located on BNSF's right of way on the Joint Trackage shall continue to be monitored and maintained by BNSF employees.

8. This Third Supplemental Agreement and any rights granted hereunder may not be assigned by UP in whole or in part without the prior written consent of BNSF except as such may occur as a result of a merger, corporate reorganization, consolidation, change of

control or sale of all or substantially all of UP's assets. This Third Supplemental Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.

9. This Third Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Third Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Third Supplement, for whatever reason, UP shall fully cooperate, consent, participate and jointly file with BNSF to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Third Supplement. UP shall assist and support BNSF's filing and any associated proceedings to facilitate any termination or expiration, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in BNSF's sole discretion, be prepared and made at any time after this Third Supplement has been terminated or expired. Such filing shall be coordinated by and at the expense of BNSF. Upon termination of the Third Supplement, the Original Agreement, as supplemented other than as by the Third Supplement, shall once again be in full force and effect. Any liability created under the Third Supplement shall survive any termination of the Third Supplement.

10. Other than as specifically modified herein, the Agreement shall remain in full force and effect.

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

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

By: _____

Printed: _____

Title: _____

JUL 23 '04 12:30 FR

7107 TO 912025659004

P.15/17

Date: _____

UNION PACIFIC RAILROAD COMPANY

By: _____

Printed: _____

Title: General Manager Joint Facilities

Date: _____

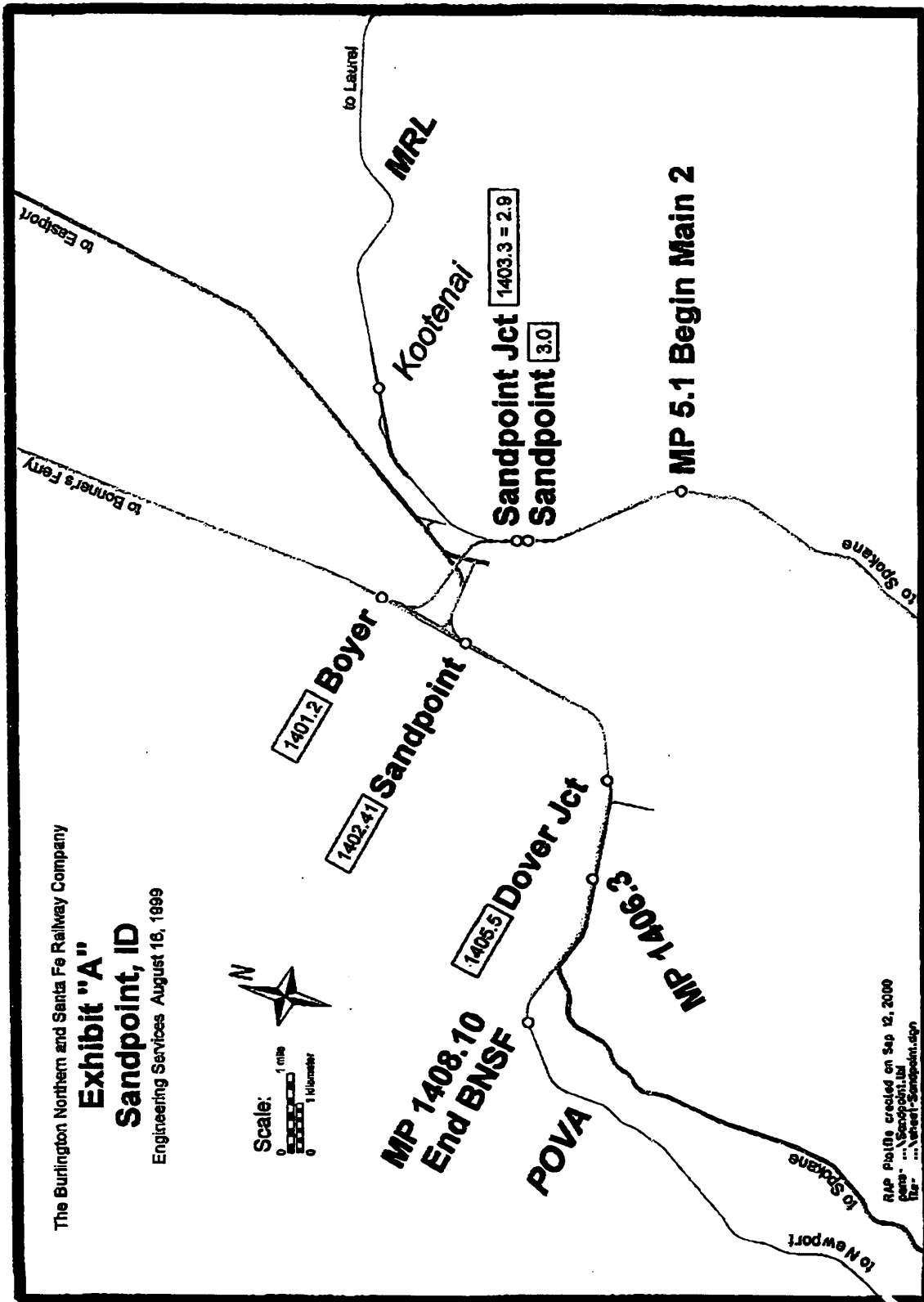


EXHIBIT 3

**CAPTION SUMMARY
SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34526**



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

The Burlington Northern and Santa Fe Railway Company ("BNSF") will agree to a modified trackage rights agreement governing the overhead trackage rights held by Union Pacific Railroad between BNSF Milepost 1406.3 near Dover, ID and BNSF Milepost 1402.41 near Sandpoint, ID, including to ES 49+88.2, a total distance of approximately 5.24 miles. The trackage rights will be effective on July 30, 2004.

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

JUL 23 '04 12:26 FR

7107 TO 912025659004

P.01/17

**UNION PACIFIC RAILROAD COMPANY
FACSIMILE TRANSMISSION**



Law Department
STOP 1580

Deliver to: The Honorable Vernon A. Williams
Secretary, Surface Transportation Board

Fax No.: 202-565-9004

Date: July 23, 2004

From: Robert T. Opal

Phone: 402-544-3072

No. of Pages Transmitted 16 + Cover

COMMENTS:

Transmitting From

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