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Re: Finance Docket No. 34667, BNSF Railway Company –
Acquisition and Operation – State of South Dakota

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Application for Acquisition and Operation Authority. Also enclosed is a check in the amount of \$5,800 for the filing fee. The text of the pleading is contained in the enclosed disk. We are also filing under seal certain financial information required by Section 1150.6.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,



Adrian L. Steel, Jr.

cc: The Hon. M. Michael Rounds
The Hon. Dennis Landguth
Mr. Gary Hanson
Mr. Mark F. Wandro
The Hon. Thomas Vilsack
Ms. Diane Munns
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34667

BNSF RAILWAY COMPANY – ACQUISITION AND OPERATION –
STATE OF SOUTH DAKOTA

APPLICATION FOR ACQUISITION AND OPERATION AUTHORITY

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Dated: February 18, 2005

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34667

BNSF RAILWAY COMPANY – ACQUISITION AND OPERATION –
STATE OF SOUTH DAKOTA

APPLICATION FOR ACQUISITION AND OPERATION AUTHORITY

BNSF Railway Company (“BNSF”)¹ hereby files this Application for authority under 49 U.S.C. 10901 and 49 C.F.R. Part 1150, Subpart A to acquire, and continue to operate, certain railroad lines from the State of South Dakota (“State”) extending principally from Milepost 777.0 near Aberdeen, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 518.9 near Sioux City, Iowa to Milepost 649.7 near Mitchell, South Dakota; from Milepost 293.1 near Canton, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 74.1 to Milepost 68.8 in Sioux Falls, South Dakota; from Milepost 68.8 near Sioux Falls, South Dakota to Milepost 49.4 near Canton, South Dakota; and from Milepost 511.9 to Milepost 518.9 in Sioux City, Iowa. The lines covered by this Application, referred to collectively as the “Core Lines”, are described in full in the Operating Agreement between the State and Burlington Northern Railroad Company (“BN”), BNSF’s predecessor, dated July 10, 1986, as amended. The total number of route miles proposed to be acquired is approximately 368 miles. A map showing the Core Lines is attached as Exhibit C, and a copy of the Operating

¹ The Burlington Northern and Santa Fe Railway Company changed its name, effective January 20, 2005, to BNSF Railway Company.

Agreement, as amended, is attached as Exhibit B. BNSF currently operates the Core Lines pursuant to lease and seeks to convert its status from lessee to owner of the track and underlying right of way.

As established in this Application, BNSF's acquisition and continued operation of the Core Lines will serve the public convenience and necessity. BNSF's purchase of the Lines will ensure that BNSF has the incentive to continue to invest in and upgrade the Core Lines over the long run so that the over 23 years of growth in South Dakota rail traffic which has been achieved by serving the transportation needs of South Dakota rail customers since BN initially commenced operations over the Core Lines will continue. BNSF committed itself in 1981 to meet the needs of South Dakota shippers over what were, at that time, the under-maintained, light-density out-of-service rail lines of a bankrupt railroad with extremely limited rail traffic potential, and the purchase of the Core Lines will enable BNSF to continue to fulfill that commitment under a full-fledged common carrier obligation.

INTRODUCTION

BNSF has provided common carrier rail service over these former Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee Road") lines since on or about July 6, 1981, pursuant to a predecessor agreement to the Operating Agreement. Prior to that time, the Milwaukee Road, which had entered bankruptcy in 1977, received approval from the Interstate Commerce Commission ("ICC" or "Commission") and the bankruptcy court to abandon the Core Lines in 1980, along with much of the rest of its system, including other lines in South Dakota. *Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. – Abandonment – In South Dakota, Iowa and Nebraska*, Docket No. AB-7 (Sub-No. 88) (ICC served May 14, 1980); *In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, No. 7-B-8999 (N.D. Ill., June 9, 1980), Order No. 342A. The Milwaukee Road physically

stopped operating over these lines and providing rail freight service of any kind to shippers served by the lines at the end of March 1980. Pursuant to an agreement between the State and the Milwaukee Road trustee approved by the bankruptcy court on October 27, 1980, the State acquired the abandoned Core Lines from the Milwaukee Road estate in 1981. *See Simmons v. ICC*, 697 F.2d 326, 329-30 (D.C. Cir. 1982). The State, however, had no operator for the Lines, and they remained abandoned for well over a year.

Subsequently, BNSF's predecessor, Burlington Northern, agreed to step in and operate the Lines temporarily if the State would rehabilitate the Lines to minimum standards. BN then obtained a Modified Certificate of Public Convenience and Necessity ("Modified Certificate") from the ICC to operate the Core Lines. *Burlington Northern Railroad Co. – Operations – In the States of IA and SD*, ICC Finance Docket No. 29672 (served August 17, 1981). Following required rehabilitation to permit safe rail service, BN commenced operations over the Core Lines beginning in early July 1981, which was the first direct rail service Core customers had received in well over a year. Thereafter, the State and BN entered into the 1986 Operating Agreement under which the State agreed to rent the Core System to BN with an option to purchase, and BN agreed to operate the Lines and continue the necessary investments to run them. In reliance on the State's commitments, BN has invested tens of millions of dollars in the Core System over the years and has nurtured the Core into a profitable enterprise for the State, BN/BNSF, and South Dakota shippers and receivers located on the Lines. Another key part of the agreements with the State was that BN, and subsequently BNSF, paid the State a tiered and escalating rental based on a percentage of qualified gross revenues generated by traffic moving on the Core Lines: as traffic increased on the Core Lines through BN and BNSF marketing efforts and investments by BN,

BNSF and shippers located on the Lines, the State received an increasing percentage of rental funds from BN and BNSF in return for BN's and BNSF's operations over the Core Lines.

As mentioned, BN bargained for and received as a quid pro quo the option to purchase the Core Lines at any time during the term of the Agreement. In June 2004, BNSF advised the State that it desired to exercise that option. BNSF determined to exercise the option because continued substantial investment for the long-run capital maintenance and improvement to the Core Lines is more prudently made in lines that BNSF owns. Also, millions of dollars in rental payments can be redirected into the investment needs of the Core System to sustain and grow the business into the foreseeable future. BNSF plans no changes in rates, operations, or service as a result of the purchase. The State has, however, refused to sell the Core Lines to BNSF, and the parties' dispute concerning BNSF's purchase option is the subject of litigation in *The Burlington Northern and Santa Fe Railway Company v. State of South Dakota*, Civ. No. 04-470 (S.D. 6th Circuit).

BNSF recognizes that it will need to prevail in acquiring the Core Lines from the State whether through voluntary conveyance by the State or involuntary conveyance as may be ordered by the state court before BNSF can acquire title to the Lines. Nevertheless, inasmuch as the Surface Transportation Board's ("STB" or "Board") authority pursuant to this Application is permissive in nature, the filing of this Application is appropriate as a prerequisite to acquiring the Lines. Moreover, the State has argued before the state court that BNSF's exercise of its purchase option requires the STB's approval and has attempted to defeat BNSF's purchase option rights on grounds that no STB authority has been obtained. Accordingly, STB authority for BNSF to acquire and continue to operate the Core Lines is being sought in this Application.

APPLICABLE LEGAL STANDARDS

Since the Core Lines were abandoned, they are no longer subject to the Board's jurisdiction, and the acquisition and operation of the Core Lines by a rail carrier (here BNSF) is subject to the prior approval requirements of 49 U.S.C. 10901 rather than those of 49 U.S.C. 11323. *See Burlington Northern Railroad Co. – Acquisition and Operation Exemption – South Dakota Railroad Authority*, ICC Finance Docket No. 32017 (served April 2, 1992) at 2. BNSF has therefore properly invoked the Board's procedures at 49 C.F.R. Part 1150, Subpart A applicable to Section 10901 acquisitions and operations.² The applicable statutory criteria for regulatory consideration of the proposed transaction are set forth in 49 U.S.C. 10901(c) which provides:

The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

49 U.S.C. 10901(c).

Under this section, the Board is required to grant requested acquisition and operation authority unless it “find[s] affirmatively that such authority would be ‘inconsistent with the public convenience and necessity’.” *Bulkmatic Railroad Corp. – Acquisition and Operation Exemption – Bulkmatic Transport Co., et al.*, STB Finance Docket No. 34145 (served November 19, 2002) (“*Bulkmatic Railroad*”) at 9. As the Board is aware, the language in the statute setting

² It should be noted that ordinarily the acquisition of an underlying fee interest in a rail line from a state with no common carrier obligation with no change in operator would not be subject to STB jurisdiction. *See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Co.*, 2 I.C.C.2d 835 (1991). Arguably, therefore, what is being reviewed in this Application is not an acquisition per se, but rather only the effects, if any, of a change from a modified certificate of public convenience and necessity to a full certificate.

forth the standard for approval was changed by Congress in the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, 109 Stat. 803 (1995), to make it easier for covered transactions to receive approval, and the revised language effectively creates a presumption that transactions to which Section 10901 applies should be approved. *See Dakota, Minnesota & Eastern Railroad Corp. Construction into the Powder River Basin*, 3 S.T.B. 847, 864 (1998) ("DM&E").³ As the Board has stated, "although the statutory criteria of public convenience and necessity remains, the burden of satisfying that criteria has been made progressively easier." *Ibid.*

Although the statute does not define the term "public convenience and necessity", the ICC and STB have identified factors to be considered in making the public convenience and necessity determination. These include the financial fitness of the applicant and the public demand or need for the service to be provided by the transaction. *Id.* at 863. The Board has further indicated that:

Public convenience and necessity is also evaluated in light of the rail transportation policy of 49 U.S.C. 10101. It has also been held that the interests of shippers are matters of substantial importance in determining the question of public convenience and necessity in railroad construction applications.

Ibid. (footnotes omitted).

It is well established under governing ICC/STB precedent that the public convenience and necessity does not require that competitive remedies be imposed in a Section 10901 proceeding unless adverse competitive harm will arise as a result of the transaction. For example, *Portland & Western Railroad, Inc. – Lease and Operation Exemption – Lines of*

³ While the Board's statements in the *DM&E* case were made in the context of a construction proceeding, the 1995 change in the statutory language and the resulting presumption in favor of approval are equally applicable to line acquisitions subject to Section 10901. *See Bulkmaric Railroad, supra.*

Burlington Northern Railroad Co., STB Finance Docket No. 32766 (served Oct. 15, 1997) (“*Portland & Western*”), involved the lease by BN of certain of its lines to Portland & Western. The Board rejected contentions that revocation was warranted based on certain provisions in the lease which effectively required Portland & Western to route its traffic over BN. The Board found that the lease provisions did “not reduce the level of competition that existed . . . before the lease since BN was free to route the traffic it originates over its own lines.” *Id.* at 6. The Board then stated:

The Board and the Interstate Commerce Commission have consistently held that carriers are not obligated to increase the existing level of competition when they undertake sale or lease transactions such as this one. *See, e.g., Montana Rail Link, Inc.--Exemption, Acquisition and Operation--Certain Lines of Burlington Northern Railroad Company, Finance Docket No. 31089 (ICC served May 26, 1988) and South Carolina Central Railroad Company, Inc.--Purchase and Lease--CSX Transportation, Inc., Lines in Georgia and Alabama, Finance Docket No. 31360 (ICC served May 4, 1989).*

Ibid. Accordingly, because the pre-transaction setting had been “preserved, not altered,” revocation was denied.

Similarly, in *Montana Rail Link, Inc. – Exemption, Acquisition And Operation – Certain Lines of Burlington Northern Railroad Co.*, ICC Finance Docket No. 31089 (served May 26, 1988) (“May 26, 1988 Decision”), petitions were filed to revoke the class exemption which had provided the authority for Montana Rail Link (“MRL”) to acquire and operate over 800 miles of BN’s lines in Montana.⁴ One of the principal grounds advanced for revocation was that the sale

⁴ MRL’s notice of exemption was filed pursuant to 49 C.F.R. 1150.31, the same provision under which BNSF filed its verified notice of exemption in Finance Docket No. 34645 on December 23, 2004. Notwithstanding the significant controversy raised by the proposed sale of the BN lines to MRL and the filing of petitions to stay by the Montana Department of Commerce (“MDOC”) and the Montana Public Service Commission (“MPSC”) (whose petition asserted that the use of a § 1150.31 notice was “inappropriate” given the “very controversial” nature of the transaction and the extensive opposition), the ICC held that nothing in its rules or decisions limited the use of the

(cont’d)

would “not foster rail competition in furtherance of the national rail transportation policy” and that “competitive alternatives available to shippers . . . might be reduced or eliminated.” May 26, 1988 Decision at 6. The Commission rejected the argument:

Contrary to petitioners’ allegations, our class exemption rules do not require MRL to establish that this transaction will result in increased competition. Petitioners are in error in contending that a transaction cannot qualify for this exemption unless it will actually increase the level of competition existing prior to the sale, or, stated differently for the circumstances here, that BN’s competitors must be placed in a better competitive posture (even at BN’s expense) than they were in prior to the transfer. *Our concern is with the competitive aspects flowing from the transaction itself.*

Id. at 15 (emphasis added).⁵ The Commission also rejected the claim that the sale would cause adverse competitive impacts because BN had sole control over the lines prior to the transaction.

Ibid. The Commission concluded by stating that, “because . . . this transaction will not reduce competition, there is no need for us to impose any restrictions or conditions here.”⁶ *Id.* at 16.

See also Horsehead Corp. – Petition for Acquisition and Operation Exemption – Chestnut Ridge Railway Company, STB Finance Docket No. 34481 (served March 12, 2004) at 2 (regulation under 49 U.S.C. 10901 not required when there is no loss of rail competition and no change in

(... cont’d)

exemption to short lines or insignificant transactions and that the revocation process provided an adequate remedy to address the concerns raised. Decision (served July 31, 1987) at 2.

⁵ On rehearing, MPSC argued that BN’s pre-transaction operations were anticompetitive and demonstrated monopoly power and that by perpetuating that situation through approval of the transaction the Commission had acted contrary to the relevant statutory provisions. The Commission, however, reaffirmed its May 26, 1988 Decision and rejected “MPSC’s allegation that the so-called competitive status quo test enunciated in Class Exemption conflicts with the pro-competitive provisions of the Staggers Act.” Decision (served November 17, 1988) at 2.

⁶ Further, the Commission responded to claims raised by Billings Grain Terminal, Inc. (“BGT”), an exclusively-served shipper on BN’s lines, that BN had engaged in improper rate actions. The Commission held that the sale of the lines to MRL did not result in any increased BN ratemaking power and that, in any event, BGT’s rate claims “should be presented in a formal complaint proceeding rather than in a revocation proceeding.” May 26, 1988 Decision at 15.

rail service); *Wisconsin Central Ltd. – Exemption, Acquisition And Operation – Certain Lines of Soo Line Railroad Co.*, ICC Finance Docket No. 31102 (decided July 8, 1988) (“*Wisconsin Central*”) at 13.⁷

Accordingly, BNSF’s acquisition of the Core Lines should be approved unless the Board can affirmatively conclude, based on the evidence submitted in the record, that the acquisition of the Lines would not be in the public convenience and necessity. There is a Congressionally-mandated presumption favoring approval, and the burden rests on parties opposing the transaction to establish that, based on effects “flowing from the transaction itself,” denial is justified. As established below, the State will not be able to meet that burden because BNSF’s purchase of the Core Lines will in fact be in the public interest – it will ensure BNSF’s willingness to invest in the Lines to continue the successful revitalization of rail service in the State for the long run, and BNSF will assume a full-fledged common carrier obligation as to the Core Lines. Moreover, merely changing BNSF’s status as lessee to owner will not alter the competitive landscape that exists today, nor will it have any resulting service performance or rate impacts on shippers and receivers who currently enjoy BNSF service from the Core Lines, and accordingly the transaction cannot be demonstrated to be inconsistent with the public convenience and necessity.

⁷ Further, in *Wisconsin Central Ltd. – Acquisition Exemption – Tomahawk Ry., Ltd. Partnership*, STB Finance Docket No. 33358 (served June 2, 1997) at 2, the Board held that regulation under 49 U.S.C. 10902 (which has an identical approval standard as Section 10901) was not required because the “proposed acquisition merely shifts ownership of the line to the rail carrier that has been the physical provider of rail service in recent years. Service will continue unchanged and no shipper will lose access to any rail service that it currently receives. Competition or transportation options for the shipping public will not be reduced.”

FACTUAL BACKGROUND

As described in the attached Verified Statement of Christopher M. Randall (“V.S. Randall”), this Application has its genesis in the Milwaukee Road’s bankruptcy and abandonment of approximately 1,000 miles of rail lines located within the State of South Dakota. These rail lines included the Core Lines, which run through South Dakota’s wheat, corn, and soybean belts, extending approximately 368 miles from Canton to Mitchell, from Sioux Falls to Canton, and from Aberdeen to Sioux City, Iowa. The abandonment of these rail lines in 1980 produced a crisis for South Dakota’s agricultural producers, who depended on the Core Lines, in particular, to provide affordable access to some of their most important markets. V.S. Randall at 2.

The State purchases the abandoned Core Lines

In response to these exigent circumstances, Governor William J. Janklow called upon the South Dakota Legislature to approve a plan for the State to purchase the Core Lines and recruit a railroad to resume operations on the most critical of the abandoned lines. The Legislature ultimately approved the approximately \$14.9 million purchase, made pursuant to the former railroad’s bankruptcy proceedings, and financed the acquisition with a temporary one-cent increase in sales taxes. The State, however, had no one to operate the lines. V.S. Randall at 2. Much of the 1981 legislative session was consumed with attempts to find a way to bring the lines back into operation. It was generally acknowledged at the time that, because the Core Lines had proved to be grossly unprofitable and much of the track was in a state of utter disrepair, the State would have to provide millions of dollars in ongoing financial assistance in order to entice any railroad to resume operation of the lines. *Id.* at 2-3. This unpleasant prospect proved to be even

more controversial than the State's original decision to purchase the rail lines.⁸ When the Legislature failed to resolve the crisis during its regular session, Governor Janklow convened a rare special session, which eventually produced a temporary compromise solution that utilized bookkeeping devices to earmark at least some revenue for the anticipated multi-million dollar subsidies.⁹ Even with the approval of this stopgap measure, however, the State was unable to finalize an agreement with any railroad to resume operations on the abandoned Core Lines.

BN agrees to revive the Core Lines *without* State operating subsidies

In June of 1981, however, the State announced that it was negotiating with BN to take over and operate the Core Lines.¹⁰ On June 16, 1981, it was announced that BN had agreed to a tentative deal to operate the Core Lines *without* any financial subsidy from the State. As reported at the time:

Gov. William Janklow couldn't begin to hide his satisfaction Tuesday morning in announcing that South Dakota finally has an operator for its railroad. "Look at that," he said in rapid staccato, pointing to a line from a news release his office had just issued to reporters, "No subsidy. It says 'no subsidy.' Isn't that something?"

The object of Janklow's buoyancy was a tentative agreement, signed Monday and announced Tuesday, whereby the powerful Burlington Northern Railroad would run trains on South Dakota's publicly owned rail system without money from state taxpayers.¹¹

⁸ See "Legislators must find way to run trains," *Sioux Falls Argus Leader*, Jan. 2, 1981, Page 1A; "State rail plan in jeopardy again," *Sioux Falls Argus Leader*, Jan. 9, 1981, Page 1A; "Uncertainty rides the rails in S.D.," *Sioux Falls Argus Leader*, Feb. 12, 1981, Page 1D. Newspaper articles documenting the relationship between the State and BN/BNSF have been collectively marked in chronological order as Exhibit I.

⁹ See "State rail plan back on track," *Sioux Falls Argus Leader*, May 19, 1981, Page 1A.

¹⁰ See "BN considered as state rail operator," *Sioux Falls Argus Leader*, June 8, 1981, Page 1A.

¹¹ "BN to run trains on S.D. rails," *Sioux Falls Argus Leader*, June 17, 1981, Page 1A.

Pursuant to this agreement, BN would assume and maintain operation of the Core Lines through June 30, 1986. The agreement provided both BN and the State with the right to cancel the agreement after 3 years. V.S. Randall at 3. The agreement ensured South Dakota's producers access to BN's vast network of rail lines, resulting in faster and more efficient access to a broader selection of markets than had been accessible via the Milwaukee Road over its pre-abandonment network at extremely competitive rates.¹² As Governor Janklow extolled, "[t]his opens new markets for our grains in Asia and Africa and all over the world. For the first time, we have access to the Gulf of Mexico, the St. Lawrence Seaway and the Pacific Northwest."¹³ Rather than pay any subsidies whatsoever to BN, the State would instead simply contribute financially to the repair of its own deteriorated Core Lines. Although a final agreement was not actually finalized and executed until December 22, 1981, BN relied on its handshake agreement with the State and began operations on the Core Lines almost immediately.¹⁴ Because the rail lines had been abandoned by a carrier and subsequently purchased by the State, and therefore removed from the jurisdiction of the ICC, BN has operated the Core Lines ever since pursuant to a modified certificate of public convenience and necessity. See Exhibit J (Corrected Modified Certificate served August 11, 1991).

¹² See *id.* at 2A.

¹³ "Janklow: Rails have promising future," *Sioux Falls Argus Leader*, Dec. 23, 1981, Page 1C.

¹⁴ See "State, BN officials to work out rail agreement," *Sioux Falls Argus Leader*, Aug. 20, 1981, Page 1D; "State, BN near rail contract," *Sioux Falls Argus Leader*, Sept. 2, 1981, Page 5B; "State, BN dedicate railroad," *Sioux Falls Argus Leader*, Sept. 23, 1981, Page 1A; "Core trains are running, despite unsigned contract," *Sioux Falls Argus Leader*, Nov. 13, 1981, Page 1C; "South Dakota, BN to sign contract Tuesday," *Sioux Falls Argus Leader*, Dec. 19, 1981, Page 1B; "Long-awaited BN pact includes some quirks," *Sioux Falls Argus Leader*, Dec. 22, 1981, Page 1C; "Myers says Burlington investing \$140 million in S.D.," *Sioux Falls Argus Leader*, June 4, 1982, Page 2B; "Myers praises Burlington Northern's work," *Sioux Falls Argus Leader*, Sept. 26, 1982, Page 4B.

**BN agrees to extend its commitment to operate
the Core Lines in exchange for purchase rights**

On July 1, 1986, the State and BN agreed to extend their contractual relationship and entered into a revised Operating Agreement. *See* Exhibit B.¹⁵ The revised agreement extended BN's operation of the Core Lines for an additional 15 years, with optional cancellation rights for both parties after 5 years and again after 10 years. In exchange for extending its commitment to the Core Lines, BN received as a quid pro quo the contractual option to purchase the lines from the State at a price determined pursuant to a formula set forth in the Agreement. V.S. Randall at 3-4. This option to purchase is contained in Article 3, § E.2, which provides, in part:

2. Option to Purchase Rail Facilities. BN shall have the option to purchase the entire Rail Facilities, which for purposes of this section includes right-of-way fences, buildings not used by the Operator, overhead bridges, and industry and elevator tracks, at any time during the term of this Agreement, provided that, at such time, BN is not in default hereunder. BN may elect to purchase the entire Rail Facilities by paying to the State an amount equal to the purchase price, which the State paid to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for the rail facilities plus any state funds that were used for Rehabilitation of the Rail Facilities. Federal funds used in the Rehabilitation of said Rail Facilities shall not be considered in determining purchase price. . . .

On August 7, 1991, the Operating Agreement was amended to further extend its term through July 1, 2020. *See* Exhibit B. BN's option to purchase was preserved unaltered by the 1991 amendment, and the optional cancellation rights for both parties were deleted.

The 1991 negotiations occurred in an environment when both BN and the South Dakota Department of Transportation were focused on providing a stable rail transportation environment

¹⁵ *See also* "State negotiates to extend rail deal," *Sioux Falls Argus Leader*, July 1, 1986, Page 3C; "Burlington signs 15-year lease," *Sioux Falls Argus Leader*, July 11, 1986. Page 1A, 2A ("The agreement gives Burlington Northern the option to buy the state-owned core system at any time during the contract period for about \$26 million, the amount the state has spent to purchase and repair the system.").

for South Dakota shippers. V.S. Randall at 4. This could be achieved only by making further infrastructure improvements that were required by traffic growth. The immediate infrastructure needs were to replace some light (less than 90 lb.) rail and to expand capacity at the Mitchell, South Dakota yard. The amendment created a framework that allowed these improvements to occur and, in turn, supported ongoing shipper investments and even further traffic growth. In reliance upon the mutual assurances under the Operating Agreement, including the option to purchase, BNSF invested well over **\$50 million** in capital improvements to the Core Lines between 1994 and the present. *Id.* at 4-5. In addition, a number of shippers invested millions in new facilities along Core Lines in response to BN and BNSF marketing programs and in anticipation of long-term uninterrupted access to the markets served by the broad geographic reach of BNSF's network. *Id.* at 5.

The 1991 amendment represented a significant step in the journey from bankruptcy and abandonment to the restoration of stable, high quality, self-sustaining rail service. Now, culmination of the permanent acquisition of the Core Line by BNSF as originally envisioned by the parties¹⁶ will successfully complete the final chapter of a remarkable and historic public-private partnership.

¹⁶ At the time the Operating Agreement was executed in 1986, Jim Myers, Director of the Division of Railroads in the South Dakota Department of Transportation, stated that the Agreement would make it easier for BN to purchase the Core Lines if BN wanted to continue operating on the Lines after the expiration of the Agreement. "Burlington signs 15-year lease," *Sioux Falls Argus Leader*, July 11, 1986. Page 1A. Myers also noted that, through BN's service and lower rates, the State had "more than recovered [its] investment in the rail facilities" and that, once BN had paid off the government loans that were to be used to repair the state-owned "mainline" (from Ortonville, Minnesota through Aberdeen to Miles City, Montana), "[t]he idea is that the railroad would then have the money available to buy the core system." *Id.* at 2A.

An unparalleled success

To date, BNSF's decades-long commitment and partnership with the State to rehabilitate and revive the Core Lines has been, by any standard, an unparalleled success.¹⁷ In 2004, more than 43,000 carloads moved over the Core Lines, compared to less than 6,000 carloads that were expected in 1981, an increase of more than seven-fold, not including a larger capacity growth brought about by the transition to larger capacity cars which, individually, transport more product than equipment fleets of the early 1980's. V.S. Randall at 5. Combined with significant investments by grain shippers and BNSF, the Core Lines are a shining example of private investment creating modern grain handling and transportation systems with benefits to shippers and communities as well as the State of South Dakota. This efficiency stands in stark contrast to the obsolete and economically unsustainable system the Milwaukee Road and its customers had abandoned. Indeed, an evaluation of the State's rail system issued in 1991 by the Office of the then Director of the State Division of Railroads, John Thune, found that the operation of the Core Lines by BN "has achieved objectives far beyond our expectations."¹⁸

As Mr. Randall describes, the Core Lines were only one component of the South Dakota-BN partnership to restore and eventually enhance essential rail service to many South Dakota shippers who had few, if any, options for continued service at the time of the Milwaukee Road bankruptcy. V. S. Randall at 5-6. The State and BN worked out arrangements first to start

¹⁷ See "State succeeds with rail system: For many towns, a lot is riding on system's success," "State concerned with maintaining system, not growth," "Janklow, ex-legislators remember heated fight," *Sioux Falls Argus Leader*, Aug. 11, 1991, Page 8A; "Rail action turned low point to a high," *Sioux Falls Argus Leader*, Aug. 11, 1991, Page 10A. As Mayor Arnold Janssen of Emery, South Dakota stated in 1991 on the tenth anniversary of BN service on the Core Lines: "I shudder to think what we'd be here in Emery if that rail line had been closed down for the past 10 years. I'm just afraid this town would have faded away." *Ibid.* ("For many towns, a lot is riding on system's success").

¹⁸ See "State concerned with maintaining system, not growth," *Sioux Falls Argus Leader*, Aug. 11, 1991, Page 8A.

service to the defunct Core Lines and then turned their attention in the early 1980's to an even larger problem – the looming demise of the East-West mainline connecting the Core Lines at their north end to the North American rail network. After South Dakota expended funds to acquire the Core Lines, the former Milwaukee Road mainline between Ortonville, Minnesota and Terry, Montana, connecting with the Core Lines at Aberdeen, South Dakota, was put on the block by the Milwaukee Road's trustee independently, and its fate was undetermined. The State's initial investment in the Core Lines was critically at risk. Through a bold and innovative series of transactions, South Dakota and BN partnered together with the federal government and other governmental and private entities to develop a plan for South Dakota to acquire this former mainline trackage and to contract with BN for continued and permanent rail service over it. In return for a purchase option, which has been exercised and honored by South Dakota, BN retired the bonds South Dakota issued for the mainline acquisition and paid off South Dakota's debt to the Federal Railroad Administration for a loan received by the State for rehabilitation funds. *Id.* at 6. This commitment just to keep the mainline connecting to the Core Lines and pay off the associated debt represented an extraordinary investment by BNSF of approximately **\$60 million**, plus interest. *Ibid.*

BNSF exercises its contractual option to purchase

On June 29, 2004, BNSF exercised its contractual option to purchase the Core Lines that it had spent the past 23 years nurturing into profitability. *See* Exhibit K (Notice of Exercise of Election to Purchase Rail Facilities). The South Dakota Core has become an important source of grain for domestic and international customers and markets served by BNSF. These markets include not just the export grain markets traditionally important to South Dakota since 1981, but also domestic markets such as grain processing and cattle feeding. Since 1981, BNSF has established 10 grain shuttle facilities along the Core Lines, converting this once defunct

branchline system into a state of the art heavy-haul, highly efficient major bulk grain artery on BNSF's network. V.S. Randall at 6. BNSF needs to invest in assets (such as rail) that have a useful life beyond the term of the current Operating Agreement. Such investments are most prudently made in an ownership environment rather than an operating environment where South Dakota would own all improvements at the end of the term. *Id.* at 6-7. Also, cessation of millions of dollars annually in rental payments would free up resources for further investment in growing the business on the Core Lines. *Id.* at 7. Finally, rail shippers who have invested in grain and other handling facilities along the Core Lines, or who might contemplate doing so in the future, would more likely do so with an assurance of long-term access to stable rail service (implementing long-term marketing and operating plans) and with continued access to present and future significant national and international markets. *Ibid.*

Despite repeated requests from BNSF, the State has failed to fulfill its contractual obligations to supply the appropriate information for calculation of the purchase price pursuant to the terms of the parties' contract. Specifically, the State has not supplied BNSF with the exact original purchase price of the Core Lines from the Milwaukee Road as well as the amount of State funds used to rehabilitate the lines. In addition, the State has refused BNSF's offer to tender, in cash, the purchase price for the Core Lines established by the Operating Agreement. The State's failure to supply this information and failure to accept BNSF's offer to tender the contractual purchase price amount to an intentional refusal to perform contractual obligations imposed by the Operating Agreement upon the State.

STB proceedings

On December 10, 2004, the MRC Regional Railroad Authority and Dakota Southern Railway Company (“Dakota Southern”) filed seven-day notices of exemption under 49 C.F.R. 1180.2(d)(7) for trackage rights over certain portions of the Core Lines.¹⁹ Subsequently, on December 29, 2004, Sioux Valley Regional Railroad Authority and D&I Railroad Company (“D&I”) filed similar seven-day notices of exemption for trackage rights over other portions of the Core Lines.²⁰ BNSF advised the Board that the State’s efforts to grant trackage rights exceeded the State’s contract authority and that the scope of the State’s rights in that regard was subject to pending litigation. The Board made clear in its exemption notices that the exemptions were “permissive” and did not give the applicants trackage rights if they were not contractually entitled to such rights.

On December 23, 2004, BNSF filed a seven-day notice of exemption under 49 C.F.R. 1150.31 to acquire and continue to operate the Core Lines.²¹ On December 29, 2004, the State of South Dakota filed a petition to stay the notice pending the petition to revoke that the State indicated it was going to file. On that same day, the Board issued a “housekeeping stay” of BNSF’s notice until January 14, 2005, to allow time for the Board to consider the issues presented by the stay petition “in a more orderly fashion.” Decision (served December 29, 2004) at 2.

¹⁹ See STB Finance Docket No. 34630, *MRC Regional Railroad Authority – Trackage Rights Exemption – Lines of the State of South Dakota*, and STB Finance Docket No. 34630 (Sub-No. 1), *Dakota Southern Railway Co. – Trackage Rights Exemption – MRC Regional Railroad Authority*.

²⁰ See STB Finance Docket No. 34646, *Sioux Valley Regional Railroad Authority – Trackage Rights Exemption – Lines of the State of South Dakota*, and STB Finance Docket No. 34646 (Sub-No. 1), *D&I Railroad Co. – Trackage Rights Exemption – Sioux Valley Regional Railroad Authority*,

²¹ See STB Finance Docket No. 34645, *The Burlington Northern and Santa Fe Railway Co. – Acquisition and Operation Exemption – State of South Dakota*.

On January 14, 2005, the Board issued a decision rejecting BNSF's notice of exemption on the ground that the class exemption procedures of 49 C.F.R. Part 1150, Subpart D are "typically reserved for uncomplicated and noncontroversial cases." Decision (served January 14, 2005) at 2. The Board found that BNSF's proposed transaction was neither "routine" nor "noncontroversial" and that the competitive issues the State intends to raise are not "uncomplicated".²² *Id.* at 3. In its decision rejecting BNSF's notice, the Board instructed BNSF to file "as soon as possible" either a 49 U.S.C. 10502 individual petition for exemption or a formal 49 U.S.C. 10901 application. *Id.* at 4.

In accordance with 49 C.F.R. Part 1150, Subpart A, BNSF submits the following Application for authority to own in lieu of lease and to continue to operate the Core Lines:

OVERVIEW (Section 1150.2)

(a) A brief narrative description of the proposal.

As set forth in detail above, BNSF proposes to acquire and operate the Core Lines pursuant to its purchase option rights in the Operating Agreement.

(b) The full name and address of applicant(s).

BNSF's full name and address is:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

²² The Board did not, at that time, also revoke or otherwise withdraw its exemption approvals of the interrelated Dakota Southern and D&I trackage rights filings, which are neither "routine" nor "noncontroversial", in order to allow the public, BNSF and the Board to more closely scrutinize those transactions.

INFORMATION ABOUT APPLICANT(S) (Section 1150.3)

- (a) **The name, address, and phone number of the representative to receive correspondence concerning this application.**

Correspondence relating to this Application should be directed to the following representatives of BNSF:

Adrian L. Steel, Jr.
Robert M. Jenkins III
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006-1101

Sarah W. Bailiff
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

- (b) **Facts showing that applicant is either a common carrier by railroad or has been organized to implement the proposal for which approval is being sought.**

As reflected in the Board's records, BNSF is a Class I carrier.

- (c) **A statement indicating whether the rail line will be operated by applicant. If not, the operator which has been selected must join in the application, and provide all information required for an applicant. If the operator has not yet been selected, state who is being considered.**

BNSF will continue to operate the Core Lines once they have been acquired pursuant to the Operating Agreement.

- (d) **A statement indicating whether applicant is affiliated by stock ownership or otherwise with any industry to be served by the line. If so, provide details about the nature and extent of the affiliation.**

BNSF is not affiliated with any industry served on the Core Lines.

- (e) **Date and place of organization, applicable State statutes, and a brief description of the nature and objectives of the organization.**

BNSF's predecessor, Great Northern Pacific and Burlington Lines, Inc., was incorporated in 1961 under the laws of the State of Delaware. Through various subsequent transactions and amended and restated certificates, The Burlington Northern and Santa Fe Railway Company was

certificated effective December 31, 1996. A restated Certificate of Incorporation of The Burlington Northern and Santa Fe Railway Company was filed in the Office of the Secretary of State of Delaware on January 20, 2005, and the name of the company changed to BNSF Railway Company. BNSF is a Class I rail carrier which provides rail transportation services in 28 states and two Canadian provinces.

(f) If a corporation, submit:

- (1) A list of officers, directors, and 10 principal stockholders of the corporation and their respective holdings. A statement whether any of these officers, directors or major shareholders control other regulated carriers. Also a list of entities, corporation(s) individual(s), or group(s) who control applicant, the extent of control, and whether any of them control other common carriers.**

A list of BNSF's officers and directors is attached hereto as Exhibit L. None of these officers and directors control other regulated carriers. BNSF is wholly-owned and is controlled by Burlington Northern Santa Fe Corporation, which does not directly control any other common carriers. BNSF Railway Company owns or controls the common carriers listed on Exhibit M.

- (2) As exhibit A, any resolution of the stockholders or directors authorizing the proposal.**

A copy of the Unanimous Written Consent of the BNSF Board of Directors authorizing the purchase of the Core Lines is attached as Exhibit A hereto.²³

Paragraphs 2(g), 2(h), 2(i), and 2(j) are inapplicable.

²³ The amount authorized for the purchase by the BNSF Board of Directors has been redacted in that such amount is highly confidential and commercially sensitive. If the Board needs an unredacted copy of the Unanimous Written Consent, BNSF will provide a copy under seal.

INFORMATION ABOUT THE PROPOSAL (Section 1150.4)

- (a) **A description of the proposal and the significant terms and conditions, including consideration to be paid (monetary or otherwise). As exhibit B, copies of all relevant agreements.**

The terms and conditions of BNSF's option to purchase the Core Lines, including the methodology for determining the purchase price, are set forth in the Operating Agreement (Exhibit B) and as described above. The amount of consideration to be paid is the subject of litigation in the state court in Pierre, South Dakota. That amount will, at a minimum, exceed the State's original purchase price for the Core Lines (estimated at \$14-15 million).

- (b) **Details about the amount of traffic and a general description of commodities.**

As set forth in Mr. Randall's Verified Statement, the Core Lines carried more than 43,000 carloads of traffic in 2004. V.S. Randall at 7. The principal commodities transported include wheat, corn and soybeans, but also include building products, consumer products and chemicals. BNSF operates 10 grain train shuttle facilities on the Core Lines.

- (c) **The purposes of the proposal and explanation of why the public convenience and necessity require or permit the proposal.**²⁴

BNSF has made the determination that the continued investment in the Core Lines that will be required to handle future traffic growth on the Lines is more prudently made in an ownership environment. Accordingly, it seeks by this Application the necessary authority to exercise the option that it bargained for and acquired as part of its overall agreement with the State to provide service over lines that had been abandoned after years of unprofitable operations. As set forth in Mr. Randall's Verified Statement, the option was granted as a quid pro quo in return for BNSF's committed capital risk and substantial rental payments. V.S.

²⁴ The language of 49 C.F.R. 1150.4(c) does not reflect the applicable statutory standard as modified by the ICCTA.

Randall at 3-4. Moreover, BNSF's provision of service over the Lines subjected it to substantial risks and required BNSF to undertake action in the public interest without any assurance as to the final terms under which it would provide service. In addition, since 1994, BNSF has invested over \$50 million in capital expenditures to improve service and build business on the Core Lines. *Id.* at 5. Had BN not been willing to assume these risks and make these investments, the State of South Dakota would have been left without viable rail service for an indeterminate number of years.

Accordingly, BNSF's proposed acquisition of the Core Lines cannot be found to be inconsistent with the public convenience and necessity. It is in fact fully consistent with the public interest. BNSF's provision of service *without subsidy* for the past 23 years has, by the State's own admission, been a significant success, and the public interest has been served through the increased access BNSF has provided to South Dakota's agricultural producers and other shippers. As Governor Janklow proclaimed: the Operating Agreement opened new markets for the State's grain "in Asia and Africa and all over the world . . . [with] access to the Gulf of Mexico, the St. Lawrence Seaway and the Pacific Northwest."²⁵ And, indeed, the success has been astounding. Freight traffic on the Core Lines has increased from an expected 6,000 carloads in 1981 to more than 43,000 carloads in 2004. V.S. Randall at 5. The purchase option is an integral part of the terms and conditions pursuant to which BNSF has provided and continues to provide high quality service to South Dakota, and the public interest cannot properly be found to require that BNSF should be deprived of the benefit of its bargain where BNSF undertook at substantial risk the very kind of "new and innovative rail operations" that

²⁵ "Janklow: Rails have promising future," *Sioux Falls Argus Leader*, Dec. 23, 1981, Page 1C.

deregulation under the Staggers Act was designed to encourage. *See Wisconsin Central, supra*, at 3.²⁶

Further, contrary to the allegations made by the State in its petition to stay,²⁷ BNSF's purchase of the Core Lines will not change the existing competitive access situation and will not reduce or eliminate any South Dakota shippers' shipping options. In its petition, the State argued that the issue presented by BNSF's proposed acquisition of the Core Lines is whether the STB would allow "BNSF to 'alter the landscape' and eradicate the seamless transportation system which the State had previously created." Petition to Stay at 13. The State further contended that the trackage rights which it has granted to the MRC Regional Railroad Authority for operation by Dakota Southern over the Core Lines between Mitchell, South Dakota and Sioux City, Iowa and to the Sioux Valley Regional Railroad Authority for operation by D&I over the Core Lines between Elk Point, South Dakota and Sioux City, Iowa are needed to preserve existing market access for South Dakota shippers and the rail structure which the State has created. Specifically, the State claims that the State-owned lines which these carriers serve have "access to multiple Class I carriers at Sioux City, not just to BNSF." *Ibid.* Finally, the State indicated that it would seek these trackage rights as a condition in the revocation proceeding which it had intended to file had Finance Docket No. 34645 proceeded.²⁸ *Ibid.*

²⁶ See also *Portland & Western, supra*, where the Board held that the facts (i) that, but for the proposed transaction, "service to the public might have been lost or disrupted," and (ii) that the transaction had "reinvigorated rail transportation in the involved area" weighed in favor of approval of the transaction. Decision at 6. The same factors weigh in favor of approval here as well.

²⁷ A letter from South Dakota Governor Michael Rounds was submitted concurrently with the State's petition, and the South Dakota Congressional delegation submitted a separate letter on January 14, 2005. Both letters express the same or similar concerns as set forth in the petition to stay.

²⁸ Presumably, the basis for trackage rights that the State indicated it intended to request would have been independent and separate from the contractual trackage rights that the State might be able to secure pursuant to the terms of the Operating Agreement in the pending state court litigation. As the Board has noted, the State's right to
(cont'd)

The State has, however, inaccurately and incompletely described the situation concerning the existing interchange rights of Dakota Southern and D&I. As Mr. Randall's Verified Statement confirms, BNSF has since the inception of its service over Core Lines and currently provides the only service to shippers located on the Core Lines, and there will be no change in the operations on the Core Lines.²⁹ V.S. Randall at 7. The situation with respect to competition and shipper access will therefore not be changed by BNSF's purchase of the Lines. Currently, Dakota Southern interchanges with BNSF at Mitchell, as it has since the 1980's. Dakota Southern does not interchange with any other Class I carrier at Sioux City or elsewhere, nor has it ever done so. *Id.* at 8. Similarly, with one exception, in an agreement it entered into willingly following negotiations with BN, D&I interchanges with BNSF at either Sioux Falls or Sioux City and with no other Class I railroads, as it always has done. The one exception is that, with respect to traffic which D&I moves from a rock quarry at Dell Rapids, South Dakota on its lines north of Sioux Falls, D&I can interchange that traffic with BNSF, Union Pacific Railroad or Canadian National Railway at Sioux City via a movement over D&I's own lines and portions of the Core Lines. BNSF's purchase of the Core Lines will preserve D&I's right to make such interchanges for that traffic. *Ibid.* Thus, BNSF's control over traffic on and interchanging with

(... cont'd)

trackage rights under the Operating Agreement is a matter of state law to be resolved by the state court. It is not apparent what conditions, if any, the State intended to seek with respect to Dakota, Minnesota & Eastern Railroad's ("DM&E") ability to interchange at Aberdeen, South Dakota or with respect to BNSF's 110-car unit grain train rate structure. In any event, neither of those two issues are proper subjects for resolution in this proceeding since they are likewise independent and separate from BNSF's proposed acquisition of the Core Lines.

²⁹ Because the Modified Certificate pursuant to which BNSF currently operates the Core Lines applies only to operations over State-owned lines, BNSF's Modified Certificate authority will no longer be valid once it acquires the Core Lines. Accordingly, this Application also seeks authority to continue to operate the Core Lines as well. Once it has acquired the Core Lines, BNSF will timely notify the appropriate parties that it will cease providing service under the Modified Certificate but will continue providing service pursuant to this Application.

the Core Lines will be no greater, and cannot be greater, than it is now.³⁰ Operations on the Core Lines, and access to the Core Lines, will remain the same post-acquisition of the Lines, pursuant to contractual agreements, as they have since BN initially started up operations on the Core Lines in 1981.

Accordingly, pursuant to the applicable ICC and STB Section 10901 precedent set forth above,³¹ there is no basis for the State to request and the Board to award trackage rights as a condition of its approval of BNSF's purchase of the Core Lines. The existing competitive access and interchange situation was established in 1981, and BNSF's operations and service under the Operating Agreement, virtually "stepping into the shoes" of the departed Milwaukee Road, were approved by the Interstate Commerce Commission at that time. As the Commission held in the *MRL* proceeding, there is no obligation on applicants for Section 10901 authority to increase the existing level of competition, and, because BNSF's purchase of the Core Lines will not reduce competition, there is no basis to impose any restrictions or conditions. *MRL* May 26, 1988 Decision at 15-16. Moreover, the State's complaints about the ability of the Dakota Southern and D&I to interchange with other Class I carriers, about DM&E's interchange rights at Aberdeen, and about BNSF's 110-car unit grain train rate structure are entirely unrelated to BNSF's proposed purchase of the Core Lines and not properly heard here. As the ICC has

³⁰ In addition to describing the current interchange rights of Dakota Southern and D&I, Mr. Randall also describes the current interchange rights of the other railroads which connect to the Core Lines (DM&E and Ellis & Eastern) and confirms that there will be no change in their interchange status. V.S. Randall at 8-9.

³¹ The precedent cited by BNSF is applicable regardless of the type of proceeding – application, individual exemption, or class exemption – since the underlying approval standard of Section 10901(c) governs all three types.

held,³² those claims should be presented in a formal complaint proceeding under 49 U.S.C.

11701 *et seq.* and 49 C.F.R. 1111.1 rather than here.

Thus, BNSF's proposed purchase of the Core Lines is consistent with and fully supports the public convenience and necessity, as follows:

- The transaction will assure continued investment by BNSF in and marketing of the Core Lines as well as the continuation of high quality, dependable service to shippers with access to the full domestic and international reach of BNSF's system.
- The transaction will protect the interests and investments of shippers by preserving their existing service and routing options.
- No shipper will pay higher rates, experience service disruptions or changes, or lose competitive options as a result of the transaction.
- The proposed acquisition will have no impact on rail labor – other than to ensure sustained and permanent operations of the Core Lines by a Class I carrier subject to collective bargaining arrangements. Since 1981, BNSF restored service and union jobs to the Core Lines, and this transaction further solidifies BNSF's presence in the region. No job loss or other impacts will result from BNSF taking full title to the lines it currently operates today.
- BNSF's purchase ensures that BNSF remains a key player in the region for the long run, since approval of this transaction will convert its Modified Certificate status, which is typically characteristic of defunct or near defunct lines, to a full

³² See footnote 6, *supra*.

common carrier operating status, more befitting of a vital link in the regional transportation system.

- Ceasing rental payments amounting to millions of dollars annually will lower BNSF's cost structure in the region and allow BNSF to improve its competitiveness and investment capabilities, consistent with the goals of the national rail transportation policy.
- The acquisition will further the objectives and commitments which paved the way for an historic and landmark public-private partnership. In the interest of promoting similar innovation in public-private partnerships, sound public policy dictates that commitments to grant ownership rights in exchange for risk-taking and years of service and investment should be honored.

As outlined above, the transaction will serve important rail transportation policy goals of 49 U.S.C. 10101, including promoting a safe and efficient rail transportation system (Section 10101(3)), ensuring the development and continuation of a sound rail transportation system (Section 10101(4)), fostering sound economic conditions in transportation (Section 10101(5)), operating transportation facilities and equipment in a safe manner (Section 10101(8)), and encouraging honest and efficient rail management (Section 10101(9)).

- (d) **As exhibit C, a map which clearly delineates the area to be served including origins, termini and stations, and cities, counties and states. The map should also delineate principal highways, rail routes and any possible interchange points with other railroads. If alternative routes are proposed for construction, the map should clearly indicate each route.**

See Exhibit C hereto.

- (e) **A list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. The names of the railroads with which the line will connect, and the proposed connecting points; the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, division of rates, or trackage rights.**
-

The principal counties and cities served by the Core Lines (and connections and other rail service available in those counties) are:

North/South corridor running south from Aberdeen to Sioux City:

Brown County - Aberdeen (connection with BNSF mainline; connection with SD owned DMV&W operated line north of Aberdeen; also DM&E has interchange rights with BNSF in BNSF's yard and DM&E has a series of trackage rights between Aberdeen and Wolsey), Warner

Spink County - Duxbury, Mellette, Ashton, Redfield (connection with DM&E branchline between Redfield and Mansfield), Tulare, Spottswood

Beadle County - Bonilla, Wolsey (DM&E mainline intersection with the Core), Virgil

Jerauld County - Alpena

Sanborn County - Woonsocket, Cuthbert, Letcher

Davison County - Loomis, Mitchell (connection with Mitchell to Kadoka line owned by State of SD and operated by Dakota Southern), Ethan

Hutchinson County - Dimock, Parkston, Beardsley, Tripp, Kaylor

Bon Homme County - Scotland

Yankton County - Lesterville, Utica, Napa Jct., Yankton, Gayville

Clay County - Meckling, Vermillion, Burbank

Union County - Elk Point (connection with SD owned, D&I operated line between Elk Point and Canton), Jefferson, N. Sioux City

Woodbury County, Iowa - Sioux City (connection with BNSF mainline which has connections with UP and CN)

Mitchell-Canton (the North Fork of the Core):

Davison County - Mitchell

Hanson County - Alexandria, Emery

McCook County - Bridgewater

Turner County - Dolton, Marion, Parker, Chancellor

Lincoln County - Lennox, Worthing, Canton

Canton-Sioux Falls:

Lincoln County - Canton (connection with SD owned, D&I operated line between Elk Point and Canton), Harrisburg

Minnehaha County - Sioux Falls (connections with D&I line to Dell Rapids; BNSF line to Madison, BNSF lines into Minnesota; the Ellis & Eastern line between Ellis and Valley Springs)

The volumes of traffic interchanged in 2004 at each interchange point are as follows:

Railroad	Initials	City	IC to BNSF	IC from BNSF	Total IC
DME	DME	Aberdeen	-	-	-
		Redfield	-	3	3
		Wolsey	14,163	1,203	15,366
Dakota Southern	DSRC	Mitchell	82	453	535
D&I	DAIR	Sioux Falls	-	1	1
		Sioux City	467	369	836
Ellis & Eastern	EE	Sioux Falls	202	2,264	2,466
Union Pacific*	UP	Sioux City	152	737	889
CN*	CN	Sioux City	2,611	14,950	17,561
			17,677	19,980	37,657

* Via connection from BNSF mainline

The principal terms of BNSF's agreements covering the operation, interchange of traffic, division of rates and trackage rights on the Core Lines, in addition to those in the Operating Agreement, are as follows:

BNSF has an agreement with D&I dated September 4, 1986, pertaining to D&I's provision of common carrier service between Canton and East Wye Switch and between Hawarden and Beresford, South Dakota. Pursuant to this agreement, D&I has granted BNSF its

power of attorney to establish all tariff charges and contracts relative to the transportation of general commodities delivered to and/or picked up from D&I. D&I may establish its own tariffs and contracts only for all aggregate commodities. All general commodity (non-aggregate) carloads originating or terminating on these lines are interchanged with BNSF at Sioux Falls or Sioux City. BNSF has granted D&I overhead trackage rights over the Core Lines between East Wye Switch and Sioux City and between Canton and West Junction. In addition, D&I may deliver aggregate material in its own equipment that originates on D&I at Dell Rapids, South Dakota and Hawarden, Iowa to the industrial park at Harrisburg, South Dakota on the Core Lines.

D&I leased from the State of South Dakota the West Yard on the Core Lines in North Sioux City. Subsequently, BNSF and D&I entered into an agreement covering rehabilitation of tracks in the yard and interchange of traffic. This agreement runs with the term of the agreement between BNSF and D&I dated September 4, 1986, as amended.

BNSF is the successor to the Milwaukee Road in various agreements with DM&E as the successor to the Chicago & North Western Transportation Company regarding DM&E trackage rights on the Core Lines between Wolsey and Aberdeen. Various of these agreements have been amended since BNSF began operations of the Core Lines.

On December 30, 1996, BNSF and DM&E entered into a Trackage Rights and Transportation Service Agreement providing, in part, for transportation and switching service to DM&E industries at Redfield, South Dakota on the Core Lines and at Aberdeen on the BNSF (former Milwaukee Road) main line.

BNSF and Dakota Southern entered into an Inter-Carrier Switching Agreement effective January 1, 1996, covering Dakota Southern's service to Universal Packaging. Interchange of this

traffic is at Mitchell, South Dakota. There is also an agreement regarding the interchange of traffic and the lease of track at Mitchell.

On the Core Lines, BNSF makes rates and offers through routes to and from points on the Core Lines in a manner that is consistent with other lines BNSF owns and operates.

(f) **The time schedule for consummation or completion of the proposal.**

Trial in the South Dakota state court litigation concerning BNSF's option to purchase is scheduled for September 24, 2005. Absent a voluntary agreement between the parties or other resolution without benefit of the trial, the consummation of the transaction is not anticipated before the end of the trial.

(g) **If a new line is proposed for construction:**

- (1) **The approximate area to be served by the line.**
- (2) **The nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries.**
- (3) **Whether the construction will cross another rail line and the name of the railroad(s) owning the line(s) to be crossed. If the crossing will be accomplished with the permission of the railroad(s), include supporting agreements. If a Board determination under 49 U.S.C. 10901(d)(1) will be sought, include such requests.**

Not applicable.

OPERATIONAL DATA (Section 1150.5)

- (a) **As exhibit D, an operating plan, including traffic projection studies, a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economies.**

See Exhibit D hereto.

FINANCIAL INFORMATION (Section 1150.6)

- (a) **The manner in which applicant plans to finance construction or acquisition, the kind and amount of securities to be issued, the approximate terms of their sale and total fixed charges, the extent to which funds for financing are now available, and whether any of the securities issued will be underwritten by industries to be served by the proposed line. Explain how the fixed charges will be met.**

BNSF anticipates that it will finance the purchase of the Core Lines from current operating revenues.

- (b) **As exhibit E a recent balance sheet. As exhibit F, an income statement for the latest available calendar year prior to filing the application.**

A balance sheet and income statement for BNSF and its subsidiaries are at page 18 and page 17, respectively, of combined Exhibits E and F hereto, which is BNSF's SEC Form 10-K for the year ended December 31, 2004.

- (c) **A present value determination of the full costs of the proposal. If construction is proposed, the costs for each year of such construction (in a short narrative or by chart).**

As described above, the methodology for determining the purchase price is set forth in Article 3, Section E.2 of the Operating Agreement, and that issue is subject to litigation before the South Dakota court in Pierre. To date, the State has failed to provide the information and data for such a determination.

- (d) **A statement of projected net income for 2 years, based upon traffic projections. Where construction is contemplated, the statement should represent the 2 years following completion of construction.**

Because they are highly confidential and commercially sensitive, the total revenues for traffic on the Core Lines for 2003 and 2004 are being submitted under seal.³³ While annual

³³ BNSF's records do not track net income separately for traffic on the Core Lines.

traffic revenues on the Core Lines are highly dependent on crop production levels and market conditions, it is anticipated that revenues may grow moderately over the next two years.

ENVIRONMENTAL AND ENERGY DATA (Section 1150.7)

As exhibit H, information and data prepared under 49 C.F.R. Part 1105, and the “Revision of the National Guidelines Environmental Policy Act of 1969,” 363 I.C.C. 653 (1980), and in accordance with “Implementation of the Energy Policy and Conservation Act of 1975,” 49 C.F.R. Part 1106.

As set forth in Mr. Randall’s Verified Statement, there will be no changes in service or operations on the Core Lines as a result of the proposed transaction. In addition, no actions such as construction or abandonment are contemplated as part of the proposed transaction, nor does BNSF have plans to dispose or alter properties subject to Board jurisdiction that are 50 years old or older. Accordingly, the acquisition does not require the preparation of environmental documentation (including a Historic Report) under 49 C.F.R. § 1105.6(c)(2)(i) and § 1105.8(b)(1). *See Borealis Infrastructure Trust Management, Inc. – Acquisition Exemption – Detroit River Tunnel Company et al.*, STB Finance Docket No. 33984 (served December 19, 2001) at 7 (transaction exempt from environmental and historic reporting if there are no changes in service levels or significant operational changes). BNSF will consult with the Board’s Section of Environmental Analysis about these issues.

ADDITIONAL SUPPORT (Section 1150.8)

Any additional facts or reasons to show that the public convenience and necessity require or permit approval of this application.³⁴

If the State of South Dakota's promise to provide BNSF with the option to purchase the Core Lines is found to be not enforceable and therefore is not fulfilled, sustained investment in a network that BNSF does not own and can never buy would be at risk. BNSF's purchase of the Core Lines would ensure that BNSF remains financially committed to South Dakota's transportation infrastructure, and its rail shippers and markets, for the long run. Further, because BNSF is operating under a Modified Certificate, Board approval is not required for cessation of service on this vital rail network. If BNSF's purchase is approved, the Core Lines will be subject to full common carrier operating status, and subsequent cessation of service cannot occur without Board approval. In addition, the transaction will protect the interests of shippers by preserving all existing service and routing options, and there will be no rate increases, service or operations disruptions, or loss of competitive options as a result of the transaction. Moreover, shippers will benefit from the cessation of millions of dollars in rental payments annually which will lower BNSF's overall cost structure in South Dakota and allow BNSF to improve its competitiveness and investment capabilities.

BNSF backed its promise to the State and shippers at a time when the prospects for resurrection of rail service were grim. If commitments made for public-private initiatives are not honored for large infrastructure projects requiring millions of dollars in investments, similar

³⁴ As previously noted, since the time the Board's regulations were published, Congress has amended the Interstate Commerce Act to provide that it is no longer necessary for an applicant to prove that a rail acquisition proposal is required or permitted by the public convenience and necessity. As amended, the statute now *requires* that an acquisition application be approved unless opposing parties prove that it would be *inconsistent* with the public convenience and necessity. See 49 U.S.C. § 10901(c).

projects which benefit shippers in need cannot be supported by investing railroads with scarce capital resources.

NOTICE (Section 1150.9)

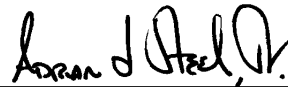
Summary of the proposal which will be used to provide notice under § 1150.10 (f).

See Exhibit N hereto.

CONCLUSION

WHEREFORE, for the reasons set forth above, BNSF Railway Company respectfully requests the Surface Transportation Board to approve this Application and authorize it to acquire and continue to operate the Core Lines.

Respectfully submitted,



Jeffrey R. Moreland
Richard E. Weicher
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Attorneys for BNSF Railway Company

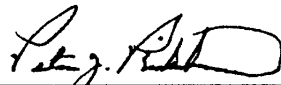
Dated: February 18, 2005

SECTION 1150.10(c)

**SIGNATURE, OATH AND CERTIFICATION
OF EXECUTIVE OFFICERS**

**BNSF RAILWAY COMPANY, Applicant
and
BURLINGTON NORTHERN SANTA FE CORPORATION, Controller of Applicant**

I, Peter J. Rickershauser, declare under penalty of perjury under the laws of the United States that I am Vice President – Network Development of BNSF Railway Company and Vice President – Network Development of Burlington Northern Santa Fe Corporation, Applicant herein and controller of Applicant respectively; that I am one of the executive officers of said corporations and I am duly authorized to sign, to verify, and to file this Application on behalf of the foregoing; that I have knowledge of the matters contained in this Application to the extent they relate to the foregoing; and that the statements in this Application are true and correct to the best of my knowledge and belief.



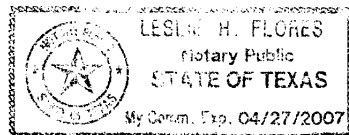
Peter J. Rickershauser

Executed on February 18, 2005

STATE OF TEXAS)
)
COUNTY OF TARRANT)

On this 18~~th~~ day of February 2005, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Peter J. Rickershauser, Vice President – Network Development for BNSF Railway Company and Vice President – Network Development for Burlington Northern Santa Fe Corporation and Craig N. Smetko, Assistant Secretary, BNSF Railway Company and Assistant Secretary, Burlington Northern Santa Fe Corporation, the corporations that executed the foregoing instrument, and acknowledged the execution thereof to be the free and voluntary act and deed of such officer and the voluntary act and deed of said corporations, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the foregoing instrument and that the seal affixed is the corporate seal of said corporation(s).

Witness my hand and official seal affixed the day and year first above written.



Leslie H. Flores
Notary Public

My commission expires: 09/27/2007

I, Craig N. Smetko, hereby certify that I am an Assistant Secretary of BNSF Railway Company, Applicant herein, and an Assistant Secretary of Burlington Northern Santa Fe Corporation, controller of Applicant and that Peter J. Rickershauser, Vice President – Network Development of BNSF Railway Company and Vice President – Network Development of Burlington Northern Santa Fe Corporation, is duly authorized to sign, to verify, and to file this Application on behalf of BNSF Railway Company and Burlington Northern Santa Fe Corporation.




Craig N. Smetko, Assistant Secretary
BNSF Railway Company

Craig N. Smetko, Assistant Secretary
Burlington Northern Santa Fe Corporation

Dated this 18th day of February, 2005, at Fort Worth, TX

APPENDIX A

VERIFIED STATEMENT OF
CHRISTOPHER M. RANDALL

**VERIFIED STATEMENT OF
CHRISTOPHER M. RANDALL**

My name is Christopher M. Randall. I am Director of Short Line Development at BNSF Railway Company ("BNSF"). My business address is 2500 Lou Menk Drive, Fort Worth, Texas 76131.

I have held various positions in the rail industry since 1979. From 1983 to 1990, I was Deputy Secretary and the Director of Railroads for the South Dakota Department of Transportation. From 1990 to 1993, I was Manager of Communications and Connecting Carriers at Burlington Northern Railroad Company ("BN"). In 1993, I became the Account Leader of Service Partner Marketing for BN, and continued in a similar position after the merger between BN and The Atchison, Topeka and Santa Fe Railway Company ("SF" or "Santa Fe") in 1995. In 1996, I became Director of Short Line Development.

As Director of Short Line Development, I am responsible for managing all aspects of the relationship between BNSF and more than 40 of its connecting shortline railroads. I have the ultimate responsibility for: communicating with the market managers responsible for marketing traffic over these lines; evaluating the shortlines' requests for the waiver of contract provisions; assisting the shortlines in their efforts to increase local traffic; working to amend the purchase and sale agreements ("PSAs") as requested by these shortlines, and negotiating new line sales and leases. Because of my familiarity and experience with South Dakota and the Core System, I have continued to perform various functions (*e.g.*, annual rental calculations) related to BNSF and its Operating Agreement pertaining to the Core Lines.

The purpose of my testimony is to provide information about the relationship BNSF has with the State of South Dakota with respect to the Core Lines. Specifically, I describe BNSF's past and current operation of the Core Lines under the terms of the 1986 Operating Agreement between the parties. I also describe the dire situation that existed in South Dakota in the early 1980's when the State faced the very real possibility that it would lose all rail service, and the steps that BN and BNSF have undertaken over the past 23 years to provide South Dakota shippers with rail service. Further, I discuss BNSF's decision to exercise its purchase option under the Operating Agreement and the reasons for that decision.

**Acquisition of the Core Lines by the
State of South Dakota**

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company's ("Milwaukee Road") bankruptcy and 1980 abandonment of approximately 1,000 miles of rail lines located within the State of South Dakota produced a crisis for South Dakota's agricultural producers who depended on the Core Lines, in particular, to provide affordable access to some of their most important markets. The Core Lines, which run through South Dakota's wheat, corn, and soybean belts, extend approximately 368 miles from Canton to Mitchell, from Sioux Falls to Canton, and from Aberdeen to Sioux City, Iowa.

In response to these exigent circumstances, Governor William J. Janklow called upon the South Dakota Legislature to approve a plan for the State to purchase the Core Lines and recruit a railroad to resume operations on the most critical of the abandoned lines. The Legislature ultimately approved the Governor's plan, but the State had no carrier to operate the lines. It was generally acknowledged at the time that, because the Core Lines had proved to be grossly unprofitable and much of the track was in a state of utter disrepair, the State would have to provide millions of dollars in ongoing financial assistance in order to entice any railroad to

resume operation of the lines. Even with the eventual legislative approval of a subsidy measure, however, the State was unable to finalize an agreement with any railroad to resume operations on the abandoned Core Lines.

BN agrees to operate the Core Lines *without* State subsidies

In June of 1981, the State announced that it was negotiating with BN to take over and operate the Core Lines. On June 16, 1981, it was announced that BN had tentatively agreed to operate the Core Lines *without* any financial subsidy from the State. Pursuant to this agreement, BN would assume and maintain operation of the Core Lines through June 30, 1986. Both BN and South Dakota had the right to cancel the agreement after 3 years. The agreement ensured South Dakota's producers access to BN's vast network of rail lines, resulting in faster and more efficient access to a broader selection of markets at extremely competitive rates. Rather than pay any subsidies whatsoever to BN, the State would instead simply contribute financially to the repair of its own deteriorated Core Lines – first to FRA Class I (10 mph) and later to FRA Class II (25 mph) standards. Although a final agreement was not actually finalized and executed until December 22, 1981, BN relied on its handshake agreement with the State and began operations on the Core Lines almost immediately. BN has operated the Core Lines pursuant to a modified certificate of public convenience and necessity since 1981.

The 1986 Operating Agreement and Purchase Option

On July 1, 1986, the State and BN agreed to extend their contractual relationship and entered into a revised Operating Agreement. *See* Exhibit B. The revised agreement extended BN's operation of the Core Lines for an additional 15 years, with optional cancellation rights for both parties after 5 years and again after 10 years. In exchange for extending its commitment to the Core Lines, BN received as a quid pro quo the contractual option to purchase the lines from

the State of South Dakota at a price determined pursuant to a formula set forth in the Agreement.

This option to purchase is contained in Article 3, § E.2, which provides, in part:

2. Option to Purchase Rail Facilities. BN shall have the option to purchase the entire Rail Facilities, which for purposes of this section includes right-of-way fences, buildings not used by the Operator, overhead bridges, and industry and elevator tracks, at any time during the term of this Agreement, provided that, at such time, BN is not in default hereunder. BN may elect to purchase the entire Rail Facilities by paying to the State an amount equal to the purchase price, which the State paid to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for the rail facilities plus any state funds that were used for Rehabilitation of the Rail Facilities. Federal funds used in the Rehabilitation of said Rail Facilities shall not be considered in determining purchase price. . . .

As a result, pursuant to the Operating Agreement, if BN decides to exercise its right to purchase the Core Lines (or "Rail Facilities," as termed in the Operating Agreement), the purchase price paid by BN to the State is to be determined by adding the following: (1) the amount that the State originally paid for those Rail Facilities to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company which previously owned them; and (2) the amount of state funds actually used for rehabilitation of the Rail Facilities.

On August 7, 1991, the Operating Agreement was amended to further extend its term through July 1, 2020. *See Exhibit B.* BN's option to purchase was preserved unaltered by the 1991 amendment, and the optional cancellation rights for both parties were deleted. The 1991 negotiations occurred in an environment when both BN and the South Dakota Department of Transportation were focused on providing a stable rail transportation environment for South Dakota shippers. This could be achieved only by making further infrastructure improvements that were required by traffic growth. The immediate infrastructure needs were to replace some light (less than 90 lb.) rail and to expand capacity at the Mitchell, South Dakota yard. The amendment created a framework that allowed these improvements to occur and, in turn,

supported ongoing shipper investments and even further traffic growth. In reliance upon the mutual assurances under the Operating Agreement, including the option to purchase, BNSF invested well over \$50 million in capital improvements to the Core Lines between 1994 and the present. In addition, a number of shippers invested millions in new facilities along Core Lines in response to BN and BNSF marketing programs and in anticipation of long-term uninterrupted access to the markets served by the broad geographic reach of BNSF's network.

The 1991 amendment represented a significant step in the journey from bankruptcy and abandonment to the restoration of stable, high quality, self-sustaining rail service. Acquisition by BNSF will complete this remarkable transition which stands as one of the most (if not the most) successful public-private partnerships in rail transportation history. In my role as Director of the South Dakota Division of Railroads, I received many inquiries about our successful preservation of the Core Lines and our partnership with BN.

An unparalleled success

BNSF's decades-long commitment and partnership with the State to rehabilitate and revive the Core Lines has been, by any standard, an unparalleled success. In 2004, more than 43,000 carloads moved over the Core Lines, compared to less than 6,000 carloads that were expected in 1981, not including a larger capacity growth brought about by the transition to larger capacity cars which, individually, transport more product than equipment fleets of the early 1980's. Combined with significant investments by grain shippers and BNSF, the Core Lines are a shining example of modern grain handling and transportation systems. This efficiency stands in stark contrast to the obsolete system the Milwaukee Road and its customers had abandoned.

It should also be noted that the Core Lines were only one component of the South Dakota-BN partnership to restore and eventually enhance essential rail service to many South

Dakota shippers who had few, if any, options for continued service at the time of the Milwaukee Road bankruptcy. The State and BN worked out arrangements first to start service to the defunct Core Lines and then turned their attention in the early 1980's to an even larger problem – the looming demise of the East-West mainline connecting the Core Lines at their north end to the North American rail network. After South Dakota expended funds to acquire the Core Lines, the former Milwaukee Road main line between Ortonville, Minnesota and Terry, Montana was on the block, and its fate was undetermined. The State's initial investment in the Core Lines was critically at risk. Through a bold and innovative series of transactions, South Dakota and BN partnered together with the federal government to develop a plan for South Dakota to acquire the mainline and contract with BN for continued and permanent rail service. In return for a purchase option which has been exercised and honored by South Dakota, BN retired the bonds South Dakota issued for the mainline acquisition and paid off its debt to the Federal Railroad Administration for a loan received by the State for rehabilitation funds. This commitment just to keep the mainline connecting to the Core Lines and pay off the associated debt represented an extraordinary investment by BNSF of approximately \$60 million, plus interest.

BNSF exercises its contractual option to purchase the Core Lines

On June 29, 2004, BNSF exercised its contractual option to purchase the Core Lines that it had spent the past 23 years nurturing into profitability. The South Dakota Core has become an important source of grain for markets served by BNSF. These markets include not just the export grain markets traditionally important to South Dakota since 1981, but also domestic markets such as grain processing and cattle feeding. Since 1981, BNSF has established 10 grain shuttle facilities along the Core Lines, converting this once defunct branchline system into a state of the art heavy-haul, highly efficient major bulk grain artery on BNSF's network. BNSF needs

to invest in assets (such as rail) that have a useful life beyond the term of the current Operating Agreement. Such investments are most prudently made in an ownership environment rather than an operating environment where South Dakota would own all improvements at the end of the term. Also, cessation of millions of dollars annually in rental payments frees up resources for further investment in growing the business on the Core Lines. Finally, rail shippers who have invested in grain and other handling facilities along the Core Lines, or who might contemplate doing so in the future, would more likely do so with an assurance of long-term access to stable rail service (implementing long-term marketing and operating plans) and with continued access to present and future significant national and international markets.

Despite repeated requests from BNSF, the State has failed to fulfill its contractual obligations to supply the appropriate information for calculation of the purchase price pursuant to the terms of the parties' contract. Specifically, the State has not supplied BNSF with the exact original purchase price of the Core Lines from the Milwaukee Road, and has not supplied BNSF with the amount of State funds used to rehabilitate the lines. In addition, the State has refused BNSF's offer to tender, in cash, the purchase price for the Core Lines established by the Operating Agreement.

Current and Planned Service On the Core Lines and Operations

In 2004, more than 43,000 carloads originated or terminated on the Core Lines. These consisted primarily of agricultural commodities, but also included building products, consumer products and chemicals. BNSF has since the inception of its service over Core Lines and currently provides the only service to shippers located on the Core Lines.

As set forth in the Operating Plan (Exhibit D), there will be no rate increases, service or operational changes, or loss of shippers' existing competitive options as a result of the transaction. All existing interchanges will be maintained.

Status of Connecting Carriers

BNSF interchanges with Dakota Southern Railway (DSRC) at Mitchell, as it has since the 1980's. DSRC serves a customer located at Mitchell and in the past has served customers on the line to Kadoka. DSRC does not interchange with any other Class I carrier nor has it done so in the past.

BNSF interchanges with the D&I Railroad (DAIR) at Sioux Falls, South Dakota and Sioux City, Iowa. DAIR provides common carrier service on the line between Canton and East Wye Switch, South Dakota (near Elk Point, South Dakota) and the line between Hawarden, Iowa and Beresford, South Dakota pursuant to an agreement with BNSF. DAIR operates via overhead trackage rights on the Core Lines between East Wye Switch and Sioux City and between Canton and West Junction where it connects with its own line. With one exception, DAIR does not interchange with any other Class I carrier. The exception, which will be maintained after the transaction, is with respect to traffic that DAIR moves from a rock quarry at Dell Rapids, South Dakota on its lines north of Sioux Falls to Sioux City, where it can interchange the traffic with BNSF, Union Pacific Railroad and Canadian National Railway.

Also, at Sioux Falls, BNSF interchanges with Ellis & Eastern (EE) which operates a line from Ellis to Valley Springs, South Dakota. EE does not interchange with any other Class I carrier.

The Dakota, Minnesota & Eastern Railroad (DME) operates via a series of overhead trackage rights agreements on the Core Lines between Wolsey and Aberdeen, South Dakota as a

result of trackage rights that were granted initially by Milwaukee to the Chicago & North Western Railroad as the CNW abandoned most of its line between James Valley Junction and Aberdeen. DME uses these trackage rights to serve customers on its line between Redfield and Mansfield and to interchange with BNSF at Aberdeen.

With BNSF's acquisition of the Core Lines, we do not anticipate any changes to the status of interchanges with any connecting carriers. All interchanges will continue to be maintained as they are today.

VERIFICATION

I, Christopher M. Randall, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on February 18, 2005.

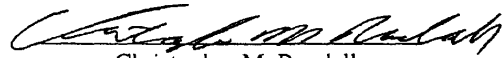

Christopher M. Randall

Exhibit A

EXHIBIT A

UNANIMOUS WRITTEN CONSENT OF BNSF BOARD OF DIRECTORS
AUTHORIZING PURCHASE OF THE CORE LINES

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
BOARD OF DIRECTORS
UNANIMOUS WRITTEN CONSENT

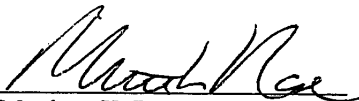
We, the undersigned, being all of the Directors of The Burlington Northern and Santa Fe Railway Company (the "Company"), hereby waive all notice of the time, place or purpose of a meeting, consent in writing to adoption of the following resolutions as being the action of the Board of Directors of the Company pursuant to the provisions of Section 141(f) of the Delaware Corporation Law and Article III, Section 11 of the By-Laws of the Company, and direct that this unanimous consent be filed with the minutes of the proceedings of the Board of Directors of the Company:

RESOLVED, that the Company is hereby authorized to purchase the entire "Rail Facilities" as defined in Article 3.E.2 of the Operating Agreement Between the State of South Dakota and Burlington Northern Railroad Company dated July 1, 1986, as amended (commonly known as the "South Dakota Core"), and of the Company's Capital Project Approval Request ("CPAR") #C9220104 for calendar year 2004, for an amount of approximately REDACTED ; and

FURTHER RESOLVED, that each of the Chairman, President and Chief Executive Officer, any Executive Vice President, and the Vice President - Network Development (together, the "Authorized Officers") is hereby authorized and empowered to commit funds and to negotiate, execute and deliver an election to exercise purchase rights and/or such other contracts, agreements and related or other documents which such Authorized Officer, in his or her sole discretion deems necessary, appropriate or desirable to effectuate the purchase of the Rail Facilities (as defined in Article 3.E.2 of the Operating Agreement Between the State of South Dakota and Burlington Northern Railroad Company dated July 1, 1986, as amended) contemplated hereby, any such election to exercise purchase rights and/or other contracts, agreements or documents to contain such terms and conditions as such Authorized Officer may in his or her sole discretion approve, such approval to be conclusively evidenced by the execution of said election to exercise purchase rights and/or other contracts, agreements and documents;

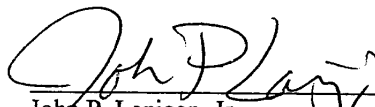
FURTHER RESOLVED, that the officers of the Company are each hereby authorized and empowered on behalf and in the name of the Company to take all such further actions, to execute all such other agreements, instruments and documents, pay all such taxes, fees and expenses, and to do such other acts and things as such officer or officers, in his, her or their discretion shall deem necessary or expedient for the accomplishment of the purposes of the foregoing resolutions, and any actions already taken for the purposes of accomplishing the foregoing resolutions are hereby ratified and approved.

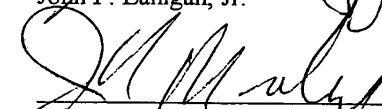
IN WITNESS WHEREOF, we have hereunto affixed our signatures as of this 31st day of August, 2004.


Matthew K. Rose


Thomas N. Hund


Carl R. Ice


John P. Lanigan, Jr.


Jeffrey R. Moreland

Being all of the Directors of
The Burlington Northern and
Santa Fe Railway Company

(SEAL)

ATTEST:

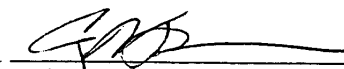

Assistant Secretary

Exhibit B

EXHIBIT B

**OPERATING AGREEMENT
(As Amended)**

BURLINGTON NORTHERN RAILROAD CO.
DOCKET NUMBER 22833

OFFICE OF SECRETARY
FORT WORTH, TEXAS

OPERATING AGREEMENT
BETWEEN
THE STATE OF SOUTH DAKOTA
AND
BURLINGTON NORTHERN RAILROAD COMPANY

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BN 22833

PREAMBLE

THIS AGREEMENT made and entered into this 1st day of July, 1986, by and between Burlington Northern Railroad Company of Fort Worth, Texas, a Delaware corporation, duly qualified to do business in the State of South Dakota, hereinafter called "BN" or "Operator", and the State of South Dakota, a body politic, by and through its South Dakota State Railroad Board, hereinafter called "State". WITNESSETH:

RECITALS

WHEREAS, the State is owner of the Rail Facilities described in Appendix 1 attached hereto and made a part hereof; and

WHEREAS, the State and BN have entered into an Operating Agreement dated December 22, 1981 in which BN agreed, inter alia, to become the operator of the Rail Facilities and to provide Rail Freight Service thereover, and pursuant to which BN has provided such Rail Freight Service; and

WHEREAS, the State and BN desire that, upon expiration of the Operating Agreement dated December 22, 1981, BN shall continue to be the operator of the Rail Facilities and provide Rail Freight Service thereover pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the State's permission for BN to use its Rail Facilities, BN's continued provision of Rail Freight Service, BN's payment to the State in the amounts set forth in ARTICLE 3E.1. hereof, and other good and valuable consideration, and upon the terms and conditions contained herein, BN and the State do hereby mutually agree as follows:

ARTICLE 1 - DEFINITIONS

The following words and phrases shall have the following meanings ascribed to them:

Federal Railroad Administration (FRA). The United States of America, Department of Transportation, Federal Railroad Administration.

FRA Class 2 Track Safety Standards. Those several applicable definitions of Class 2 found in 49 C.F.R. § 213, et seq., as amended.

Interstate Commerce Commission (ICC). The United States of America, Interstate Commerce Commission.

Line Segment(s). The individual railroad lines listed in Appendix 1 which comprise collectively the Rail Facilities.

Maintenance. The normal and regular work required to keep the Rail Facilities in the condition necessary to enable continued safe operations at the Maintenance Standard established in Article 5A herein, including, but not limited to, tie, rail and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control and other necessary repairs and work. Maintenance does not include the performance of major repairs occasioned by force majeure as defined in Article 10 herein.

Rail Carrier(s). A person, corporation or other organization providing transportation by railroad.

Rail Facilities. The track, bridges, switches, and related rail bed structures owned by the State and made available to the Operator hereunder, or any portion thereof, as described in Appendix 1. The term "Rail Facilities"

does not include right-of-way fences, buildings (except buildings used by Operator), overhead bridges, or industry or elevator tracks, unless otherwise designated in Appendix 1.

Rail Freight Service. The service to be provided by the Operator hereunder.

Rehabilitation. The work, in addition to Maintenance, including capital improvements, to improve or upgrade the condition of the Rail Facilities above and beyond their existing condition.

Shipper(s). Any individual or entity utilizing the Rail Freight Service provided by the Operator, including consignees.

System. The Burlington Northern Railroad Company railroad system.

ARTICLE 2 - RAIL FACILITIES

A. Facility Description. The State shall provide the Rail Facilities described in Appendix 1 hereto.

B. Operational Rights. The State hereby grants and permits the Operator use of any and all of the State's rights and licenses in the Rail Facilities owned by the State as may be necessary for the purpose of providing Rail Freight Service. The rights granted the Operator herein relate solely to the provision of Rail Freight Service and all related activities over facilities owned by the State, and the Operator may not use such facilities for any other purpose without the prior written authorization of the State. Nothing in this Article shall be construed as in any sense relieving the Operator of its responsibilities pursuant to Article 6 hereto.

C. Administration of Rail Facilities. Notwithstanding any other provision to this Agreement, the State shall retain sole responsibility for the management of State owned Rail Facilities and equipment, other than in connection with provision of Rail Freight Service and all related activities. The State shall have the right to make such Rail Facilities available for use by third parties, subject to prior approval by the Operator; provided, however, that such use by third parties shall not materially interfere with the provision of Rail Freight Service by Operator.

D. State Inspection. The State or its duly authorized representative, upon reasonable notice to the Operator, shall have the right to inspect any and all Rail Facilities for the purpose of verifying the Operator's compliance with the terms and conditions of this Agreement.

E. Other Operations. Nothing in this Agreement shall be construed so as to prohibit the State or any of its subdivisions from contracting separately for operations by the Operator or by third parties over State owned trackage not included in the Rail Facilities described in Appendix 1 hereto.

ARTICLE 3 - OPERATIONS

A. Provision of Rail Freight Service. The Operator hereby agrees to provide transportation of freight by railroad to and from points on the Rail Facilities at the levels and frequencies performed by the Operator over the remainder of its System under similar transportation circumstances. Rates and charges to be paid by South Dakota shippers for such service shall be established by the Operator on the same basis as those rates and charges paid to BN by shippers which are similarly situated.

B. Control. The Operator shall be responsible for the management, operation, and control of the Rail Freight Service, including, but not limited to, the provision of locomotives, cars and other equipment, the dispatching and scheduling of trains, employment and assignment of crews and other employees, publishing of transportation, accessorial and demurrage rates and charges in appropriate tariffs, agreeing to divisions, per diem and other accounting and operating agreements with other railroads, and the performance of Maintenance as provided in Article 5 hereto. The Operator will endeavor to provide such service in an efficient manner.

C. Operating Rules and Regulations. The Operator shall have the exclusive authority to promulgate and adopt rules and regulations for the operation of the Rail Freight Service.

D. Labor Agreements. The Operator shall have exclusive responsibility for the negotiation and implementation, as required, of labor agreements and arrangements relative to the Operator's performance hereunder, and nothing in this Agreement shall be construed as to give rise to any contractual or other legal relationship between the State and any labor organization.

E. Rental Payments and Purchase Option.

1. Rental Payments. BN agrees to pay rental payments to the State for use of the Rail Facilities during the term of this Agreement in accordance with the following provisions of this ARTICLE 3E.1.

(a) For all traffic originated or terminated on the Rail Facilities during each calendar year, beginning January 1, 1987, excluding coal, BN will make annual rental payments equal to the amount derived by multiplying the gross freight revenues earned from such traffic, by the appropriate percentage set forth below:

<u>For that Portion of Gross Freight Revenue:</u>	<u>Percentage</u>
\$20 Million and under	0%
Between \$20 and \$25 Million	5%
Between \$25 and \$30 Million	6%
In excess of \$30 Million	7%

Example

Gross freight revenue is \$35 million in 1988. Payments are:

First \$20 Million	x 0% = 0
\$5 Million	x 5% = \$250,000
\$5 Million	x 6% = 300,000
\$5 Million	x 7% = <u>350,000</u>
Total Rental Payment	\$900,000

For purposes of this Article, traffic which originated or terminated on the Napa to Platte line or the Mitchell to Chamberlain line and which was interchanged to or from the BN is considered to be traffic which originated or terminated on the Rail Facilities.

All rental payments shall be made by BN as soon as practicable after BN has determined its settled revenues for the preceding year, but in no event later than July 1 of each succeeding year.

The revenue figures hereinabove stated shall be adjusted effective July 1, 1987 and each July 1 thereafter to recognize the increase or decrease in the cost of labor and material as reflected in the Annual Indexes of Chargeout Prices and Wage Rates (1967=100), Series RCR, included in indexes of Railroad Material Prices and Wage Rates and supplements combined (excluding fuel) thereto, issued by

the Association of American Railroads. In making such determination, indexes for the Western District shall be used. The material prices, wage rates and supplements combined (excluding fuel) index figure for the calendar year 1985 shall be taken as the base.

2. Option to Purchase Rail Facilities. BN shall have the option to purchase the entire Rail Facilities, which for purposes of this section includes right-of-way fences, buildings not used by the Operator, overhead bridges, and industry and elevator tracks, at any time during the term of this Agreement, provided that, at such time, BN is not in default hereunder. BN may elect to purchase the entire Rail Facilities by paying to the State an amount equal to the purchase price, which the State paid to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for the rail facilities plus any state funds that were used for Rehabilitation of the Rail Facilities. Federal funds used in the Rehabilitation of said Rail Facilities shall not be considered in determining purchase price.

If BN exercises its option to purchase the Rail Facilities pursuant to this Article, the BN purchase of the Rail Facilities is subject to any encumbrances against the property except that the State shall warrant that no encumbrances exist which would deprive BN of use and enjoyment of the Rail Facilities as a railroad. If the BN exercises its option to purchase the Rail Facilities pursuant to this ARTICLE 3E.2., BN agrees that it will provide Rail Freight Service on the Rail Facilities for a period of not less than ten (10) years following BN's purchase thereof. Provided, however, nothing contained herein shall preclude BN from discontinuing rail service

over any Line Segment or Segments, or from permitting third party use thereof.

The State further agrees that, if the Rail Facilities are purchased by BN, the State will use its best efforts to secure an exemption for BN from railroad taxes levied by the State of South Dakota on the Rail Facilities for a period of five (5) years after the purchase is finalized.

F. Service on Mitchell to Chamberlain Line Segment. BN shall provide Rail Freight Service over that portion of the Canton to Chamberlain Line Segment between Mitchell and Chamberlain, South Dakota, through December 31, 1986, and ~~after that date the Line Segment between Mitchell and Chamberlain~~ shall no longer be considered a part of the Rail Facilities and BN shall have no responsibility as Operator to provide Rail Freight Service ~~thereover~~. Any termination of Rail Freight Service on the Mitchell to Chamberlain Line Segment shall be accomplished in accordance with the laws and Interstate Commerce Commission regulations applicable thereto, and shall in no way modify the Operator's obligation to provide Rail Freight Service over the remaining Rail Facilities pursuant to this Agreement, which obligation shall continue in full force and effect.

ARTICLE 4 - ADDITIONS TO RAIL FACILITY

A. Additions to the Rail Facilities. The State hereby grants to Operator the right to make such Additions to the Rail Facilities as Operator may require to perform the Rail Freight Service, at Operator's sole expense, unless otherwise mutually agreed. The term "Addition(s)" as used herein shall mean capital improvements which are in addition to the Rail Facilities.

Operator shall own and have the right to remove any of said Additions which

can be removed without causing the Rail Facilities to be less serviceable than before said Addition was made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made shall become the property of the State and a part of the Rail Facilities.

ARTICLE 5 - MAINTENANCE

A. Maintenance Standard. The State shall have no obligation to perform any Maintenance of the Rail Facilities. Operator shall be obligated to perform Maintenance of the Rail Facilities in accordance with FRA Class 2 Track Safety Standards.

B. Responsibility. The Operator shall be responsible for the performance of Maintenance required to keep the Maintenance Standard contained in Article 5A in effect. Operator acknowledges the assignment to it of responsibility for purposes of compliance with 49 C.F.R. § 213, et seq. and shall conduct routine inspections of the Rail Facilities in accordance with 49 C.F.R. § 213, et seq. for the term of this Agreement. Maintenance performed by the Operator pursuant to this Article shall not materially interfere with Rail Freight Service.

C. State Remedies. Should the State determine that the Operator is in default of its obligations under this Article, the State shall provide the Operator with notice of such default pursuant to Article 12 hereto. In the event that the Operator fails to cure such default to the satisfaction and acceptance of the State within thirty (30) days of receipt of such notice, the

State shall have the right to terminate this Agreement and enter upon the Rail Facilities. The exercise of such right shall not impair any other rights of the State for default in law or equity.

ARTICLE 6 - LEGAL RELATIONSHIPS AND RESPONSIBILITY TO PUBLIC

A. Laws to be Observed. The Operator shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees identified herein. The Operator shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the Operator or its employees, agents, or subcontractors.

B. Permits, Licenses, and Taxes. The Operator shall procure all permits and licenses, obtain any and all necessary safety waivers, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of this Agreement; provided, however, that the Operator shall be exempt, pursuant to SDCL 10-28-24 (S.B. 236, Section 13, March 7, 1981), from railroad taxes levied by the State of South Dakota. The Operator shall defend, indemnify and hold harmless the State and its representatives from any liability resulting from the Operator's, or its

vendors' or subcontractors', failure to make timely payment of, or to pay, any such items or similar items, or failure to comply with the reporting, return or other procedural requirements with respect to their payment. Any interest, penalties, or other liabilities arising from such failure shall be solely for the Operator's account.

C. Public Convenience and Safety. The Operator shall at all times conduct operations in connection with performance of Rail Freight Service so as to ensure the safety and protection of the general public, residents along the Rail Facilities and their property. Operator shall be responsible for maintaining the facilities included in each Line Segment in safe working condition, except to the extent that applicable law places this responsibility on any governmental authority, and shall comply with all laws, ordinances, rules, regulations, final orders and decrees applicable to such facilities. Operator shall provide upgrading of such facilities, or new or additional facilities, as may be required by appropriate governmental authority, to the same extent provided by Operator over the remainder of its System under similar transportation circumstances. Nothing herein shall be construed as prohibiting or estopping the Operator from contesting in good faith any such laws, ordinances, rules, regulations, or final orders and decrees applicable to such facilities.

D. Liability of the Operator. The Operator shall indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property, including State owned property,

on account of any negligent act, omission, neglect, or misconduct of the Operator, its representatives, officers, employees, agents, or subcontractors; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright, or from any claims or amounts arising or recovered under any "Workmen's Compensation Act", comparable law, or any other law, ordinance, or order or decree; or from any liens or claims for which the State might be or become liable, or to which the State's property might be or become subject, which are chargeable to the Operator or any of its subcontractors, representatives, officers, employees or agents, except any liens imposed on the State's property by the Federal Government arising from the use of Federal monies for Rehabilitation of the Rail Facilities. The Operator shall have and maintain adequate insurance to fulfill its obligations under this Article.

E. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no liability upon any employees of the State, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

F. Assignment. Neither party shall assign its rights or delegate its duties under this Agreement or any part thereof except as provided in Article 6G.

G. Subcontracts. With the prior written approval of the State, which approval shall not be unreasonably withheld, the Operator shall have the

right, so long as it is not in default hereunder, to enter into subcontracts for the performance of all or a portion of its agreements, duties and obligations under this Agreement. Any such subcontract (i) shall be in accordance with all applicable laws and regulations, including those of the Interstate Commerce Commission; (ii) shall not conflict with any term or provision of this Agreement; (iii) shall in no way affect the State's rights under this Agreement and, under the express terms of the subcontract, the rights of the subcontractor shall be subject and subordinate to the terms of, and the rights of the State under, this Agreement; and (iv) the period of any such subcontract (including any option by the subcontractor to extend such period) shall be for a period not longer than the term of this Agreement. No subcontract permitted by this Article 6G shall affect or reduce any of the obligations of the Operator hereunder or relieve or release the Operator from such obligations, or create any contractual relationship between the State and any subcontractor or labor organization, and this Agreement and all obligations of the Operator hereunder shall continue in full force and effect as the obligations of a principal and not those of a surety.

H. Amendment. No term or provision of this Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided, however, that when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.

I. Governing Law. Except as expressly provided herein, this Agreement shall be governed in all respects by the law of the State of South Dakota, and any recourse shall be to the State Courts of the State of South Dakota, provided, however, that if the State Courts do not have subject matter jurisdiction over an issue, recourse may be had to a Federal Court located in South Dakota.

J. Conduct Pending Dispute. In the event of any dispute between the State and the Operator arising out of, or relating to, the performance of this Agreement, which dispute is the subject of an action brought in good faith by any party hereto, as provided in Article 6I of this Agreement, Rail Freight Service and any and all other obligations of the Operator and of the State hereunder shall be performed in the manner they were performed prior to the bringing of such action, pending final determination of such action by the Court, and the expiration of the time for any appeal, or the determination of any such appeal, if taken.

ARTICLE 7 - RECORDS AND REPORTS

A. Records. The Operator shall maintain records of operations and activities conducted pursuant to this Agreement to the same extent and in the same form and detail as those normally maintained by the Operator with respect to other identifiable portions of its System.

B. State Inspection. Upon reasonable notice, the Operator shall allow the State or its authorized representatives to inspect the operations and activities of the Operator pursuant to this Agreement, and to examine applicable records of the Operator at BN's principal place of business during normal business hours, for the purpose of verifying the Operator's compliance

with the terms and conditions of this Agreement and the amount of traffic moved by the Operator over the Rail Facilities and the gross freight revenues earned therefrom; provided, however, that the Operator may refuse the State or its representatives access to records which the Operator is required to keep confidential pursuant to the express terms of any law, ordinance, decree or regulation of any governmental authority with jurisdiction over the Operator.

C. State Responsibility for Records. The State, as owner of the Rail Facilities, shall be responsible for all records relating to track construction agreements, property acquisition agreements, track leases, property leases and all other property related transactions respecting the Rail Facilities. The State shall provide BN with notice of each such transaction. The State agrees to insert provisions in each agreement between the State and an industry or elevator to the effect that said industry or elevator will hold the State and BN harmless for liability occurring as a result of BN rail operation over the leased facilities, such provisions to be as protective to the State and BN as those provisions contained in BN's standard form of similar type of agreement, appended hereto as Appendix 2.

ARTICLE 8 - CONTRACT TERM, RENEWAL AND RENEGOTIATION

A. Term. This Agreement shall be in effect from July 1, 1986, until July 1, 2001, provided, however, that this Agreement may be terminated in accordance with the provisions of Article 8.B or Article 9.

B. Optional Termination. Either the Operator or the State may terminate this Agreement after five (5) years from the Effective Date hereof, by notifying the other party of its intent to do so by certified mail at least one hundred eighty (180) days prior to the end of five years of operations

hereunder, and such termination shall be without cost or liability to either party.

Either the Operator or the State may terminate this Agreement after ten (10) years from the Effective Date hereof, by notifying the other party of its intent to do so by certified mail at least one hundred eighty (180) days prior to the end of ten years of operations hereunder, and such termination shall be without cost or liability to either party.

ARTICLE 9 - TERMINATION

A. Termination For Fault. Subject to Article 6J hereto, should either the Operator or the State substantially fail to perform their obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement. The exercise of such right shall not impair any other rights of the terminating party under this Agreement or any rights of action against the defaulting party for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the Operator shall be deemed to include, but shall not be limited to, the insolvency of the Operator, appointment of a receiver of any part of the property of the Operator, any assignment by the Operator for the benefit of creditors, the filing of a petition in bankruptcy or insolvency laws or any laws relating to the relief of debtors or readjustment of indebtedness, by or against the Operator, or the attachment or distraint of any of the assets of the Operator at any time pursuant to any court order or other legal process.

B. Termination by Governmental Action. In the event that a final order or decree of a governmental authority or Court is rendered which requires, or would require if applied to Operator, BN to adopt or implement labor agreements or arrangements, with respect to compensation, rules governing working conditions, and fringe benefits, including protective arrangements, which are significantly different from, and inconsistent with, any existing agreements or arrangements presently in effect on the Rail Facilities, and which are imposed solely on account of and with respect to its performance of this Agreement, the Operator shall have the right, at its option, to terminate this Agreement by notifying the State of its intent to do so by certified mail thirty (30) days after the time for any appeal of such order has expired, or the determination of any such appeal, if taken, and such termination shall be effective on the sixtieth day following receipt of such notice by the State.

C. Termination Upon Purchase By Operator. This Agreement shall terminate upon the execution by the State and Operator of a purchase agreement in which the Operator exercises its option to purchase the entire Rail Facilities and accompanying fences, buildings, bridges, and tracks pursuant to ARTICLE 3E.2. of this Agreement.

ARTICLE 10 - FORCE MAJEURE

A. Force Majeure. The parties will be excused from performance of any of their respective obligations hereunder where such performance is prevented by any event beyond their respective control, and which is without the fault or negligence of either party, which shall include, without limitation, any actions of any federal, State or local agency or instrumentality; acts of God; strikes or other labor troubles; explosions; fires, or vandalism; provided,

however, that actions of the State shall not excuse the State from performance of its obligations hereunder.

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

A. The Operator. The Operator represents and warrants as of the Effective Date of this Agreement the following:

1. The Operator is a corporation duly organized in the State of Delaware, and validly existing and in good standing under the laws of the State of South Dakota, and is duly qualified to do business in each jurisdiction where the utilization of Railroad Facilities requires such qualification;
2. The Operator has the full power and authority to enter into this Agreement and to carry out the functions which it shall have undertaken in this Agreement;
3. All corporate and other proceedings required to be taken by or on the part of the Operator to authorize the Operator to enter into this Agreement and perform the Rail Freight Service shall have been or will be duly taken; and
4. The execution of this Agreement and the provision of Rail Freight Service will not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

B. The State. The State represents and warrants the following:

1. The State has been granted, by its legislature, the power and authority to enter into this Agreement and to carry out its obligations under this Agreement;
2. The entering into and performance of this Agreement on the part of the State does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body;
3. The State has duly and validly acquired the rights to use the Rail Facilities and has made those rights available to the Operator; and
4. There exist no legally binding restrictions on use of the Rail Facilities which would preclude performance of this Agreement by the Operator; provided, however, that this Agreement shall be subject to existing trackage rights approved by the IOC.

ARTICLE 12 - NOTICES

A. Notices. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first-class, postage prepaid to the person specified herein as entitled to receive such notice, or to their duly authorized representative, unless notice of a change of address is given pursuant to the provisions of this Article.

For the State: Director, Division of Railroads
Department of Transportation
State of South Dakota
Pierre, South Dakota 57501

For the Operator: Vice President, Twin Cities Region
Burlington Northern Railroad Company
176 East Fifth Street
St. Paul, Minnesota 55101

cc: Senior Vice President
Regional Operations - East
Burlington Northern Railroad Co.
9401 Indian Creek Parkway
Overland Park, Kansas 66210

The date of any such notice shall be the date of delivery as prescribed by this Article.

ARTICLE 13 - INTERPRETATION

A. References to Articles. All references to articles or sections include all subarticles or subsections under the Article referenced, and references to subarticles similarly include references to sub-subarticles.

B. Referenced Standards. All references specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the effective date of this Agreement, except where a particular issue is indicated. Municipality, utility and railroad standards shall govern except as otherwise provided herein.

C. Severability. In the event any article, section, subarticle, paragraph, sentence, clause, or phrase contained herein shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other articles, sections, subarticles, paragraphs,

sentences, clauses, or phrases of this Agreement, which shall remain in full force and effect as if the article, section, subarticle, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally a part thereof, provided, however, that if the foregoing determination, declaration, or adjudication results in a material detriment to either party, under the terms of this Agreement, that party may, upon thirty (30) days written notice to the other party, terminate this Agreement without incurring further liability.

D. Effect of Headings. The headings and titles to provisions contained herein are for convenience only, and shall not be deemed to modify or affect the rights and duties of the parties to this Agreement.

E. Entire Agreement. This Agreement and the Appendices attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreements between the parties are hereby abrogated and withdrawn except as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized officers on the date and year first above written.

ATTEST:

BURLINGTON NORTHERN
RAILROAD COMPANY

[Signature] By [Signature]
Vice President

(SEAL)

APPROVED AS TO LEGAL FORM

STATE OF SOUTH DAKOTA

By [Signature]
Assistant Attorney General

By David B. Miller
Chairman, South Dakota State
Railroad Board

By [Signature]
Governor

APPENDIX 1

ABERDEEN TO MITCHELL

Commencing at the North line of the NW 1/4 of the NW 1/4 of Section 25, and the NE 1/4 of the NE 1/4 of Section 26, Township 123 North, Range 64 West of the 5th P.M., also known as Milepost 777.0 and additionally known as Railroad Engineer's Survey Station Number 105+40.2N and additionally known as Melgaard Road and extending in a Southerly direction a distance of approximately 126.4 miles in and through the Counties of Brown, Spink, Beadle, Jerauld, Sanborn and Davison and terminating at the intersection with the Canton to Mitchell Line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6, and additionally known as Railroad Engineer's Survey Station Number 6434+08 containing a gross area of 2,055 acres, more or less, all of which is more particularly described on those certain right of way and track maps designated V.S.D. 11/ 1 through 32, inclusive, and on station maps V.S.D. 11/ S-3 (Warner); V.S.D. 11/ S-4 (Duxbury); V.S.D. 11/ S-5 (Mellette); V.S.D. 11/ S-8 (Ashton); V.S.D. 11/ S-10 (Redfield); V.S.D. 11/ S-13 (Tulare); V.S.D. 11/ S-14 (Spottswood); V.S.D. 11/ S-15 (Bonilla); V.S.D. 11/ S-19 (Wolsey); V.S.D. 11/ S-21 (Virgil); V.S.D. 11/ S-23 (Alpena); V.S.D. 11/ S-25 (Woonsocket); V.S.D. 11/ S-27 (Cuthbert); V.S.D. 11/ S-29 (Letcher); and V.S.D. 11/ S-30 (Loomis); all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Aberdeen	290,291,1157
Warner	695,897,917,1196,1201,TE112
Duxbury	1063
Mellette	296,898,1011,T163
Ashton	300,301
Redfield	636,676,1083,1133,T162
Tulare	308,310,1070,T161
Bonilla	934,970
Wolsey	808,815,918,1001
Alpena	936,985,1047,1084,1134
Woonsocket	328,785,931,986,1039,1079,1098,1135,T156
Letcher	337,669,670,677,TE110
Loomis	694,850,915
Mitchell	480,794,795,854,855,926,1038,1092,1160,1256 T204,T205

NORTH SIOUX CITY TO MITCHELL

Commencing at the Iowa-South Dakota border located at the centerline of the Big Sioux River in Section 14, Township 89 North, Range 48 West of the 5th P.M., also known as Milepost 518.9, and additionally known as Railroad Engineer's Survey Station Number 305+51N, and extending in a northwesterly direction a distance of approximately 130.8 miles in and through the Counties of Union, Clay, Yankton, Bon Homme, Hutchinson and Davison and terminating at the intersection with Canton to Mitchell Line in the NE 1/4 of the SW 1/4 of Section 22, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 649.7, and additionally known as Railroad Engineer's Survey Station Number 0+00, containing a gross area of 1801.8 acres, more or less, all of which is more particularly described on those certain right of way and track maps designated V.S.D. 21/ 8 and 9; V.S.D. 22/ 1 through 22, inclusive; V.S.D. 22A/ 1 through 12, inclusive, and on station maps V.S.D. 21/ S-8 (Scotland); V.S.D. 22/ S-1a, S-1b (West Yard); V.S.D. 22/ S-1c (McCook); V.S.D. 22/ S-2 (Jefferson); V.S.D. 22/ S-4 (Elk Point); V.S.D. 22/ S-6 (Burbank); V.S.D. 22/ S-8a, S-8b (Vermillion); V.S.D. 22/ S-10 (Meckling); V.S.D. 22/ S-12 (Gayville); V.S.D. 22/ S-13 (Fullerville); V.S.D. 22/ S-14a, S-14b, S-15, S-22 (Yankton); V.S.D. 22/ S-17 (Utica); V.S.D. 22/ S-18 (Lesterville); V.S.D. 22/ S-20 (Plumb); V.S.D. 22A/ S-2 (Kaylor); V.S.D. 22A/ S-4 (Tripp); V.S.D. 22A/ S-5 (Beardsley); V.S.D. 22A/ S-7 (Parkston); V.S.D. 22A/ S-8 (Dimock); and V.S.D. 22A/ S-9 (Ethan), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Ethan	412,678,766,804,1090
Dimock	753,T113
Parkston	514,515,884,908,988,1000,1069,1076,1093,1156,1182 T114,T115,T116,T117
Beardsley	357,790,T118
Tripp	796,929,938,951,1002,1099,1153,1154,1169,T172,T120
Kaylor	924,963,1042,1107,T121
Scotland	768,769,774,852,853,867,900,932,953,1104,1159 1175,1197,1257,T122,T177
Lesterville	849,1031,1165
Yankton	581,585,647,652,698,752,771,799,907,1143,1176, 1209,1216,T126
Fullerville	846
Gayville	800,964,1200
Meckling	464,465,466,1190

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Vermillion	630,679,818,952,961,998,1016,1027,1175
Burbank	1012
Elk Point	402,403,950,1057,1074
Jefferson	922,1233
West Yard	683,797,1024,1127

CANTON TO MITCHELL

Commencing east of Canton, located 285 feet east of the west line of the SW 1/4 of the SE 1/4 of Section 18, Township 98 North, Range 48 West of the 5th P.M., also known as Milepost 293.1, and additionally known as Railroad Engineer's Survey Station Number 6588+96, and extending in a Westerly direction a distance of approximately 81.50 miles in and through the Counties of Lincoln, Turner, Hutchinson, McCook, Hanson and Davison and terminating at the intersection with the Aberdeen to Mitchell line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6, and additionally known as Railroad Engineer's Survey Station Number 2861+00, containing a gross area of 1,403 acres, more or less, and also including the western leg of the west wye at Canton also known as Milepost 295.3 and additionally known as Railroad Engineer's Survey Station 6707+92, and extending in a northerly direction to Milepost 50.5, also known as Railroad Engineer's Survey Station 3512+88 connecting with the Sioux Falls to Canton line, all of which is more particularly described on right of way and track maps designated V.S.D. 19/ 1 through 21b, inclusive, and on station maps V.S.D. 19/ S-1a, S-1b (Canton); V.S.D. 19/ S-4 (Worthing); V.S.D. 19/ S-5 (Lennox); V.S.D. 19/ S-6 (Chancellor); V.S.D. 19/ S-8 (Parker); V.S.D. 19/ S-10 (Marion); V.S.D. 19/ S-12 (Dolton); V.S.D. 19/ S-14 (Bridgewater); V.S.D. 19/ S-16 (Emery); V.S.D. 19/ S-18 (Alexandria); V.S.D. 19/ S-19 (Burton); and V.S.D. 19/ S-21a, S-21b (Mitchell), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Canton	237,238,870,871,894,913,914,977,1028,1072,1129 1222,T201,T202,T203
Worthing	816,955,1078,T130
Lennox	436,438,773,974,1091,1198,1199
Chancellor	997,1013,1054,1089,1162,1255,T133,T134,T210
Parker	899,901,1106,1167,1194,1205,T135
Marion	449,650,666,767,865,883,906,935,1050,1060,1075 1095,1117,1136,1137,1139,1140,1166,1193,T136
Dolton	876,1123
Bridgewater	1035,1036,1065,1087,1141,1172,1195,T139,T140,T194
Emery	409,705,857,965,1189,1202,1251,T141,T143
Alexandria	352,653,971,1122,1171,T144,T145,T146
Mitchell	101,482,686,792,814,962,968,1032,1046,1049,1150, 1207,1212,1218,1219,T207

SIoux FALLS

Commencing at the North Line of the NW 1/4 of the NW 1/4 of Section 33, Township 102 North, Range 49 West of the 5th P.M., also known as Milepost 74.1, and additionally known as Railroad Engineer's Survey Station Number 6807+96, and extending in a Southerly direction a distance of approximately 5.3 miles in Minnehaha County to a point of termination at the South line of the SW 1/4 of the NE 1/4 of Section 22, Township 101 North, Range 49 West of the 5th P.M., also known as Milepost 68.8 and additionally known as Railroad Engineer's Survey Station Number 4478+79, containing a gross area of 72 acres, more or less, and also including the connecting track to and the lead track in the Sioux Empire Industrial Park which begins at Milepost 73.8, also known as Railroad Survey Station Number 6822+32 and extending a distance of 4,506 feet, which includes Tract 2 of Block Eleven of the Sioux Empire Development Park One Addition and Tract R-1 of the Sioux Empire Development Park Two Addition to the City of Sioux Falls, all of which is more particularly described on right of way and track maps designated V.S.D. 17/ 8 and 9 on station maps V.S.D. 17/ S-8, S-9a, S-9b and S-9c (Sioux Falls), all of which are included herein and made a part hereof by reference. Excepting therefrom that portion of the S 1/2 of the NW 1/4 of Section 16, Township 101 North, Range 49 West of the 5th P.M. lying East of Phillips Avenue, north of 6th Street and southwesterly of a line 25 feet southwesterly of and parallel to the centerline of the main track, being the site of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's depot and freight house facility. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Sioux Falls	245,757,895,1058,1080,1101

SIOUX FALLS TO CANTON

Commencing at a point on the North line of the NW 1/4 of the SE 1/4 of Section 22, Township 101 North, Range 49 West of the 5th P.M., also known as Milepost 68.8 and additionally known as Railroad Engineer's Survey Station Number 4478+79, and extending in a Southerly direction a distance of approximately 18.7 miles in and through the Counties of Minnehaha and Lincoln to a point of termination at the intersection with the Canton to Elk Point line in the NE 1/4 of the NW 1/4 of Section 24, Township 98 North, Range 49 West of the 5th P.M., also known as Milepost 49.4, and additionally known as Railroad Engineer's Survey Station Number 97+08.5, containing a gross area of 243 acres, more or less, all of which is more particularly described on those right of way and track maps designated V.S.D. 17/ 9 through 14, inclusive, and on station maps V.S.D. 17/ S-11 (Harrisburg); and V.S.D. 17/ S-14 (Canton); all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Canton	238,980,1026,1040,1102,1238,T200
Harrisburg	759,941,1120,1131,T211

STIOUX CITY LINE

Commencing with the intersection with the West Line of Charles Street in the SE 1/4 of Section 27, Township 98 North, Range 47 West of the 5th P.M., in the City of Sioux City, Woodbury County, Iowa, also known as Milepost 511.90, and additionally known as Railroad Engineer's Survey Station Number 74+13.7 and extending in a westerly direction through Woodbury County to the Iowa-South Dakota border, located at the centerline of the Big Sioux River in Section 14, Township 89 North, Range 48 West of the 5th P.M., also known as Milepost 518.9, and additionally known as Railroad Engineer's Survey Station Number 295+61S, containing a gross area of 80 acres, more or less, all of which is more particularly described on that certain right of way and track map designated V. Iowa 19/ 23 and 24; and on station maps V. Iowa 19/ S-23b, S-23c, S-23d, S-24a, S-24b and S-24c (Sioux City), all of which are included herein and made a part hereof by reference. This line is referred to herein as the "Sioux City Line". The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Sioux City	471,473,619,620,641,642,643,644,645,682,869,1103

MITCHELL TO CHAMBERLAIN

Commencing at the intersection with the Aberdeen to Mitchell Line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6 and additionally known as Railroad Engineer's Survey Station Number 2861+00, and extending in a Westerly direction a distance of approximately 68.8 miles in and through the Counties of Davison, Aurora and Brule and terminating at the Easterly line of the Missouri River Bridge in the SW 1/4 of Section 21, Township 104 North, Range 71 West of the 5th P.M., also known as Milepost 442.4, and additionally known as Railroad Engineer's Survey Station Number 222+17, containing a gross area of 1,559 acres, more or less, all of which is more particularly described on right of way and track maps designated V.S.D. 19 /S-21a through 38B, inclusive, and on station maps V.S.D. 19/ S-21a, S-21b (Mitchell); V.S.D. 19/ S-23 (Betts); V.S.D. 19/S-24 (Mt. Vernon); V.S.D. 19/ S-27 (Plankinton); V.S.D. 19/ S-30 (White Lake); V.S.D. 19/ S-33 (Kimball); V.S.D. 19/ S-36 (Pukwana); and V.S.D. 19/ S-38A, S-38B (Chamberlain), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Betts	999
Mt. Vernon	944,T185
Plankinton	519,866,1125,1168,1235,1237
White Lake	561,563,564,568,798,1048,1246
Kimball	432,701,979,1014,1163,1164,1244
Pukwana	530,754,847,1114,1155
Chamberlain	377,378,381,382,680,681,788,916,921,987,993,994, 1088,1183,1188,T151

APPENDIX 2

Contract Transmittal

BNSF BNSF

Burlington Northern Santa Fe

Complete the form and send with original contract to:
BNSF Corporate Support, Contract Records, 4929
Northeast Parkway, Fort Worth, TX 76106-1818. See
attached instructions for more information.

ONLY ORIGINAL CONTRACT WITH ORIGINAL SIGNATURES ARE TO BE SUBMITTED

☐ MARK THIS BOX AND INCLUDE A FAX NUMBER IN THE SPACE BELOW TO REQUEST A RETURN FAX OF THIS TRANSMITTAL ONCE THE CONTRACT NUMBER IS ASSIGNED

FORM SUBMITTED BY:	PHONE NUMBER	FAX NUMBER	DATE SUBMITTED
Michael J. Galassi	817-352-4937	817-352-7219	1/21/04

DEPARTMENT	LOCATION	CONTRACT SIGNED BY:	OFFICER CODE
Contracts & Joint Facilities	Fl. Worth, TX	John T. Hall	Misc

☐ NEW CONTRACT	DATE OF CONTRACT (mm/dd/yyyy)	EFFECTIVE DATE (mm/dd/yyyy)	TERMINATION DATE (mm/dd/yyyy)	REVIEW DATE (mm/dd/yyyy)
Complete the following:				

☒ AMENDMENT	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	AMENDMENT DATE (mm/dd/yyyy)
Complete the following:	BN22833	07/01/1986	08/07/1991

☐ CANCELLATION	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	TERMINATION DATE (mm/dd/yyyy)
Complete the following:			07/01/2020

CONTRACT TYPE CODE	AMOUNT (TOTAL OR MAXIMUM CONSIDERATION)	FORM CONTRACT OR LAW DEPT. APPROVED (SPECIFY)	CONFIDENTIAL (Y,N)
			Y

CONTRACT PARTIES (OTHER THAN BNSF)

State of South Dakota

DESCRIPTION OF THE CONTRACT

Operating Agreement between BN(SF) and the State of SD. Amendment among other items extended the term to 7/1/2020, changed the rental payment terms, provided for the purchase by BN(SF) of the Appleton, MN - Orionville, SD line segment

CONTRACT LOCATION		LINE SEGMENT / MILEPOST INFORMATION					
STATE	CITY	LINE SEG. #	FROM MP #	TO MP #	LINE SEG #	FROM MP #	TO MP #
SD							

DOT #	FEDERAL FUNDED (Y,N)	FEDERAL PROJECT ID #	STATE PROJECT ID #

RAILROAD PROTECTIVE INSURANCE (Y,N)	CERTIFICATE OF INSURANCE ATTACHED (Y, N/A)	REFERENCE NUMBER (IF APPLICABLE)

BNSF BILLS OTHER PARTY? (Y,N)

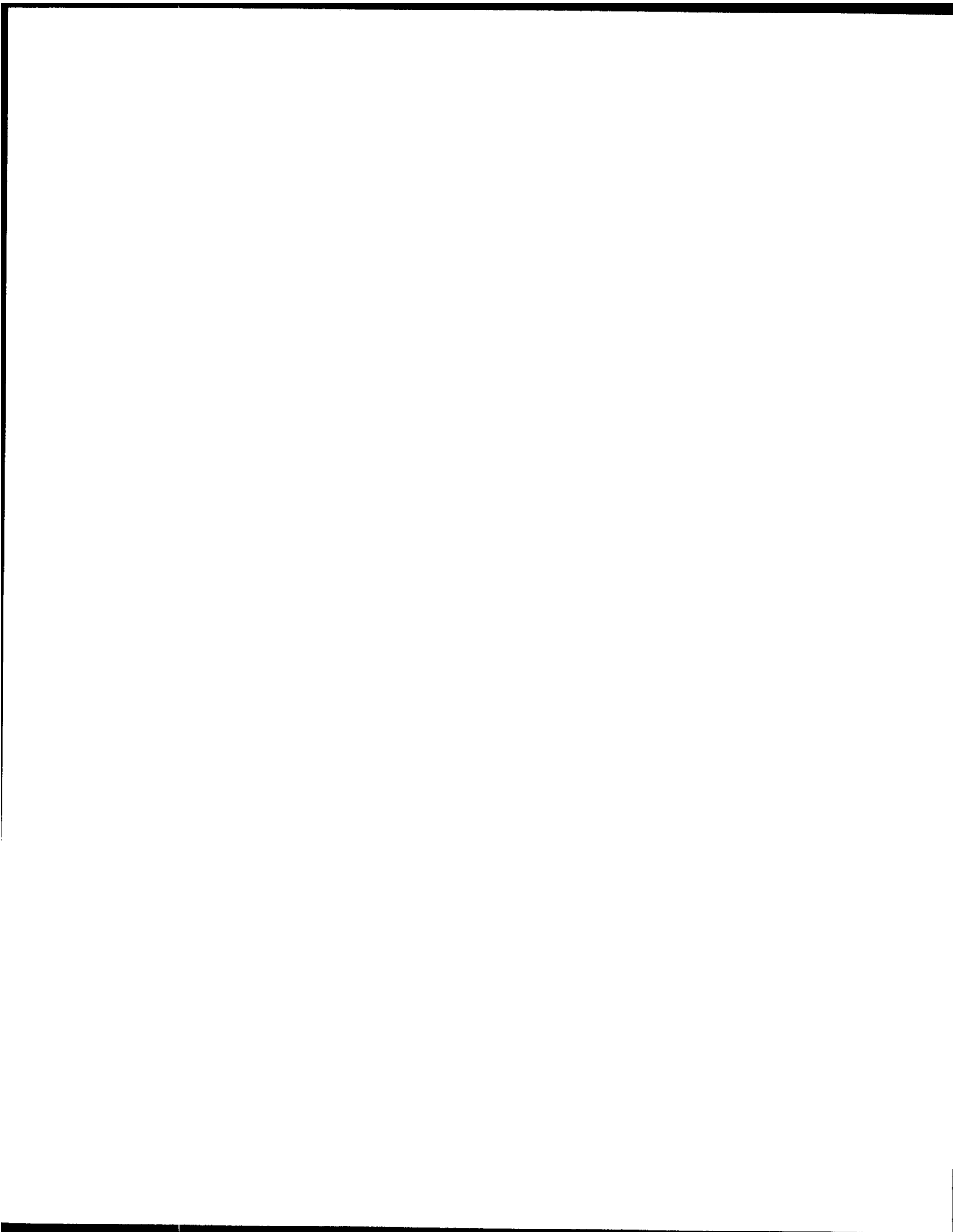
IF YES, ATTACH EXTRA COPY OF
CONTRACT FOR ACCT. DISTRIBUTION

NOTE: NO OTHER DISTRIBUTION WILL
BE MADE

SUBMITTING DEPT. IS RESPONSIBLE FOR
NOTIFYING CORPORATE SUPPORT WHEN
CONTRACT IS CANCELLED.

CONTRACT NO. (ASSIGNED BY CORPORATE SUPPORT.)

BN 22833.01



Docket # 14524
Contract # 22833

7/1/81

AMENDMENT TO OPERATING AGREEMENT
BETWEEN THE STATE OF SOUTH DAKOTA AND
BURLINGTON NORTHERN RAILROAD COMPANY

PREAMBLE

This Amendment Agreement, made and entered into this day of _____, 1991, by and between Burlington Northern Railroad Company of Fort Worth, Texas, a Delaware Corporation, duly qualified to do business in the State of South Dakota, hereinafter called "BN" or "Operator", and the State of South Dakota, a body politic, by and through its South Dakota State Railroad Board, hereinafter called "State".

WITNESSETH:

RECITALS

WHEREAS, the State and BN have entered into an Operating Agreement, dated July 10, 1986, hereinafter "Operating Agreement", in which BN agreed, inter alia, to become the Operator of the Rail Facilities and to provide Rail Freight Service thereover, and pursuant to which BN has provided such Rail Freight Service; and

WHEREAS, the State and BN desire that the Operating Agreement be amended pursuant to ARTICLE 6H. thereof.

NOW THEREFORE, in consideration of the State's agreement to modify the rental provisions of the Operating Agreement and BN's performance of certain rail construction and acquisition projects, and for other good and valuable consideration, and upon the terms and conditions contained herein, BN and the State do hereby mutually agree to amend the Operating Agreement as follows:

Section 1. Scope of Amendment.

BN and the State agree that the Operating Agreement shall remain in full force and effect in all respects except as specifically amended in the following sections of this Amendment Agreement.

Section 2. Amendment of ARTICLE 3E.1 (Rental Payments) of the Operating Agreement.

BN agrees to continue to calculate rental payments to be made to the State for the use of the Rail Facilities during the term of the Operating Agreement in accordance with the provisions of ARTICLE 3E.1 of the Operating Agreement. However, the actual amount of the rental payment will be determined in accordance with the terms of this Section 2.

After BN has calculated the rental payment under the formula set forth in ARTICLE 22.1 of the Operating Agreement ("Amount Due Under Formula"), the actual rental payment BN makes to the State will be determined as follows:

- (1) If the Amount Due Under Formula is less than \$1 million, BN will pay the State \$100,000 as rental.
- (2) If the Amount Due Under Formula is greater than \$1 million, BN will pay the State the excess of the Amount Due Under Formula above \$1 million as rental, but in no event less than \$100,000.
- (3) If the Amount Due Under Formula is equal to \$1 million, BN will pay the State \$100,000 as rental.

No later than June 1 of each year during the term of the Operating Agreement, BN shall provide the State with notice pursuant to ARTICLE 12 of the Operating Agreement of the Amount Due Under Formula and the actual amount of the rental payment due under this Section 2 including an explanation of the basis for determining the revenue attributable to the Rail Facilities. BN will continue to make rental payments under the terms of this Section 2 until the "Reduced Rental Account", as determined hereinafter, aggregates \$8 million. The Reduced Rental Account will be established beginning with BN's August 1, 1991, rental payment to the State and is intended to accumulate no more than \$8 million. The Reduced Rental Account will be determined as follows:

Circumstance

If the Amount Due Under Formula is less than \$1 million, BN will pay the State \$100,000 as rental.

If Amount Due Under Formula is greater than \$1 million, BN will pay the State the excess of the Amount Due Under Formula above \$1 million as rental, but in no event less than \$100,000.

Amount Credited to Reduced Rental Account

Reduced Rental Account gets credited the difference between the Amount Due Under Formula and \$100,000.

Reduced Rental Account gets credited \$1 million.

If the Amount Due Under
Formula is equal to
\$1 million, BN will pay
the State \$100,000
as rental.

Reduced Rental Account
gets credited \$1 million.

BN's June 1 notice to the State shall also include a statement of the amount credited to the Reduced Rental Account for the year in question and a statement of the total accumulated amount credited to the Reduced Rental Account. Rental shall continue to be determined pursuant to this Section 2 until the State receives a notice from BN that the total accumulated credit in the Reduced Rental Account has reached \$8 million. Upon receipt of such notice and for the remainder of the term of the Operating Agreement, BN shall make rental payments to the State under the rental formula contained in the Operating Agreement, ARTICLE 3E.1.

Section 3. Amendment of ARTICLE 4 (Additions to Rail Facilities) of the Operating Agreement

BN and the State agree to amend ARTICLE 4 of the Operating Agreement by adding the following new Section B:

B. Acquisition of Ortonville to Appleton Line and Additions to Certain of the Rail Facilities

BN agrees to use its best efforts to acquire from the Soo Line Railroad Company a line of railroad between Ortonville and Appleton, Minnesota, at an estimated cost of \$900,000. Upon BN's acquisition of the Ortonville to Appleton line, it will rehabilitate the line at an estimated cost of \$1,500,000. In consideration for the State's agreement to reduce rental for use of the Rail Facilities, and for other good and valuable consideration, BN agrees to rebuild the north yard in Mitchell, South Dakota (at an estimated cost of \$1,037,000), relay all rail less than 90 pounds per yard between Mitchell and Canton, South Dakota (at an estimated cost of \$4,556,500), and relay all rail less than 90 pounds per yard between Mitchell, South Dakota, and Sioux City, Iowa (at an estimated cost of \$4,707,000), in accordance with the estimates attached as Exhibit 1 hereto. BN agrees that it will complete all five (5) of the aforementioned rail acquisition and construction projects no later than December 31 of the calendar year in which the State receives notice under ARTICLE 3E.1 of the Operating Agreement and Section 2 of this Amendment Agreement, stating that the Reduced Rental Account has been credited with \$8 million. If any of the aforementioned construction or acquisition projects have not been completed by December 31 of the calendar year in which the State receives notice that the Reduced Rental Account has been credited with \$8 million, BN agrees to pay a portion of the Reduced Rental

Account to the State as provided hereinafter. The amount to be remitted to the State in the event BN has not completed all rail construction or acquisition projects within the required time will be calculated as follows: the estimated cost (as set forth in Exhibit 1 hereto) of the uncompleted project(s), divided by \$12.7 million (the total cost of the rail construction/acquisition projects) multiplied by \$8 million (the State's funding commitment). BN shall pay the State any amount due under this paragraph no later than March 31 of the year following the year in which the State receives the notice that the Reduced Rental Account has been credited with \$8 million.

Between July 1, 1991, and November 15, 1998, BN agrees that it will complete at least one of the five (5) construction/acquisition projects in any two (2) year period in which the Reduced Rental Account has been credited with a total of \$2 million. BN and the State agree that: (1) BN will own the Ortonville to Appleton line and all additions, betterments and improvements on the line resulting from the rehabilitation project; and (2) the State will own the additions, betterments and improvements resulting from the rail construction projects at north yard in Mitchell, on the Mitchell to Canton line, and on the Mitchell to Sioux City line...

Section 4. Amendment of ARTICLE 8 of the Operating Agreement (Contract Term, Renewal and Renegotiation)

BN and the State agree to amend ARTICLE 8A. of the Operating Agreement by extending the termination date of the Agreement from July 1, 2001, to July 1, 2020, and by deleting the reference to ARTICLE 8B in ARTICLE 8A. BN and the State agree to amend ARTICLE 8B. of the Operating Agreement by deleting that section from the Operating Agreement in its entirety.

Section 5. Amendment of ARTICLE 12 of the Operating Agreement (Notices)

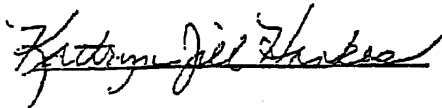
BN and the State agree to amend ARTICLE 12 of the Operating Agreement by changing the notice provision for the Operator as follows:

Vice President and General Counsel
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102

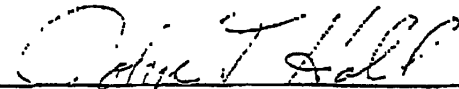
Vice President, Business Development
Burlington Northern Railroad Company
176 East 5th Street
St. Paul, MN 55101

IN WITNESS WHEREOF, the parties hereto have caused this
Amendment Agreement to be executed and attested by their
duly authorized officers on the date herein first-above
written.

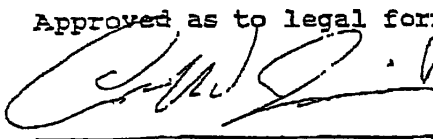
ATTEST:



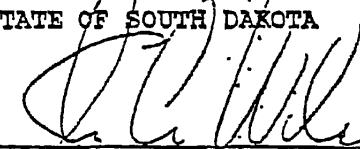
BURLINGTON NORTHERN RAILROAD COMPANY

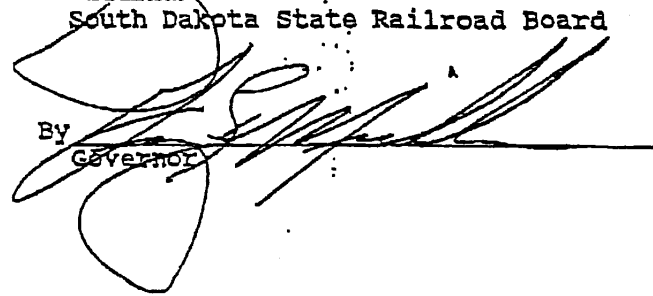
By 

Approved as to legal form by:



STATE OF SOUTH DAKOTA

By 
Chairman
South Dakota State Railroad Board

By 
Governor

Ident:
447AW19

BURLINGTON NORTHERN RAILROAD ESTIMATE	NONCASH CAPITAL CAPITAL	OPER EXP	OTHERS	TOTAL
---------------------------------------	----------------------------	-------------	--------	-------

LOCATION: ELK POINT TO ETHAN, SD.

LINE SEG.: 2001

RFA:

ACCT DIV:

BEGIN MP: 535.10

AFE:

STREET(S):

ENDING MP: 636.70

CLASS:

2

DOT #(S):

RELAY 25.5 MILES 85# CB INCLUDING 7 - #11 TURNOUTS WITH SH 115# CWR

AND 7 - #11 TURNOUTS, INCLUDING 7 SETS OF SWITCH TIES AND 8400 NT BALLAST.

BN WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -
ACCRUED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE

35.700 MBM N SSND & TRTD HDW SW TIES	19117
*UNLOAD TIES - COMPANY FORCES	1049
*REPLACE 35.700 MBM WD SW TIES (71%)	9873
*WORK TRAIN SERVICE	640
2800 LF NEW 115# BLANKS - STD CARB	23580
267600 LF SH 115# CWR	1949020
300 FLD WLDS 115# ORGOTHRM W/HRDWR	18900
3 N RH #11 MAN SW COMP 115# CWR	29141
4 N LH #11 MAN SW COMP 115# CWR	38854
7 NEW #11 RBM FROG 115# CWR	38603
14 EA NEW 15' GUARD RAIL 115#	15435
7 SW STAND(S), HTDL (RACOR 112G)	3321
7 CONN ROD(S) F/ RACOR 112G	652
7 TARGET(S) F/ RACOR 112G, RED	37
24 PR COMP JTS (NEW)	5040
600 EA TEMP JT BARS 115#	
1944 EA TRACK BOLTS 1 1/8" x 6"	3099
1944 EA SPRING WASHERS 1 1/8"	566
1576 TIE PLATES, NEW 5 1/2" BASE	6344
157884 TIE PLTS, SH 5 1/2" BS	381323
896 EA CLIPS TYPE "E"	1646
1666 EA LOCK SPIKES 5/8"x7"	1050
482594 EA TRK SPKS 5/8"x6"	110922
113800 RAIL ANCHORS NEW 5 1/2" BASE	103849
157892 ADZ PADS	31433
473676 LQD TPLGS	39789
*UNLOAD RAIL AND OTH	56196
*WORK TRAIN SERVICE	8320
*RELAY 133800 T.F. (75%)	474154
*RELAY 7 TURNOUTS (75%)	12403
*PLACE FIELD WELDS	32100
*PLACE 25.50 MI ADZ PADS	6560
8400 N.T. CR. ROCK BALLAST	43659
*UNLOAD BALLAST	7810
*SURFC, LINE & TAMP 133800 T.F.	16275
*WORK TRAIN SERVICE	23680
SUBTOTAL	3514440
OVERHEADS:	
ACCOUNTING	19472
EQUIPMENT RENTAL	162265

Ident:
447AW19

BURLINGTON NORTHERN RAILROAD ESTIMATE				NONCASH	OPER	OTHERS	TOTAL
				CAPITAL	CAPITAL		
					EXP		
BUSINESS EXPENSE						57000	
LABOR ADDITIVES:							
	TOTAL \$		OTHERS				
ACCOUNTING	19472		53.09%			10338	
CAPITAL:							
W/S	616420		54.44%			335579	
TYE	32640		48.65%			15879	
TRANSPORTATION:							
OTHERS =	100.00% X:						
	N. T. x	AVE. MILES x	CONSTANT				
TIES	100.0	396	0.0150			594	
RAIL	5182.7	851	0.0150			66157	
BALLAST	8400	200	0.0150			25200	
MATL ADD'S:							
MATL FURN BY BN	2821721		8.16%			230252	
LIABILITY INSURANCE						128513	
CONTINGENCIES						118317	
TOTAL OVERHEADS						1169566	
SUBTOTAL - INSTALLATION COSTS						4,684,006	
TRACK REMOVAL COST:							
*REMOVE TIES IN A NORMAL REPLACEMNT (29%)						4,033	
*LOAD TIES						628	
DISPOSE OF TIES						1,962	
*REMOVE RAIL & OTM IN A RELAY						168,751	
*LOAD RAIL						43,072	
*LOAD OTM						14,665	
*TRAIN SERVICE						28,475	
SUBTOTAL						261,586	
TRACK REMOVAL COST OVERHEADS:							
BUSINESS EXPENSE						18,491	
LABOR ADDITIVES:							
	TOTAL \$		LBR SURCHG				
M/W	(231,149)	111.00%	52.51%			121,375	
TYE	(28,475)	53.00%	48.65%			13,852	
CONTINGENCIES						8,396	
TOTAL OVERHEADS						162,114	
GROSS COST OF TRACK REMOVAL						423,700	
CREDIT VALUE OF MATERIAL SALVAGED:							
269200 L.F. RAIL			7 T/O'S			(543,974)	
1833095 LBS OTM							
NET TRACK REMOVAL COST						(120,274)	
TOTAL ACCOUNT 709						4,563,732	

Ident:
447AW19

BURLINGTON NORTHERN RAILROAD ESTIMATE		NONCASH	OPER		
		CAPITAL	CAPITAL	EXP	TOTAL

CHARGE ACCOUNT 761 - USE TAX - STATES AND PROVINCES					
STATE TAX	4.00%				114,615
LOCAL TAX	1.00%				28,653

TOTAL ACCOUNT 761					143,268
TOTAL COST TO STATE					4,707,000

LEDGER VALUE RETIREMENT
RATABLE

CREDIT ACCOUNT 8 - TIES			
5332	785 EA	6.792 EA	SYS AV
CREDIT ACCOUNT 9 - RAIL AND OTM			
662770	269200 LF RAIL	2.462 PER LF	SYS AV
300628	1833095 LBS OTM	0.164 PER LB	SYS AV

958730	TOTAL - CHARGE ACCOUNT 735 - ACCUMULATED DEPRECIATION; ROAD		

RAIL AND OTM RECOVERED BY RELAY:				AVERAGE TIES / 100':		
				59		
RAIL	TF MATL	RAIL	JT.B.	T.P.	SPIKE	ANCHOR
85# CB	134600	100.00%	100.00%	100.00%	100.00%	100.00%
134600		TOTALS				

INCLUDING TURNOUTS:

	# 20	# 11	# 9	# 7	LF RAIL	LBS REG OTM	LBS T/O OTM	VALUE
90# CB			7				42000	2415
85# CB					269200	1791095		541559
TOTALS:								
			7		269200	1791095	42000	543974

Ident:
447AW18

Exhibit 1

BURLINGTON NORTHERN RAILROAD ESTIMATE		NONCASH	OPER	
		CAPITAL	CAPITAL	OTHERS

LOCATION: CANTON TO MARION, SD.				
LINE SEG.:	2002	RFA:	ACCT DIV:	
BEGIN MP:	295.00	AFE:	STREET(S):	
ENDING MP:	326.65	CLASS:	2	DOT # (S):
RELAY 24.6 MILES OF 75 AND 85# CB INCLUDING 6 - #10 TURNOUTS WITH SH 115# CWR				
AND 6 - #11 TURNOUTS. INCLUDING 6 SETS OF SWITCH TIES AND 8100 NT BALLAST.				

BN WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -
ACCURED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE

30.600 MBM N SSND & TRTD HDW SW TIES	16386
*UNLOAD TIES - COMPANY FORCES	899
*REPLACE 30.600 MBM WD SW TIES (71%)	8462
2400 LF NEW 115# CB - STD CARBON	20212
259360 LF SH 115# CWR	1889005
276 FLD WLDS 115# ORGOTHRM W/HRDWR	17388
3 N RH #11 MAN SW COMP 115# CWR	29141
3 N LH #11 MAN SW COMP 115# CWR	29141
6 NEW #11 RBM FROG 115# CWR	33089
12 EA NEW 15' GUARD RAIL 115#	13230
6 SW STAND(S), HTDL (RACOR 112G)	2847
6 CONN ROD(S) F/ RACOR 112G	559
6 TARGET(S) F/ RACOR 112G, RED	32
30 PR COMP JTS (NEW)	6300
552 EA TEMP JT BARS 115#	
1656 EA TRACK BOLTS 1 1/8" x 6"	2639
1656 EA SPRING WASHERS 1 1/8"	482
1114 TIE PLATES, NEW 5 1/2" BASE	4484
153578 TIE PLTS, SH 5 1/2" BS	370923
768 EA CLIPS TYPE "E"	1411
1428 EA LOCK SPIKES 5/8"x7"	900
468399 EA TRK SPKS 5/8"x6"	107659
109740 RAIL ANCHORS NEW 5 1/2" BASE	100144
153586 ADZ PADS	30576
460758 LQD TPLGS	38704
*UNLOAD RAIL AND OTM	54664
*WORK TRAIN SERVICE	7680
*RELAY 130152 T.F. (75%)	461226
*RELAY 6 TURNOUTS (75%)	10631
*PLACE FIELD WELDS	29532
*PLACE 24.60 MI ADZ PADS	6328
8100 N.T. CR. ROCK BALLAST	43971
*UNLOAD BALLAST	7480
*SURFC, LINE & TAMP 130152 T.F.	15500
*WORK TRAIN SERVICE	22400
SUBTOTAL	3384025
OVERHEADS:	
ACCOUNTING	18744
EQUIPMENT RENTAL	156201
BUSINESS EXPENSE	54765

Ident:
447AW18

BURLINGTON NORTHERN RAILROAD ESTIMATE	CAPITAL	NONCASH CAPITAL	OPER EXP	OTHERS
LABOR ADDITIVES:				
TOTAL \$		OTHERS		
ACCOUNTING 18744		53.09%		9951
CAPITAL:				
W/S 594722		54.44%		323767
TYE 30080		48.65%		14634
TRANSPORTATION:				
OTHERS = 100.00% X:				
N. T. x AVE. MILES x CONSTANT				
TIES 85.7 396 0.0150				509
RAIL 5017.1 851 0.0150				64043
BALLAST 8100 160 0.0150				19440
MATL ADD'S:				
MATL FURN BY BN 2715252 8.16%				221565
LIABILITY INSURANCE				123710
CONTINGENCIES				113957
TOTAL OVERHEADS				1121286
SUBTOTAL - INSTALLATION COSTS				4,505,311
TRACK REMOVAL COST:				
*REMOVE TIES IN A NORMAL REPLACEMNT (29%)				3,456
*LOAD TIES				538
DISPOSE OF TIES				1,682
*REMOVE RAIL & OTM IN A RELAY				163,586
*LOAD RAIL				41,649
*LOAD OTM				13,163
*TRAIN SERVICE				25,925
SUBTOTAL				249,999
TRACK REMOVAL COST OVERHEADS:				
- BUSINESS EXPENSE				17,790
LABOR ADDITIVES:				
TOTAL \$		LBR SURCHG		
M/W (222,392) 111.00% 52.51%				116,777
TYE (25,925) 53.00% 48.65%				12,612
CONTINGENCIES				8,022
TOTAL OVERHEADS				155,201
GROSS COST OF TRACK REMOVAL				405,200
CREDIT VALUE OF MATERIAL SALVAGED:				
260304 L.F. RAIL 6 T/O'S				(491,971)
1645387 LBS OTM				
NET TRACK REMOVAL COST				(86,771)
TOTAL ACCOUNT 709				4,418,540
				111

Ident:
447AW18

BURLINGTON NORTHERN RAILROAD ESTIMATE NONCASH OPER
CAPITAL CAPITAL EXP OTHERS

CHARGE ACCOUNT 761 - USE TAX - STATES AND PROVINCES

STATE TAX	4.00%	110,368
LOCAL TAX	1.00%	27,592

TOTAL ACCOUNT 761	137,960
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TOTAL COST TO STATE	4,556,500
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LEDGER VALUE RETIREMENT

RATABLE

CREDIT ACCOUNT 8 - TIES

4571	673 EA	6.792 EA	SYS AV
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CREDIT ACCOUNT 9 - RAIL AND OTM

640868	260304 LF RAIL	2.462 PER LF	SYS AV
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269843	1645387 LBS OTM	0.164 PER LB	SYS AV
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915282 TOTAL - CHARGE ACCOUNT 735 - ACCUMULATED DEPRECIATION; ROAD

RAIL AND OTM RECOVERED BY RELAY: AVERAGE TIES / 100':

RAIL:	TF MATL	RAIL	JT. B.	T.P.	SPIKE	ANCHOR
85# CB	60456	100.00%	100.00%	100.00%	100.00%	100.00%
75# CB	69696	100.00%	100.00%	100.00%	100.00%	100.00%

130152 TOTALS

INCLUDING TURNOUTS:

	# 20	# 11	# 9	# 7	LF RAIL	LBS REG OTM	LBS T/O OTM	VALUE
85# CB			2		120912	804475	10800	243864
75# CB			4		139392	810912	19200	248107
TOTALS:			6		260304	1615387	30000	491971

PROJECTS IDENTIFIED IN AUGUST 2, 1991 AGREEMENT

LINE SEGMENT	DESCRIPTION OF PROJECT	EST. COST	STATUS	ACTUAL COST
Ortonville to Appleton	purchase	\$900,000	complete	\$900,000
Ortonville to Appleton	rehabilitate	\$1,500,000	complete	\$1,539,622
Mitchell yard	construct track	\$1,037,000	complete	\$1,259,900
Sioux City to Mitchell	relay rail - 25.5 miles	\$4,707,000	complete	
Canton to Mitchell	relay rail - 24.6 miles	\$4,556,500	complete	\$12,220,359
		\$12,700,500		\$15,919,881
Source of funds:	Planned	Actual		
BNSF	\$4,700,500	\$15,919,881		
State of South Dakota	\$8,000,000	\$8,000,000		

Ident:
409

BURLINGTON NORTHERN RAILROAD ESTIMATE		NONCASH	OPER	
		CAPITAL	CAPITAL	OTHERS

LOCATION: MITCHELL, SD				
LINE SEG.: 2011	RFA:			
BEGIN MP: (651.33)*	AFE:			* 0.00 BECAUSE TRACKAGE IS IN A YARD BUT
ENDING MP: (652.52)*	CLASS: 6			M.L. M.P. LOCATIONS ARE IN PARENTHESIS.
TRACK WORK IN MITCHELL YARD. RELAY 1608 T.F. WITH NEW 115# CWR INCLUDING 6				
TURNOUTS WITH C.B. TYPE SWITCHES AND FROGS. RELAY 9591 T.F. WITH S.H. 115# CWR.				
CONSTRUCT 117 T.F. NEW 115# CWR INCLUDING TURNOUT WITH C.B. TYPE SWITCH AND				
FROG. CONSTRUCT 700 T.F. S.H. 115# CWR. REPLACE 5428 CROSS TIES WITH NEW NO.4'S				
& SWITCH TIES ON 6 T/O'S. LINE 9275 T.F.				
BM WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -				
ACCRUED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE				

5825 NEW NO 4 HARDWOOD CROSS TIES	94618
32.080 MBM N SSND & TRTD HDW SW TIES	17179
*UNLOAD TIES - COMPANY FORCES	10117
*PLACE 397 WOOD CROSS TIES	3552
*REPLACE 5428 WD XTIES (71% TO PLC)	48559
*REPLACE 32.080 MBM WD SW TIES (71%)	8872
*WORK TRAIN SERVICE	3200
2400 LF NEW 115# BLANKS - STD CARB	20212
19200 LF SH 115# CWR	139840
519 PLANT WELDS	17983
111 FLD WLDS 115# ORGOTHRM W/HRDWR	6993
1 N RH #11 MAN SW COMP 115# CWR	9714
3 N LH #9 MAN SW COMP 115# CB	19754
1 N LH #11 MAN SW COMP 115# CWR	9714
2 N RH #9 MAN SW COMP 115# CB	13170
2 NEW #11 RBM FROG 115# CWR	11030
5 NEW #9 RBM FROG 115# CB	22783
14 EA NEW 15' GUARD RAIL 115#	15435
2 SW STAND(S), HTDL (RACOR 112G)	949
5 SW STAND(S), LT (RACOR 40)	1730
2 CONN ROD(S) F/ RACOR 112G	186
5 CONN ROD(S) F/ RACOR 40	394
5 SW STND STAFF(S) F/ RACOR 40	109
2 TARGET(S) F/ RACOR 112G, RED	11
10 TARGET(S) F/ 518, RCR 40, RED	31
10 TARGET(S) F/ 518, RCR 40, GRN	31
124 EA JT BARS 115#, NEW	2511
4 PR COMP JTS 115#/90RA, NEW	444
4 PR COMP JTS 115RE/85MLB, NEW	554
222 EA TEMP JT BARS 115#	
828 EA TRACK BOLTS 1 1/8" x 6"	1320
8 EA TRACK BOLTS 1 1/16" x 6"	10
16 EA TRACK BOLTS 1 1/16"x5 1/2"	20
828 EA SPRING WASHERS 1 1/8"	241
24 EA SPRING WASHERS 1 1/16"	8
1198 TIE PLATES, NEW 5 1/2" BASE	4823
11524 TIE PLTS, SH 5 1/2" BS	27833
768 EA CLIPS TYPE "E"	1411
1428 EA LOCK SPIKES 5/8"x7"	900

Ident:
409

BURLINGTON NORTHERN RAILROAD ESTIMATE	CAPITAL	NONCASH CAPITAL	OPER EXP	OTHERS
53661 EA TRK SPKS 5/8"x6"				12334
14526 RAIL ANCHORS NEW 5 1/2" BASE				13256
*UNLOAD RAIL AND OTM				4418
*WORK TRAIN SERVICE				640
*RELAY 9703 T.F. (75%)				34385
*RELAY 6 TURNOUTS (75%)				10631
*PLACE 817 T.F. RAIL AND OTM				4289
*PLACE 1 TURNOUTS				1772
*PLACE FIELD WELDS				11877
*LINE 9275 TF				24736
6375 N.T. CR. ROCK BALLAST				36548
*UNLOAD BALLAST				2420
*SURFC, LINE & TAMP 10800 T.F.				5425
*WORK TRAIN SERVICE				3840
SUBTOTAL				682812
OVERHEADS:				
ACCOUNTING				5362
EQUIPMENT RENTAL				44683
BUSINESS EXPENSE				32246
LABOR ADDITIVES:				
TOTAL \$		OTHERS		
ACCOUNTING 5362		53.09%		2847
CAPITAL:				
W/S 146317		54.44%		79655
TYE 7680		48.65%		3736
OPERATING:				
SCHEDULED 24736		54.44%		13466
TRANSPORTATION:				
OTHERS = 100.00% X:				
N. T. x AVE. MILES x CONSTANT				
TIES 817.9 396 0.0150				4859
RAIL 414.0 851 0.0150				5285
BALLAST 6375 90 0.0150				8606
MATL ADD'S:				
MATL FURN BY BN 467531 8.16%				38151
LIABILITY INSURANCE				35389
CONTINGENCIES				35
TOTAL OVERHEADS				274320
SUBTOTAL - INSTALLATION COSTS				957,132
TRACK REMOVAL COST:				
*REMOVE TIES IN A NORMAL REPLACEMENT (29%)				23,458
*LOAD TIES				4,906
DISPOSE OF TIES				15,332
*REMOVE RAIL & OTM IN A RELAY				15,421
*LOAD RAIL				3,584
*LOAD OTM				1,407
*TRAIN SERVICE				3,400

ident:
409

BURLINGTON NORTHERN RAILROAD ESTIMATE				NONCASH	OPER	OTHERS	
				CAPITAL	CAPITAL	EXP	
TRK REMOVL SUBTOTAL							67,508
TRACK REMOVAL COST OVERHEADS:							
BUSINESS EXPENSE							3,789
LABOR ADDITIVES:							
TOTAL \$		LBR SURCHG					
M/W	(47,369)	111.00%	52.51%	24,872			
TYE	(3,400)	53.00%	48.65%	1,653			
CONTINGENCIES							78
TOTAL OVERHEADS							30,392
GROSS COST OF TRACK REMOVAL							97,900
CREDIT VALUE OF MATERIAL SALVAGED:							
22398 L.F. RAIL		6 T/O'S		(43,235)			
175898 LBS OTM							
NET TRACK REMOVAL COST							54,665
TOTAL ACCOUNT 709							1,011,797
CHARGE ACCOUNT 761 - USE TAX - STATES AND PROVINCES							
STATE TAX 4.00%							20,163
LOCAL TAX 1.00%							5,040
TOTAL ACCOUNT 761							25,203
TOTAL COST TO STATE							1,037,000
RAIL AND OTM RECOVERED BY RELAY:				AVERAGE TIES / 100':			
				59			
RAIL:	TF MAIL	RAIL	JT.B.	T.P.	SPIKE ANCHOR		
90# CB	1608	100.00%	100.00%	100.00%	100.00%	100.00%	
75# CB	9591	100.00%	100.00%	100.00%	100.00%	100.00%	
11199		TOTALS					
INCLUDING TURNOUTS:							
	# 20	# 11	# 9	# 7	LF RAIL	LB REG OTM	LBS T/O OTM
90# CB			2	4	3216	28307	36000
75# CB					19182	111591	
TOTALS:			2	4	22398	139898	36000
							43235

Exhibit C

EXHIBIT C

MAP

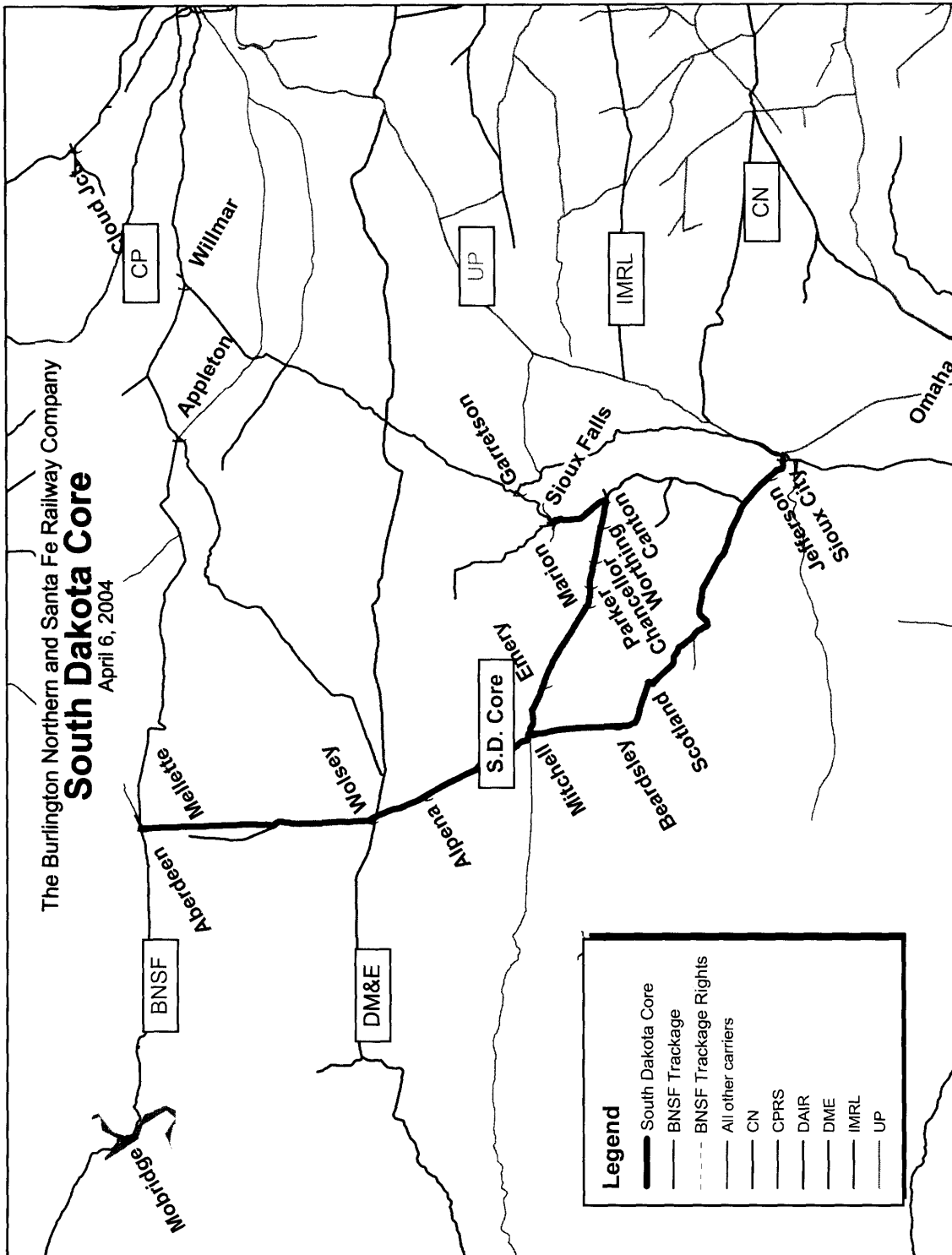


Exhibit D

EXHIBIT D

OPERATING PLAN

EXHIBIT D

OPERATING PLAN

BNSF intends to make no changes in operations or service as the result of its proposed acquisition of the Core Lines, and no traffic diversions will occur. Train service will continue on the same schedules as it now operates, the same equipment and crews out of Aberdeen, Sioux Falls, and Sioux City will be used as are currently being used, and shippers will continue to receive the same service. There will be no rate changes as a result of the transaction. All interchanges will be maintained pursuant to existing agreements. No abandonments or discontinuances are planned. Accordingly, the information and data provided below concerning BNSF's current and projected operations fulfill the Operational Data requirements of 49 C.F.R. 1150.5.

BNSF's current and projected train service on the Core Lines is as follows:

<u>Train Route</u>	<u>Train Type</u>	<u>Days Operating</u>
Mitchell – Aberdeen	Local	M, W, F
Aberdeen – Mitchell	Local	TU, TH
Aberdeen – Mitchell	Local	SU
Sioux City – Mitchell	Local	TU, TH, SU
Mitchell - Sioux City	Local	M, W, F
Sioux Falls - Canton - Sioux Falls	Local	M, W, F
Sioux Falls - Mitchell - Sioux Falls	Local	TU, TH, SU

Aberdeen -		
Mellette -		M, TU, W, TH, F,
Aberdeen	Local	SA

Notes:

Some trains also operate on lines other than Core Lines.
Grain trains are handled on non-scheduled service.

The counties and cities currently served and to be served by BNSF on the Core Lines and connections with other railroads are as follows:

North/South corridor running south from Aberdeen to Sioux City:

Brown County - Aberdeen (connection with BNSF mainline; connection with SD owned DMV&W operated line north of Aberdeen; also DM&E has interchange rights with BNSF in BNSF's yard and DM&E has a series of trackage rights between Aberdeen and Wolsey), Warner

Spink County - Duxbury, Mellette, Ashton, Redfield (connection with DM&E branchline between Redfield and Mansfield), Tulare, Spottswood

Beadle County - Bonilla, Wolsey (DM&E mainline intersection with the Core), Virgil

Jerauld County - Alpena

Sanborn County - Woonsocket, Cuthbert, Letcher

Davison County - Loomis, Mitchell (connection with Mitchell to Kadoka line owned by State of SD and operated by Dakota Southern), Ethan

Hutchinson County - Dimock, Parkston, Beardsley, Tripp, Kaylor

Bon Homme County - Scotland

Yankton County - Lesterville, Utica, Napa Jct., Yankton, Gayville

Clay County - Meckling, Vermillion, Burbank

Union County - Elk Point (connection with SD owned, D&I operated line between Elk Point and Canton), Jefferson, N. Sioux City

Woodbury County, Iowa - Sioux City (connection with BNSF mainline which has connections with UP and CN)

Mitchell-Canton (the North Fork of the Core):

Davison County - Mitchell

Hanson County - Alexandria, Emery

McCook County - Bridgewater

Turner County - Dolton, Marion, Parker, Chancellor

Lincoln County - Lennox, Worthing, Canton

Canton-Sioux Falls:

Lincoln County - Canton (connection with SD owned, D&I operated line between Elk Point and Canton), Harrisburg

Minnehaha County - Sioux Falls (connections with D&I line to Dell Rapids; BNSF line to Madison, BNSF lines into Minnesota; the Ellis & Eastern line between Ellis and Valley Springs)

The volumes of traffic interchanged in 2004 at each interchange point are as follows:

Railroad	Initials	City	IC to BNSF	IC from BNSF	Total IC
DME	DME	Aberdeen	-	-	-
		Redfield	-	3	3
		Wolsey	14,163	1,203	15,366
Dakota Southern	DSRC	Mitchell	82	453	535
D&I	DAIR	Sioux Falls	-	1	1
		Sioux City	467	369	836
Ellis & Eastern	EE	Sioux Falls	202	2,264	2,466
Union Pacific*	UP	Sioux City	152	737	889
CN*	CN	Sioux City	2,611	14,950	17,561
			17,677	19,980	37,657

* Via connection from BNSF mainline

In 2004, approximately 43,000 carloads were transported over the Core Lines. BNSF projects moderate annual traffic growth on the Core Lines over the next two years.

Exhibit E

EXHIBIT E

BALANCE SHEET

BNSF RAILWAY COMPANY AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in millions)

December 31,	2004	2003
Assets		
Current assets:		
Cash and cash equivalents	\$ 321	\$ 18
Accounts receivable, net	165	129
Materials and supplies	339	266
Current portion of deferred income taxes	293	280
Other current assets	554	224
Total current assets	1,672	917
Property and equipment, net	25,762	25,016
Other assets	1,637	1,077
Intercompany notes receivable, net	1,859	1,455
Total assets	\$30,930	\$28,465
Liabilities and stockholder's equity		
Current liabilities:		
Accounts payable and other current liabilities	\$ 2,346	\$ 2,111
Long-term debt due within one year	160	244
Total current liabilities	2,506	2,355
Long-term debt and commercial paper	1,669	1,736
Deferred income taxes	7,813	7,474
Casualty and environmental liabilities	941	462
Minimum pension liability	353	359
Employee separation costs	124	144
Other liabilities	1,698	1,250
Total liabilities	15,104	13,780
Commitments and contingencies (see Notes 3, 9 and 10)		
Stockholders' equity:		
Common stock, \$1 par value 1,000 shares authorized; issued and outstanding and paid-in-capital	6,286	6,286
Retained earnings	9,533	8,533
Accumulated other comprehensive income (loss)	7	(134)
Total stockholder's equity	15,826	14,685
Total liabilities and stockholder's equity	\$30,930	\$28,465

Exhibit F

EXHIBIT F

INCOME STATEMENT

BNSF RAILWAY COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(Dollars in millions)

<u>Year Ended December 31,</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>
Revenues	<u>\$10,857</u>	<u>\$9,380</u>	<u>\$8,963</u>
Operating expenses:			
Compensation and benefits	3,313	2,959	2,902
Purchased services	1,358	1,231	1,145
Depreciation and amortization	1,011	909	930
Equipment rents	790	p 705	698
Fuel	1,335	1,093	848
Materials and other	1,341	793	764
Total operating expenses	<u>9,148</u>	<u>7,690</u>	<u>7,287</u>
Operating income	1,709	1,690	1,676
Interest expense	128	144	153
Interest income, related parties	(33)	(25)	(20)
Other expense, net	2	13	12
Income before income taxes and cumulative effect of accounting change	1,612	1,558	1,531
Income tax expense	612	574	570
Income before cumulative effect of accounting change	\$ 1,000	\$ 984	\$ 961
Cumulative effect of accounting change, net of tax	—	39	—
Net income	<u>\$ 1,000</u>	<u>\$1,023</u>	<u>\$ 961</u>

Exhibit G

EXHIBIT G

[Not Applicable]

Exhibit H

EXHIBIT H

[Not Applicable]

Exhibit I

EXHIBIT I

NEWSPAPER ARTICLES DOCUMENTING THE RELATIONSHIP
BETWEEN THE STATE AND BN/BNSF

2.9 percent. On an overall basis, the marketbasket bill at the end of December was four-tenths of a percent higher than it was at the start of the month.

moved from the totals, the AP survey

*MARKET
Continued on page 2A

Jan. 2, 1987
page A1

Legislators must find way to run trains

By CHUCK RAASCH

Argus Leader Staff Writer

Last year will find its place in South Dakota history as the year of the big railroad track buy.

But this is the year Republican leaders hope will be remembered as the one when the trains came back. The 1981 Legislature, which opens 40 days of state house-keeping Tuesday in Pierre, will have to figure out how to do that, and decide who should pay for it.

Last year's Legislature made state citizens pay an extra 1-cent sales tax to buy rail lines. And the citizens may be asked to pay a railroad operator to run on state lines until the operator begins to make a profit.

But that is a dollars-and-cents question, not the philosophical one that crept into arguments a year ago. Many lawmakers last year simply didn't think a state had any business running a railroad.

"We fought out the concept battle a year ago," said incoming House Speaker Walter Dale Miller, R-New Underwood, a philosophical opponent in 1980, but a lawmaker now talking about ways to get trains running again.

Although Senate Minority Leader Jake Krull, D-Watertown, said Democrats have

discussed the possibility of holding off operating plans for another year to "let things sort out," Republican leaders see the operating plan as the next step.

"The rationale is that the state has purchased the line, so let's get the trains moving again," said Sen. George Shanard, R-Mitchell, the Senate assistant majority leader.

Since last spring, the bankrupt Milwaukee Road shut down 1,000 miles of track in the state—some of which has been bought by the state.

With South Dakota residents and visitors paying an extra 1 cent sales tax since last spring, the necessary \$25 million to buy up to 1,250 miles of track could be raised by the time the regular legislative session ends in late February.

In 1980, Gov. William Janklow proposed a \$33 million track purchase and train operating plan. Legislators spent the next two months trying to figure out how far to take the proposal.

Some legislators agreed with Janklow's total plan, others wanted merely to buy track, many thought the state had no business buying a private railroad and some

*RAILS

Continued on page 2A

Hua's emergence

Party Hu told the New Year's party audience that the central committee recently held a conference on China's economy, and then introduced Zhao Ziyang, 61, a protege of Deng, to give a speech on it.

The diplomatic sources said Deng has taken charge of the party's military commission. But it is apparently only temporary because when a new party chairman—presumably Hu—is formally announced, the constitution automatically gives him the military post.

Hua, 59, has been under criticism for sticking too closely to the policies of Mao, who appointed him. Hua is reportedly

committee meeting expected soon.

Hu, 67, was still listed by his old title of party general secretary. While Hua headed the party's leading body, the central committee, Hu has headed its secretariat, set up in February to handle the party's day-to-day affairs.

Establishment of the secretariat cut Hua, who lost further ground in September when his second job as was turned over to Zhao.

Hu, who has called the Mao-led Revolution of 1966-1976 a disaster, has been prominent in efforts to rebuild the party's

*Rails

Continued from page 1A

were upset that the 480-mile core system was exclusively east of the Missouri River.

When a final compromise was reached, the Legislature decided that the \$25 million purchase was a large enough step, and that any operating plans for railroads would have to wait until this year. They decided a one-time sales tax boost would be the best way to pay for the tracks, and abandoned Janklow's multi-source payment plan.

It appears lawmakers will arrive in Pierre with no concrete suggestions on how to take the second step.

A summer railroad study committee of selected legislators couldn't come up with any specific suggestions on how to subsidize railroad operators on state-owned lines. The chairman of the four-man group, Sen. Don Peterson, R-Yankton, said afterward, "We could have sat here all night and I don't think we could have agreed on any one proposal."

Money is needed, state Rail Director Jim Myers said, because a railroad contractor coming into the state will need a subsidy of up to \$10.5 million for as long as seven years, including \$2.5 million for the first 12 months.

Besides the funding question, the Legislature will have to decide what company — or companies — it wants to run on the tracks. The state has been advertising for applicants for several weeks and hopes to have a list to take to the Legislature by mid-January.

There are several possible funding sources for the operation subsidy that will be offered to the Legislature.

- Extending the extra sales tax through March, which would also help state businesses because that is the end of a financial quarter. Such a proposal would require specific legislation because the sales tax is triggered to go off when the \$25 million purchase price is reached. (There may be \$1.5 million of the \$25 million rail purchase money left after all necessary track is bought, Shanard said).

- A commodity tax on all grain sold in the state.

- A 1-cent a gallon tax on diesel fuel used on the roads and in the fields, but not for home heating.

- A surcharge on rail shipments.

- Any combination of the above proposals.

Although Shanard said a sales tax extension may be tough to pass, it does have support from Miller.

"And pressure for the extension

could come from outside the Legislature.

"I am not, obviously, here to answer for the governor on that issue, but we do know that there have been a lot of business influences who have told us, 'don't take that tax off in the middle of the quarter. It's a businessman's nightmare,'" Myers said.

Besides the Milwaukee shutdown, there have been other major changes in the state's railroad system this year.

The state has bought about 780 miles of track, including sections in both the core (roughly Canton to Chamberlain and Yankton to Aberdeen, with Mitchell as an intersecting point), and lines outside of the core that could be run by regional railroad authorities.

The railroad committee also agreed that a \$54 million repair plan stretched over several years deserves more study.

And there have been some track repairs already made.

The state spent \$900,000 in Federal Railroad Administration money to fix ties on the Milwaukee Road line that carries coal cars from North Dakota to the Big Stone Power Plant near Milbank, S.D. This line is the West Coast link for South Dakota grain and, as planned, would receive wheat, corn and other commodities from East River elevators over the core rail system.

State rail officials also have committed \$4.4 million in federal taxpayer money to fix the Chicago and North Western track from Pierre to Huron across the wheat and ranch country of central South Dakota. That work will start in the spring.

The state has also been told by the Federal Railroad Administration it will get about \$4 million annually for the next two years to repair the decrepit core line, which would allow trains to travel up to 25 miles an hour on the track.

"I'm not satisfied that we're as far along as we could have been," Myers said. "If the governor's set of recommendations had been listened to, we'd have had rail service beginning as early as July of (last) year."

"But, nevertheless, given that I recognize that it was very difficult for any legislator or a member of the public to believe that the (Milwaukee) railroad was able to walk away from 1,000 miles of track in South Dakota, then I'd have to put it in perspective and say, 'yeah, I feel pretty satisfied — we've come a long way.'"

Threat to hostages repeated in

By The Associated Press
Tehran Radio Thursday repeated declarations by the Iranian leadership that the 52 American hostages would be tried as spies unless an American message now in the hands of Algerian intermediaries met Iranian demands.

Later, the radio carried an apparent rebroadcast of a commentary heard Wednesday, but the rebroadcast deleted the earlier version's threat to execute hostages convicted of spying.

In Wednesday's broadcast, the commentary said: "According to Islamic laws, the trial of the hostages might of course not only lead to their execution, being guilty of spying, but even more importantly it will lay bare the unwarranted interference of imperialism in other countries."

Thursday's report said, "The trial of the hostages will lay bare

the unwarranted imperialism.

What the American's target was Wednesday flew from Algerian capital where the from Paris would stop the U.S. d

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*Parade

Continued from page 1A

they don't like," McAlister said. "We've got a lot of people in jail who are not going to see the parade next year," he said, suggesting they will be in custody instead.

An hour after the parade began, a motorcycle officer collided with a boy on a bicycle but neither was injured, police spokeswoman Wilhelm Anderson said.

Of the heavy drinking that is always prevalent along the parade route overnight, McAlister said, "You have that 1 percent who are cruds and would be cruds if they drank or didn't drink. A lot of people out there are loaded to the gills, but they're nice people who didn't give us any problem."

Appropriately, a float named "Summertime" won the top prize.

The float, from the Orange County city of Mission Viejo, displayed giant butterflies and lilies made of chrysanthemums and gladiolas towering over a turn-of-the-century couple riding through a bayou in a boat. It was the second straight year Mission Viejo had won the Sweepstakes.

Traffic was jammed on all streets leading into the city, and pedestrians also packed the traffic lanes. To help matters, the Santa Fe Railroad shut down its Los Angeles-to-Chicago route until the crowds cleared because its tracks cross the parade route at street level.

*City Hall

Continued from page 1A

Continued from page 1A. At the mayor's direction, the maintenance building at 6th Street man Clint-

Rails, redistricting, revenue will rule in '81

By BOB SWENSON
Argus Leader Staff Writer

PIERRE, S.D. — State finances, railroad operations and redistricting are seen by legislative leaders as the big issues for the 1981 session, which begins Tuesday.

Several other issues are considered important and potentially controversial, and legislators would not be surprised to see additional weights matters develop. But railroad, reapportionment and the budget seem to head the list of concerns.

"If we can handle those, we can say we've done the job we were to do," House Speaker-elect Walter Miller, R-New Underwood, said. "Miller said it may be premature to think that overcharged sales taxes to utilities will be an issue. The court has not yet ordered the Legislature to do anything, he said."

Several other lawmakers expect the refund to be a major consideration this year, however.

Water issues are also ranked high by some lawmakers, although general sentiment appears clearly against continuing the extra 1 percent sales tax to fund water development.

The state Water and Natural Resources Board says it wants the extra penny on a dollar for water development. And some legislators have mentioned continuing the tax to finance subsidies for operations on railroad track the state bought after the 1980 session. But many lawmakers say the Legislature has a commitment to roll back the gas tax rate to 4 percent.

"I'll predict the Legislature will have a very extra penny for railroad operations and will not impose it for any other purpose," Assistant Senate Majority Leader George Shanard, R-Mitchell, said.

Shanard, chairman of the Senate Transportation Committee, said—

railroads will again be a big issue, as they were last session. Funding must be found to subsidize a private operator to run trains on acquired track.

About \$2.5 million is expected to be needed to offset losses the first year of rail operations, and a total subsidy of \$16.5 million is expected to be needed over a four to seven year period to get an operator going.

The 1980 Legislature authorized the state to spend up to \$25 million on abandoned track. Financial requests to get trains moving are expected to be hotly debated, at least partly because of the financial pressures on the state.

South Dakota's list of financial obligations is growing. For one, the amount of money the state must find for local government property taxes doubles this year to more than \$40 million. Other multi-million dollar debts may result from the state Supreme Court's November ruling on utilities being overcharged sales taxes.

The high court said the state illegally collected too much sales tax from six utilities for years. Officials estimate that the state may owe them and other utilities up to \$20 million. The debt could be increased to up to an estimated \$50 million if another legal ruling goes against the state.

Both Republicans and Democrats seem to like Attorney General Mark Meierhenry's suggestion that legislators try to cancel the debt through legislation. Proposals are in the works.

"I think everybody's trying to get out of going through the motions of collecting a tax to pay back a tax," Senate Minority Leader Jake Krull, D-Waterloo, said. Krull's minority Democrats expect to have a say in legislative matters this session, despite being Transportation Committee—

considerably outnumbered. Democrats will be outnumbered 24 to 14 in the Senate and 49 to 21 in the House of Representatives.

"We'll play a role, and a constructive role," House Minority Leader Lars Hereth, D-Houghton, said.

Because of the party's minority position, Democrats may have to concentrate on shaping legislation rather than trying to force their own bills through, Hereth said.

But he said, "I feel as individuals, as a caucus, we will have a great amount of say."

Republicans downplay their lawmaking power, saying legislative division is often not along party lines.

Legislative issues sometimes split lawmakers on the basis of geography or other factors not party related.

Hereth, for example, supports Republican Gov. William Janklow's renewed proposal to increase financial aid to local school districts by \$4 million for the next budget year, which will begin in July. Several Republican lawmakers have said that proposal, as well as the governor's call for a new \$15 million per-

sonal metals severance tax, are in for a rough ride.

The precious metals tax, which would be paid primarily by Homestake gold mines of Lead, S.D., would replace an existing net income tax on mining operations that was enacted last year.

The new tax, which Janklow counted on to fund his proposed budget, is one reason lawmakers say the governor may have overplayed the state's hand in making spending plans.

Hereth says another Janklow proposal, the recommendation for an 8 percent salary increase for state workers, may be too much to ask and may be contested.

Proposed liquor tax increases

and reserved calls for a corporate income tax are also expected to be one of the most disputed issues of the next two months will likely be reapportionment, or the process of redrawing the state's legislative boundaries.

"We aren't going to keep everybody happy," Shanard said. "There's no doubt about that."

Legislators face the once-every-decade task of changing district borders to conform with updated population data from the 1980 census.

Growth in the state's population and notable shifts in residency will require significant changes in existing boundaries. House Majority Leader Joseph Brough, R-Aberdeen, has said.

Barnett also considers Janklow's proposal to put a lid on increases of property taxes and a legislative committee proposal to deregulate the trucking industry for agricultural purposes as controversial issues.

The biggest debates over reapportionment may be over the size of districts; particularly large, multi-member Senate districts. There is some support for cutting existing large districts into more than one district. But significant change from present structures may be hard to come by.

Legislators say they have sufficient preliminary census data to do

most of their redistricting work, but plans may not be available until February, leading observers to think that a final resolution will not come until late in the session.

If lawmakers face an overriding issue for the duration of the session, it may be general finances. The budget is always a big issue, lawmakers say. But many of them say it takes on increased significance because of the problems of the past year.

Many legislators are concerned the level of funding projected by Janklow and his staff will not be fully available to be spent next year.

"I'm just not optimistic that we will be able to meet the revenue level he said we would," Shanard said.

Janklow proposed in December that the state spend a record \$909 million, with \$290 million of that being directly funded by the state.

The proposed spending of \$290 million of the state's general fund represents an increase of \$60 million from this year.

Janklow's budget staff counts on both the mining tax and a 17 percent increase in sales tax revenue to fund the proposed budget, which legislators will study and alter as they see fit.

"If either one of those fail, the

budget would be in serious trouble," Janklow made his projections, which are subject to revision, on the assumption that economic conditions would improve next year.

Drought and record unemployment rates combined to depress the state's economy last year. Janklow ordered a 5 percent cut in government spending in September to avert an expected mid-budget year cash flow crisis. So, money-related issues may be closely scrutinized this year.

One lingering money issue that could bloom this year is water. Water board members will seek the Legislature's endorsement to seek millions in state and federal dollars for 26 water projects given priority ratings. Legislators may also be asked to seek across-North Dakota irrigation water to run kols's use.

Other issues include a possible land use move to get agricultural land assessed on the basis of productivity from this year.

Legislators will say the "11 session will require diligence because of the many issues, but many of them say they are approaching it like just another session.

"We have controversial issues every year," Miller said.

PREMIER CROSSWORD

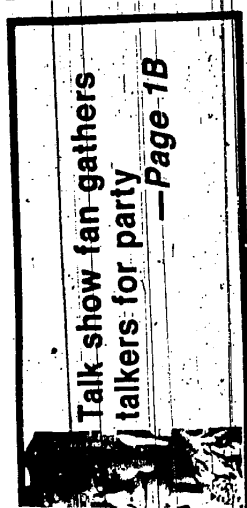
By Jo Paquin

Stellar Nostalgia

ACROSS	44 A Sloman	119 Popular TV	37 Heroic in scale	76 "— Irish Rose"
1 Kind of lily	language	38 Subject of a	77 Takes forty	wins
8 Former TV host	121 Lariat	Paul Newman	78 Dad's sister	80 Biblical name
10 Actor Richard	122 Fermented	40 Famous hostess	79 Three, in Berlin	81 Streetcar
14 — canals	123 Small fishing	124 Anthropologist	41 Wear away	82 Sudden
19 Song for Ida Lupino	125 Penetrates	42 Sparkling	83 For example	84 Invasion
20 French river	126 Auld lang	43 Discharge	85 City on the	86 Manlike ape
21 Wild cat	127 Role for Robert	44 Discharge	87 Variety of	88 Kind of
22 Star of "The Lost Weekend"	128 Very fat	45 Discharge	89 Gem weight	90 Kind of
23 Star of "High Noon"	129 Down	46 Discharge	91 Gem weight	92 Kind of
24 Star of TV's "Perry Mason"	130 Describe	47 Discharge	92 Gem weight	93 Kind of
25 Star of TV's "Perry Mason"	131 Describe	48 Discharge	93 Gem weight	94 Kind of
26 Star of TV's "Perry Mason"	132 Describe	49 Discharge	94 Gem weight	95 Kind of

HOW A BILL BECOMES A LAW IN SOUTH DAKOTA





Talk show fan gathers talkers for party —Page 1B



Sioux Falls Christian beats Emery, 56-30 —Page 1C



Alexander Haig's confirmation hearings today could raise a few skeletons —Page 3A

Argus Leader

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Friday, January 9, 1981 Sioux Falls, South Dakota 57102

A Gannett Newspaper

State rail plan in jeopardy again

By CHUCK RAASCH, Argus Leader Staff Writer

PIERRE, S.D. — State lawmakers are in a state of confusion about the future of a state-owned rail system because a proposed plan to build a new line through the state is being questioned.

In Chicago, at that hearing, Milwaukee Road Trustee Richard Ogilvie is expected to give some indication of whether the line will be included in a second round of negotiations with the bankrupt railroad.

At the hearing, the state's main line, the Milwaukee Road, was the subject of much discussion. Several legislators said plans to operate the state-owned line might be held off until the future of that main line is certain.

The reason for the shutdown would be because the line did not — and cannot — stand up to federal court standards for profit.

Interstate Commerce Commission officials want the line to make an 11 percent profit.

Myers said the legislators' concerns have been known since May, and to put off an operating plan — as some lawmakers suggested.

Gov. William Janklow said rising energy costs will make future rail service vital to South Dakota's farm-to-market economy. The state has raised the money to buy the line. But the track could be worthless if the main line through Aberdeen shuts down, because West Coast access for South Dakota grain would be shut off.

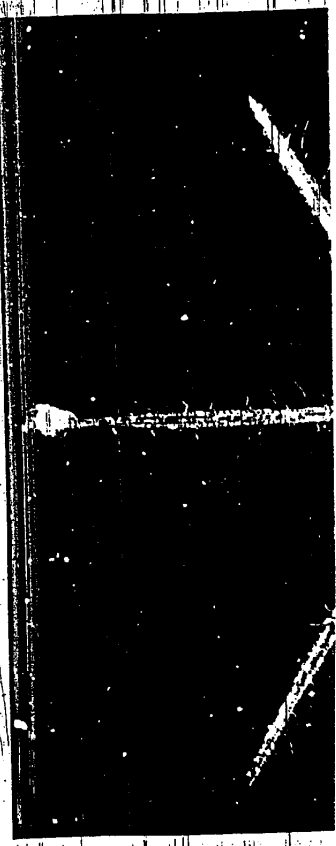
"The line substantially gets the return on investment," Janklow said.

Investment on the value of the track estimated at \$45 million the 650-mile stretch. That would mean the line should make about \$5 million annually, but it returned only about \$100,000 last year and is projected to lose \$10 million this year.

Gov. Janklow said rising energy costs will make future rail service vital to South Dakota's farm-to-market economy. The state has raised the money to buy the line. But the track could be worthless if the main line through Aberdeen shuts down, because West Coast access for South Dakota grain would be shut off.

"The line substantially gets the return on investment," Janklow said.

'80 sales not saved by Santa



By FLOYD NORRIS, AP Business Writer
NEW YORK — Retail sales ended their slump and rose sharply in December, providing a happier holiday picture than expected.

\$6 billion separates U.S., Iran

By PAUL TREUTHARDT, Associated Press Writer
ALGIERS — Algeria — American envoys here and Algerian diplomats in Tehran worked long hours

- morning
- EADLINES
- agan's proposed tax may be delayed —Page 3A
- ish union tells members to stay home —Page 4A
- aelik Prime Minister begin may resign —Page 4A
- ngkok flu may have spread —Page 4D
- inklow still hunting for gold tax —Page 1D
- udson School District uses education board —Page 1D
- rand jury will look bids —Page 1D
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- Map: San Diego Char- r Gene Klein accused id Raiders' Al Davis o intimidate the offi- Sunday's game. —Page 1C

Sioux Falls, S.D. Friday, January 9, 1981

n won't 'sign *Rail 'check' to Iran

— President Reagan said free to relations with a different administration takes of

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any agree- es, I could lared. "On ink anyone n a blank ve you an

ident that for 14 years under four presidents. toward an

agreement that does preserve the honor of our country and is aimed at trying to get those people home which we all hope he'll be successful in doing.

The president-elect said later in the day that "all of us feel a little more optimistic" about the situation in Iran.

"At last we might be getting someplace," he said, "at least I feel that way."

In another development, Reagan announced that Dr. Daniel Ruge, a Veterans Administration neurosurgeon, will be appointed White House physician. Ruge, 63, an expert on spinal cord and brain injuries, replaces Dr. William Lukash, who has served as White House physician for 14 years under four presidents. Lukash will retire Jan. 20.

Continued from page 1A
requirements for its present level of capitalization," Myers said. "However, the line does not meet, nor is there any indication it could meet, a return requirement if the (Milwaukee bankruptcy) trustee was forced to return that kind of return not only on its railway value, but on the extra \$42 million in repairs necessary to keep the line in operation."

Legislative leaders agreed that the requirement was unrealistic, and said that's why they fear for the future of the Milwaukee, and subsequently, the state-owned track.

"It's something that has everybody in the state kind of jumpy," said GOP Sen. George Shanard, R-Mitchell, the Senate Assistant majority leader.

"We've got to have that to make the core work," said Senate Majority Leader Homer Harding, R-Pierre.

Some legislators came to Pierre this year saying that the track had been bought and the next order of business would be to get an operat-

ing plan. But Harding and other said they were reluctant to commit state tax dollars — whether through an operators' tax or an extension of the sales tax increase — to subsidize a private operator on the state-owned lines.

"They've got to eventually pay their own way within reason or somewhere down the road we'll have to find a new source of transportation," said Assistant Senate Minority Leader Roger McKellips, D-Alcester.

And at one point, McKellips said the state may be "grasping at straws" in its effort to keep railroads running.

But Myers disagreed vehemently that the Legislature should drag its feet on helping a private operator come into the state.

"If we take that attitude, then we will determine the outcome," he said, "why should they (federal and railroad officials) bother to perpetuate the line that we asked them to perpetuate when we throw in the towel before they do?"

*Energy

Continued from page 1A

Before leaving Washington, the distance between them, but it was still measured in very large numbers" and "serious problems remain."

Neither U.S. nor Algerian officials would make any comment after the discussions here.

In Tehran, a four-man Algerian diplomatic team continued talks with Iranian officials, dividing its day between the Algerian Embassy and the Iranian Prime Ministry.

One of the four, Algerian Ambassador to the United States Rehda Malek, told a reporter he did not know when the intermediaries might leave for Algiers or Washington. "We are busy working," he said.

An Algerian Foreign Ministry official said the four-man team would not return here to meet Christopher

can't have the same luck we've had," Birdsall said. "We're the only ones using it in Iowa, but there are a lot of cities in the South where it's worked even better."

Just such a plan could, say those involved, work even better for city the size of Sioux Falls. As an example, Albany, Ga., with about 100,000 people, installed the circuit-breaker system and, said Birdsall and Roos, paid for it on one hot summer day.

The situation is, however, more complicated in Sioux Falls. Albany, Orange City and Osage all use municipal power plants for the majority of their power.

Sioux Falls gets more than 90 percent of its electrical power from NSP, a multi-state network of consumers and generating plants.

"It's not as viable here," said Chuck Meyer, an energy engineer for NSP in Sioux Falls. "We really couldn't do it in just one city unless the PUC wants to give us some help

electricity during the times of peak usage — like late in the afternoon — thereby discouraging people from using electricity during those times.

Sioux Falls Light and Power Plant supplies power for most of the city's government buildings, but hasn't examined the circuit-breaker plan and has no immediate plans to do so.

In Orange City, meanwhile, the city is looking at Birdsall's experience in the hopes that it can be matched there. Birdsall found that only one of the 700 people with the metal box last summer asked that it be removed and that the seven-and-a-half-minute shut down of the air conditioners and water heaters "had little or no effect on the temperatures" of the water or air conditioned rooms.

"If we have it w his Orang

ions abound, Green said.

"That's why on a hot, sultry day you feel so lousy," Green said.

"I don't want to come across like I bought the Brooklyn Bridge," Green said.

Legislators prepare to tackle rails

By SANDY JOHNSON
Associated Press Writer

PIERRE, S.D. — State legislators will roll up their sleeves and begin work this week on the state railroad plan, which is expected to dominate the 56th Legislature.

With last year's last-minute compromise on the railroads haunting them, legislators say they want to dig right into the issue.

The Special Committee on Railroad Operations is scheduled to meet Wednesday to come up with recommendations on how to get trains running on portions of the 780 miles of state-owned track.

Lawmakers said they'll start work on the railroad, despite the questionable future of the Milwaukee Road's main line from Jonathan, Minn., to Miles City, Mont.

"We will have to assume that the northern line will operate," said Assistant Senate Majority Leader George Shanard, R-Mitchell.

Some legislators said it was futile to do any work on the railroad issue until after a Jan. 16 hearing on the main line, which is crucial to the coal-fired Big Stone Power Plant.

"If we lose that main line, we end up going nowhere to the north," said House Minority Leader Lars Herseeth, D-Houghton.

Gov. William Janklow has already proposed a commodities tax to raise \$3.5 million to subsidize operations of the newly-acquired track.

And House Speaker Walter Dale Miller, R-New Underwood, said he has a bill drawn up to keep the 1-cent sales tax until March 31. He wants to put the \$4 million to \$6 million raised from the extra penny into a trust fund for the railroad.

The Legislature will be coming off a three-day weekend when it returns Monday. Lawmakers took Friday off to give Janklow time to finish up his executive orders, which are due Tuesday.

Legislators apparently were expecting a wave of gubernatorial orders similar to the 15 introduced by Janklow at the last minute last year.

But Janklow said he only has three executive orders this year. One would merge all agencies and boards dealing with alcohol or other drugs under one statewide council.

A second would recognize in statute last year's structural shuffle in the Department of Social Services. And the final order would create a super board under the Department of Water and Natural Resources to deal with all mining, gas and oil questions.

Janklow's executive orders take effect July 1, unless struck down by the Legislature.

Some sparks might fly Monday when the Cement Plant Commission meets with the Appropriations Committee. Janklow has said the state-owned plant might be leased to a private firm and lawmakers are sure to press commission members for details.

Last week, Janklow quoted Portland Cement Association figures showing a 30.4 percent decline in cement use in South Dakota over the last year.

The committee will also consider Janklow's recommendation that the 1,500 state workers get an 8 percent pay hike for fiscal year 1982. The State Employees Organization has already said it will settle for the raise, which amounts to about \$1.67 per worker.

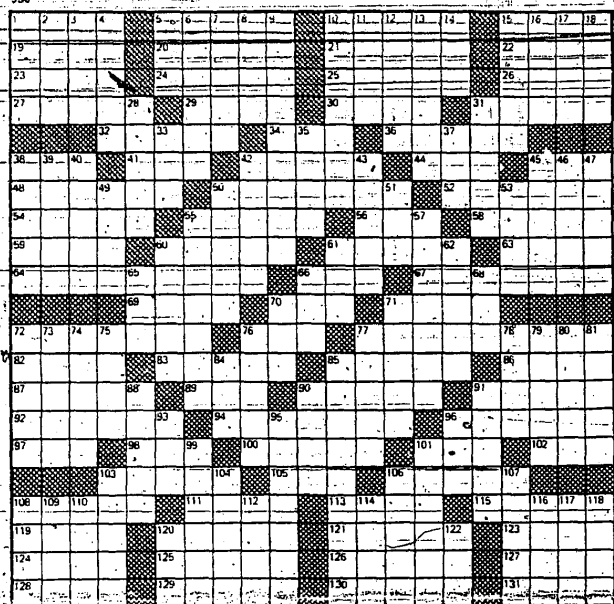
PREMIER CROSSWORD

By Jo Paquin

All that Glitters

ACROSS	60 Mother of Isaac	113 Baal for one	37 Police youth org.	78 A coarse sugar (E. Ind.)
1 Metallic element	61 A tangible object	115 Condescend	38 Ferber opus	79 Greek epic poem
5 Informal language	63 Olive genus	119 Israeli dance	39 One of the Muses	80 Film producer
10 Greek philosopher	64 Field flower	120 Serious and comb. form	40 Ateller item	81 Capelle
15 Quick	66 Gaming cube	121 Courage	42 Founder of the Hungarian monarchy	82 Granny, et al.
19 Kind of exam	67 Comedian Phil	123 River in France	43 Certain church contribution	84 Japanese porgy
20 Video's partner	70 Swamp	125 Synthetic fiber	45 Roman official	85 European
21 Fleet	72 Twist	126 Fisherman's basket	46 Mechanical device	86 Fished for lampreys
22 Assam	76 Marble	127 This, in Spain	47 Regions	90 Geometric solid
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24 Chant merrily	82 Winglike	129 Opposed to lee	50 Dionysius	92 Palms
25 Correct	83 Person of great power	130 Part of HST	51 Nickname for the Windy City	93 Homilies
26 Hamilton's milieu	85 Founder of first American woman's magazine	131 For fear that	52 Yugoslavian liquid measure	94 Container
27 Growing out	86 Hale or Ladd	DOWN	53 Neck artery	95 Morley or Mitchum
29 Made wrathful	87 French girl's name	1 City district	55 Stores in a silo	101 "The"
30 Chalcedony	89 Patriotic org.	2 Horse or lung	57 Stores in a silo	103 Effrontery
31 Sponge	90 Hearts	3 Zola opus	60 Harsh nasal sound	104 Daughter of Danny Thomas
32 He wrote "Lust for Life"	91 City near the Nile	4 Coagulates	61 Metallic element	106 Plant pest
34 Haggard opus	92 It resists oxidation	5 Held session	62 Elightly	107 Great strength
36 Part of the calyx	94 Shoe	6 Enticing	63 Personality	108 Home of the Mels
38 Understand	96 Metallic element	7 Worship	64 Morning phenomenon	109 Treeless rolling plain
41 Ugly crone	97 Chemical suffix	8 White or Blue	65 Tennis stroke	110 Voided
42 Catkin	98 Malay gibbon	9 Cellini	66 Flammable material	111 Grande and Bravo
44 British air arm	100 Dispatches	10 Exhibit	67 Strange	112 Neck types: comb. form
45 Highest note of the gamut	101 Exhaust	11 Tibetan monk	68 Singer Merman	116 River to the Humber
48 Papal garments	102 John — Passos	12 Mimickers	69 Coffeehouses	117 Table scraps
50 Sophistical argument	103 Straw broom	13 Flammable	70 Winnow	118 A fuel
52 A downspout	105 Ump's cousin? Lts.	14 Strange	71 Ore deposits	120 Distress call
54 Swiss canton	106 Twining stems	15 Untamed	72 Crili con	122 — Culbertson
55 Higher than	108 Scimitar	16 Dry	73 Liquid part of fat	
56 Article	111 Foamy yeast on malt liquor	17 Warble	74 John — Garner	
58 Slice off		18 Receipts or profit	75 A migration	
59 Flowering shrub		19 Singer Merman	76 Mountain lakes	
		20 Coffeehouses	77 Pierces with a tusk	
		21 Hemisphere		
		22 British pianist		

Average time of solution: 63 minutes



CRYPTOQUIP

XIJUNYIIJ XSX YSUOIJ RSY CSKUOQ KOQUCS I

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Today's Cryptquip clue: O equals N

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The answer to today's crossword is on page 11C.

Jan. 11, 1982
p. C6

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*Milwaukee

Continued from page 1A

the rate of return on the value of its assets would have to equal the current market rate of return. That is about 11 percent."

Levin said, "Investors will not invest in the railroad industry if the railroad is not permitted a reasonable rate of return."

In a December 1980 report, the ICC's Washington staff justified the 11 percent requirement by saying: "A railroad whose prospective rate of return falls far short of its cost of capital would have poor prospects for retaining or attracting capital, hence little likelihood of becoming financially self-sustaining."

To put taxpayer money into such a reorganization is incompatible with the public interest, the report said.

But Janklow said it is inconsistent to require a reorganized railroad to

come up with higher return rates than other railroads. State Rail Director Jim Myers said industry figures show American railroads averaged 2.68 percent rate of return in 1979; 1.52 percent in 1978; and 1.73 in 1970.

Constance Abrams, an official in the ICC's office of policy and analysis said other railroads aren't comparable benchmarks.

"The fact that other railroads are earning that and are yet quite bankrupt is valid, especially understanding the fact that you are using great deals of federal funds (to revitalize the line)," she said.

Janklow argued that there are other considerations beyond the line's immediate return.

"We're in a problem here that involves the whole economic well-being of a region of America, and the other governors in the states (around South Dakota) have recognized that before," he said.

"South Dakota's people are going to pay for that railroad one way or another. They're going to pay for it if it's running or their going to pay for it if it isn't, by the amount they lose on their income," Janklow said.

Janklow and others said cooperation could overcome the state-ICC rift.

"We really hope that

Congress and the new administration would see that there are agricultural, energy, transportation and national defense considerations in preserving that northern line."

Rep. Joe Barnett, R-Aberdeen, Housing majority leader, said. Janklow said pressure from South Dakota's congressional delegation, work among the states in the region and possible changes in the membership of the ICC (to be appointed by incoming President Ronald Reagan), could solve the problem.

After the meeting with Ogilvie Tuesday, Janklow said he and other officials in the region have a month to come up with \$45 million to fix the main Milwaukee line.

By late Thursday, Janklow hadn't briefed legislative leaders on the session with Ogilvie. He said he didn't have time to talk to each individual legislator, but used a press conference to notify them.

Democratic leaders criticized Janklow for being secretive, but Republicans said the negotiations required some secrecy and that the negotiations were beyond the scope of the state Legislature.

Governor's tune changes on rails

By TENA ANDERSEN
Associated Press Writer
PIERRE, S.D. — Gov. William Janklow changed his tune on railroad operations Thursday, coming close to endorsing a plan for local groups to hire train operators instead of the state.

"I think that idea is entirely workable — to turn the whole thing into a regional railroad," Janklow said.

"The state might have to subsidize them the first year, then the regional railroad authorities could get set up and handle the responsibility," Janklow said.

Lawmakers call that idea the Curt Jones Plan.

Sen. Curt Jones, D-Britton, said it's nothing different than what he's been saying for more than a year.

"I know farm people, and I know elevator people," he said. "They'll go where it's the most convenient and the cheapest. That could be a truck or crossing state lines."

The state should own the tracks, Jones said, and more track should be purchased as long as abandonments continue.

"But the state shouldn't operate any of it," he said. "The Division of

fort to coordinate local groups, getting them all the facts and figures they need."

Jones said counties would join together under existing regional rail authority laws to hire an operator for the trains.

"What if nobody wanted to join? That's for those people out there to decide, and that's part of my thinking," Jones said. "If they're not willing to form a regional authority to operate it, it's going to fail anyway."

Jones said the state should go after federal grants to repair and upgrade the lines. In addition, the state should raise at least \$10 million for low-interest, long-term loans to local groups.

Jones said he wouldn't oppose state aid for early subsidies to the operator, as Janklow suggested.

"What I'm scared of is we're going to start a subsidy and it would be a never-ending subsidy with people opposed to it," he said.

Jones said he was surprised by the support Janklow voiced for his idea after he and the governor discussed it Thursday.

Both Jones and Janklow are in-

terested in a bill proposed by House Speaker Walter Dale Miller, R-New Underwood. Miller wants to extend the extra penny sales tax until March 31, raising an extra \$4.3 million dollars above the amount needed for rail purchase.

Miller wants to put the money in a trust fund for railroad purposes. Janklow and Jones are eyeing the cash for rail operations.

Adopting the Jones plan might make the governor's proposed commodity tax unnecessary, Janklow said.

"I'm not pushing that commodity tax that hard," Janklow said. "But I want them to do something before Feb. 15."

"Sen. Jones' strong point is, whenever government provides something, people don't really take advantage of it," Janklow said.

"I think there's a powerful lot of merit to the way he explains it," he said. "The only bad thing we could do on railroads this year is nothing."

*Nuts

Continued from page 1A

So, for the first time in 26 years, peanut growers were not able to supply the 1.275 million tons of nuts needed to satisfy American households. A federal law limits peanut imports, but last month the Carter administration temporarily lifted a 27-year-old peanut import quota.

Peanuts will be brought in from Argentina, China, India, Sudan and Brazil, but it will take about two months to transport the nuts to food distributors. The import costs will be passed on to consumers.

Local school children will not be forced to sacrifice peanut butter until mid-spring, said David Lyng, who manages Nordica Food Service Inc., a federal government commodity warehouse that distributes bulk food supplies to various South Dakota public agencies. He said when the current supply runs low, that's it.

"So far the supply is good, but there's no more available," Lyng said.

And grocers would not predict when peanut supplies will improve. "Maybe next summer," one grocer said. "Maybe not until the next crop is harvested."

*Hostages-

Continued from page 1A

Muskie said.

Other top-level officials also met Thursday to weigh the latest Iranian terms, which were understood to deal chiefly with \$4 billion in blocked deposits in overseas branches of American banks, and loans to Iran that were blocked in

of negotiations, the U.S. officials have been consulting with private bankers whose institutions hold the Iranian money.

Representatives of the White House, Treasury Department and Federal Reserve Board conferred late Thursday.

"I don't know if it's more feasible than we got in the past," one source who asked not to be identified, said.

Secretary of State-designate Alexander Haig was at the State Department Thursday night and indicated he has been briefed on the Iranian response.

Haig said, "I've been following it very closely and leave any comments on it to Mr. Muskie, at least until next Tuesday."

Haig refused to comment on the possibility of a breakthrough.

Meanwhile, Iran's top negotiator told his country in a broadcast that today is the last practical day to work out terms between the two nations. Behzad Nabavi said his government "has no wish to begin from scratch what it has accomplished" with the outgoing Carter administration.

"Should there be no action toward this end by the end of office hours tomorrow, the circumstances would radically be changed" from Iran's standpoint, Nabavi said.

The broadcast seemed to coincide with the Carter administration's earlier admonition to Iran that today is practically the last opportunity to unblock billions of dollars of frozen Iranian assets and trans-

Argus Leader

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General Office

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Direct Dial Departments

FIRST AN

Underlying Wednesday's testimony were tensions left over from a stormy meeting last September. business by giving illegal kickbacks to his competitors. gai activities in the future. And they paid the state \$50,000 to cover the costs of the investigation.

"I don't remember in all my years in the

Feb. 12, 1981
D1

Uncertainty rides the rails in S.D.

By CHUCK RAASCH

Argus Leader Capital Bureau
PIERRE—S.D.—Legislative leaders say they've never seen so much uncertainty on a state issue as the questions surrounding this year's proposal for state subsidies to private railroad operations.

"It's right at the heart of the whole thing right now when you say there is uncertainty," Senate Majority Leader Homer Harding, R-Pierre, and a 10-year Senate veteran, said Wednesday. "I've never really seen this much uncertainty. Even when we were cutting the personal property taxes, I didn't see this much."

Other legislative leaders agreed but added that a meeting scheduled

by Gov. William Janklow could be the start to a possible railroad solution, whatever that may be.

The question is twofold: Should South Dakota pay a private operator to run trains on 800 miles of recently bought state track? And if so, how should that subsidy be financed?

Janklow met with Republican and Democratic leaders Tuesday night and has scheduled another think-session with that group this morning. He said the meetings were to keep rail discussions out of the political setting and to assess "where everybody thinks we're at, where we ought to go, what we ought to be doing and how."

That suits legislative leaders, who must find support in their own parties or the state-subsidized plan will die.

"We want to see it in concrete terms — all the possible solutions," Harding said. "That's what the governor is trying to do in meeting with the leadership, and I have to give him a lot of credit for that."

"We're down now to the dollars, what it's going to cost, how long we'll have to finance it and how we'll do it," Harding said. "Then we'll take it back to our caucuses."

Since the opening day of the 1981 Legislature, no consensus has evolved among the 105 lawmakers. Some shrug their shoulders or answer questions with questions when asked about railroads by reporters.

House extends 1-cent rail tax through March

By TENA ANDERSEN
Associated Press Writer

PIERRE, S.D. — The extra 1-cent sales tax for railroads would continue through March under a bill passed 56-14 by the South Dakota House Wednesday.

"It's not easy to pass a new tax. It's not easy to extend an existing tax," said House Speaker Walter Dale Miller, R-New Underwood, sponsor of the bill.

"But I think, in the long run, we'll look back and say the decision was right."

Extending the tax through March 31 will bring in \$3.8 million to be deposited in a railroad trust fund, Miller said.

But none of that money could be used for operating trains, he said.

The money could go for rail purchases and for other local people if they wanted to run the trains.

The bill was narrowly defeated Monday when it fell four votes short of the two-thirds majority needed for passage.

Republicans control more than two-thirds of the seats in the House, but eight Republicans voted against the bill and two were absent.

On Wednesday, the two who had been absent voted for the bill.

And 11 more House members, two of them Republicans, changed their votes from no to yes. They included Democratic Leader Lars Herseth of Houghton and Assistant Democratic Leader James Burg of Wessington Springs.

Part of the volatility is because the major philosophical question of whether a state should buy a railroad was answered a year ago. Hence, few arguments for or against state subsidies for operations cut along philosophical lines this year.

Lt. Gov. Lowell Hansen also said that the sense of urgency over railroad operations may have been lost because many people think the state solved the railroad problem by buying the lines a year ago.

But there are other major reasons for legislative puzzlement.

Lawmakers are more reluctant to set aside money for operations when they question the return.

A year ago, it was argued that the \$25 million purchase investment was safe, because the track could be sold for scrap and the land auctioned, so the state would get its money back.

Other legislators argue that there is no statewide hue and cry to buy railroads, which makes their decision tougher. Citizens are as confused as lawmakers, they said.

Dry weather has hurt, too.

"I think the biggest problem we have today was that it didn't rain last year," Janklow said earlier this week. "That's clearly the biggest problem. We didn't get any moisture. And as a result, it's relieved the pressure to ship."

Democrats have questioned the accuracy of figures from the state, which also casts a shadow on deliberations.

The continued uncertainty just feeds on itself, casting more self-doubt, House Minority Leader Lars Herseth, D-Houghton, said.

"Nobody knows three years down the road if they're going to be wrong or right," he said.

Janklow remains convinced that some operating plan will pass the Legislature, although Krull and Harding both agreed some lawmakers simply can't support state-subsidized operations.

"I think the key thing where everybody is at is that most people think it's necessary, but everybody wants to figure out how to get somebody else to pay for it," Janklow said.

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Bill Means

the historic village, the site of an infamous 1890 battle, in which about 200 Sioux Indians were killed. The confrontation between the Indians and government marshals and FBI agents would last 71 days. Some 200 Indians and supporters protested what they called corrupt management of Indian affairs while a force of up to 200

action is being taken partially in honor of occupation force members who died in the 1973 takeover at the Pine Ridge Reservation.

brother of activist Russell Means, who became nationally prominent in the Wounded Knee takeover and has since said the era of violence between Indians and white institutions is over.

Sioux Empire

Argus Leader, Sioux Falls, S.D., Thursday, April 9, 1981

State expects railroad contract by May 1

By TENA ANDERSEN

Associated Press Writer
PIERRE, S.D. — As early as May 1, South Dakota officials may be able to sign a railroad operation contract with one of three leading companies, Rail Director James Myers said Wednesday.

"If our intent to have a contract ready for ink by 1 May," Myers said before a joint meeting of the South Dakota Railroad Board and the Railroad Authority.

Members of the Iowa citizen boards will get a look at a draft operating contract today, and specific negotiations with each company will shift into high gear soon.

The front-runners include Morrison-Knudsen Co., Inc., of Boise, Idaho; Kyle Railways of San Diego, Calif.; and PLM Inc. of San Francisco, Calif.

In other business Wednesday, the Railroad Board recommended the following purchases, which still must be approved by Gov. Bill Janklow:

- Rail yard facilities in Sioux City, Iowa, for \$1.4 million.
- Fifty miles of track between Canton

• Almost seven miles of track in the Mitchell area for \$62,000. The track serves four facilities at Mitchell, including a fertilizer plant operated by Sen. George Shanard R-Mitchell, a strong backer of the rail plan.

- About 72,800 railroad cross ties for repair work from a Pennsylvania firm for \$12 million.

To overcome a legal technicality, the board reaffirmed its approval for the purchase of 18.6 miles of track from Hersford to Hawarden, Iowa, for \$12 million.

The board also received a low bid of \$3.9 million from Railroad Builders Inc. of Englewood, Colo., for a substantial reconstruction of the 483 miles of state-owned track.

But Myers said the board couldn't let the contract because half of the money for the project will be wiped out by President Reagan's budget cuts.

"If we can't come up with funds to replace our branch line assistance money, we're facing speeds 2½ times slower on our tracks and we won't be able to meet operating costs," Myers warned.

The lost money with \$1 million in matching money that was set aside for the project.

Railroad Board chairman resigns

PIERRE, S.D. (AP) — Sioux Falls attorney Jeremiah Murphy resigned as chairman of the South Dakota Railroad Board Wednesday because of a possible conflict of interest, Rail Director James Myers said Wednesday.

An attorney in Murphy's law firm is handling a lawsuit before the South Dakota Supreme Court that seeks to block the state from subsidizing rail operations with money from a new, 1-cent increase in the motor fuel tax.

George Nikolas, a Milwaukee Road employee from Aberdeen, was elected to replace Murphy as board chairman.

Gov. William Janklow is expected to appoint a new board member to fill the chair vacated by Murphy.

During a joint meeting of the state Railroad Board and the Railroad Authority

In addition, the South Dakota Railroad Advisory Committee will meet April 21 to see if any current projects could be put on the upcoming repair job.

"If we make these changes we won't repay the bonds."

Despite money worries, Myers said, inspectors will gather Monday to begin the huge job of walking all 483 miles of track and marking the sections that need repair.

The Railroad Board Wednesday approved almost \$200,000 to hire the inspectors, pay for their supplies, rent moving equipment, and buy two used vehicles.

The board also approved \$50,000 for Myers' expenses in arranging the guarantee. Janklow has tried rally neighboring states in hopes of guaranteeing some \$40 million to save the Milwaukee Road

At the same time, Myers said, salvage of the copper and stainless steel communication cables along the state-owned tracks could bring in \$100,000 to \$200,000. In addition, the state may salvage some unneeded track. And there's income from hundreds of private businesses that lease space on state-owned rail property.

The Railroad Board approved the use of \$800,000 from the Railroad Trust Fund for South Dakota's part of a multi-state guarantee to save the Milwaukee Road

The board also approved \$50,000 for Myers' expenses in arranging the guarantee. Janklow has tried rally neighboring states in hopes of guaranteeing some \$40 million to save the Milwaukee Road

The board also approved \$50,000 for Myers' expenses in arranging the guarantee. Janklow has tried rally neighboring states in hopes of guaranteeing some \$40 million to save the Milwaukee Road

Drug seller sentenced to prison

By KATE MCCARTHY

Argus Leader Staff Writer

Despite a contrary recommendation by the prosecutor, a Sioux Falls man was sentenced to four-and-a-half years in prison Wednesday after pleading guilty to selling the drug LSD.

Judge Robert J. Patterson, who when contacted Wednesday night said he "had some definite feelings about people who sell drugs," bypassed a recommendation by an assistant state attorney that pleading his case.

Thomas Adrian Roland, 33, was given a suspended prison sentence.

The 22-year-old Roland, 630 W. Seventh St., was one of 15 Sioux Falls men recently indicted by a Minnesota County Grand jury for selling drugs. A 16th man, from Pipestone, Minn., faces charges in his native state.

Roland was the first of the young defendants to plead and be sentenced.

Assistant State Attorney Marvin Trotzig, who was sitting in for otherwise occupied Deputy State Attorney Steve Miller, recommended Roland pay for the crime by making \$800 in restitution to the state, serving an unspecified, but short, he said, sentence in jail, cooperating with law enforcement officers in investigating other drug cases he has knowledge of and completing his FBI training.

Roland's guilty plea was the result of negotiations between Miller and defense lawyer L. Anthony "Tony" Welsensee, who is Roland's uncle.

Welsensee asked the judge to reconsider his sentence after it was issued, but Patterson would not be swayed.

"He made it known," Trotzig said of the judge's remarks, "that if they're distributing drugs and they're sentenced by him, they can expect to go to the pen."

Though Roland had no prior felony convictions, he was a juvenile offender and has been found guilty of driving while under the influence of alcohol.

Patterson is also scheduled to preside in the drug cases of Robert Banker, Steven Hergen and John Fugl.

The cases of the 11 additional men charged with selling drugs in the March 11 mass indictments are split between the four other Second Judicial Circuit Court judges — Wayne W. Christensen, Robert C. Heger, William H. Feuerbaum and Richard D. Hurd.





Phone pals reach out —Page 1B



North Stars try again tonight —Page 1D



Beirut's residential districts bombed —Page 4A

Good morning

HEADLINES

- Litton workers disagree union merits —Page 1C
- Nominee outlines human rights policy —Page 3A
- Pope leaves intensive care —Page 4A
- S.D. unemployment rate drops in April —Page 1C
- Sioux Empire —Page 1C

Plays: Not guilty pleas were entered for 15 liquor store li-
censes charged with selling to
an underage person. —Page 1C

Jumps bond: A man charged
with keeping two minors in in-
voluntary servitude failed to
appear in federal court. —Page 1C

Nation

Fed up: Two senior officials
will resign when the Reagan
administration votes against an
international code favoring
another's milk. —Page 3A

May storm: A rare storm left
damaged a foot of snow in the
Colorado Rockies and flooded
the Midwest with thunder-
storms. —Page 6A

Sports



(USPS 030240)

Argus Leader

Tuesday, May 19, 1981

Sioux Falls, South Dakota 57102

A Gannett Newspaper

State rail plan back on track

By ROB SWENSON
and CHUCK RAASCH

Milwaukee abandonment may affect plan —Page 1C

PIERRE, S.D. — South Dakota's rail plan program got another injection of life Monday when lawmakers meeting in a rare special session approved a plan to provide first-year subsidy money to get trains running on state track.

Trains are expected to start running in June. With full operations scheduled to begin in September.

Rail plan supporters successfully fought off opposition in both houses of the Legislature, including a dose of parliamentary maneuvering in the Senate.

Proponents won approval of a plan to provide subsidy money by making what amounts to bookkeeping changes in state spending plans for the coming budget year.

Although rail plan backers were widely

Milwaukee abandonment may affect plan —Page 1C

pleased with Monday's developments, they also agreed that not all rail problems are solved. But House Speaker Walter Dale Miller, R-New Underwood, said it should be at least a "temporary respite."

Monday's action produced a slightly modified version of a plan that had been touted by most legislative leaders and Gov. William Janklow. It passed both houses with comfortable margins and was signed at-
most immediately by the governor. The bill, which was passed in reaction to a re-
cent state Supreme Court ruling, will take
effect in 90 days — soon enough to ward off
any funding shortfall.

Under the new plan, the state will trans-
fer \$1.8 million in state motor fuel tax
money to help fund state Highway Patrol
operations. The shift will free \$1.8 million in
operational money for the division of rail
transportation.

Continued on Page 1A

money to help fund state Highway Patrol operations. The shift will free \$1.8 million in operational money for the division of rail transportation.

Rail system proponents hope the transfer will withstand any future legal test, al-
though several legislators questioned the
constitutionality of the new plan.

About \$1.5 million in general fund money
and \$1.2 million in tax revenue from oil-
highway use will be used to pay a yet-un-
hired company to run trains on the state's
track.

The plan passed the Senate 23-11 and the
House of Representatives 19-9 — margins
well above the simply majority required.
The majority vote requirement was un-
successfully challenged by several law-
makers who —

Continued on Page 1A



South Dakota Rail Director Jim Myers observes the action at Monday's special legislative session in Pierre.

More rail woes

loom over state

By CHUCK RAASCH

Argus Leader Staff Writer

PIERRE, S.D. — Although Mon-

day's historic special legislative

Senate Minority Leader Jake

Reilly-Foxworthman voted against

the final measure and predicted the

state rail system's doom

still exist.

Some of the problems appear to

be out of the state's hands and are

unpredictable as the weather.

Some may be as large as the one ap-

parently solved by Monday's spe-

Barnett, R-Aberdeen, said during
debate. "If it doesn't work out, at
least we tried."

Senate Minority Leader Jake

Reilly-Foxworthman voted against

the final measure and predicted the

state rail system's doom

still exist.

Some of the problems appear to

be out of the state's hands and are

unpredictable as the weather.

Some may be as large as the one ap-

parently solved by Monday's spe-

*Rails

Continued from page 1A

majority should have been required because the original plan required the two-thirds majority.

Sen. Don Frankenfeld, R-Rapid City, called the majority vote requirement "a waste of time." Other Republicans argued that such a funding transfer needed only a simple majority under the state's Constitution.

"We're changing the rules in the middle of the game, and we're changing the rules to make it possible to do what shouldn't have been done in the first place," Sen. Michael O'Connor, D-Brandon, said.

Bills in both the Senate and the House to stop rail subsidies failed, as did a so-called rail homestead proposal by Rep. A.J. Barondeau, D-Onaka, that would have provided for the transfer of ownership of state track to any private company that would use, upgrade and maintain it for 10 years.

"How much money are we going to spend in the next 10 years in subsidies if we don't pass this bill?" Barondeau asked.

Proponents of the successful legislation said that the philosophy of state-funded railroads had already been accepted by the regular 1981 Legislature and that Monday's action was merely a bookkeeping procedure. Supporters also said that a majority of South Dakotans are behind Janklow and other backers of the state rail system.

"When we have a governor going out on the point that strong on a

How they voted...

PIERRE, S.D. (AP) — Here's how the South Dakota House and Senate voted in Monday's special session in approving a fund transfer to subsidies.

SENATE
YES (23) Bibby, Bones, Brown, Gregerson, Halverson, Ham, Wallace Hanson, Wendell Hanson, Harding, Hogen, Jones, Kleinsasser, Lamont, Manka, McClure, McKellips, Peterson, Poppen, Ripp, Scarbrough, Shanard, Stoltz, Streff.

NO (11) Allen, Dunn, Duxbury, Frankenfeld, Hoffman, Krull, Mahan, O'Connor, Petersen, Samuelson, Williams.

HOUSE
YES (44) Dean, Anderson, Debra, Anderson, Barnett, Brady, Burp, Carlson, Christensen, Christianson, Clements, Cotton, Elchman, Glebink, Gross, Ham, Herseff, Johnson, Kennedy, Knochenmus, Kocer, Koch, Lammers, Lyon, McKillop, Tarrel, Miller, Walter Dale Miller, Mortimer, Munson, Olen, Olson, Paisley, Pederson, Rickenbach, Sleh, Skie, Terveen, Thleiman, Timmer, Van Gerpen, Volesky, Wagner, Warkenthien, Wiczorek, Wiest, Wofford, Wood, Zabel.

NO (19) Barondeau, Biever, Cerny, Chicoline, Danekas, Forney, Freeman, Frerichs, Gleason, Hallen, Jorgensen, Kellogg, Kumm, Marsden, Robbenhoff, Strom, Thorstenson, Weber, Wiese.

major issue, we ought to support him," House Majority Leader Joe Barnett, R-Aberdeen, said.

But opponents of state-funded rails used the opportunity to try to repeal the state's authority to contract for operations on its lines. The opponents said the state had already gone far enough by buying the track and that private enterprise should be given further opportunity to run the trains.

"We don't need to saddle our already saddled taxpayers with another tax to subsidize railroads," Rep. Verne Thorstenson, R-Rapid City, said.

Some senators tried unsuccessfully to repeal the penny-a-gallon fuel tax increase approved in February and get rail subsidy money from elsewhere in the budget.

But Sen. Bob Williams, D-Aberdeen, successfully pushed through an amendment that basically recognized constitutional problems that could have threatened the division of railroad's operating budget. Williams' amendment increased the general fund transfer by \$318,000.

Constitutional problems brought legislators to Pierre Monday for the state's first special legislative session in 31 years. Barnett estimated the cost of the special session at about \$15,000.

The state Supreme Court ruled May 8 that the state could not use fuel tax money specifically collected from highway fuel usage to fund railroad operations. Opponents did not contest whether the state could use off-highway fuel taxes for railroads, but nonetheless the 1981 Legislature's plan for providing subsidy money was ruined by the high court's ruling.

Legislators made quick work of Monday's chores compared to the drawn-out battles over legislative redistricting that marred the final night of the 1981 session in mid-March.

That night was punctuated with vocal fights and drinking by lawmakers and others, but it contrasted sharply with the mostly congenial atmosphere Monday.

*Problems

Continued from page 1A

"I think it's challengeable, but I'd much rather be on the side of the defense than defending it," Barnett said.

The future of the bankrupt Milwaukee Road's main line through Aberdeen, which is considered very important to the success of the 480-mile state core system. The Milwaukee filed for abandonment on the track last Friday, and so far, no

challenges every year, the support may appear tenuous. But Barnett said he's convinced operators know that a majority of the state Legislature wants to get trains running again. The Janklow administration also says it has three solid potential operators, one of which would use the \$2.7 million subsidy to get trains operating again later this summer.

and Iowa, taking a significant chunk of South Dakota's grain out of state. It will be hard for the state track to compete with these already operating private lines, the Democrats said.

Legislative leaders generally agreed Monday that the state core will get a serious assessment in the 1982 Legislature any more cons the state will have

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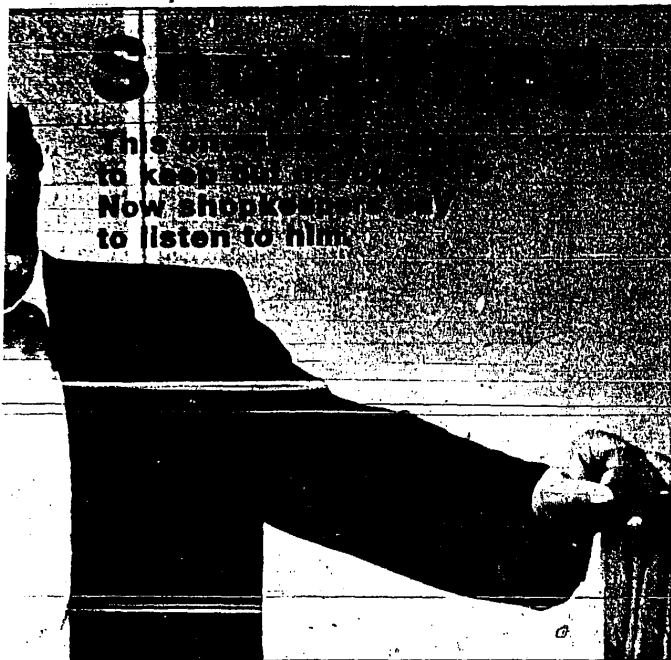
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This is how a professional shoplifter who now tells merchants how to guard against theft.

Argus Leader photo by LLOYD D. CUNNINGHAM

o nickel, dime business

fitting dress. They are heroin addicts with a ravenous habit by means of three operate, diverting attention, circuit of cities. They are about shoplifting reasons responsible for the thievery. They are watching for this while stealing under the said. "We steal us."

boosters take any work gloves at \$20 a g-line leaders at 79 expensive items are

is know merchandise, than store manage- s the best.

\$25 sport coat and a at are the same size, economics will tell you y will steal," he said. goods yields an aver- nts on the dollar. He hieves as a fence who eneral-inventory store ty.

ent of the stuff in my len — I bought it from e said. Items in the fraction of what they e. Choosy customers the low prices must some suspicion.

believe ... some of the e community had to you can't buy a Botany \$125," he said.

expensive item he stole a fur coat. The largest,

a chandelier. He walked out the front door with it, shielded partly by his woman partner spreading her coat wide as if putting it on.

The woman on a team carrier the goods. She hides items in a girdle around her midsection.

A typical steal works this way: The man and woman stand facing one another, looking over each other's shoulders at who is looking.

The man holds an item, perhaps a suit wrapped up like a sleeping bag. At the right moment, she grasps the hem of her loose-fitting dress with both hands. Her arms are not inside the sleeves of the coat on her shoulders. She draws her hands up, her elbows spread the coat out like a kite. The man puts the item into the girdle.

"I can load a fur coat on a woman like that and you can't see the damn thing," he said.

The woman also can feign pregnancy or carry a large purse.

Deal told merchants to look for such a man and woman, not looking down at the merchandise as most people do.

Any dollar figures on shoplifting loss are false, he said, since merchants refuse to admit mysterious losses.

The ideal store is moderately busy, but not overcrowded. It has many exits, but not large picture windows: Passersby outside are more likely to alert store personnel of theft than are persons standing inside nearby, he said.

Such security devices as cameras

and mirrors never deterred Deal. Guards put other store personnel at ease, and the guards seemed lazy themselves. Locked cases alerted him to valuables. Fifteen years as a locksmith taught him how to pick any lock.

For only two reasons would he not enter a store. One was if he knew the management had a picture of him; the other was if an overly attentive sales clerk hovered near- by.

Deal knows the business well. He never got caught.

Deal did serve time in prison, though — seven and a half years on drug charges. He was freed from prison last November and began the consulting job in January with a partner who is assistant district attorney in Kansas City. The company, Security Education Service, is young but growing as word spreads, he said.

Deal never named dollar amounts he made, either from dealing drugs or shoplifting. Most money went to buy drugs.

Deal quit shoplifting after he quit drugs. He had stolen to support his habit.

He likes to talk of his past. But he admits the consulting job has another draw, aside from the \$150 fee for speaking 75 minutes as he did Thursday.

"Mainly, it's something that's socially acceptable. I don't have to be looking over my shoulder."

Firms: S.D. track will be profitable

By ROB SWENSON
Argus Leader Staff Writer

PIERRE, S.D. — Companies in the running for the contract to operate trains on state-owned track say the system needs some work but has the potential to be profitable.

"We wouldn't be wasting our time if we didn't think it was," Leon Stoddard, a vice president for Morrison-Knudsen Co. of Boise, Idaho, said Thursday.

"But it isn't something that's going to happen overnight. It's going to take two or three years to get back to the point where you're making a little money or breaking even."

Morrison-Knudsen, a heavy construction company which also contracts for rail equipment maintenance, is said to be one of three companies still in contention for the contract to run trains on state track.

Other final contenders are PLM Inc. of San Francisco and Kyle Railways of San Diego.

The companies all want the multi-year operating contract, which has yet to be awarded and is separate from the contract awarded earlier this week to Railroad Builders Inc. of Englewood, Colo., the company that is doing repair work on state track. That contract was awarded early so the state could qualify for \$2.6 million in federal aid for track repairs. Railroad Builders is expected to hire the yet-unpicked operations company to actually make the train runs.

Full-fledged operations on state track are expected to begin in September, with operations phased in beginning in June.

The state Railroad Board is expected to meet soon to award the operations contract — an event that has been delayed.

"They (state officials) have said we're still in the running, and that's about all we can get out of them," Stoddard said.

He doesn't think there's any particular reason for the delay, other than "they just haven't made up their mind yet."

One corporate official said he thought Gov. William Janklow was ready to give his nod to Kyle Railways for the contract several weeks ago, but state officials may have decided to take another look at the offers, possibly because of negotiation developments.

Janklow won't respond to inquiries, but State Rail Director Jim Myers has said the decision on the operations contract is the most important decision that will be made for the state rail program. Janklow has spent hours working on the contract, Myers said.

"It's a decision we don't want to make irrationally," said Myers, who also will play a key role in the final decision.

Kyle Railways operates 10 short-line rail systems in the country. Company Vice President Lynn Cecil said Thursday he did not know the status of negotiations with the

state and that the company official who did, President Willis Kyle, was traveling and unavailable for comment.

PLM Inc. considers Kyle's company its primary competition for the state contract.

PLM is a San Francisco-based railroad services company with shops in other parts of the western United States, including Sioux City, Iowa, Miles City, Mont., and Alliance, Neb.

Bryan Whipple, vice president of PLM's development and project division, said the company plans to refurbish an old depot in Mitchell to base its South Dakota operations, if it gets the contract.

"By the time the railroad gets somewhere back near its potential, it would employ somewhere near 90 people," Whipple said.

Like Stoddard, Whipple said the South Dakota program could be profitable.

"We expect to be breaking even in 12 to 18 months, barring crop failure," he said.

The contract under negotiation is for five years, with provisions for earlier termination. The Legislature intends to fund subsidies for three years, although only one year's worth is currently available. The state is offering a maximum subsidy of \$10.5 million over a period of years, with \$2.7 million payable the first year.

"When you really get right down to it, the operator will really be running at the whim of the Legislature, the governor and the division of railroads," Whipple said.

His company thinks it can triple or quadruple the business the state's track had under the last two years of Milwaukee Road ownership.

"But it isn't going to happen overnight," he said.

Lines need to be repaired and shipper confidence must be restored, he said. Whipple said his company planned to take "vigorous steps" to encourage the construction of sub-terminal elevators along state-owned track in eastern South Dakota if it receives the contract. It also wants to run trains on the Kadoka to Chamberlain line, which the state also owns.

"We are absolutely certain we can operate that line profitably," Whipple said.

Most of the track on which there will be trains is in eastern South Dakota. Lines run from Aberdeen to Sioux City, and from Chamberlain to Canton and Sioux Falls. The frequency of train runs will depend on the cargo available, officials said.

There would be some tug-of-war with the Chicago & North Western railroad, which runs east and west through the center of the state, but most competition would probably come from the Union Pacific, which has no track in South Dakota, and the Burlington Northern, Whipple said.

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June 8, 1981 p. 1A

the 3 p.m. accident, Mayes said, one was taken to the hospital. Pande said she was conscious after the accident and was in good condition. Cause of the rollover has not been determined. No other passengers were in the car and no other vehicles were involved.

BN considered as state rail operator

PIERRE, S.D. (AP) — Burlington Northern, one of the nation's largest rail systems, has become the fourth company under consideration to operate the state-owned railroad, spokesmen from the other contenders say.

"All I know for sure is that the state is still in negotiations with several parties, one of which is the Burlington Northern," said Dick Presnell, director of rail operations for Morrison-Knudsen Co. of Boise, Idaho.

Bryan Whipple, vice president of PLM Inc. of San Francisco, another contender, learned from a Washington, D.C., source that "what has been thought of as a three-way competition may be a four-horse race."

Both executives said Friday the giant railroad with its maze of connections, particularly to lucrative Northwest markets, might actually give the state better service with lower rates, at least initially.

But Whipple said he was surprised to learn of negotiations because state Rail Director Jim Myers and Gov. William Janklow have been wary of putting the state at the mercy of a monopoly like BN. In fact, South Dakota's rail plan is designed to give it access to two competitors, BN and Union Pacific, whose trunk lines in North Dakota and Nebraska are projected survivors of the future.

South Dakota's rail system, by contrast, is made up of branch lines which BN is in the process of trying to abandon in other states, Whipple noted.

And if railroad deregulation means the disappearance of the regional rates that give BN a competitive advantage, "South Dakota may yet come to wish it had a short line operator," Whipple said.

Kyle Railroads of San Diego, the third company vying for the multi-year contract with the state, operates 10 short line systems in the country. PLM is a railroad services company that has shops, among other places, in Sioux City, Iowa, Miles City, Mont., and Alliance, Neb. Morrison-Knudsen is a heavy construction company which also contracts for rail equipment maintenance.

Janklow would not confirm or deny that talks were taking place. BN's public relations spokesman said he did not know of the negotiations.

Janklow in the past has criticized BN as "having a stranglehold on us" because any "RAILS

Continued on page 2A

rusty tracks. Pande said the train was swept off the tracks by a fierce gale.

*TRAIN

Continued on page 2A

Miners report back to work at coal fields

By the Associated Press

Coal miners returned to work early today after a 10-week strike, with a new contract that will increase their wages and benefits by almost 40 percent.

But the reopening of some mines was threatened by stalled contract talks for mine construction workers.

Negotiations continued Sunday in Washington between the construction locals of the United Mine Workers union and the Association of Bituminous Construction Workers.

The construction workers have threatened to picket today if they haven't reached agreement, and most UMW miners would be reluctant to cross those picket lines, a UMW official said.

Sam Church

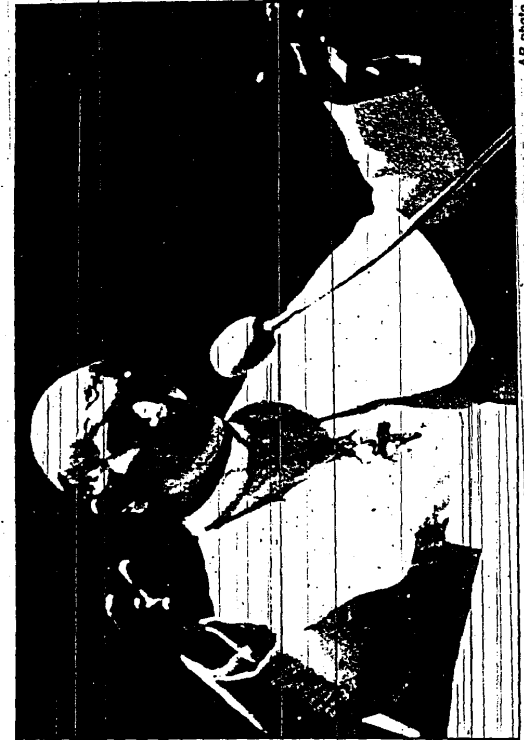
He said he's not sure whether progress was being made in the ABC bargaining. UMW secretary-treasurer Willard Esselstyn, who is heading those negotiations, is holding his cards pretty close to the chest, even with us," Williams said.

However, he noted that negotiations for the construction contract usually speed up once the UMW reaches agreement with the Bituminous Coal Operators Association, chiefly because the construction workers generally follow the economic package included in the UMW-BCOA pact.

The strike by the rest of the UMW's 160,000 members in the East and Midwest officially ended Saturday night when UMW President



Sam Church



AP photo Pope John Paul II blesses the faithful Sunday from the window of his Vatican apartments in St. Peter's Square.

Pope surprises crowd at St. Peter's Basilica



Actress Swoosie Kurtz holds the Tony award she won for her role in the Broadway play "Fifth of July."

'42nd Street,' 'Amadeus' capture top Tony honors

NEW YORK (AP) — "42nd Street" was named Broadway's best musical Sunday night, winning New York theater's top honor, the Tony award, with an English import, "Amadeus," topping the drama category with five Tonys, including a best-play award.

Lauren Bacall, a Tony-winner in 1970 as the star of "Applause," won her second Tony for "Woman of the Year," a based-on-a-movie musical in which she stars as a successful TV anchorwoman who falls in love.

She was thought to be a shoo-in for a Tony. Her show also won awards in the best-book and best-score categories.

Kevin Kline, the swashbuckling Pirate King in the revival of "The Pirates of Penzance," won as the season's best actor in a musical.

The show also won Tonys as the 1980-81 season's best revival and for the direction of Wilford Leach.

Elizabeth Taylor, nominated for a Tony in her Broadway debut in a revival of "The Little Foxes,"

didn't win. The award, in the best-actress, drama, category, went to England's Jane Lapotaire, star of "Piaf," about the ill-fated French singer.

Tony voters also picked another visitor from England, Ian McKellen, as the best actor in a play, "Amadeus," in which he plays Antonio Salieri, the bitter court rival of composer Wolfgang Amadeus Mozart.

The show also won honors for its author, Peter Shaffer, a Tony-winner in 1975 for "Equus," and for Peter Hall, the director, and John Bury, who won Tonys for his "Amadeus" set and lighting.

There was an emotion-packed moment during the ceremonies when the late Gower Champion was awarded Broadway's major award for his choreography of "42nd Street," a show based on the movie classic.

The black-tie audience at the Mark Hellinger Theater, site of the 35th annual Tony awards ceremonies, erupted into sustained applause

when Champion's name was announced. His son, Gregg, accepted the award for Champion, a five-time Tony winner who died last August on the same day his show opened.

Tony awards also went to Swoosie Kurtz and Brian Backer as best supporting actress and supporting actor for their respective work in "The Fifth of July" and "The Floating Light Bulb."

Best supporting player awards in the musical category went to Hinton Battle of "Sophisticated Ladies" and Marilyn Cooper of "Woman of the Year."

The glittering ceremony, televised live by CBS, saluted contributions of women in theater. During the show, special Tony awards for achievement were made to the Trinity Square Repertory Company of Providence, R.I., and to Lena Horne, now starring on Broadway in her one-woman musical revue, the hit "Lena Horne: A Woman and Her Music."

*Rails

Continued from page 1A
South Dakota rail line must hook up with BN tracks in Montana as the cheapest means of reaching the Northwest coast. It has acknowledged that by using a system of sub-terminal grain elevators around South Dakota's border, BN could siphon away grain which is needed to make the state's rail system work.

Janklow met with BN's president May 22 in Pierre. The only acknowledged purpose of the visit was a ceremony linking the state, BN and the Lake Minnehaha Regional Rail Authority in a rehabilitation project on BN track from Madison to Sioux Falls.

Negotiations between the state and BN is a logical explanation for why talks with other companies have suddenly been held up, Whipple said. He asked Myers recently what the state was waiting for.

"What kind of negotiating process is this where we don't even hear from you?" he recalled asking Myers.

According to Whipple, Myers replied that the state's operator selection hinged on the outcome of a discussion with a connecting line.

"That's when I put it all together and added in the notion that the BN might be able to offer shippers lower rates," Whipple said.

If I were to pick one of the best service the needs of South Dakota, I would pick BN because of their connections," Presnell said. The state is expected to name an operator yet this month.

*Pope

Continued from page 1A
around the world gathered for an ecumenical conference. Also present were church leaders from other Christian churches, including the Greek Orthodox, Lutherans, Methodists and Anglicans.

The Mass marked Pentecost, or Whitsunday, which commemorates the descent of the Holy Spirit to the Apostles and the establishment of the Church.

It also marked the 1600th anniversary of the Council of Constantinople and the 1500th anniversary of the Council of Ephesus, which defined some of the key doctrines forming the theological bases of all major Christian churches.

Another taped message from the pontiff was delivered later to the prelates after a service at the Cathedral of St. Mary Major.

In a 30-minute address to the prelates holding vigil candles outside the huge cathedral, John Paul prayed in Italian:

"You, who are the first handmaid of the unity of Christ's body, help

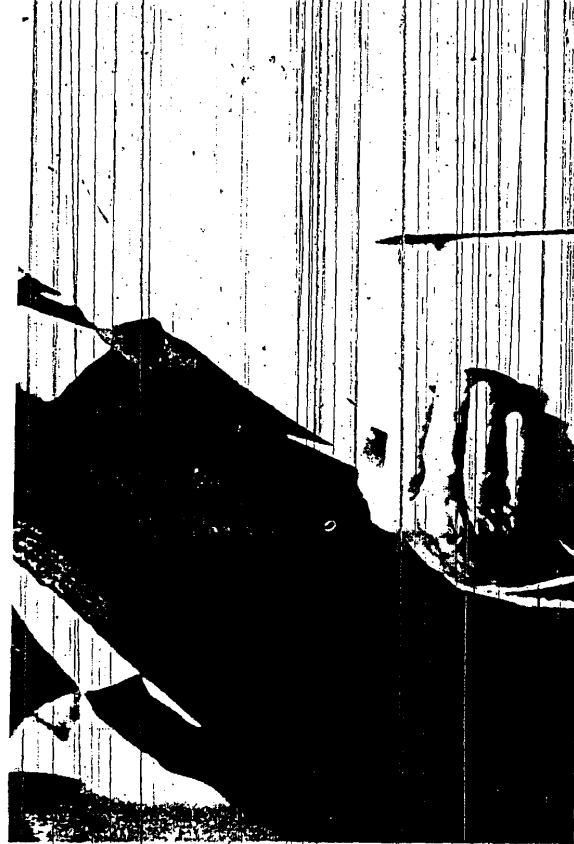
panded meeting, also presented "in considerable detail" his ideas for a development plan for the Caribbean basin, including Central America. "The presidents are in agreement on the need for a plan for long-term development in the Caribbean region," he said.

The official also said Lopez Portillo told Reagan that both external and internal factors, including lack of resources, must be considered when studying destabilizing influences in the region and Reagan told his guest about the general flow of armaments in the region.

This suggested the two touched on a key difference. Reagan has asserted that Soviet and Cuban weapons are being sent to rebels fighting the U.S.-backed junta in El Salvador. Lopez Portillo has argued that unrest in Central America is not to be blamed solely on Cuba and is rooted in the region's poverty.

Deputy White House press secretary Larry Speakes said Reagan and Lopez Portillo met privately for more than an hour and then joined aides for lunch.

*PORTILLO
Continued on page 2A



President Ronald Reagan and Mexican President Jose Lopez Portillo stand on the South Lawn of the White House Monday during arrival ceremonies.

AP photo

paid more

Led by Justice William J. Brennan, the court's oldest and most liberal member, the slender majority ruled that a federal civil rights law allows women to file such suits.

The decision states, in essence, that women cannot be paid lower wages simply because they are in jobs held primarily by women. Such a policy would violate that portion of the Civil Rights Act of 1964 outlawing on-the-job sex bias, Brennan indicated.

Brennan's opinion in an Oregon case said women can try to prove their wages were depressed because of intentional sex discrimination, consisting of setting the wage scale at a level lower than the worth of the jobs warranted.

But Brennan emphasized that the court was not giving its seal of approval to the controversial concept of comparable worth.

Under that concept, women could claim they are entitled to higher pay on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in

*COURT
Continued on page 2A

BN could become state's rail ally

By CHUCK RAASCH
and ROB SWENSON
Argus Leader Staff Writers

A new Burlington Northern president — and subsequently a change in the grain rates offered to South Dakota — has apparently turned the railroad from potential villain to an ally that might run trains on abandoned track.

Gov. William Janklow and Burlington Northern Railroad officials confirmed Monday that the railroad has studied the joining of trains on South Dakota's core rail system and the bankrupt Milwaukee Road's track through the northern tier of the state.

"It's in the looking at stage," Janklow said of the BN's interest, along with at

least three other carriers, in running on state track.

A.R. Boyce, vice president of public affairs for the Burlington Northern, said the subject of running trains on South Dakota track has come up, but no final decision has been made.

"I can't say at this point how it will come out or whether it's a realistic possibility," Boyce said.

A BN legal department spokesman said "the question is whether agreeable terms" can be worked out.

The abandonment of the Milwaukee Road's main line from Ottumwa, Minn., to Miles City, Mont., could spur "dramatic changes" in the coming months, Boyce

There was evidence that was already occurring. In February, it was reported that several major grain companies were planning to build huge loading facilities on BN track in extreme western Minnesota, which potentially could draw from the new South Dakota rail system.

Janklow said he expects an answer from the company in 10 days.

The BN negotiations, which Janklow said began near the end of the 1981 legislative session in February, significantly changes the railroad's public relationship with the state.

During the 1981 session, the BN was portrayed by Janklow and other state transportation leaders as a railroad that could have South Dakota at its mercy by being virtually the only access to grain markets in the Pacific Northwest. The state

core line, and another operator, would provide competitive alternatives, advocates of the state rail system said.

But Janklow said Monday that since new BN Transportation Co. president Richard Grayson has taken over, the railroad has given the same rates to South Dakota shippers as those in other states, in effect eliminating a competitive advantage for out-of-state buyers.

"They have changed that practice, which

*RAILS
Continued on page 2A

*Rails

Continued from page 1A

very seriously has made them much less of a threat," Janklow said.

Janklow said he has had private discussions with BN and Chicago and North Western officials about running on state track for some time.

The governor also said that he considers South Dakota's 780 miles of state-owned rails to be publicly owned property, similar to airports, highways and waterways, and that any private carrier interested in operating on the track could do so.

Asked if that meant that more than one carrier could operate on state lines, Janklow said, "absolutely." But he refused to speculate if the latest revelation that the Burlington Northern was interested in the track would in turn make another major state carrier — the Chicago & North Western — also interested.

The state has cooperated with the C&NW in the past, Janklow said. He said South Dakota currently is allowing the C&NW to operate on state track from Wolsey to Aberdeen.

Speculation on the BN state discussions surfaced after representatives of two of the three previously announced contenders for a state contract said that contract work had been held up because the state apparently was discussing operations with the BN. The three companies have expressed a willingness to contract with South Dakota for operations on state-owned lines and \$2.7 million public subsidy. Janklow said they are still in contention.

The BN, however, has indicated that it is not interested in the subsidy as much as it is in the state fixing its track, Janklow said.

That money — from a raise in the state gas tax and subsequent shuffling of the state budget — could be spent to fix track without legislative approval, Janklow said.

*Schools

Continued from page 1A

Total high school enrollment in the district is expected to drop be-

"Because it's for operation — fixing track — operation," Janklow said in answer to why specific legislative approval wouldn't be needed.

While the state owns its core system, there is a possibility that power companies and shippers could be the landlord for the northern Milwaukee Road line through Aberdeen. That line hooks the Big Stone Power Plant with North Dakota coal fields and also is a potential West Coast access for South Dakota grain.

Representatives of the power companies that own the Big Stone Power Plant, and the Great Plains Rail Shippers confirmed Monday that preliminary negotiations have started over possible power company purchase of the Milwaukee Road line to North Dakota coal fields.

Janklow said he first began talking with Grayson about possible Burlington Northern operation on the Milwaukee main line about the end of the 1981 Legislature in February.

Three weeks ago, Janklow said, the two again met in Pierre, where the topic of operation also on the state core line was discussed.

"I said, 'You ought to really consider looking at this,'" Janklow said. He sat there studying a railroad map for a long moment and he then said, 'I'll put some people on it.'"

About two weeks ago, the Burlington Northern sent company officials to check the northern track through Aberdeen, state and railroad officials said Monday.

Although calling the BN-state negotiations a "positive step," state Sen. Don Frankenfeld, R-Rapid City, said he didn't think possible Burlington Northern operation on state tracks would diffuse a state railroad referendum drive.

"I don't think it changes philosophical objectives to state involvement in railroads," said Frankenfeld, a leader in the referendum.

Feds crack on coupon

CHICAGO (AP) — Federal agents said Monday they are investigating a nationwide racket, totaling as much as \$250 million in which grocery stores are redeeming newspaper coupons that have been counterfeited or stolen from printing plants.

Kevin Deery, FBI spokesman in Chicago, said an investigation of the schemes had been going on "for some time," but he declined to elaborate. He did say, however, that the scheme "probably has something to do with the state of the economy."

"Grocery stores operate on such a slim profit margin that in tough days, these coupons can prove to be very beneficial," Deery added.

The Chicago Tribune reported Monday that a private investigator hired by the newspaper had uncovered widespread theft and counterfeiting of coupons.

Such schemes involve both black and white coupons which appear in daily sections and "free-standing inserts" — color sections of coupons that are printed independently and inserted into Sunday newspapers.

The Tribune said coupon pages intended for Sunday papers were stolen before they got to the newspaper plant, possibly between the independent printer and its own

*Raid

Continued from page 1A

evidence that Iraq has violated its commitments under the treaty."

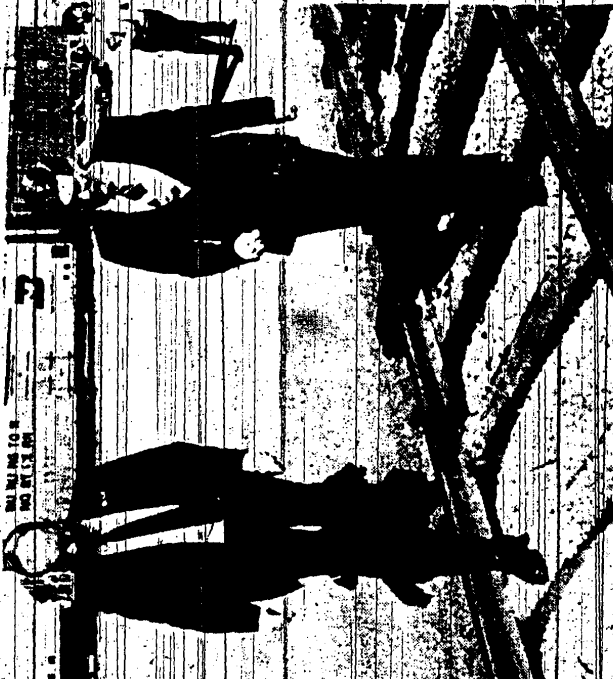
Therefore "The United States government condemns the reported Israeli air strike...the unprecedented character of which cannot but seriously add to the already tense situation in the area," he declared.

He added, however, that the United States remains concerned "that the availability of highly enriched uranium and the acquisition of sensitive nuclear facilities can increase the risk of nuclear proliferation, particularly in the Middle East."

fuselage of a plane that crashed on the roof of Brown-Drug Co. Tuesday evening. More photos page 1B.

June 17, 1981 1A

BN to run trains on S.D. rails



By CHUCK RAASCH
Sioux Falls Argus Leader
Gov. William Janklow couldn't begin to hide his satisfaction Tuesday morning in announcing that South Dakota finally has an operator for its railroad.

"Look at that," he said in rapid staccato, pointing to a line from a news release his office had just issued to reporters. "No subsidy. It says, 'no subsidy.' Isn't that something?"

The object of Janklow's buoyancy was a tentative agreement, signed Monday and announced Tuesday, whereby the powerful Burlington Northern Railroad would run trains on South Dakota's publicly owned rail system without money from state taxpayers.

Monday was, he said, "truly one of the best days I've had in public office," Janklow said. And Tuesday was "a great day for South Dakota," the governor gushed.

Tuesday's announcement at the Burlington Northern's yards in

Rail funding petition may be dropped. Page 3B.

Sioux Falls capped what many shipping and rail officials say is a striking recent change surrounding the Janklow administration's struggle to keep grain-hauling trains in the state.

Although the agreement doesn't include BN trains on the bankrupt Milwaukee Road's track through Aberdeen, there is speculation that the railroad will now be in position to do that if shippers and owners of the Big Stone Power Plant buy the line.

Under the agreement, the BN will run trains for at least five years on about 435 miles of state track that forms a rough cross through eastern South Dakota's wheat, corn and soybean belt. The state will not pay the BN to run on the track, as it would have a smaller operator. But

*RAILS
Continued on page 2A

Contract may reopen coal mines

WASHINGTON (AP) — United Mine Workers and industry negotiators moved toward resumption of coal production Tuesday night when they reached tentative agreement Tuesday night on a new 40-month contract for mine workers.

Despite that accord, coal production has been stalled by the continuing strike by the construction workers. UMW construction picketing shut down mines in seven eastern and midwestern states when miners refused to cross picket lines.

*Rails

Continued from page 1A
South Dakota must spend about \$4.3 million — which was to subsidize a smaller operator — for track repair over the next three years.

BN trains could be running on state track the first week of July. The railroad is expected to be in full operation by Oct. 1.

Until a week ago, South Dakota appeared to be ready to strike a deal with one of three smaller railroad companies that would have operated on the state track with a \$2.7 million public subsidy the first year.

But then the BN jumped in and offered to run trains on state track. As the largest grain hauler and the second largest coal shipper in America, the BN has easy access to lucrative West Coast grain markets.

The state Railroad Board and the federal Interstate Commerce Commission must approve the agreement, but Janklow said it appeared there would be little trouble with either of those hurdles.

By employing a basic transportation system with the BN's connections to world markets, South Dakota farmers could make 15-30 cents more per bushel of grain, Janklow said. Current state law provides for a shipper surcharge of between 2 and 5 cents per bushel for shippers using the state track. That money, along with an extra penny state gas

tax, will go to fix the state's track. However, state Rail Director Jim Myers said he will seek an attorney general's opinion to see if the state must now charge the surtax.

"The chance of doing this without a subsidy (to the BN) ... is an exciting thing," Janklow said.

"What's new here is no subsidy requirement and a requirement that we invest in our own track ... in other words, fix-up-our-own property."

Robert Garland, senior vice president for administration and planning for BN, said the South Dakota agreement may allow the railroad to improve its public relations image and profits at the same time. The railroad has been seen as a tough, sometimes ruthless competitor, Janklow earlier this year criticized the BN for trying to isolate South Dakota's grain traffic.

As for why the BN suddenly shifted from a potential competitor to what Janklow called a "good partner," Garland said: "The governor is a persuasive advocate of the interests of South Dakota and we had an opportunity to study it more carefully. Just the people and the time was right."

"We feel we can do a good job for the customers in the state without a subsidy," Garland said. "We'd rather see the money committed to rehabilitating the track that the state of South Dakota owns."

"If we do a good job, we'll get more business and we'll turn a reasonable profit."

The agreement will last through June 30, 1986. Under its guidelines, the BN will run trains on the state track from Aberdeen south to Redfield, Woley, Mitchell, Yankton and Sioux City; from Chamberlain east to Mitchell and Canton; and from Canton to Sioux Falls. The state will have the right to monitor the service and inspect the company's records.

The state's \$6.9 million rail fix-up requirements will allow 130-ton jumbo hopper cars to be pulled 25 miles per hour on all stretches of the track except for Chamberlain to Mitchell, state Rail Director Jim Myers said.

"The BN can remove its trains in three years if South Dakota doesn't meet its repair requirement."

After the state's repair program is finished, the BN will be required to perform "all ordinary maintenance necessary" to allow trains to continue to run at 25 mph.

South Dakota also can allow other railroads on state track, subject to prior approval of BN.

"It's not the final step but it's a big step," Janklow said, before he, Myers and rail officials stepped outside to watch a green-and-white BN locomotive rumble down the tracks.



Argus Leader photo by MIKE SIERRA
An injured passenger is loaded into an ambulance.

*Crash

Continued from page 1A

Ness said: "Hooked back. I thought it was going to clear our building but it just took a nose dive, and boom. I was about 30 feet away. You bet I feel real lucky."

When the plane hit, Froese was halfway between the crash site and the wheel the plane had thrown off.

One adjoining private office in the Brown building was the only one that was not damaged. Brown employees said, had taken the day off to go fishing.

Randy Albers was not so lucky. He was working late in another adjacent office when the roof suddenly gave in.

"I looked up and it came right through the ceiling," said Albers, one of about a dozen Brown employees inside the building when the six-seat plane crashed above them. "It came right into the office. I was wondering what the hell was going on, that's for sure."

Unharmed, he fled into the street.

He was met in the company's parking lot by Virgil Froese, a Brown purchasing agent, who had watched the entire tragedy unfold. "I always look at the planes as they take off," Froese said. "But this guy was spluttering right away. His engine was cutting in and out. I knew he was in trouble."

So did the control tower at Foss Field. Mike Baldridge, the tower chief, said Schroeder radioed back immediately with reports of some unspecified problem and was given permission to land once again.

Froese and colleague Eugene Ness had a better view just several hundred yards from the plane as they stood near their cars in the parking lot. They said that as the plane continued to gain altitude while heading south off the runway, it was emitting uneven coughs from its engine.

Then, they said, it swung around to the east and eventually north, 180 degrees, back toward the airport, all the while losing altitude and heading right in their direction.

"That's when I started running,"

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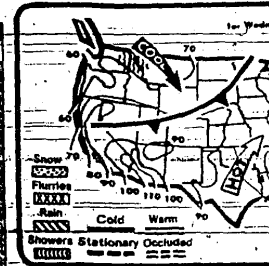
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"That's when I started running,"



Sioux Falls
Partly cloudy through today. Highs today of thundershowers tonight and Thursday. L mid 50s. Cooler Thursday with highs in the northwest 15 to 25 mph today. The chance

Sioux Falls		Exu	
Tuesday		Ch:	
3 a.m.	54	3 p.m.	79
6 a.m.	51	6 p.m.	74
9 a.m.	50	9 p.m.	74
noon	73	midnight (est.)	64
High Tuesday		82	low
Relative humidity		92% at 9 p.m.	
Precipitation		none 24 hours preceding 9 p.m.	
Total for year to date		71.2	
Today's date, June 17		71.2	
Merits		7:45	9111
Mortgage		7:45	8117
Year ago high		79	low
Record high		92	9931.1946
		low	26 1974

Sioux Empire

State, BN officials to work out rail agreement

Argus Leader, Sioux Falls, S.D. Thursday, August 20, 1981

By ROB SWENSON
Argus Leader Capital Bureau
PIERRE, S.D. — South Dakota and the Burlington Northern railroad expect to work out an agreement late next week for operations on state-owned track, state Rail Director Jim Myers said Wednesday.

Myers is planned Sept. 22 in Mitchell, S.D., to meet with BN officials to complete the deal, Myers told reporters here.

State and BN officials announced a tentative agreement in June under which BN would run trains on state track for five years in exchange for \$6.9 million in future track repairs.

The railroad company has since been phasing in operations on about 435 miles of state track.

Initial operations began in July on the line from Volney to Aberdeen — next spring, Myers said. The Chicago and North Western Railroad is currently running trains in that area.

Myers said he had a "very constructive meeting" with BN officials Tuesday.

He expects a decision from the company next week on whether it will accept about \$2.5 million in federal money from the state for track "live but to reallocate those funds."

Myers said. The proposal will be put off but not scrapped, he said. "We can't afford to have the funds given to Arkansas or Mississippi (just) because we can't agree on a project at this time," Myers said.

Utility companies that use the line have offered to buy it, but no deal has been worked out.

Rail officials inspected the line Wednesday and found it in good condition. The \$1 million from utilities should be spent to fix up track. The loan is intended for temporary repairs to help keep the line open until its fate is determined, Myers said.

An agreement for the project has been reached, he said.

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Sieh: S.D. needs water funds now

By The Associated Press
Omaha Conservancy Subdistrict board chairman John Sieh said Wednesday that the governor's water development plan for South Dakota should include a request for more federal money to begin the projects construction.

Sieh said the plan, which calls for \$1 billion in federal money, is outdated and that the state needs to get water development started now.

Sieh said that time delayed comment until he had a chance to study the plan further.

"While in general we can support much of what the governor proposed for new or additional study, we do not feel this should relieve the federal government from its commitment for construction funding for water development in the state," Sieh said Wednesday.

Sieh said a dozen of the 37 water projects in the state water plan are in need of construction money now.

"We would recommend that the manager of the Lower James Conservancy Subdistrict, Character-



1% sales tax proposed for water projects

MITCHELL, S.D. (AP) — The Lower James Conservancy Subdistrict board is recommending a 1 percent statewide sales tax to generate money for water development.

The board on Wednesday unanimously passed a resolution calling for the tax, which would be in effect for five years and include everything but food and medicine.

"We feel water is a statewide priority and everyone should participate in it," said board chairman Tom Greenway of Mount Vernon.

Subdistrict manager Don Barber, Mitchell, said the tax would raise \$100 million for water development, which he said "could provide front-end money or guarantee bonding for projects."

He estimated such revenue would perhaps guarantee as much as \$800 million in bonds.

Barber said the board is attempting to gather public support for the proposal. "I'm only guessing, but it probably will not be very popular with the Legislature at this time," he said.

State, BN near rail contract

By ROB SWENSON

Argus Leader Capitol Bureau
 PIERRE, S.D. — The state and the Burlington Northern railroad have about concluded negotiations for a new contract for train operations in South Dakota's system.

Talks have formally ended until the two sides ratify the final agreement, state Rail Director Jim Myers said Monday.

"We have what we think is a final draft of the document," Myers said. "My office and BN's people are sitting down and we are getting approval from each side."

Myers expects approval to come from both sides before Sept. 22, the day of a planned celebration in Mitchell, S.D., to mark the renewal of operations on former Milwaukee Road track now owned by the state.

A dedication ceremony and public barbecue are planned by Mitchell and Rapid City. The contract was worked out by Myers' office and the BN have been forwarded to members of the state Railroad Board, the attorney general's office and the governor's office for final inspection and comment.

Myers said the document is not yet available for public scrutiny, however.

"Until the actual negotiation is formally closed, it's not appropriate to release the document," he said.

The proposed contract embodies the principles outlined in the tentative agreement reached by the state and the railroad. The BN will provide rail service on about 435 miles of eastern South Dakota track in exchange for \$6.9 million in future track repairs.

"We didn't have any major issues or differences of opinion," Myers said of talks with BN. "It was just a matter of working out language on things we all wanted to cover."

A rail board meeting is expected to be scheduled in the near future for members to consider and approve the contract.

Mitchell group

protests NWPS



AP photo

Stockman protest

Protesters meet Budget Director David Stockman as he tries to slip into a Manhattan, Minn., hotel Monday evening. About 25 people rallied against the Reagan administration's budget cuts as Stockman helped 2nd District Rep. Tom Haden raise about \$40,000.

McCarthy assesses support at state fair

ST. PAUL (AP) — A once-familiar face was among the tens of thousands of people who visited the Minnesota State Fair earlier this week.

Former Sen. Gene McCarthy, now 65, stopped at the fair to explore the possibility of seeking the DFL nomination for the U.S. Senate seat currently held by Independent Republican David Durenberger.

McCarthy says he has been urged to consider running by supporters who believe his leadership and experience are needed in Washington.

"I've been a McCarthy supporter ever since he first ran for Congress in 1950," said a man in a blue suit, Karl Gruhn, McCarthy's chairman of Citizens for

McCarthy. "The people I talk to think he's the kind of man we need in the Senate, especially with this nuclear arms race we've got going," said Gruhn.

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Authorities seized the devices Sept. 2 from his combination 3.2-beer tavern and gas station.

Janklow, BN head plan rail ceremony

PIERRE, S.D. (AP) — Gov. William Janklow met Friday with the president of the Burlington Northern Railroad to discuss plans for a Sept. 22 railroad ceremony in Mitchell.

Janklow said he and Richard Grayson discussed the ceremony marking completion of an agreement between the railroad and the state for the Burlington Northern to operate on state-owned railroad track.

Janklow said his trip to Minneapolis wasn't prompted by any problems with the agreement and that everything is going smoothly.

*Rights budget

Continued from page 1B

ness, will make Ms. Eller's former position unnecessary.

Mrs. Eller said she does not know if she will be reassigned or lose her job next year.

Friday, some audience members and Commissioner Dick Peterson were concerned about the confidentiality of investigations under the word-processing system, under which about seven workers will handle clerical work for all city departments.

No money has been set aside for independent legal counsel. Knobe said a city attorney will aid the commission unless the city is a defendant in a complaint — then, he said, money from the city's contingency fund can be used for an independent lawyer.

Also on Friday, Knobe reiterated that he favors a local civil rights office. Since former Director Eileen

Lincoln's go-ahead touchdown came on a six-minute march which launched the second half. Two Hoover passes to Greg Erickson, and one to Dave Stenseth, helped keep the drive alive.

The 14th play of the 68-yard advance was Hoover's keeper jaunt around the Pats' right corner. There was 5:44 remaining in the

*LINCOLN

Continued on page 3C

Navratilova broke Chris Evert Lloyd in

NEW YORK (AP) — Martina Navratilova broke Chris Evert Lloyd in the eighth and 10th games of the third set Friday to upset the tournament's No. 1 seed 7-5, 4-6, 6-4 and advance to the women's final of the U.S. Open tennis championship.

"This was like the finals, only I've got to go out and play again," Navratilova said of the two-hour, 12-minute battle.

Navratilova, who has never won America's premier tennis event, will meet third-seeded Tracy Austin in today's final. Austin advanced with a 6-1, 6-3 victory over No. 11 Barbara Potter in the day's first match.

The men's singles semifinals also are scheduled for today, with top-seeded John McEnroe meeting No. 15 Vitas Gerulaitis and No. 2 Bjorn Borg of Sweden taking on No. 4 Jimmy Connors.

"It's a question as to whether I'll be on such a high (for the finals), whether I'll be playing great or whether I will have expended so much energy that I'll be flat," Navratilova said.

Lloyd, the defending champion, was going after her sixth U.S. Open title in seven years. Navratilova, who became a naturalized American citizen earlier this year, never before made it



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Wednesday, September 23, 1981

Sioux Falls, South Dakota 57102

A Gannett Newspaper

ETSI brings lawmakers to Pierre

By ROB SWENSON

PIERRE, S.D. — Legislators converge in Pierre today to consider Gov. William Janklow's proposal to sell Missouri River water to an out-of-state energy company for a planned coal slurry pipeline. It will be an old battle with a new twist for many lawmakers. Some legislators are excited about the deal Janklow negotiated with Energy Transportation Systems Inc. to protect underground water supplies in southwestern South Dakota. Others are worried about time constraints and other factors.

Pierre prepares for business boom. Page 5C.

Although there has been a flood of developments recently, the subject of ETSI is not new in South Dakota. Talk of a West River pipeline to transport Missouri River water to Wyoming for a coal slurry pipeline has circulated in legislative corridors and meeting rooms for years. Janklow said more than four years ago, as attorney general, that he would sue Wyoming, if necessary, to prevent a coal slurry pipeline from taking water that feeds towns

in the southwestern part of the state. He said the same thing in January as governor.

Since that time, he has negotiated a tentative deal with ETSI whereby the company would use water from Lake Oahe — not the Madison Formation, which underlies parts of South Dakota, Nebraska and Wyoming — to supply its proposed coal slurry pipeline to southern states. The deal could potentially net the state \$1.4 billion over the next 50 years at a cost of up to 50,000 acres of Missouri River water a year. This will be the second time South Dakota legislators have given serious considera-

tion to a proposal that could result in the construction of a water pipeline in western South Dakota.

Consideration of the most recent proposal begins today at the 11th special session in state history. The session will get under way today at noon. Legislators will hear Janklow and take care of procedural matters before debating any bills. They may not get to the heart of matters until Thursday.

The special session marks the second time since the regular 1981 session ended in

LEGISLATURE
Continued on page 2A



BN President Richard Grayson, left, and Gov. William Janklow congratulate each other at the dedication of the state's railroad line Tuesday in Mitchell.

1 S.D. college must close, ed chief says

By JANE VANDERPOEL

BROOKINGS, S.D. — In the next decade one of seven state colleges will have to close, academic programs will be eliminated and enrollments will be limited by stiff admission requirements, a Janklow administration official said Tuesday.

Secretary of Education and Cultural Affairs Harris Wolman said state schools will survive only if they do not duplicate other school's programs, and concentrate on marketable job skills.

Wolman interrupted his Black Hills vacation to substitute for Gov. William Janklow Tuesday at a human resources development symposium at South Dakota State University.

The secretary was not the first to suggest closing a state college. A decade ago, then-Commissioner of Higher Education Richard Gibb's suggestion to do so drew criticism from throughout the state, particularly from communities that feared the loss of a school.

Wolman said tight budgets are no reason for the seven colleges and universities to ask the Legislature to solve their internal money problems; they have to learn to make program cuts themselves.

"We seem to have the idea that once we have something, you lose ground or lose turf by giving it up," Wolman said. But tax dollars will be scarce in the years ahead, and college-age youngsters will have to learn to get by with less.

Each school should have an academic specialty of its own, said Wolman, who spent 19 years as a teacher and dean at

EDUCATION
Continued on page 2A

But bond disagreement looms

State, BN dedicate railroad

By CHUCK RAASCH

Argus Leader Staff

MITCHELL, S.D. — Two

fall allies — South Dakota and Burlington Northern Railroad — dedicated the state railroad here Tuesday. But today in Pierre, they will be foes.

Calling it a great day for South Dakota, Gov. William Janklow joined about two dozen other state and BN officials in opening the company's venture onto 480 miles of South Dakota-owned railroad in the state's eastern grain belt.

The dedication culminated a series of back-room negotiating and legislative debate on an issue that has dominated the first two-and-a-half years of Janklow's administration.

But when the Legislature convenes in Pierre for a special session Monday, BN will argue Janklow's proposed "tax-free" revenue bonds to help Energy Transportation Systems build a pipeline from the Oahe Reservoir near Pierre to Wyoming coal fields.

A real gift for gift giving

MITCHELL, S.D. — Gov. William Janklow might have the gift of mental telepathy, or he might just be lucky.

Among the gifts Janklow gave Burlington Northern Railroad Company President Richard Grayson at Tuesday's state rail dedication was a star quilt, made by women of the Soldier Creek community on the Rosebud Indian Reservation.

Grayson accepted the gift on behalf of his wife, whom Janklow had never met. Grayson said his wife has collected quilts for most of the 42 years they have been married.

On behalf of the state, Janklow also gave BN officials Black Hills Gold cuff links shaped like pheasants, golden railroad spikes, and bookends made from chunks of iron rail painted gold. Some of the gifts also were given to state officials and their wives.

BN sees ETSI as a competitor for coal the railroad now hauls from Wyoming.

"To put them into business with water from a tax-free bond issuance is a tax-free subsidy and we're opposed to that," Burlington Northern Railroad Company President Richard Grayson said. "We're not opposed to him (Janklow) selling them water."

Grayson said the company doesn't mind competing with ETSI, but feels government help in getting ETSI's pipeline built is an unfair business advantage.

BN officials said the railroad will lobby against the bonds in Pierre this week. BN officials briefed their lobbyist William Dougherty, Sioux Falls, here Tuesday.

Janklow said the two sides disagree on the tax-free bonds for ETSI, but that doesn't mean the railroad and government are not in agreement. The general feeling is that the ETSI deal is a good one that South Dakota can't afford.

RAILROAD
Continued on page 2A

Anti-abortion amendment introduced

WASHINGTON (AP) — A Senate foe of legalized abortion has introduced a compromise constitutional amendment that would permit both Congress and state legislatures to restrict a woman's right to end a pregnancy.

The proposal by Sen. Orrin Hatch, R-Utah, chairman of a Senate Judiciary subcommittee on the Constitution, was condemned as "a lot of Karen Mulhauser."

The amendment, visions among anti-says, "A right to ab

the Milwaukee line through Iowa. Lawmakers to provide for ETSI to build water supply line and financing for the north coal line with abandoned proposals giving authority of

ending debt on venue bonds for the \$1-billion. At least a moral and contribute to

Leader Homer said the ETSI differs from past like measures to it loans for home

ing issue that will for the state of Harding said. f the legislative ig success for us, which will be each this after-

tes of a constitu- approved by the 1972, legislators what measures ring the special Constitution says convene the Leg-

nd only business such purposes d."

the special ses- or lawmakers to decrease the possi- to the Madison re opportunity for ent and a state ent fund and ad- ation problems atened abandon- Milwaukee Road's 16.

Curriculum should be designed with the job market in mind, Wollman said. It does no good to educate students who can't find jobs when they leave school with a useless degree; he recommended closer co-operation with businesses and in-

*Railroad

Continued from page 1A

to pass up.

Ironically, state and BN officials expected to sign a formal legal agreement here Tuesday, but did not because of what both sides said were legal quibbles still to be worked out. BN officials said the disagreements were very minor and denied the lack of a signature had anything to do with the railroad's concern for the ETSI bonds.

State Rail Director Jim Myers said the two sides are waiting to find out how much federal rehabilitation money the state will get next year.

"I feel like a million bucks," Janklow said after the hour-long ceremony on a BN flatcar at the old Milwaukee Road depot.

The Milwaukee abandoned its track here about a year ago, after operating trains for 100 years. Mitchell was named for Alexander Mitchell, the president of the Milwaukee Road when the town was founded.

Mitchell is the crossroads of the new state-owned railroad and will serve as the hub for the BN operations.

for the celebration Tuesday, BN brought in an engine, box car and an office car — all decked out with a bright coat of green BN paint — especially for the occasion.

About 350 people watched on a sunny, blustery afternoon as Janklow, state Sen. George Shanard, R-Mitchell, Grayson and several others celebrated the five-year agreement. About two dozen state legislators attended, and participants and onlookers ate a traditional railroad meal of beans, wieners, coleslaw and buns.

ing doesn't mean higher education isn't supported by the federal government, Wollman said, but it signals a change in responsibility for supporting colleges and universities from the federal government to the states.

Under the five-year agreement, South Dakota will put about \$6.9 million into track repairs and BN will haul grain on the state core line that connects with the railroad's main line to West Coast markets.

Grayson said his company probably won't make money on the state-owned line this year. BN trains have operated on the track for about three months.

"We're not looking at this as what we'll do in 1981," Grayson said. "We're looking at it as a long term relationship and setting up for long term profits, and if we didn't think we could do it, we wouldn't be here today."

While BN's venture on state-owned track has begun, the problem of the Milwaukee Road's main line through Aberdeen remains. Its future is expected to be debated in the special session.

BN has no intention of buying the Milwaukee Road main line, even if South Dakota issues tax-free bonds to make the purchase more attractive, Grayson said.

"We're not going to buy it. We have no offer out," he said.

However, Grayson left open the possibility the railroad could end up operating trains on the line under other ownership if the proper deal were made.

Correction

In Tuesday's Argus Leader, the caption of a photo of Clara Jones, proprietor of C-Jones Tailors, mistakenly indicated that she restyles furs at her shop. She tailors men's and women's clothing, but does not work with furs.

Anchorage	49	37	cir	Houston
Asheville	81	44	cir	Indianapolis
Atlanta	82	57	cir	Jacksonville
Atlantic City	77	46	cir	Jamez
Baltimore	86	58	02	Keokuk
Birmingham	87	50	cir	Las Vegas
Bismarck	71	48	05	Little Rock
Boise	67	39	cir	Los Angeles
Boston	78	59	rn	Louisville
Brownsville	90	74	cdy	Memphis
Buffalo	53	49	28	Miami
Charlottesville	82	66	cir	Milwaukee
Charlottesville	75	55	cir	Miss-St. P.
Cheyenne	76	52	02	Nashville
Chicago	61	50	cir	New Orleans
Cincinnati	63	57	cir	New York
Cleveland	60	53	16	Norfolk
Columbus	66	54	cir	Okla City
Del-Ft Worth	93	64	cir	Omaha

Poll: Reagan's

WASHINGTON (AP) — President Reagan is going too far in his budget cuts and he cares more about the rich than he does about the poor, according to a new poll.

The Washington Post-ABC News poll showed that although the president remains personally popular, public opinion about his policies is shifting.

In the poll, 47 percent of the 1,501 adults interviewed by telephone

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Sioux Empire Deals get through with no snags

ETSJ backers see package for rail line passes easily as promise for the future

By ROB SWENSON
Argus Leader Staff Writer

There, the water would be used to transport crushed coal to power plants in southern states like Arkansas.

Approval of the bill provides what many officials say is long-sought protection for Madison aquifer water, which underlies parts of Wyoming and Nebraska, as well as southwestern South Dakota. Officials and residents of the area have been worried that ETSJ use of the water could seriously deplete the supply.

ETSJ President Wesley Witten said before the bills were approved that exact contract language between the state and his company had not been worked out, but that Janklow had accurately summarized the tentative deal in recent speeches.

Neither Myers nor Janklow would say publicly that the Burlington Northern planned to buy the line, but when that scenario became apparent to lawmakers, opposition all but vanished.

But many senators who voted for the bill said they did so because they understood it would lead to BN ownership of the essential coal-hauling line, which also could provide attractive rates for South Dakota grain shippers.

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But the Legislature preferred the vague plan with a known entity — the BN, which operates trains on the state-owned track that crosses the eastern half of the state

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Neither Myers nor Janklow would say publicly that the Burlington Northern planned to buy the line, but when that scenario became apparent to lawmakers, opposition all but vanished.

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ETSJ backers see package as promise for the future

just grabbed my friend and ran'

By TONY BROWN
Argus Leader Staff

MADISON, S.D. — Singed hair and quiet shock were the badges of survival worn by the people in and around the Farmers Coop Elevator that exploded and then burned to the ground here Thursday.



Penny Hughes, a bookkeeper, was in the elevator's office when everything "just blew apart." As she walked through the

*RAILS
Continued on page 5C

*ETSJ
Continued on page 5C

pany would have the right to cut out 50,000 acre-feet if other obstacles are cleared.

Charles Chapman — his railroad company was left out.

*Rails

Continued from page 1C

Testimony and debate were short in the House. After his resounding defeat in the Senate, Chapman didn't even prevent Michigan Industries' case against the bonding bill in the House.

Myers, told lawmakers the Milwaukee north line was the essential link between South Dakota's rail system and grain markets in the Pacific Northwest.

Shipping 54-car trains full of corn on the BN all the way to the Northwest would net farmers an extra \$45,000 per 100,000-bushel train load, according to estimates from Sen. Don Peterson, R-Yankton.

"The less connections you have to make, the better for the producer," he said.

Myers said state shippers would be captive to the Burlington Northern because they could go south to Sioux City or Nebraska and get on a competing railroad — the Union Pacific.

"Once we erase those gateways and become part of the BN, then all we want to derive is the benefit of the direct competition between the BN and the UP," Myers said, "and that happens right at our southern border."

One potential stumbling block for the state seemed to be easing Thursday. A legal spokesman for Indians who had threatened to sue the state for part of the money said tribes now are uncertain whether a suit would be filed. Dennis Ickes, a Salt Lake City lawyer representing the United Sioux Tribes Development Corp., said Indians were told by officials that money generated by the BN deal would be for water projects for all South Dakota.

The prospect of getting clean Missouri River water to western South Dakota residents had some lawmakers bubbling with enthusiasm.

"The governor has done a miracle, in my view, in putting this together," Sen. Marvis Hogen, R-Kansas, said.

Hogan praised the deal on the Senate floor.

David Muns

said Thursday. He said the alliance has discussed legal action on the ETSI plans, which include buying more than 16 billion gallons of Missouri River water a year from South Dakota.

The alliance thinks the ETSI plan would be a misuse of the water, Beaulieu said. "We started the Water for Life campaign approximately 3-4 weeks ago and up until now, we really haven't considered all the

used, said Beaulieu, who criticized the secrecy surrounding negotiations between the state and ETSI on a contract for the water sale.

The alliance also wants to continue work started last year by the Attorney General Mark Meyerhenry, who filed a lawsuit seeking to determine rights to water in the Missouri and its tributaries, Beaulieu said.

The estimated \$1.5 million that corrections officials want would allow the prison eventually be requested or built. The major obstacle will be money, which will have to come from the Legislature, in

Although exact costs are not yet known, the board reaffirmed plans to seek money

Continued on page 3C

Core trains are running, despite unsigned contract

By MEL ANTONEN

Sioux Leader Staff

Riding the rails with Bill and Dick

Burlington Northern Railroad Co. President Richard Grayson and Gov. William Janklow said Thursday there have been no problems running trains on the state-owned core line even though a contract can't be signed.

Grayson and Janklow haven't set a date for a formal signing of the contract.

"Both said there are no problems that would delay the signing. The contract is finished and all that's left is to have lawyers from both sides read it," they said.

Grayson, speaking to the annual meeting of the Sioux Falls Development Foundation, said the merger of small railroad companies in the past 15 years has been necessary to cope with competitive markets and rising costs of energy.

Grayson said that single-line runs and longer railroad lines are more efficient and that South Dakota's core-line system fits into the total BN picture.

"The core system eliminates timely and costly interchanges," Grayson said. "The BN offers South Dakota grain shippers single-line access to three primary markets: the Pacific Northwest, the Great Lakes and the Gulf."

Grayson said other states could learn from South Dakota's core-line plan.

"As unit trains come into general use, we expect to see the core area generate several hundred unit grain trains per year with a savings to producers of more than \$40,000 per train," Grayson said.

Grayson said regional submini-loads that load unit trains will dominate the first wave of development along the core system. He said he

Two buddies celebrated a friendship less than a year old when Gov. William Janklow and Burlington Northern Railroad Co. President Richard Grayson met here Thursday.

Janklow said Grayson had become his personal friend, and he credited the BN executive with turning South Dakota's rail plan from a dream into a reality.

"I'm just country enough to believe no deal is a good deal unless that would delay the signing. The contract is finished and all that's left is to have lawyers from both sides read it," they said.

During that first meeting, Grayson said Janklow showed him a railroad map with green Burlington Northern lines branching around South Dakota.

"He said those green lines reminded him of a giant green octopus whose tentacles were surrounding the state ready to crush it," Grayson said. "I said, 'Governor, those aren't tentacles, they're just loving arms.'"

From the day they met, the two respected each other. This fall, Grayson attended the governor's invitational pheasant hunt.

"Six months ago I wouldn't have gone around a bunch of armed South Dakotans for anything," Grayson joked.

Both Grayson and Janklow said Thursday they are almost ready to sign a formal contract for the BN to operate state-owned rail tracks.

But even without the contract, the operation is going smoothly. One of the only places the two men disagree is over South Dakota's planned sale of Missouri River water for a coal slurry pipeline.

Grayson said the deal, negotiated by Janklow, will give Energy Transportation Systems, Inc., an unfair advantage over the railroad in moving Wyoming coal.

"I don't know what the future for ETSI is. I hope poor," Grayson said bluntly.

Since being created through a merger of several railroad companies in 1970, BN has invested \$2.9 billion in operations. Grayson said shipments of grain is about 25 days while a unit train, made up of 34 cars, is less than 12 days. Grayson said with unit trains, the company can charge up to 15 cents a bushel less to move the product, he said.

"Six months ago I wouldn't have gone around with a bunch of armed South Dakotans for anything."

Richard Grayson commenting on his inclusion in the governor's pheasant hunt



Sioux Leader photo by MIKE SIERRA
Burlington Northern president Richard Grayson says he and Gov. William Janklow think a lot alike (except about the ETSI deal).



Argus Leader photos by LLOYD B. CUNNINGHAM and MIKE SIERRA

Street and Cliff decreased as roads became slick. Visibility was cut to a quarter of a mile. Eastern South Dakota received 1-2 inches of snow, with snow and traffic travelers' advisories out for today. See story, page 1A.

more legislators will ask what was the need for the special session," House Minority Leader Lars Herseeth, D-Houghton, said. Legislators will meet in Pierre Jan. 5 for the beginning of the

hurt the state, he said. "I'm concerned that the contract be properly drawn before signed," Harding said. He, like Janklow, is a Republican.

Myers and BN officials plan '82 core rail work

YANKTON, S.D. (AP) — South Dakota Rail Director Jim Myers is meeting with Burlington Northern officials in Minneapolis this week to make plans for next year's work on the state's core rail system.

Once the repair work is planned, the two sides can sign an agreement for the BN to run on state-owned track, he said. The BN is already operating on the state's core system under an agreement reached with Gov. William Janklow.

Myers said one of the things needed before the operation agreement can be signed is BN's estimates of work required on state track, which have now been determined.

"We wanted to sit with them and agree on the time frames so that we can coordinate crossing work, for example, with communities and counties and the state highway department," said Myers.

"Once we've both agreed on that program we'll agree to signing of the contract and we'll be on the road."

Even after details of the work program are decided, Myers said it could take another two to three weeks to get everyone together to sign the contract between the BN and the state.

Daschle's absence during vote

said, "If that were the only vote on this continuing resolution, you bet it would be important, but that's only one of about half a dozen (votes)."

About 70 other House members missed the vote, while the average absenteeism is 35 or 40, Daschle said. He also said the House seldom votes on Mondays.

"I can't tell you the last time we had votes on Monday," he said. "The last time we talked about any votes, we were told the soonest they would be was at 4 Tuesday afternoon, so we made our arrangements around the schedule were given at the whip meeting."

Daschle estimated he has been present

for "98½ or 99 percent" of all votes this session.

Parish said Rep. Clint Roberts, R-S.D., was there for the vote.

"We all know South Dakota will only have one vote in Congress after 1982," Parish said. "South Dakota's Congressmen, Clint Roberts deserves the thanks of his constituents for voting against this big spending plan of the Democrats."

But Daschle said he's been told if things had worked out a bit differently, Roberts would have been at the same meeting. Daschle attended in Sioux Falls Monday. A Roberts-Daschle race is expected for the state's lone House seat next year.

"The leadership apparently didn't decide when it would be brought up until Friday, and I was in South Dakota Friday," he said.

Daschle said he would have supported the 5-percent cut, but there will be several more votes on the continuing resolution. The one that counts will be the vote on the House-Senate conference committee's version, he said.

A resolution must be approved by Friday midnight for the federal government to keep operating, he said. President Reagan probably will veto any resolution he feels contains too much money, Daschle said. "We had our commitments," Daschle

saved the American taxpayers Tom Daschle doesn't show up," said. "There's no excuse for his absence. The House majority leader announced it on Thursday that this vote would be as a complete surprise."

he was in Sioux Falls keeping speaking engagement, aware of the vote. There was a vote at a meeting of party ek, Daschle said, adding he vote was scheduled as late

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Sioux Empire

South Dakota, BN to sign contract Tuesday

Argus Leader, Sioux Falls, S.D. Saturday, December 19, 1981

By DAVID EGNER

Associated Press
PIERRE, S.D. — A five-year contract will be signed Tuesday for the Burlington Northern Railroad to run trains on 435 miles of state-owned track, in return for \$6.9 million in state-funded track repairs. "We've worked out a railroad program that's going to be better than we've ever had in South Dakota," Gov. William Janklow said Friday night, after announcing the signing.

The BN has been operating trains on state-owned track since July 6, under a tentative agreement. Negotiations have been going on since then to turn the two-page tentative pact into a complex legal contract, Janklow said. "There is no substantive change" from the tentative agreement in the formal contract, Janklow said. "This will mean hundreds of millions of dollars more in the pockets of South Dakota

producers," Janklow said. If none of the approximately 1,350 miles of track abandoned by the Milwaukee Road in South Dakota from 1974 through 1980 had been saved, farmers "would be facing bankruptcy in a few years because they couldn't afford to market their product without a railroad," Janklow said. Janklow said he and BN officials will sign the contract at a luncheon ceremony in Aberdeen.

"It's the end of a long journey, believe me," Janklow said. "I think it's a great Christmas present. It's a great way to end the year, by building something. I've been able to call high points and to me this is one: It's one of my proud achievements," Janklow said.

The state Railroad Board approved the final contract with the Burlington Northern on Wednesday, state Rail Director Jim Myers said Friday night.

Although legal advertisements had said the board would hold a public hearing on unrelated and relatively minor matters, notice had been given that the board would meet to act on the rail contract. No news reporters were at the meeting, Myers said.

No other approvals are needed for Janklow to sign the contract, Myers said. Efforts are continuing to get the BN or another railroad to buy the Milwaukee Road's mainline across northern South Dakota, which the Milwaukee wants to abandon, but there's still no agreement, Janklow said.

"We're in the best of all possible worlds right now," as far as being able to ship farm commodities out of the state, Janklow said.

"Strategically, we couldn't be better off. We can go north, south, east and west for the first time," Janklow said, because of connections from the state core system to

the sprawling BN system. The Burlington Northern is the nation's longest railroad, the largest grain hauler, and the second-largest coal mover.

"This opens up new markets for us," Janklow said. By allowing South Dakota grain to be shipped in large unit trains at cheaper rates, the BN is making South Dakota crops competitive with crops from other states, the governor said.

The BN has phased in operations on the 435-mile state rail core system since its July start-up. Myers said Service to all 435 miles of the system began Nov. 9, he said.

The core system is made of two main corridors. One runs from Sioux Falls through Canton and west to Mitchell and Chamberlain. The other runs from Aberdeen south through Mitchell and Yankton, and to Sioux City, Iowa.

"Jim Myers, he works 15 and 20 hours a day, he goes seven days a week," the governor said.

collected by a temporary sales tax in crease, consists of 800 miles of track. Much of the track is being held for possible future use.

The agreement with BN exempts the firm from state railroad taxes on its operation of the core rail system. It also requires Janklow said legislators from both par-

ties who supported a penny sales tax in the election year of 1980 to fund July start-up. Myers said Service to all 435 miles of the system began Nov. 9, he said.

"I'm proud of the people of South Dakota," for supporting plans to rescue rail ser-

vice, the governor said. Janklow praised Myers as "the inspiration, and the guiding force" of the rail-

Wakonda gas leak forces

evacuation

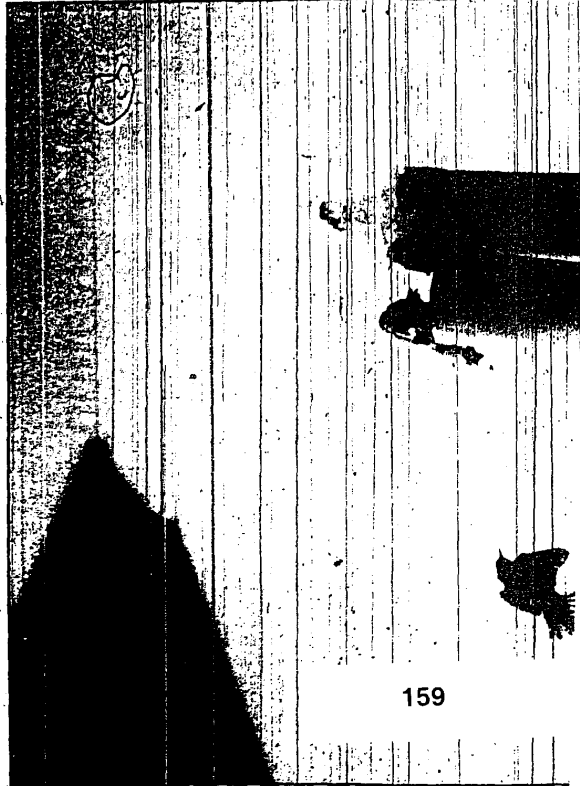
WAKONDA, S.D. (AP) — Propane gas leaked from a cracked storage tank Friday, forcing an evacuation of a two-block area in Wakonda for several hours.

"No pockets of gas were found. Everything is back to normal," Clay County Civil Defense Director Ben Taylor said Friday evening.

Taylor said he understood that a 1,000-gallon tank was overfilled and developed a 3-inch crack when the gas expanded. About 500 gallons of gas escaped, he said.

Special sensing meters were used to check for pockets of propane in basements and low-lying areas, but none was found, Taylor said.

Propane gas is just like natural gas. It settles to low spots," he said.



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Regents tighten college standards

By JANE VANDERPOEL

Argus Leader Staff

Admissions-standards-at-three-state-universities-will-get tougher, and the public television station at South Dakota State University will close, the Board of Regents decided Friday.

Starting in the fall of 1983, high school seniors in the state must graduate in the upper half of their class and get a score of 21 on the American College Test entrance exam to be admitted to SDSU, the University of South Dakota or the School of Mines and Technology.

This year, students in the upper two-thirds of their class with an ACT score of 20 are accepted.

The requirements for out-of-state applicants will be stiffer, too; they must score 22 on the ACT and graduate in the upper half of their class.

USD President Charles Lein said his school would probably lose between 100 and 150 students.

The proposal read by board President William Sristka, combined suggestions from two of the



Sioux Empire

Dec. 22, 1981 IC

Argus Leader, Sioux Falls, S.D.

Long-awaited BN pact includes some quirks

By ROB SWENSON

Argus Leader Capital Bureau

PIERRE, S.D. — The contract to be signed today between the state and the Burlington Northern railroad to provide service on state-owned track reveals some apparent quirks in the lawmaking process.

The signing itself is somewhat anticlimactic because the BN is already operating on state lines. But the ceremony will mark the end of a long and often controversial quest led by Gov. William Janklow to provide service on former Milwaukee Road lines.

Although the rail system was dedicated in September, the big day actually came last June when the state and the BN announced that they had reached a tentative agreement. But the agreement remains tentative until Janklow fills in his signature on the resulting contract today.

"I'm pleased, obviously, that we're getting the agreement signed," State Rail Director Jim Myers said Monday. "I'm sure the public perception of this was that things weren't really settled until the final agreement was signed."

Generally, the contract calls for BN to run trains on state track for five years in exchange for about \$6.9 million in future state-funded track repairs.

Under the contract, BN will run trains on former Milwaukee Road track that runs from Aberdeen to Sioux City, Iowa, and from Chamberlain to Sioux Falls. The contract will run for five years, but it contains provisions to allow either the state or the BN to get out after three years.

The escape clause is apparently the result of seemingly contradictory legal provisions approved by lawmakers during the last-minute scramble to get out railroad legislation during the closing hours of the 1981 session.

One clause in the key railroad bill approved by the Legislature says the state "may contract to operate and maintain state-owned rail lines" until July 1, 1984. Another clause authorizes the state "to contract for rail operations over state-owned rail lines" until July 1, 1986.

The contract also requires BN to collect a surcharge of 2 cents for each hundred pounds of grain shipped to or from the state system.

"It isn't anything that was required by BN. But it's in our law," Myers said.

Myers said BN will use the approximately \$300,000 the tax will raise a year to make further system improvements, not to increase its profit. State officials, meanwhile, are considering seeking legislation to repeal the surcharge requirement.

The surcharge requirement became law during the course of legislative debate over who, if anyone, should pay the bill for get-

ting trains rolling on state track. Although a proposed commodities tax attracted a lot of attention during the session, lawmakers ended up choosing to boost the state's fuel tax to raise most of the money to subsidize an operator.

At the time, a short-line operator, not a major railroad like BN, was expected to eventually provide the service in exchange for subsidy payments and any profit the lines have to offer.

BN will not receive a subsidy. But the state, under the contract, will be required to pump about \$8.9 million of state money into future track repairs. The state must also spend about \$4.5 million in federal aid for repairs on the system, but that money was earmarked for work on the system before the agreement with BN came about.

The state previously spent about \$3 million, mostly federal aid, in line repairs. But that is not included in those totals.

In exchange for, in effect, expanding BN's system, South Dakota is receiving service that Janklow says will take the state "from the end-of-the-line status that previously characterized South Dakota's grain marketing to the heart-of-the-system status."

Improvements in the state's ability to market grain at favorable prices have resulted in the short time BN has operated on state lines, Janklow says. BN has phased in operations over all the state's 435-mile core system since beginning initial operations in July.

And Janklow, who once criticized BN because of the threat the company's regional strength posed to South Dakota, is now singing the company's praises.

"The Burlington Northern is such a good railroad for South Dakota that we've been operating on a handshake and good faith for most of the year. Farmers know what a good company they are for them because of the great unit car rates they are receiving that puts more profit in the farmers' pocket when he decides to ship to market," Janklow said in announcing the completion of contract negotiations last week.

Myers said finalization of the contract relieves the state of a big burden.

"I'm glad the core system is in the BN's hands," he said. "It gives us more time to devote to the other problems. I took this job to deal with rail problems, and there's still a few to be dealt with."

Among them, he says, is the threatened abandonment of the Milwaukee Road line through northern South Dakota and the uncertain future of the Chicago and North Western branch line that runs through central South Dakota.

A Christmas crane



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A lighted Christmas tree atop a crane and a giant Christmas card greet a Sioux Falls Construction Co. site near Sioux Valley Hospital.

Tourism, educators at odds over bill delay

RAPID CITY, S.D. (AP) — With the 1982 Legislature two weeks away, South Dakota tourism operators are nose-to-nose with state educators over a bill that would hold off the start of school until after Labor Day.

The sponsor, Sen. Doris Miner, D-Spearhead, said the bill has drawn a strong interest from tourism businessmen who want a later

start, help them keep their high school-age employees longer.

The bill is generally opposed by school boards, administrators and many teachers, mainly because they feel it's difficult now to get the required 170 days of school in each year.

Most South Dakota schools started at least a week earlier, such as Rapid City, which started Aug. 31.

shorter tourism season.

The bill is "darn important to us," said Bill Honerkamp, president of the Black Hills, Badlands and Lakes Association, the state's largest private tourism group.

"Each year there is more and more of the month of August dedicated to vacation travel. The travel industry feels this calendar creep occurring for a number of years shortens the

lies off the highways and out of the parks," he said.

Visitor counts take a plunge the moment school opens, Honerkamp said. He said tourism groups will lobby for Miner's bill. They'll be opposed by the Associated School Boards of South Dakota, and the South Dakota Education Association.

"We feel very strongly that's a decision to be made by the local

associated S secretary schools car if they war start until get so mas strongly op dating a pi The bill ic starting Labor Day. Bill Sund five direct

Sioux Empire

Argus Leader, Sioux Falls, S.D. W

City switching to private shops for ve

By RUTH HAMEL

Argus Leader Staff

Starting New Year's Day, Sioux Falls city vehicles will be trundled out to private businesses for repairs, leaving only minor service work for the city garage.

Public Works Commissioner Harold Wingler says the garage is too antiquated to handle major equipment repairs. The commission this week voted to dissolve the special fund created for city garage repairs.

But the shop supervisor, Larry Russell, says the private-enterprise move is a foolish one that will end up costing the city a lot of money.

"I think it's going to cost the taxpayers a

fortune," Russell, a 16-year public works employee, said. "There's no other major city in the country that's successfully getting by with farming out all their work."

The city pays its own garage workers \$6 or \$7 an hour, Russell said. He estimated the city will pay private shops \$29 an hour.

The city garage used to employ 30 people; it now employs 16. By next year, 11 people will work at the Falls Park Drive building.

The city has more than 600 vehicles, including cars, trucks and heavy equipment.

Under the City Commission's plan, the

garage will perform only service work after Jan. 1. Mechanics still will change oil and light bulbs and maintain snow removal equipment, but major repair jobs will go to private businesses chosen by individual department heads.

This will please department heads who have complained in the past about delays and shoddy repair work at the city shop.

When the garage did all major repairs, it didn't break even. Wingler predicts the garage will run \$50,000 in the red this year.

Part of the garage's problem stemmed from the fees it charged — the city had a hard time deciding how much it should charge its own departments for labor. At

first it charged \$20 to \$22 an hour, worked out all right, Wingler said. The garage started making a profit, so fees were knocked back to \$1.

Russell said the garage saved the city. Within the last five months, the garage restored two police cars, been totalled, he said. The garage \$3,000 to fix police cars that would have been junked, he said.

The city will pay three times when private businesses start repairs next month, Russell predicted.

When he was asked Tuesday garage changes, Wingler first said

Janklow: Rails have promising future

ABERDEEN, S.D. (AP) — South Dakota's troubled rail lines now have something they haven't had in a long time, according to Gov. William Janklow. That something is a promising future.

Janklow met with officials of the Burlington Northern Railroad Co. Tuesday in Aberdeen to sign a five-year rail use pact, allowing the railroad to operate trains on state-owned tracks in exchange for about \$6.9 million in future state-funded track repairs.

"This is a great day for me and a great day for South Dakota," Janklow said as he signed his name.

"This contract is a tribute to the people of South Dakota who contributed through the 1-cent sales tax to raise the \$30 million for the railroad. Hopefully we are now at a stage where the people of South Dakota can start reaping the benefits."

Janklow also praised state Rail Director Jim Myers for his contribution to the rail deal.

"I am convinced it was the hand of providence that brought Jim Myers to South Dakota," the governor said. "There is no one in the state that worked harder for South Dakota's rails."

"We are sharing a feeling now that I think our grandparents shared when the railroads were first completed," said Bob Garland, BN senior vice president from St. Paul, Minn. "It is a tribute to the courage of the people of South Dakota in tackling a very difficult problem."

Garland said he had no doubts the contract would be successful.

"I want you to make some money and I want us to make some

money," he said.

Janklow said the contract is a continuation of the informal agreement the state has had with the BN since July.

"It was a sign of the railroad's good faith that they operated on nothing but a verbal agreement and a handshake since July," he said. Janklow said Aberdeen could become a gateway to feed the world. "This opens new markets for our grain in Asia and Africa and all over the world," he said. "For the first time, we have access to the Gulf of Mexico, the St. Lawrence Seaway and the Pacific Northwest."

Garland said BN was actively supporting the state's efforts to save the Milwaukee Road main line through Aberdeen. The BN has been mentioned as a possible buyer for the line.

"The BN is the logical choice to operate the main line," Janklow said. "Their system is all around us."

Janklow said two things led to Tuesday's contract signing.

"One was the fact that we have been doing business with BN since July on just a handshake, and the other is that they didn't want the state to subsidize their operation," he said. "That was an indication of the kind of company they wanted to be."

Janklow said he isn't worried about a clause that would allow either party to get out of the contract in three years.

"I am not even concerned about it," he said, "because if everyone lives up to the conditions of the contract there is no reason to get out of it."



Radio station changing its tune — to country

By MARSHALL FINE

Argus Leader Staff

Rock station will drop its Top 40

try format," Holland said. "We're shooting for the 25-54 age group and looking at long-term positioning in

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elementary

schoolwide

Sioux Empire

BN to save money by having S.D. own rail line

By CHUCK RAASCH
Argus Leader Staff Writer

PIERRE, S.D. — The Burlington Northern appears ready to pay for a coal-hauling line through Northern South Dakota, but it doesn't want to be the owner — yet.

Although railroad officials and State Rail Director James Myers essentially agree that the Burlington Northern would guarantee repayment of bonds to buy the line and a \$60 million federal loan to repair it, the technical owner for a while will probably be the South Dakota Rail Authority.

The reason is that certain benefits — namely low-interest federal loans — are available to a government but not a private company. And in times of high free-market financing rates, that can mean great monetary differences.

There are some interest rate advantages

Some blame BN competition for C&NW woes. Page 4C.

that accrue to a public body that don't accrue to a private railroad. Myers said Thursday, "I think it's important to give them all the advantages we can, and public ownership certainly is."

Myers currently is the fulcrum of a two-sided negotiation process to get the BN train on the Milwaukee Road's track that feeds coal to the Big Stone Power Plant near Milbank, S.D. The line also is important because it is a west-coast connection off South Dakota's infant state rail collector in corn and bean country along the Iowa and Minnesota borders.

South Dakota bought that 428-mile feeder rail system from the Milwaukee a year ago with money through an extra penny sales tax. But the main line through Aberdeen would be paid for by the BN.

The Milwaukee is going through bankruptcy and wants to abandon the line. Myers is negotiating with Milwaukee officials on a final price. Myers said while he is trying to set up an operating purchase and repair agreement with the BN, should the purchase price be settled. That could happen this month, Myers said.

But the BN is, for now, viewing it as a loan on the track. Officially, company officials call the potential deal a lease-purchase agreement, and make a point of telling questioners that they're not buying, at least yet.

"I think we feel it will be a good line

although should we get into it, I think it will take a while for it to be a viable economic opportunity for us," BN Vice President of Public Affairs Larry Kaufman said.

The reason for the company's reluctance, Myers said, is that the line, although it has potential, has not been a money-maker for the Milwaukee Road in the past.

It's one of the things that will take a number of years to make into a profitable venture, Kaufman said. He added, "Some, where along the line, we have to have some period where it's not going to be a draw on our program."

Besides being a west coast connector for grain and a hook to the Big Stone plant, the line could in the future be important in coal shipments from Wyoming and other west.

At some point of time if the BN doesn't want ownership, we will have to address that," Myers said.

City approves firefighters' 1982 contract

By RUTH HAMEL
Argus Leader Staff Writer

After months of haggling and controversy, Sioux Falls firefighters finally have a 1982 contract.

The city council Thursday approved a 7.5-percent raise for firefighters, which automatically will go to the firemen's pension system.

The firefighters agreed to contribute more to their pension system if they could keep the practice of figuring unused sick pay into their final pay checks and, therefore, into their pension checks.

"I'm ticked to death with the contract — I can retire this year," one fireman said Thursday. "I have taken very little sick leave and I've got a pretty good piece of change coming."

If the city had succeeded in ending the sick-leave practice, that fireman would have lost several thousand dollars.

1982 Legislature

Argus Leader, Sioux Falls, S.D. Thursday, January 14, 1982

B

BN's efforts to buy Milwaukee line nearing fruition

By TENA HARALDSON

Argus Leader Press
Burlington Northern still isn't eager to own the main line, he said.
"That line has been a money loser for the Milwaukee," he said. "For the first five years, the owner of the main line continued to lose money," Myers said.

Myers said the BN agreed to take the losses because it can benefit from tax advantages and low interest rates in the deal.
In 1980, at the end of Burlington Northern's five-year contract to operate trains on state tracks, the state may try to sell the core line to the BN, Myers said.

"The core system is well designed. It fits into the BN system," he said. "I think we'll be able to sell the line back to private enterprise."

But before the state gets out of the railroad business, there likely will be another crisis to face, Myers said.

"In 1984 I think we're going to have to face the problem of the (Missouri) River west," he said. "And I think it's the toughest one we've got."

Two lines run west to Rapid City. South Dakota already owns the former Milwaukee line from Chamberlain west, but no trains run on it. The Chicago and North Western train operates from Rapid to Rapid City but Myers expects that line to be abandoned.

"We'll have to pick the one that's lower cost," Myers said. Three men from western South Dakota questioned Myers about the state's plan to improve their rail service.

"I have to admit, we out there get a distinct feeling you're a lot more for East River than you are for West River," said Fred Taylor, Farmers' Elevator manager in Philip.

Every day we go to work in the cement plant negotiated a new, cheaper shipping contract with Myers said.

Myers said current train connections weren't favorable for expanding the state's cement market.

Bill to tax advertising killed in committee

PIERRE, S.D. (AP) — A bill that would have brought South Dakota year by taxing advertising services was killed by a House committee Wednesday.

The House Taxation Committee would have brought South Dakota year by taxing advertising services was killed by a House committee Wednesday.

The House Taxation Committee taking a position on the proposal, Van Johnson, who said he wasn't taking a position on the proposal, state's attorney to maintain his office.



Rail director Jim Myers explains his plans to the Senate Transportation Committee Wednesday.

Don Ferguson of the Philip Farmers' Elevator asked why the state cement plant negotiated a new, cheaper shipping contract with Myers said.

Myers said current train connections weren't favorable for expanding the state's cement market.

Here's a list of bills filed so far

HOUSE

HB1055 — Requires reading of ordinances by title.

HB1066 — Extends the time for operating a motor vehicle under a restricted permit.

HB1067 — Changes some procedures regarding the issuance of a ground water permit.

HB1069 — Allows a part-time state's attorney to maintain his office.

HB1065 — Appropriates money to provide for life safety code requirements at the state penitentiary.

HB1068 — Revises the procedures for selling various Game, Fish and Parks licenses and deposits caplan.

HB1069 — Revises the procedures for the graduation administration fees to the graduation administration fund.

HB1070 — Taxes the sale of agricultural aircraft on cash difference of the exchanged aircraft.

HB1071 — Amends the prohibition of the Game, Fish and Parks Department.

SB43 — Allows the superintendent of elementary and secondary education to waive the citizenship requirement for teacher certification.

SB44 — Revises the procedures for the graduation administration fees to the graduation administration fund.

SB45 — Revises student truancy laws.

SB46 — Revises student truancy laws.

SB47 — Amends the prohibition of the Game, Fish and Parks Department.

Redistricting divisiveness flares up again

By ROB SWENSON

Argus Leader Capital Bureau
PIERRE, S.D. — Legislative redistricting, one of the major issues that came before the 1981 Legislature, hasn't been put to rest for a decade, as far as some lawmakers are concerned.

Opponents of parts of the state's new plan are setting the stage with bills for a rematch over some of last year's biggest battle areas.

But questions exist on whether the Legislature can legally make redistricting changes this year.

membership by the regular 1981 session, and every 10 years thereafter and at no other time.

But legislators seeking to make change point out that they don't want to overhaul the entire plan — just parts of it — and that may be allowable.

Rep. Maurice Olson, D-Waubesa, is among those in favor of changes. A bill he is pushing is generally referred to as the measure that would put Day County into one legislative district.

He out, however, would no longer alter borders for four legislative districts in northeast South Dakota.

Marshall, Roberts, Day, Clark, Grant, Kingbury, Hamlin, Brookings and Deuel counties would all be affected.

*REDISTRICT
Continued on page 3B

Sioux Empire

Subdistrict board compromises on W

By SANDY JOHNSON
Associated Press

The Oahe Conservancy Subdistrict Board has backed down on its insistence that the South Dakota water bill include a section deauthorizing the northern features of the old Oahe Irrigation Project.

In a compromise reached over the weekend, the subdistrict decided it would go along with language in the WEB-Oahe bill saying the West Brown and Spink features of Oahe could not be built without specific congressional action instead of outright deauthorization.

Curt Hohn, subdistrict manager, said

Monday the board agreed to the compromise to get action rolling on the bill.

"We're not ecstatic but we're not going to be the cause of any delay," he said. "We figure they'd better get going with something."

The agreement was worked out between the subdistrict and Gov. William Janklow, who got involved in a controversy over the bill last month. That disagreement prevented the House Agriculture Committee from marking up the bill March 3.

The legislation was bogged down when Rep. Clint Roberts, R-S.D., withdrew his support of a proposed amendment after

talking to Janklow. The other congressmen soon followed suit.

The original draft of the bill said West Brown and Spink features of Oahe "shall not be constructed by the secretary" of the Interior Department. The Oahe people wanted the bill to specifically drop authorization for the northern Oahe features while continuing authorization for any features needed for other water development in the state.

The compromise language is being circulated in two forms. One version, from Rep. Tom Daschle's office, said the northern features would not be built without further

action by Congress. The other of Sen. Larry Pressler's features wouldn't be constructed by the secretary is specifically directed to Congress.

Roberts has agreed to Pressler's version.

Hohn said the subdistrict is happy with the compromise, but ity of the board members were to get things moving.

"WEB funding has been withheld in the last two years on occasions, Hohn said. "We

S.D. rails

Milwaukee mainline abandonment gets OK

By The Associated Press

A federal bankruptcy judge has ruled that the Milwaukee Road can abandon its northern mainline, thereby freeing the track for possible purchase by South Dakota.

The abandonment ruling is a necessary step in South Dakota's plan to keep the line operational through a lease-purchase agreement with the Burlington Northern Railroad, state Rail Director Myers said Monday.

Myers said the bankruptcy judge on Monday adopted the recommendation of a special master and ruled that the Sisseton-to-Milwaukee branch line and a branch line between McLaughlin and New England, N.D., could be abandoned 10 days after shippers and employees are notified.

"Then he ruled that the mainline could be abandoned 10 days after notification was given or April first, whichever is later. So we can now expect the mainline will be officially abandoned April 1," Myers said.

Last month, South Dakota's Rail Authority agreed to offer \$30.4 million for the 480-mile Milwaukee line from Ortonville, Minn., to Terry, Mont. The Burlington Northern would make the payments, operate on the track and eventually could buy the line for \$1.

"This (abandonment) is the event we had planned for so our effort now will continue as planned. We were anticipating the abandonment on the 31st of March and April 1 is only one day later."

Myers has said BN trains could be operating on the northern line by mid-April.

"Our purchase agreement is still subject to court approval. The abandonment is one of the necessary steps before the court can act on our agreement," said Myers, who added that he foresees no problems in getting approval of the lease-purchase agreement.

The northern line is an important piece in South Dakota's rail picture because it connects the state's core rail system to West Coast grain markets. It also is used to haul North Dakota coal to the Big Stone Power Plant near Big Stone City.

A private group of investors has been involved in negotiations to buy the 38 miles of branch track from Sisseton to Milbank. It also wants a \$1 million federal grant to repair the track.

Myers said the main line abandonment order involves track from Ortonville to Miles City, Mont., and also includes trackage rights from Miles City to Billings, Mont.

"The Milwaukee has limited trackage rights over the BN railroad between Miles City and Billings, so what will discontinue is from Ortonville to Miles City on Milwaukee track and then the Milwaukee rights from Miles City to Billings on the BN will be discontinued.

"Our purchase only relates to the segment of line from Ortonville west to Terry, which is about 40 miles this side of Miles City. The reason we're only purchasing to that point is the BN and Milwaukee trackage crosses at Terry and it's our intent to construct a connection between the tracks and eliminate the need for parallel trackage between Terry and Miles City."



Joaquin "Jack" Hanson says he'll have a formal decision on his candidacy to

Hanson "for-sure maybe"

By KATE MCCARTHY

Argus Leader Staff
Minnehaha County State's Attorney Joaquin "Jack" Hanson said Monday that it is highly likely he'll be a candidate for the Republican state Attorney General nomination.

"It's a for-sure maybe," was how Hanson characterized the pre-announcement announcement.



Prof

Name: Joaquin
Date of birth:
Hometown: S
Occupation: S
Education:
School, August
city of South
Law

Involving

164

ay



Burlington Northern Railroad and state officials, including Gov. William Janklow, State Rail Director Jim Myers and Rep. Tom Daschle, line Saturday with a ride in the BN minitrain.

Burlington Northern Railroad welcomed to S.D.

ABERDEEN, S.D. (AP) — A going to show you our real appreciation for turning out today by giving you the type of service that you deserve.

The Burlington Northern is here to stay. The BN has been operating trains on the track from Ortonville, Minn., to Terry, Mont., since mid-April. Gov. William Janklow praised all those responsible for bringing the BN to South Dakota following the bankruptcy of the Milwaukee Road.

Janklow said his attitude toward the BN changed from bad to good since he started working with Grayson to solve South Dakota's rail problems.

Richard C. Grayson said, "We are

"We found a common bond," Janklow said. "When you are dealing with Dick Grayson, you know you are dealing with a man whose word is good. Every time he made a deal, he kept it."

Janklow said the BN's takeover of the main line will enable South Dakota shippers to be competitive with shippers in other states for the first time since World War II.

"It was just a matter of the right mix of people coming together at the right time," he said. "In Dick Grayson, South Dakota found someone it could do business with on a handshake on a multi-million dollar deal."

George Nikolas, former member of the South Dakota Rail Authority and new BN employee, said South Dakota now has one of the best railroads in the country doing business in the state.

"This is one helluva railroad," Nikolas said. "It is second to none in the United States." The BN became the official operator of the main line last month when the state bought the line from the Milwaukee Road for \$30.4 million. The monthly payments will actually be made by the BN, and the railroad will have the option of buying the line for \$1 once the debt is paid off.

Ken Dy at Columbia

11/11/11

"You know they won't start looking up unless you go out and buy a new car. Can't do it with those interest rates. I'm not going to buy a new car until they come down." "They won't come down if the economy cut, George?"

From the people

Myers says Burlington investing \$140 million in S.D.

To the editor:

In Hagen Kelsey's letter of May 29, he is very critical of the state's efforts to save our farm-to-market railroad system.

He claims there are 29 trainloads of coal a day from North Dakota to Sisseton. Currently, there is only one coal train on the northern mainline each day, delivered to a power plant near Big Stone City, not Sisseton. If we had 29 trains a day, the line would be such a profit generator that we would have never had to do anything to save it the last three years.

Although the preservation of this line is absolutely necessary to keep the Big Stone Power Plant open, it is also an absolute necessity for our state's farmers and ranchers because it gives them a competitive advantage in shipping their harvests to the expanding Asian markets.

That's why the state has acted as a facilitator and pass-through agency so that the Burlington Northern can operate on and eventually own this very important rail route to the West Coast.

But, Kelsey also levels sharp criticism at the Burlington Northern. He writes: "Noticeably absent from South Dakota's jig saw railroad puzzle is any investment by the Burlington Northern. What do they have to lose?"

Mr. Kelsey is wrong again. The Federal Railroad Administration is loaning the South Dakota Railroad Authority \$30 mil-

lions to upgrade the northern mainline track. But, the BN has contractually obligated itself to pay back all of that loan for South Dakota. The BN is paying, not the South Dakota taxpayer.

Also, the Railroad Authority will soon be issuing \$30.8 million in taxable bonds to purchase this line from the bankrupt Milwaukee Road. But, it will be the BN who pays back the bondholders. Again, it is the BN who will be paying. Not one penny will come from South Dakota taxpayers.

On just these two items concerning one section of track in one part of the state, the BN will be investing more than \$60 million over the next 20 years. When you add the interest payments the BN must also make, their investment in South Dakota is over \$140 million.

In addition, the BN will spend many more millions on maintaining and improving the track it owns itself in South Dakota and the state-owned track that it is allowed to use.

So, to answer Mr. Kelsey's question, the BN has a lot to lose. Its investment in South Dakota is so substantial that it's obvious the BN has great faith in the ability of our farmers and ranchers to produce abundant harvests and great faith in our American system to provide the prices those farmers and ranchers need to prosper.

If you want to put a price tag on what the BN could lose or, said another way, on how much faith the BN has in South Dakota,

economic crisis we're in. You are not part of the problem any more. You ARE the problem. If you don't start spending money, who will?"

"Reagan will. Have you seen his budget for 1983?"

June 4, 1982 ZB

ta's farmers and ranchers, the figures would be at least \$140 million. That's certainly more than the nothing asserted by Mr. Kelsey.

—Jim Myers, director, Division of Railroads, S.D. Department of Transportation, Pierre, S.D.

Huset claims unfair to Flandreau drivers

To the editor:

I am writing out of concern for an incident which occurred at Huset's speedway on Sunday evening May 23. Two Flandreau drivers had their engines claimed for \$350.

They refused the claim so could not receive the money they won that night and are excluded from the track for two weeks. What's more, this can happen again.

I think it is a sad state of affairs when these young men worked so hard to build beautiful racers and then are denied their right to race there. Anyone would be glad to buy a motor for \$350 when the initial cost was two or three times more.

This rule has been in effect for several years so why in one night do we have a claim on two Flandreau drivers?

We in Flandreau are proud of our drivers and would like to enjoy them more.

—Francis Riffel & Family, Flandreau, S.D.

State briefing

From Staff and AP reports

Death still being probed

Conroy Sheriff's office reported no new developments on the Thursday night shooting death of Terry Miller, S.D. The investigation is continuing and is expected to be completed by the end of the week. Paul Morhouse, Turner County Sheriff, said he would issue a statement to the media as soon as he has more information. The investigation could go on a while longer, he said. Authorities found a .38 Smith & Wesson revolver in the car. Officials also did not say who the gun belonged to. A witness to the shooting, but officials refused to name him. Authorities did not say if the death was a murder.

inger to be at USD

— Arthur Schlesinger Jr., Pulitzer Prize-winning biographer, will speak at the University of South Dakota on Sept. 13. He is the author of more than 20 books, including "Robert Kennedy and His Times." He is a graduate of Harvard, as taught history since 1946. He has held various positions, including special assistant to former President

age losing high school

— Carthage will lose its high school next year, the school board decided. The board decided Sept. 13 to send 33 senior high school students to nearby schools in the fall. The school will keep its grade school, which has 29 students. Lee Poppen said. Teaching and administrative jobs will also be cut by the school. Carthage's school enrollment fell below 35, the school board said. The school district could have handled the loss, but it has been difficult.

diversion would cost \$433,000

— It would cost about \$433,000 to divert flood waters from Lake Byron via pipeline, a study by the state engineer of Huron based its cost estimate on a 24-inch pipeline 3,800 feet between the river and lake. The Byron Association wants water pumped to the lake and recreation. The association of landowners has funds to clean up the lake. The average depth of Lake Byron is 6 1/2 feet.

of 170 laboratory miles at 100 mph. The state

4B State

Argus Leader, Sioux Falls, S.D. Sunday, September 26, 1982

PUC staff: Bell rate increase request unjustified

PIERRE, S.D. (AP) — A nearly \$14 million rate increase requested by Northwestern Bell Telephone Co. is unjustified because the company is making too much money already, according to the Public Utilities Commission's staff. Bell requested the rate increase in May. Hearings before the PUC are scheduled to begin Oct. 12.

The PUC staff's recommendations are based on an analysis of the rate request done by two members of a Washington, D.C., consulting firm. They concluded that not only is the rate increase not needed, but Bell would earn \$1.4 million more than necessary every year under the current rates.

It's not unusual for the PUC to hire outside consultants to analyze utility rate requests. The company's report will form the basis for

staff recommendations, but the final decision is made by the three elected commissioners after hearing testimony from the staff and Northwestern Bell. The PUC must issue a decision by late November. The big argument is over the proper amount of profit, or "rate of return." Bell should earn, but a PUC decision earlier this year to allow increased telephone installation charges had the effect of reducing the overall rate increase request.

That accounts for most of the difference between the consultant's analysis and Bell's \$13.5 million increase request. Originally, Bell had asked for a \$15.3 million increase, but a PUC decision earlier this year to allow increased telephone installation charges had the effect of reducing the overall rate increase request.

Myers praises Burlington Northern's work

By The Associated Press
The Burlington Northern Railroad Co. is doing an excellent job in repairing part of South Dakota's core rail system, state Rail Director Jim Myers said. The BN is working on core system track from Canton to Mitchell, and from Mitchell to Sioux City, Iowa. The BN operates on the state's core rail system. "The railroad has done, really on an overall basis, they've done an excellent job," Myers said last week. "In most instances, we're getting more than another \$1 million for crossing work."

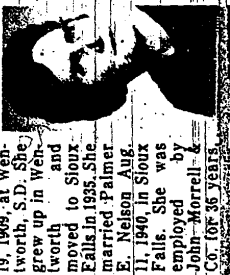
we've paid for from the railroad, and I know of no instances where we're getting less. More than 150,000 ties needed on the two segments of track have been laid and crews handling track ballast and surfacing also are making progress, he said. "It looks to me like Burlington Northern has been cooperating very, very well," said state Sen. George Shanard, R-Mitchell, chairman of the Senate Transportation Committee. This year's work is costing about \$8 million, plus another \$1 million for crossing work.

Deaths

Sioux Falls

Lydia J. Nelson

Lydia J. Nelson, 72, 2908 E. 20th St., died Saturday at Sioux Valley Hospital. Lydia Zwillingberg was born Nov. 19, 1909, at Wentworth, S.D. She grew up in Wentworth and moved to Sioux Falls in 1935. She married Palmer E. Nelson Aug. 11, 1940, in Sioux Falls. She was employed by John-Morrell & Co. for 35 years, retiring in 1966. Her husband died in 1960. She is survived by one brother, John Zwillingberg, Flandreau, S.D., and three sisters, Mrs. Lawrence (Gussie) Winterton, Mrs. Olga Lentz and Mrs. Ella Christianson, all of Sioux Falls. Services will be 9:30 a.m. Tuesday at Faith Lutheran Church. Visitation will begin Sunday evening at



Terry Beier

Terry Beier, 28, Chancellor, S.D., died Thursday at his home, 1501 S. 1st St. He was born March 21, 1954, in Sioux Falls. He married Sonja Sundheim Dec. 23, 1977 at Chancelor. He was employed as a secretary at the Royal G. Johnson Veterans Memorial Hospital in

Survivors include his parents, George and Lois Hyronimus, Sioux Falls; his wife, two brothers: Larry Crooks, S.D., and Bryan, Sioux Falls; one sister: Mrs. Dell (Kathryn) Spade, Randolph, Neb.; and his grandmother: Mrs. Hattie Hink, Lake Havasu City, Ariz. Services will be 1 p.m. Monday at Miller Funeral Home. Burial will be at the Dell Rapids cemetery.

Rz Carl Hart

SPENCER, S.D. — Rz Carl Hart, 90, Canova, S.D., died Thursday at the Good Samaritan Home in Howard, S.D. He was born March 10, 1909 near

Louis Walsh

HARTFORD, S.D. — Louis Walsh, 90, Lyons, S.D., died Saturday at Terrace Manor Nursing Home, Dell Rapids, S.D. He was born Sept. 18, 1892, on a farm near Lyons. In 1912, he moved to Montana where he homesteaded for two years. In 1917, he served in the army during World War I. After his service, he returned to his family farm near Lyons and farmed on it until his retirement in 1962. After he retired, he continued to live on the farm until 1981 when he moved to Terrace Manor Nursing Home at Dell Rapids.

Survivors included one sister, Mrs. Cecelia Spartz, Stayton, Minn., and four nephews, George, at St. George's Catholic Church, Hartford, S.D. A wake will be conducted at 7:30 p.m. Monday at the church. Visitation will be on Monday at the Kahler Funeral Home, Dell Rapids, and prior to services at the church.

Susie Rames

OLIVET, S.D. — Susie Rames, 92, Olivet, S.D., died Friday at the

These are no ordinary dog snacks. These are gourmet snacks that retail for \$7.50 per 10-ounce bag.

Hamel was the one who put the seal of approval on the snack recipe early last year. Unenthusiastic about home-made snacks before then, he was lured from his cozy bed beneath the family baby grand by the smell of the latest concoction baking. When the snacks came out of the oven, Hamel wolfed one down. Then the other 59.

so she would have time for my own personal growth. Then she became interested in gourmet cooking and one day ran across a recipe for home-made dog snacks.

That was the beginning of a new career for Coffey, who holds business certificates from Harvard University and New York University and had spent 15 years in marketing and merchandising jobs and as a small business consultant.

Coffey bought every available snack on the market, analyzed content, shape and packaging, made notes on the fact that las

between \$2.5 billion and \$4.7 billion was spent on pet products, 1.5 p

of which was spent on pet snacks. She determined the snack business was one of the fastest growing segments of the industry, that there was a growing interest in gourmet

BN crews suspend work on S.D. core

By The Associated Press

Crews of the Burlington Northern Railroad have stopped rehabilitation work for this season on South Dakota's core-railroad system.

Gary Nyberg of Wilmar, Minn., who is BN's assistant superintendent for roadway maintenance, said the crews were not able to complete all scheduled work. Nyberg said only a small portion of the work to upgrade the rail lines remains to be done.

Work is unfinished on about eight miles of core track from Sioux City, Iowa to Mitchell, and on about 12 miles of track from Canton to Mitchell, he said.

The rehabilitation project has included laying new ballast and ties so the track can carry heavier loads. Nyberg said BN crews hope to begin work again next May.

Federal panel denies White Hawk an appeal

ST. LOUIS (AP) — A federal appeals panel denied a rehearing Friday for Thomas J. White Hawk, who pleaded guilty to premeditated murder in 1967.

White Hawk contended that his confession was coerced, his counsel was ineffective and that his guilty plea was not voluntary. The 8th U.S. Circuit Court of Appeals denied all three contentions in a 10-page opinion.

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SKATE FOR SIGHT Announces 2nd Annual FIGURE SKATING LESSONS



Wed., Thurs. & Saturdays
BEGINNING WED., DEC. 15, 1982

Sign Up At
MINNEHAWA ICE CENTER
Valley Drive at West Ave.

Mon., Dec. 6th
Wed., Dec. 8th
Thurs., Dec. 9th
3:30-5:30 PM

Cost: \$55.00
(Family Discount, Time Payments)

FOR INFORMATION CALL 334-771

Dec. 4, 1982 46

ANNOUN

168

a new addition

ue the case has been set for such a hearing and asked for the trial.

He was arrested, charged and suspended from his teaching duties Feb. 28 and is free on bond.

Aberdeen-school board members accepted his resignation last week after telling him they didn't plan to renew his teaching contract.

Myers: Some Burlington issues unresolved

BROOKINGS — Negotiations between the state and Burlington Northern Railroad for continued operation of state-owned railroad track are going well although some issues remain unresolved, Jim Myers, secretary of the Department of Transportation, said.

The contract between the state and the railroad expires at the end of June for operation of the core railroad system the state bought from the bankrupt Milwaukee Road in 1980.

The state is trying to obtain a longer-term agreement so there will be long-term confidence in the line, he said.

"We are working very hard to see to it that the agreement serves the interests of South Dakota well and that we get a better agreement than the one we now have," Myers said.

He said one change in the contract that is definite is that Burlington Northern will not continue to provide service on the Mitchell-to-Chamberlain branch line at the end of this year's harvest.

Myers said it is not certain whether alternate service will be provided on that track, which serves only one shipper.

Republican women to meet

From staff reports

The co-chairwoman of the Appalachian Regional Commission will be the banquet speaker during the South Dakota Federation of Republican Women's convention Saturday in Pierre.

Jacqueline Phillips is a presidential appointee to her position with the development agency that serves 13 Appalachian states. She served as deputy director of the Reagan-Bush campaign in Maryland.

FEWFI RV REPAIR

Sioux Tribe. Federal judge ruled Mission is an Indian community, and Mission must go the tribe to get a liquor license.

But Ferner's lawyer, Jo son of Winner, said earlier jurisdictional questions involved lawsuits and the courts have ed down a decision involving

Thieves take zoo an

MANKATO, Minn. (AP) — have struck the Sibley again.

"These people (the thieves) be the lowest clods in the city," Roberts, Mankato Parks said Monday.

SELF-STOR

Outside Storage	\$10/
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10x15	\$38/
10x20	\$44/

335-1986
BURLINGTON BOOKS
230 Burlington
Behind Shopping
on South Western



FAST SERVICE

CONCRETE



AP photo

the Minnesotan's fun today. Though mostly cloudy skies and a 20 percent chance of thundershowers are forecast this morning, the afternoon should become partly cloudy with a high near 79.

State negotiates to extend rail deal

By RICHARD BALE

Argus Leader Staff

PIERRE — Burlington Northern Railroad will continue operating on 437 miles of state-owned track known as the core system under an agreement being negotiated by state and railroad company officials.

The agreement will extend the original five-year agreement that restored much of the state's most important rail service lost in 1980 when the financially troubled Milwaukee Road abandoned its line. The Milwaukee once was the state's largest carrier.

"The state is on the verge of executing an agreement to continue core system operations," Jim Myers, chief of operations, said Monday.

The original contract officially expired Monday, but state and Burlington Northern officials signed a 10-day extension to allow the railroad company more time for review, Myers said.

The state-owned core system consists of lines from Aberdeen south

through Mitchell and on to Sioux City, Iowa, and from Sioux Falls to Chamberlain via Canton. It was designated in 1981 as some of the most vital part of the state's rail transportation system.

Myers said the contract was "essentially a lease agreement," making it similar to the original agreement.

The Mitchell-to-Chamberlain link, made of lighter gauge rail than the rest of the core system, will not be included in the new agreement.

Myers said this line will continue to operate through 1986 when it will either be abandoned or turned over to a private short-line operator.

The state's 1986 railroad plan says traffic on the Mitchell-to-Chamberlain line does not justify the higher cost of rehabilitating the lighter line.

Myers declined to say how long the new agreement would last or give other details until it was completed.

friends

Cement plant

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...Weather 2A

...America," he said in his 20-minute
...speech. "A lot is going on that's good
...around the world because of Ronald
...Reagan's leadership for democracy
...for this," Bush said.

"It says that farming should be for
...farmers, and I couldn't agree more;
...and Jim Abdnor deserves the credit
...for this," Bush said.

...appearance, about 20 protesters car-
...ried signs opposing the administra-
...tion's farm program, involvement in
...paigning for others in Omaha earlier
...the

Burlington signs 15-year lease

By RICHARD BALE
Argus Leader Staff

PIERRE — Burlington Northern Railroad
signed a new 15-year lease agreement Thursday
that could bring the state millions of dollars.

The agreement means the rail company will
operate 437 miles of state-owned track and assures
that rail service will continue on some of the most
important routes in eastern South Dakota for at
least another five years.

It also will make it easier for the Burlington
Northern to purchase the track if the railroad
wants to continue operating on the lines after 15
years, Jim Myers, chief of operations, said.

"This is a happy day for BN," Tom Hackney, a
Burlington Northern regional vice president,
said.

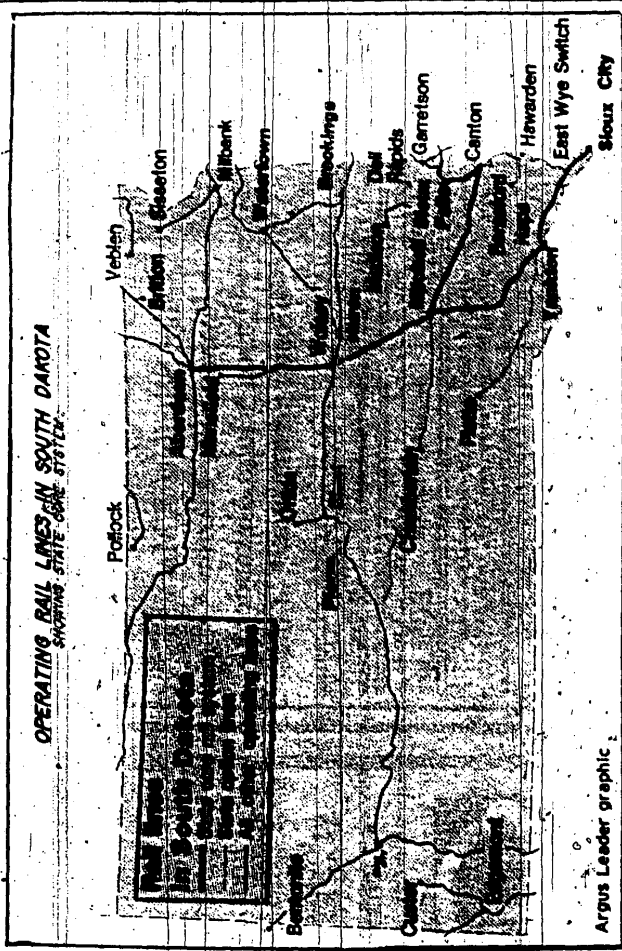
Hackney flew to Pierre from St. Paul for a sign-
ing ceremony with Gov. William Janklow and
Myers.

Burlington Northern will continue operating the
state-owned core system from Aberdeen through
Mitchell to Sioux City, Iowa, and from Sioux
Falls to Mitchell via Canton.

The lighter gauge line from Mitchell to Cham-
berlain will get service only until Dec. 31.

The contract extends the original five-year
agreement, which took effect in 1981, with Burling-
ton Northern that restored a substantial portion of

Burlington/See 2A



This map shows the operating rail lines
in South Dakota. Burlington Northern Rail-
road signed a 15-year lease agreement
Thursday that could bring millions of dollars
to the state. The contract extends an
agreement which took effect in 1981.

July 11, 1986

The Newark-based no-trills carrier, which has suffered because of rapid expansion, management problems and increased competition, bought Denver-based Frontier just eight

available course of action to take and was in the best interests of the People Express shareholders. The deal with United followed wide speculation about the fate of People

directors announced that it would sell Frontier to United for \$146 million, of which \$50 million will be paid next week.

Sunday; partly Tuesday. High: the 60s to lower

Burlington: Signs 15-year lease

Continued from 1A

the lines in the eastern part of the state. Those lines had been lost in 1980 when the financially troubled Milwaukee Road abandoned its lines in South Dakota.

Either party may cancel the contract on the fifth anniversary or the 10th anniversary of its starting date, July 1, 1986, provided they give 180 days notice.

"The principle concern on our side was we wanted the agreement to be as long as possible," Myers said.

"We had hoped for a straight 15 years. We took it as far as we could. They wanted a five-year contract."

The contract calls for the railroad company to make lease payments to the state if the lines' gross freight revenues exceed \$20 million a year, the amount estimated by the state as Burlington Northern's break-even point.

The state would earn 5 percent of gross revenues between \$20 and \$25 million, 6 percent between \$25 and \$30 million, and 7 percent above \$30 million.

Last year Burlington Northern generated \$23 million on the lines, which would have earned the state almost \$200,000.

The lease money will go into a fund in the Department of Transportation.

Under the previous contract the railroad company paid the state \$1 a year for the lines, and the state was responsible for maintenance and repair costs. The railroad company will now be responsible for maintenance and repairs to ensure the lines' allowable speeds remain at 25 miles an hour.

"We feel the contract has worked well enough that the citizens of South Dakota should get something back," Myers said, adding that through the railroad's service and lower rates, "We more than recovered our investment in the rail facilities."

The Milwaukee Road was losing \$12 million to \$15 million a year on the same routes before abandoning the lines March 1980, he said.

The difference comes from more efficient shipping practices on the part of Burlington Northern in using 54-car unit trains, Myers said.

The agreement gives Burlington Northern the option to buy the state-owned core system at any time during the contract period for about \$26 million, the amount the state has spent to purchase and repair the system.

Burlington Northern operates on another state-owned line, known as the main line, which runs from Ortonville, Minn., through Aberdeen to Miles City, Mont. It is used primarily for coal shipments from the West, and is covered under a separate agreement that expires in 2002.

Myers said the new agreement with Burlington Northern is timed so that when the railroad pays off the government loans that were used to repair the main line, in about 15 years, they will be at the end of the lease agreement on the core system.

The idea is that the railroad would then have the money available to buy the core system, Myers said.

Hackney said if the lines continue to make money, the railroad would consider purchasing them from the state.

Hackney did not disagree with Janklow, however, when the governor said that if export markets did not improve, the prospect of the company buying the state-owned system was not good.

Burlington Northern moves grain, primarily corn and some wheat, over the core system to the north, then west to the state's major grain markets in the Pacific Northwest. It also ships grain and soybeans south to the Gulf and to the east.

The contract has been approved by the South Dakota Railroad Authority.

The agreement allows the Burlington Northern to use other rail carriers to fulfill its obligations under the contract, but Burlington Northern would still be responsible for the service other companies would provide.

The South Dakota Wheat Growers

Association is the only shipper on the line in Chamberlain, which will lose its only rail connection Dec. 31.

"What we will have to do is try to get a short-line operator," Vince Erz, grain division manager for the Wheat Growers, said. The company has 15 terminals statewide.

Erz said proposals have been considered from Dakota Southern Railroad, a short-line operator that operates on state-owned track from Platte to Napa, just north of Yankton.

An operator probably won't be found by the time the Burlington Northern quits the line, Erz said. He said shipments are scattered throughout the year in order to take advantage of price changes, so the terminal really has no deadline to meet in finding an operator.

He said the Burlington Northern had been lowering its prices over the last several years, which had been good for business. "We had been getting along fabulously," he said.

The company has since lowered its rates for elevators that can sell entire train loads at one time by 17 percent, Myers said.

Mike Vehle, president of Shanard Inc., a grain, feed and fertilizer company based in Mitchell, said he welcomes the extension of the contract.

The company, owned by state Sen. George Shanard of Mitchell, has two elevators served by trucks at Reliance and Armour, and a third on the state's core system at Emery.

Shanard and Vehle decided to invest in a large new unit-loading elevator when Burlington Northern first started operating the lines and offered special prices for elevators that could load entire trains at a time.

Vehle said the investment has paid off. Vehle said the trucks have not been edged out of the transportation picture, because many now concentrate on short hauls to elevators with rail connections.

And the railroad has benefited the farmer by providing competition for the truckers, which tends to keep transportation costs down, Vehle said.

National

Highs across are expected to with readings 70s over the north and along the coast to 110 degrees or west.

Smoke Two studies

WASHINGTON studies reach opposite conclusions whether other smoke can damage smokers, and this a dispute akin to over smoking and

A British study of having from small, if it existed appeared just as searcher concluded smoking could Americans—a 46,000.

The British study P. N. Lee of the Research, said it whether tobacco cancer among statistical study make, it said, the

U.S.

WASHINGTON an administration \$13.5 million in a the government try apologizes for can speech and soften its critics States, officials

The State Dept that it had canceled \$9 million this year in mining and agricultural projects. An ad



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For many towns, a lot is riding on system's success

BY TERRY WOSTER
Argus Leader Staff Writer

EMERY — Cradling the telephone receiver against his shoulder, Lowell Doorn studies the number, underlines it twice and speaks into the phone, his voice strong over the rumble of a loaded grain truck pulling in low gear onto the scale just beyond the office wall.

That's what it's running now, and it's a solid price, Doorn tells the caller. He hears, pushing his baseball cap back on his forehead, then closes the deal and hangs up.

"There aren't any miracles in the elevator business," he says.

Well, maybe not.

A lot of folks in Emery would disagree, though. For them, it is a miracle enough that a grain elevator exists in this small, grain-country community east of Mitchell, Minn., to Terry, Mont., about 480 miles of track that brought North Dakota coal to the Big Stone power plant and linked state farm families coming to the hardware and grocery stores, the machine shop and parts store.

And without a railroad running to carry the wheat and corn from the elevator to the West Coast or Gulf of Great Lakes, Emery would be a ghost town.

markets, there'd be no elevator.

That was the future Emery, population 399, faced in March of 1980, when the Milwaukee Road closed 853 miles of its track in South Dakota, including the line past Emery's elevator.

The Legislature, prodded then by Gov. Bill Janklow, added a penny to the state sales tax to raise \$25 million to buy a core rail system, targeting abandoned and underused lines of the Milwaukee Road, Chicago and North Western, and Burlington Northern.

Janklow and Burlington Northern officials agreed to a deal to buy the company's line from Emery to Mitchell, and two years later, on July 6, 1982, the state bought the system. On July 6, 1982, the state bought the system. On July 6, 1982, the state bought the system.

rolled, savings flap in the breeze, the screen door at the Eagle Cafe bangs as the noon crowd leaves. The Security State Bank is the newest building on the block.

"That line, the one Janklow wanted to save so much he put the state in the railroad business," includes track from Canton through Parker, Marion and Emery to Mitchell and north, through Sioux City through Yankton to Mitchell.

In 1982, 5,302 carloads of freight were carried over that line. In 1988, the system carried nearly four times that, 19,810 carloads.

Burlington Northern operates that line under a rental agreement with the state, paying a fee when business exceeds a series of thresholds. A year ago the company ran \$44 million in business over the line and paid the state \$1.3 million, Thune says.

On Thursday, the state and Burlington Northern made a deal for five years of projects to upgrade the core line at a cost of \$12.7 million. The state will pay up to \$8 million in the first year, then \$2 million a year for the next four years.

Neglect caused much of the rail problems in the 1980s, Thune says. "We're trying to make sure the state takes care of the lines we have for the future."

"There'd have been no elevators to sell," he says. "You could chart business activity pretty precisely by following the rail lines."

Burlington Northern is now negotiating to buy the state's main line, the northern route from Ortonville to Mitchell.

The state issued bonds and notes to buy that line and rebuild the track, and the company is repaying those notes. Last year, Burlington Northern paid off the \$40 million loan for the original purchase. A final deal to give the company complete ownership of that line is close, says Thune, head of the rail division in the State Transportation Department.

"Conservatively, having a railroad here means at least 20 cents a bushel difference in what a farmer gets for his grain," Doorn says. "Work that out for the past 10 years. It isn't that far by highway to Mitchell, or Marion or Canton. Even if people get used to traveling that far on grain business, some of them will keep going for groceries, meals, parts. Pretty soon there isn't much reason to go to the old hometown."

Emery is a post-card farm community of grain elevators in 50 South Dakota towns, deeply rooted shade trees and well-built homes. On the wide, lazy main street,

convincing those legislators it was a good idea, Bill Janklow took the partisan politics out of it by inviting both parties' leaders in and explaining. It took a lot of discussion, but I ended up for it."

Don Frankendorf of Rapid City, then a state senator, was an outspoken Republican foe of the purchase. "I fought it at every step. I had a philosophical concern about the state being involved in what traditionally had been private enterprise, and I had a practical problem with the process. The state railroad never enjoyed a public consensus. It was rammed at us. I don't blame Janklow. He was a strong advocate, perhaps an overbearing advocate, but the fault I find is with people who caved in."

The deal might have died if Janklow hadn't caved in a bit after that until they passed something.

In the end, the Monday morning calls weren't needed.

That concession was important.

State concerned with maintaining system, not growth

BY TERRY WOSTER
Argus Leader Staff Writer

PIERRE — The state rail network now serving South Dakota has plenty of room to grow, but it won't get much bigger.

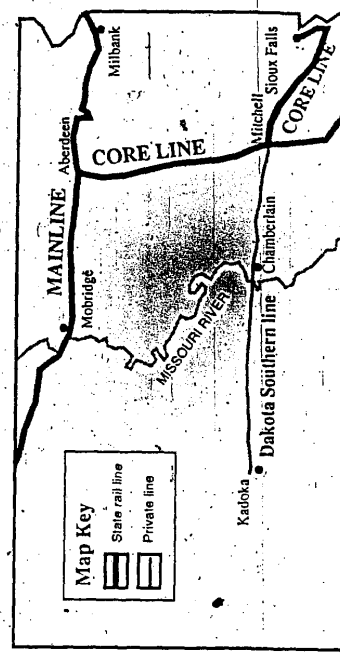
What you're looking at now is probably pretty close to the ultimate state rail system," said Don Frankendorf, director of the State Division of Railroads in the Department of Transportation.

"The chances of much expansion of the system are slim, but with a couple of exceptions, the existing lines are fairly solid. ... After all but disappearing from the state 10 years ago, the railroads have been built back to a solid, basic system. The future of railroading in South Dakota, really, is going to be a matter of holding on to that, just protecting and maintaining what we have."

Reacting to a series of rail abandonments through the 1970s that left South Dakota virtually without any service, the 1980 Legislature authorized the state to buy key lines and negotiate with private companies to run trains.

The state was the first to buy its own lines and

STATE RAILROAD: 10 years running



Cargo shipped by rail

What state ships: (in 1989)
66.3% farm products

Janklow, ex-legislators remember heated fight

BY TERRY WOSTER
Argus Leader Staff Writer

PIERRE — Former Gov. Bill Janklow knew he could talk South Dakota legislators into buying a railroad. He just wasn't sure how long it would take.

"I didn't tell them this, but I was prepared to call one special session after another until they agreed with me," Janklow says, recalling the free-for-all over his \$25 million proposal in 1980.

"I truly believed saving basic railroad service was essential for South Dakota to have any future," he says. "If legislators hadn't finally passed a rail package in the last hours of the session, I was fully prepared to call them back to repeat the call every Monday morning until that until they passed something."

In the end, the Monday morning calls weren't needed.

That concession was important.

And without a railroad running to carry the wheat and corn from the elevator to the best West, Coast or Gulf or Great Lakes

State concerned with maintaining system, not growth

By TERRY WOSTER
Agus Leader Staff
PIERRE — The state rail network now serving South Dakota has plenty of room to grow, but it won't get much bigger. "What you're looking at now is probably pretty close to the ultimate state rail system," says John Thune, director of the state Division of Railroads in the Department of Transportation.

"The chances of much expansion of the system are slim, but with a couple of exceptions, the existing lines are fairly solid. ... After all but disappearing from the state 10 years ago, the railroads have been built back to a solid, basic system. The future of railroading in South Dakota, really, is going to be a matter of holding on to what we have, just protecting and maintaining what we have."

Reacting to a series of rail abandonments through the 1970s that left South Dakota virtually without any service, the 1980 Legislature authorized the state to buy key lines and negotiate with private companies to run trains. The state was the first to buy its own lines and eventually owned more than 1,300 miles of track, most of which had belonged to the Milwaukee Road.

In a separate agreement, the Dakota, Minnesota and Eastern Railroad in 1986 acquired most of the line owned by the Chicago and North Western and began private service from Minnesota through Brookings to Rapid City. U.S. Sen. Larry Pressler is credited with helping arrange that. His administrative aide, Kevin Schieffer, was involved in the negotiations and remembers the day the abandonment of track from Pierre to Rapid City was stopped. "We stood there and claimed victory, and then wondered, 'Now what are we going to do?'" Schieffer says.

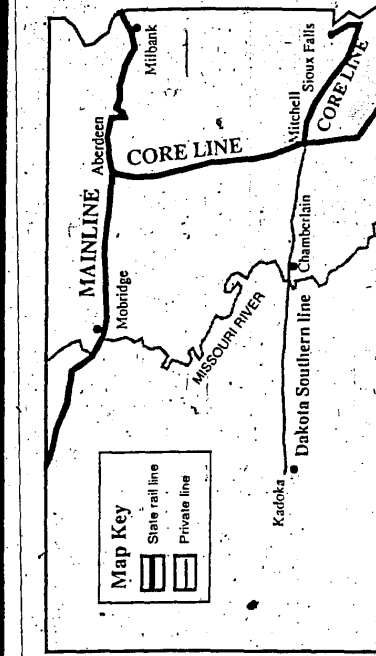
"What really helped was that funds were available for track rehabilitation. Although the climate was bad for railroads in some respects, it was a good time in the sense that federal money was around."

If the same situation arose today, Schieffer doubts the solutions of the 1980s would work. "The days of buying and fixing railroads with tax dollars are pretty much over. ... The money has to come from some other source. The message there for the future is keep and maintain what you have."

Congressional debate over the federal highway bill included an attempt to plug railroads into the formula that directs spending

Mitchell, businessman who once owned, deeply routed shade trees and well-built homes. On the wide, lazy main street, Department.

STATE RAILROAD: 10 years running



Cargo shipped by rail	
What state ships: (in 1989)	
66.3% farm products	
24.9% stone, clay, non-metals	
4.9% lumber, wood	
3.9% other products	
What state receives: (1989)	
70.0% coal	
12.6% stone, clay, etc.	
7.4% chemicals	
9.9% other products	

of gasoline and diesel fuel tax money. The attempt failed, but the U.S. Senate did approve a bill that would let the state use federal highway money to subsidize Amtrak passenger service.

Even so, passenger trains probably aren't in the state's future, Thune says. Existing lines would have to be upgraded at up to \$1 million per mile of track.

"There's almost no way that kind of money would be available," he says. Thune's office recently released an evaluation of the system that included these observations: "The main line, operated by Burlington Northern from Ortonville, Minn., to Terry, Mont., is a key link to Pacific markets and traffic to future continued service. The Britton spur has done well, but traffic has been hurt by recent droughts."

Local options such as the Sioux Valley lines to Canton, Elk Point and Beresford in Hawarden, Iowa — have succeeded greatly, acquiring the condition of the lines at the time of acquisition. The future of these lines is better than it was before their acquisition.

Not all local lines have secure futures. The line from Rapid City to Pierre hasn't generated the necessary support, and the western portion from Mitchell to Kadoka needs more traffic to justify continued service. "The Britton spur has done well, but traffic has been hurt by recent droughts."

The core operated by BN from Sioux City

trying to make sure we take care of the lines we have for the future."

Janklow, ex-legislators remember heated fight

By TERRY WOSTER
Agus Leader Staff
PIERRE — Former Gov. Bill Janklow knew he could talk South Dakota legislators into buying a railroad. He just wasn't sure how long it would take. "I didn't tell them this, but I was prepared to call them out on their asses after another until they agreed with me," Janklow says, recalling the free-for-all over his \$25 million proposal in 1980.

"I truly believed saving basic railroad service was essential for South Dakota to have any future," he says. "If legislators hadn't finally passed a rail package in the last hours of the session, I was fully prepared to call them back to Pierre for a special session the next Monday, and I was ready to repeat the call every Monday morning after that until they passed something."

In the end, the Monday morning calls weren't needed. Janklow's plan was to buy more than 1,200 miles of abandoned and rundown railroad track and have the state run trains on it. Lawmakers agreed after he dropped his demand for owning the cars.

It wasn't easy, recalls Gov. George Mickelson, who was then a state representative. Those for and against the plan spent a lot of time in Pierre, he says. "I remember Joe Barrett who carried Janklow's plan in the Legislature. "We had at least 18 or 20 votes," says Mickelson, who was then a legislator in Republican caucus. People were taking more votes and Joe Barrett was going to win. Then we'd take another vote and we'd have less support than the time before. Oh, it was vicious."

Vicious, but not partisan, remember Public Utilities Commissioner Jim Burg, a Democratic legislator in 1980. "It broke along territorial lines, not political," Burg says. "West River didn't see much track on the maps, so it was really tough proposal we saw."

Looking back, Frankfield says: "It's one thing I'm glad I lost. I didn't think it would work, and it didn't. I don't apologize for my part, though. I think we had a positive effect. The ultimate plan, after numerous defeats and new drafts, was quite a bit better than the first proposal we saw."

But as we travel tonight it becomes apparent: why trains struggle and why the state had to step in a decade ago to keep some of the lines going. It's not an easy business. The guys in the westerns never

Ride this train: Some mysteries of the rails uncovered in special, slow-moving trip

Continued from 1A

Johnny Cash train song. It just wasn't easy.

"I was born 100 yards from a



Argus Leader
Sioux Falls, South Dakota
A Gannett newspaper

Opinion

Rail action turned low point to a high

One of the low points of South Dakota history came about 11 years ago.

The Milwaukee Road had shut down about 1,000 of rail line in the state. Hundreds of other miles of rickety track were in jeopardy. South Dakota, one of the most farm-dependent states in the nation, was in danger of losing rail access to grain markets on the coasts.

The loss of that much rail service would have been catastrophic for many farmers and small towns. Transportation costs would have soared.

State government, forced to do something, reacted with an uncharacteristic burst of public activism: It created a state-owner rail system. In doing so, it turned a low point in state history into a high point.

This year represents the state's 10th anniversary of its plunge into railroading. Time has proven it to be a successful venture.

The normally slow-moving wheels of government started turning quickly in 1980, when Gov. Bill Janklow and the Legislature approved a temporary increase in the state sales tax to buy abandoned rail lines. The state's work continued for the next couple of years.

The state's original purchase included what became the 368-mile core system: lines from Aberdeen through Mitchell to Sioux City, Iowa, and from Sioux Falls through Canton to Mitchell.

Then came a coup. Janklow convinced officials from Burlington Northern Railroad, a major rail company, to run trains on the system.

The first trains rolled on state-owned track on July 6, 1981. Railroad Dedication Day was celebrated Sept. 22, 1981, in Mitchell.

The next September, after a special session of the Legislature, South Dakota acquired another major rail line — a 480-mile line that runs through northern South Dakota on its way from Ortonville, Minn., to Terry, Mont.

The BN is paying off the state's expenses for buying and rehabilitating the line through northern South Dakota. Its agreement with the state also calls for the BN to run trains on the core system until 2001.

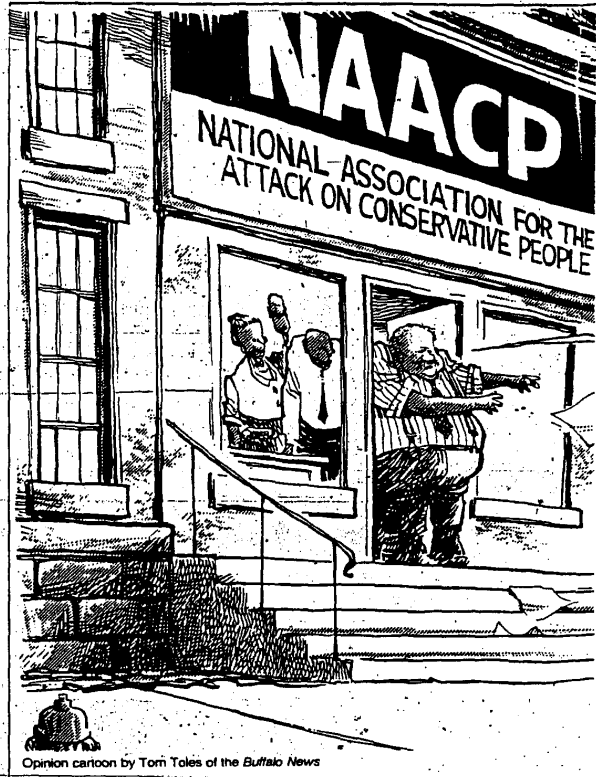
The acquisition of an old Chicago & North Western line by the Dakota, Minnesota & Eastern Railroad in the mid-1980s solidified the rail network in South Dakota even more. That line runs through the middle of the state from Brookings to Rapid City.

Janklow and others in his administration, notably Jim Myers, as well as leaders in both parties of the Legislature deserve credit for taking on the rail crisis aggressively. So do the local officials and business leaders who helped. And don't forget the state residents who chipped in their tax money with little objection.

Their efforts paid off.

A decade after railroads appeared to be dying in South Dakota, the health of rail transportation has substantially improved. The future remains uncertain; it will depend on business conditions and shipper use. But the future is certainly more encouraging than it was 11 years ago.

Editorial



Opinion cartoon by Tom Toles of the Buffalo News

Black spokesman w

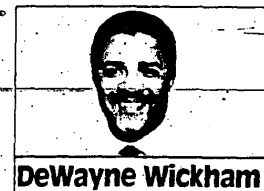
WASHINGTON — Tony Brown says he has crossed the Rubicon of American politics. He's become a black Republican.

A syndicated columnist and television talk-show host, Brown — once a registered Independent — has been an untiring advocate of the just causes of black Americans. And for about as long as anyone can remember, he also has been an eloquent spokesman for black economic development.

So when recently Brown announced, with much fanfare, that he had joined the party of George Bush, Jesse Helms and David Duke, it came as quite a surprise.

"BLACKS NEED economic solutions," Brown wrote in defense of his move. The small number of black Americans who claim to be Republicans "spells long-term economic ruin for our country," he added in an explanation of his decision that appeared in *The Washington Street Journal*.

It's obvious that Brown is insincere convert to the Republicanism that swept George Bush into the White House.



fully devising ways to win "anti-black votes without appearing racist in the old Deep South style."

Brown doesn't embrace the party's twisted notions about race, so much as he has concocted a strategy to get along by going along.

BY INFILTRATING the sullied ranks of a party that tramples upon the rights of black Americans, Brown believes he might reverse

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act of political conversion might convince GOP leaders of the right-

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EXHIBIT J

CORRECTED MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

SERVICE DATE

AUG 17 1981

INTERSTATE COMMERCE COMMISSION
Washington, D.C. 20423

Finance Docket No. 29672

BURLINGTON NORTHERN RAILROAD COMPANY --OPERATIONS-- IN THE STATES OF
IA AND SD

*Corrected Modified Rail Certificate

August 11, 1981

NOTICE:

On June 29, 1981, a notice was filed by the Burlington Northern Railroad Company for a modified certificate of public convenience and necessity under 49 C.F.R. 1120A, published at 45 Fed. Reg. 53827. As of that date, this carrier is authorized to provide service initially over the Sioux Falls to Mitchell line segment via Canton. Train service for this line will be provided from Sioux Falls, SD, to Marion, SD, thence from Marion to Mitchell, SD, and return to Sioux Falls via Marion. Beginning July 1, 1981, BN will commence operations over the Mitchell to Chamberlain, SD, Mitchell to Wolsey, SD, and Mitchell to Scotland, SD, line segments. Thereafter, on September 1, 1981, BN will begin operating from Scotland to Yankton, SD, in addition to performing service over the previously mentioned lines. Finally, beginning September 1, 1981, BN will extend service to the line between Yankton and Sioux City, IA.

The line is owned by the State of South Dakota.

This notice shall be served upon the Association of American Railroad (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement.

American Short Line Railroad Association

AGATHA L. MERGENOVICH,
Secretary

177

(SEAL)

Exhibit K

EXHIBIT K

NOTICE OF EXERCISE OF ELECTION TO PURCHASE RAIL FACILITIES

BNSF



PETER J. RICKERSHAUSER
Vice President
Network Development

The Burlington Northern
and Santa Fe Railway Company

2500 Lou Menk Drive, 3rd Floor
Fort Worth, TX 76131
817-352-6686
Fax 817-352-7154
E-mail pete.rickershauser@bnsf.com

June 29, 2004

VIA OVERNIGHT MAIL

Mr. Bruce Lindholm
Director of Railroads
Department of Transportation
State of South Dakota
700 East Broadway Avenue
Pierre, SD 57501

Re: Notice of Exercise of Election to Purchase Rail Facilities

Dear Mr. Lindholm:

Pursuant to the provisions of Article 3.E.2. of the Operating Agreement Between the State of South Dakota and Burlington Northern Railroad Company dated July 1, 1986, as amended, The Burlington Northern and Santa Fe Railway Company (successor in interest to Burlington Northern Railroad) ("BNSF") hereby provides notice of BNSF's exercise of its election to purchase the entire Rail Facilities (as defined in Article 3.E.2.). Please promptly provide the State's calculation of the purchase price pursuant to Article 3.E.2.

Subject to the parties' confirmation of the purchase price, BNSF intends to close the transaction as soon as possible, pending a reasonable due diligence period and any final governmental approvals which may be required. Accordingly, BNSF would propose to tender a reasonable agreed deposit sum into escrow, and accordingly requests the State's proposed deposit amount and escrow instructions, in addition to the information listed above. In light of this notice and reiterating our prior correspondence on this matter, we trust no actions will be taken which would interfere with BNSF's election rights and/or diminish the value of the properties and the rights of BNSF subject to acquisition by BNSF without the prior consent of BNSF.

Sincerely,

Cc: Mr. Dennis Landguth

Exhibit L

EXHIBIT L

LIST OF BNSF OFFICERS AND DIRECTORS

EXHIBIT L

BNSF RAILWAY COMPANY

OFFICERS

January 20, 2005

*Matthew K. Rose	Chairman, President and Chief Executive Officer
*Thomas N. Hund	Executive Vice President and Chief Financial Officer
*Carl R. Ice	Executive Vice President and Chief Operations Officer
*John P. Lanigan, Jr.	Executive Vice President and Chief Marketing Officer
*Jeffrey R. Moreland	Executive Vice President Law & Government Affairs and Secretary
Stevan B. Bobb	Vice President – Business Unit Operations and Support
Stephen G. Branscum	Group Vice President – Consumer Products
Rollin D. Bredenberg	Vice President – Service Design and Performance
Jeffrey J. Campbell	Vice President – Technology Services and Chief Information Officer
M. David Dealy	Vice President – Transportation
Frederick G. (Fritz) Draper	Vice President – Business Development
George T. Duggan	Vice President – Industrial Products Sales
Arthur P. (Skip) Endres, Jr.	Vice President – Government Affairs
John J. Fleps	Vice President – Labor Relations
Gregory C. Fox	Vice President – Engineering
James H. Gallegos	Vice President and Corporate General Counsel
David L. Garin	Group Vice President – Industrial Products
Steve A. Goodall	Regional Vice President Operations
John T. Hickerson	Vice President Domestic Intermodal Marketing
Craig Hill	Vice President – Mechanical and Value Engineering
Paul R. Hoferer	Vice President and General Counsel
Dennis R. Johnson	Vice President and Controller
Kevin Kaufman	Group Vice President – Agricultural Products
Kenneth J. Kempker	Vice President and Chief Sourcing Officer
Mark A. Kotter	Regional Vice President Operations
Thomas G. Kraemer	Group Vice President – Coal
Frederick R. Malesa	Vice President International Intermodal Marketing
Jeanne E. Michalski	Vice President – Human Resources and Medical
Marsha K. Morgan	Vice President – Investor Relations
Peter J. Rickershauser	Vice President – Network Development
Chris A. Roberts	Regional Vice President Operations
Richard A. Russack	Vice President – Corporate Relations
Sami M. Shalah	Vice President – Coal Marketing

Denis Smith
Gregory W. Stengem
David W. Stropes
Shelley J. Venick
Richard E. Weicher

Vice President – Industrial Products Marketing
Vice President – Safety, Training and Operations Support
Vice President – Corporate Audit Services
Vice President and General Tax Counsel
Vice President and Senior Regulatory Counsel

*Director

Appointed Officers:

Linda J. Hurt	Assistant Vice President – Finance and Treasurer
Peter M. Lee	Assistant Secretary
Betty L. Reinert	Assistant Secretary
Craig N. Smetko	Associate General Counsel and Assistant Secretary
Jeffrey T. Williams	Assistant Secretary
Patricia Zbichorski	Assistant Secretary

Exhibit M

EXHIBIT M

COMMON CARRIERS OWNED OR CONTROLLED BY BNSF

EXHIBIT M

COMMON CARRIERS OWNED OR CONTROLLED
BY BNSF RAILWAY COMPANY

- The Burlington Northern and Santa Fe Railway Company de Mexico, S.A. de C.V. (incorporated in Mexico)**
- Burlington Northern Santa Fe British Columbia, Ltd.**
- Burlington Northern (Manitoba) Limited (incorporated in Manitoba, Canada)**
- The Dodge City and Cimarron Valley Railway Company*
- Los Angeles Junction Railway Company
- Oklahoma City Junction Railway Company*
- Rio Grande, El Paso and Santa Fe Railroad Company*
- Santa Fe Pacific Railroad Company (established by Act of Congress)*
- Star Lake Railroad Company
- The Wichita Union Terminal Railway Company
- Winona Bridge Railway Company*

Further, BNSF has holdings in the following common carriers:

- Alameda Belt Line - 50 %
- The Belt Railway Company of Chicago - 16.6 %
- Central California Traction Company - 33.3 %
- Houston Belt & Terminal Railway Company - 50 %

*At present, the company has no employees and no on-going operations.

** Not a U.S. common carrier.

- Iowa Transfer Railway Company - 25 %
- Kansas City Terminal Railway Company - 25%
- Longview Switching Company - 50 %
- The Oakland Terminal Railway Company - 50 %
- Paducah & Illinois Railroad Company - 33.3 %
- Portland Terminal Railroad Company - 40 %
- St. Joseph Terminal Railroad Company - 50 %
- Sunset Railway Company - 50 %
- Terminal Railroad Association of St. Louis - 14.3 %
- Texas City Terminal Railway Company - 33.3 %

Exhibit N

EXHIBIT N

SUMMARY OF PROPOSAL

EXHIBIT N

FINANCE DOCKET NO. 34667

RAIL CARRIER: BNSF Railway Company
AGENCY: Surface Transportation Board
ACTION: Notice of Filing of a Railroad Application to Acquire and Operate Certain
Rail Lines in South Dakota and Iowa

SUMMARY: BNSF Railway Company ("BNSF") has filed an application with the Surface Transportation Board seeking authority to acquire and operate certain railroad lines owned by the State of South Dakota ("State") as described in a July 10, 1986 Operating Agreement between BNSF's predecessor and the State. These lines include principally the lines from Milepost 777.0 near Aberdeen, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 518.9 near Sioux City, Iowa to Milepost 649.7 near Mitchell, South Dakota; from Milepost 293.1 near Canton, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 74.1 to Milepost 68.8 in Sioux Falls, South Dakota; from Milepost 68.8 near Sioux Falls, South Dakota to Milepost 49.4 near Canton, South Dakota; and from Milepost 511.9 to Milepost 518.9 in Sioux City, Iowa.

Any interested person may file written comments and evidence on the application with the Surface Transportation Board. Written comments and evidence are due on March 11, 2005, and comments should indicate the proceeding, STB Finance Docket No. 34667, and should be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. The original and ten copies of all comments and evidence shall be filed with the Board. A copy of each comment and evidence shall also be

served upon BNSF's representatives: Adrian L. Steel, Jr., Esq., Mayer, Brown, Rowe & Maw LLP, 1909 K Street, NW, Washington, DC 20006, (202) 263-3237, FAX number (202) 263-5237; and Sarah W. Bailiff, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131, (817) 352-2354, FAX number (817) 352-2397.

A copy of the application is available for public inspection at the offices of the Surface Transportation Board and the applicant, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131.

Dated: February 18, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2005, a true and correct copy of the foregoing Application for Acquisition and Operation Authority was served by first-class mail, postage prepaid, or by a more expeditious manner, on the following persons required by 49 C.F.R. § 1150.10(e):

The Hon. M. Michael Rounds, Governor
State of South Dakota
500 E. Capitol Avenue
Pierre, SD 57501

The Hon. Dennis Landguth
Secretary of Transportation
State of South Dakota
700 E. Broadway Avenue
Becker-Hansen Building
Pierre, SD 57501

Gary Hanson, Chairman
Public Utilities Commission
Capitol Building, First Floor
500 E. Capitol Avenue
Pierre, SD 57501

Mark F. Wandro, Director
State of Iowa
Department of Transportation
800 Lincoln Way
Ames, IA 50010

The Hon. Thomas Vilsack, Governor
State of Iowa
State Capitol Building
Des Moines, IA 50319

Diane Munns, Chairperson
State of Iowa
Utilities Board
350 Maple Street
Des Moines, IA 50319

and on the following:

Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago IL 60606-2875

Gordon P. MacDougall
1025 Connecticut Avenue N.W.
Suite 410
Washington, DC 20036-5405



Loren J. Hall