

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34668

KEOKUK JUNCTION RAILWAY CO.

TEMPORARY TRACKAGE RIGHTS EXEMPTION

BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Daniel A. LaKemper, Esq.
Keokuk Junction Railway Co.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400
Fax: (309) 697-8486

Dated: March 10, 2005.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34668

KEOKUK JUNCTION RAILWAY CO.
TEMPORARY TRackage RIGHTS EXEMPTION
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

I. Comes now Keokuk Junction Railway Co. ("KJRY"), and files this Verified Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(8). Under this Notice, KJRY will obtain temporary overhead trackage rights from BNSF Railway Company ("BNSF") between Blair Junction, McDonough County, Illinois (Beardstown Subdivision MP 157.1) and Bushnell, McDonough County, Illinois (Briikfield Subdivision MP 191.5), a distance of approximately 3.5 miles. The trackage rights are for the purpose of bridging KJRY's trains from Blair Junction to Bushnell until the diamond crossing between the BNSF and KJRY is restored at Bushnell.

The acquisition of these trackage rights is based on a written agreement.

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

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

BNSF has granted temporary overhead trackage rights to KJRY between Blair Junction, McDonough County, Illinois (Beardstown Subdivision MP 157.1) and Bushnell, McDonough County, Illinois (Brookfield Subdivision MP 191.5). Subject to the approval of the Board, the

temporary trackage rights will terminate on or before March 17, 2006. KJRY will operate its own trains with its own crews over the BNSF line under the trackage rights.

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

Keokuk Junction Railway Co.
1318 S. Johanson Road
Peoria, Illinois 61607

BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, Texas 76161

Questions regarding this exemption should be sent to: Daniel A. LaKemper, General Counsel, Keokuk Junction Railway Co., 1318 S. Johanson Road, Peoria, Illinois 61607. The telephone number is (309) 697-1400. The trackage rights will expire on or before March 17, 2006.

Consummation of this transaction will occur on March 18, 2005, and operations under this exemption will begin thereafter. The purpose of the trackage rights is for the purpose of bridging KJRY's trains from its line at Blair Junction to its line at Bushnell until the diamond crossing at Bushnell can be restored.

Section 1180.6(a)(5).

The trackage involved in the trackage rights agreement is located in the state of Illinois.

Section 1180.6(a)(6)

The required map is attached as Exhibit No. 1.

Section 1180.6(a)(7)(ii)

A draft copy of the temporary trackage rights agreement covering this transaction is attached hereto as Exhibit 2.

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board and, with respect to the discontinuance of these temporary trackage rights, imposition of conditions pursuant to *Oregon Short Line RR Co. – Abandonment –Goshen*, 360 I.C.C. 91 (1979).

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel A. LaKemper".

Daniel A. LaKemper, Esq.
Keokuk Junction Railway Co.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34668

KEOKUK JUNCTION RAILWAY CO.
TEMPORARY TRACKAGE RIGHTS EXEMPTION
BNSF RAILWAY COMPANY

BNSF Railway Company has agreed to grant temporary overhead trackage rights to Keokuk Junction Railway Co. ("KJRY") between Blair Junction, Illinois (Beardstown Subdivision MP 157.1) and Bushnell, Illinois (Brookfield Subdivision MP 191.5), a distance of approximately 3.5 miles.

The temporary trackage rights will allow KJRY to bridge its trains from its line at Blair Junction to its line at Bushnell until the diamond crossing can be restored at Bushnell, Illinois, and will be effective on March 18, 2205, with operations under this exemption commencing on that date. The temporary trackage rights will expire on or before March 17, 2006.

This Notice is filed under 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

STATE OF ILLINOIS)
) ss
COUNTY OF PEORIA)

Daniel A. LaKemper being duly sworn, deposes and states that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief

Donald H. Kuiper

Daniel A. LaKemper

Subscribed and sworn to
before me this 10th day
of March, 2005

Meghan E. Peterson

Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Notice of Exemption was served on the following via UPS Overnight Mail on March 10, 2005:

Assistant Vice President – Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk.
Fort Worth, Texas, 76161



Daniel A. LaKemper

EXHIBIT 1

MAP

Red dashed line shown on map
represents route provided to
KJRY

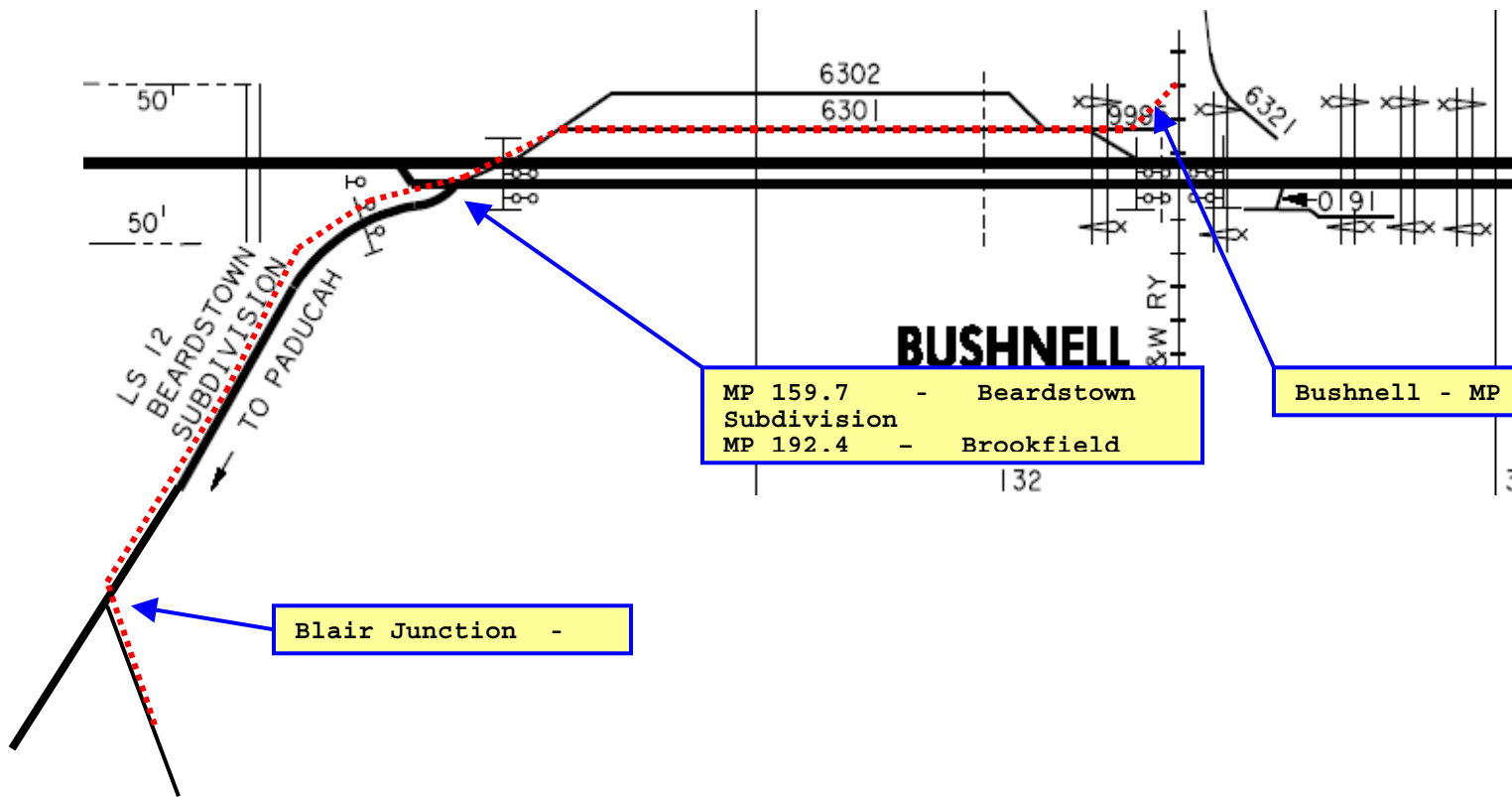


EXHIBIT 2

DRAFT OF PROPOSED AGREEMENT

DRAFT
TEMPORARY TRACKAGE RIGHTS AGREEMENT
AND
SUPPLEMENTAL AGREEMENT TO THE SEPTEMBER 16, 1932
CROSSING AND INTERLOCKER AGREEMENT
BUSHNELL, ILLINOIS

This SUPPLEMENTAL AGREEMENT made this _____ day of March, 2005 ("effective date"), by and between BNSF RAILWAY COMPANY, formerly known as The Burlington Northern and Santa Fe Railway Company ("BNSF"), a Delaware corporation (hereinafter referred to as "**BNSF**") and THE KEOKUK JUNCTION RAILWAY CO., an Iowa corporation (hereinafter referred to as "**KJRY**").

WHEREAS, BNSF, as the successor to the Chicago, Burlington & Quincy Railroad Company, and KJRY, as the successor to the Toledo, Peoria & Western Railroad ("TPW") with regard to the rail line between Hollis, IL and LaHarpe, IL, are parties to an agreement dated September 16, 1932 (as amended on November 1, 1939, October 10, 1956, and June 20, 1979, providing for the ownership, maintenance, repair and renewal of two railroad crossings at grade and related interlocking plant near BNSF's Milepost 191.44 at Bushnell, Illinois (the "Original Agreement"); and

WHEREAS, the two (2) diamond crossings at Bushnell, Illinois have been removed; and

WHEREAS, for reasons of economy and efficiency the parties desire to use, as a temporary measure only, an alternate crossing means to the diamond crossings by constructing connecting tracks and turnouts between KJRY's line and BNSF's line at the locations of Blair Junction, IL and Bushnell, IL and further seek to define responsibility for construction, maintenance, and operations of the diamond crossing configuration at Bushnell, IL.

NOW, THEREFORE, the parties hereto agree as follows:

A. Temporary Crossing Arrangements

BNSF and KJRY agree to implement temporary crossing arrangements pursuant to the terms set forth in this Section A of this Agreement until such time as permanent crossing arrangements are implemented pursuant to the terms of Section B of this Agreement.

1. Turn-out and Connecting Track Reconstruction at Blair Jct., IL and Bushnell, IL

(a) At Blair Junction, near BNSF Milepost **157.1** on BNSF's Beardstown Subdivision,

BNSF will construct one (1) No. 11 turnout as well as trackage from that turnout to the end of its property line necessary to connect BNSF's track with KJRY's track. KJRY shall pay \$25,000.00 for its share of the cost of the temporary installation on BNSF property, and BNSF shall bear all other costs related to the construction on BNSF property. KJRY shall render said payment to BNSF not later than 30 days following implementation of the temporary crossing arrangements.

(b) At Blair Junction, near KJRY Milepost 167.4, KJRY will reconstruct, at its sole cost and expense, all necessary facilities and trackage required to be located on KJRY property as necessary to facilitate the temporary crossing and connect KJRY's track with BNSF's track at said location.

(c) At Bushnell, extending westward from BNSF's yard track number 6301 near BNSF Milepost 191.5 on BNSF's Brookfield Subdivision, BNSF has existing trackage to the end of its property line necessary to connect BNSF's track with KJRY's track. At Bushnell, near KJRY Milepost 170.9, KJRY will reconstruct, if necessary, at its sole cost and expense, any turnouts, facilities, and/or trackage on KJRY property as necessary to connect KJRY's track with BNSF's track.

(d) Upon execution of this Agreement, the parties will initiate the reconstruction tasks for the temporary crossing and pursue them to completion with reasonable dispatch. BNSF anticipates that its turnout installation will be completed by March 18, 2005, assuming no uncontrollable events delay the completion date.

2. Turnout and Connecting Track Maintenance at Blair Jct., IL and Bushnell, IL.

(a) At Blair Junction, BNSF will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

(b) At Blair Junction, KJRY will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

(c) At Bushnell, BNSF will maintain, repair and, at its sole cost and expense, the connecting track extending beyond its yard track 6301 to the end of its property line.

(d) At Bushnell, KJRY will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

3. Grant of Temporary Overhead Operating Rights to KJRY

(a) For the lesser of a term i) coterminous with the temporary crossing operations; or ii)

one year from the effective date of this agreement, BNSF shall grant to KJRY the temporary trackage rights to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Overhead Operating Rights") over BNSF's railroad between a point near Milepost 157.1 at Blair Junction, IL and near Milepost 159.7 at Bushnell, IL on BNSF's Beardstown Subdivision and between a point near Milepost 192.4 and near Milepost 191.5 at Bushnell, IL on BNSF's Brookfield Subdivision for a total distance of approximately 3.5 miles (hereinafter referred to as "Subject Trackage") including any sidings or appurtenances, as a temporary crossing arrangement. The parties hereto agree, subject to the terms and conditions herein provided, that KJRY shall have these Overhead Operating Rights over the Subject Trackage for the sole purpose of crossing BNSF lines to enter and exit from its own line and for no other purpose whatsoever.

(b) The operation by KJRY on or along the Subject Trackage shall at all times be in accordance with the rules, instructions, and restrictions of BNSF. (Trains will be powered to a minimum horsepower of 1.2 per trailing ton). The gross weight limit on the rail per car load will not exceed 286,000 lbs.

(c) It is understood and agreed that KJRY shall not have a right to:

(i) Handle any traffic other than its own trains, locomotives, cars and equipment over the Subject Trackage (except for haulage cars handled by KJRY trains in the ordinary course of business); or

(ii) Set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; or

(iii) Serve any industry, team or house track now existing or constructed in the future along the Subject Trackage, which heretofore has not been served by KJRY;

(iv) Connect with itself or any other railroad at any location along the Subject Trackage; or

(v) Interchange with any other railroad along the Subject Trackage; or

(vi) Permit or admit any third party to the use, directly or indirectly of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage.

(d) In the event that for operating convenience, necessity or emergency, BNSF permits or directs KJRY to use adjacent BNSF track and/or track connections between or beyond the terminal of the Subject Trackage as an alternative route, then such trackage, track connections and appurtenances shall be deemed to be part of the Subject Trackage for the limited time and scope necessary to effect BNSF's directed reroute.

(e) The Subject Trackage is the property of BNSF and this Supplemental Agreement does not vest any right of ownership to KJRY or any other right other than for the purpose

of allowing KJRY to enter and exit its own track at Blair Junction, IL and Bushnell, IL.

(d) In lieu of the crossing diamond maintenance expenses and the interlocking signal expenses, all ordinary maintenance, operating and capital expenses covering maintenance of the Subject Trackage shall be apportioned to KJRY as follows:

(e) For the maintenance, repair, and renewal of the Subject Trackage, KJRY will pay to BNSF a flat monthly rate of (\$1,566.51) [leave open - will have to get a response from Mike on this], which rate shall be prorated, as appropriate, in the event the commencement and/or termination of operations under the temporary trackage rights occurs midmonth.

(f) The crossing protocols governing the crossing in the Original Agreement shall govern the temporary crossing operations under this Agreement.

4. Liability and Indemnity

This Supplemental Agreement provides for a temporary alternate route for KJRY's contiguous line of railroad in lieu of using crossing diamonds as a means of crossing the lines of BNSF at Bushnell. The liability and indemnity provisions of the Original Agreement shall have the same application to the temporary crossing arrangement covered by this Supplemental Agreement as if the temporary crossing infrastructure were the "interlocking plant" as described in the Original Agreement. For so long as the temporary crossing rights remain in effect, KJRY shall maintain in effect, at its sole cost and expense insurance coverage which shall cover the temporary crossing on the same terms as set forth in the BNSF/KJRY Keokuk Crossing Agreement for Keokuk, IA, which terms and conditions shall be deemed incorporated herein by reference. Coverage for the temporary crossing shall have BNSF named as an additional insured.

B. Reinstallation of Permanent Crossing Arrangements at Bushnell, IL

BNSF and KJRY agree to implement permanent crossing arrangements pursuant to the terms set forth in this Section B of this Agreement. Upon execution of this Agreement, the parties will initiate the tasks necessary to reinstall diamonds at Bushnell, IL in lieu of the temporary crossing arrangements and shall pursue them to completion with reasonable dispatch. The parties anticipate that the diamonds will be restored within 90-180 days from the effective date of this Agreement.

1. Installation of Crossing Diamonds at Bushnell, IL

(a) BNSF desires install two "OWLS" crossing diamonds at Bushnell, IL in the same locations as the previously existing diamonds under the Original Agreement.

(b) The OWLS crossing diamonds may limit KJRY's crossing speeds to 10 mph, and

may create other operating issues for KJRY.

- (c) KJRY is agreeable to BSNF installing the "OWLS" diamonds, although such restricted speed will cause KJRY inconvenience and increased operating expense.
- (d) The material costs of one OWLS diamond shall be borne by BNSF and the material costs of the other diamond shall be borne by KJRY, as provided hereinbelow.
- (e) All labor installation costs for both diamonds shall be BNSF's responsibility.
- (f) BNSF will provide the specifications of the OWLS crossing diamond to KJRY, and BNSF shall order and deliver both of the OWLS diamonds in accordance with said specifications.
- (g) Within thirty (30) days after said diamonds have been ordered by BNSF, KJRY shall reimburse BNSF for the cost of one such diamond, up to \$50,000.
- (h) As consideration for KJRY acquiescence in the installation of OWLS diamonds, KJRY shall not be obligated to pay any share of the signal maintenance and interlocking costs, pursuant to Article IX of the Original Agreement, as amended, for so long as the crossings have OWLS diamonds.

2. Maintenance, Repair, Renewal, and Operation of Crossing Diamonds

Once the OWLS Crossing Diamonds are installed, the terms of the Original Agreement shall govern the maintenance, repair, renewal and operation thereof, except that BNSF shall perform, and bear the costs of, regular maintenance on the OWLS diamonds.

C. Term of Supplemental Agreement and Effect of Original Agreement

- (a) Except as expressly provided otherwise in this Supplemental Agreement, the terms and conditions of this Supplemental Agreement shall continue in force and effect for the term of the Original Agreement. No termination or expiration of the term of this Supplemental Agreement shall release any party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term hereof.
- (b) The parties acknowledge and agree that the terms of the Original Agreement (including, without limitation, all rights, liabilities, obligations, and indemnities thereunder) shall have been effectively assigned to KJRY as of February 11, 2005.
- (c) KJRY acknowledges and agrees that the terms of that certain Bushnell, IL Switching/Train Handling Agreement Between The Burlington Northern and Santa Fe Railway Company and The Toledo, Peoria & Western Railway Corp., dated effective June 2, 2004, shall, as between the parties hereto, have no binding force and effect. []

(d) Except as amended and supplemented herein, all other terms of the Original Agreement remain in full force and effect.

(e) The dispute resolution procedures under the Original Agreement shall govern any disputes concerning the construction or performance of any of the terms of this Supplemental Agreement. Except where expressly provided otherwise herein, the billing and payment procedures under the Original Agreement shall apply to any matters requiring billing and payment under the terms of this Supplemental Agreement.

D. Notices

Notwithstanding any provision to the contrary in the Original Agreement, any notice required or permitted to be given by one party to the other under this Supplemental Agreement or the Original Agreement shall be served upon the following:

If to the BNSF:
Assistant Vice President Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76161-0034

If to the KJRY:
Chief Operating Officer
Keokuk Junction Railway
1318 S. Johanson Road
Peoria, IL 61607

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed dates listed below and effective as of the agreed Effective Date.

BNSF RAILWAY COMPANY

**KEOKUK JUNCTION RAILWAY
CO.**

By: _____ By: _____

Printed: _____ Printed: _____

Title: _____ Title: _____

Date: _____ Date: _____