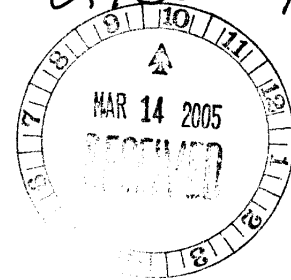


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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34667

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

**COMMENTS AND REQUEST FOR CONDITIONS
OF THE STATE OF SOUTH DAKOTA**

ORAL ARGUMENT REQUESTED

ENTERED
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Dated: March 11, 2005

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-- ACQUISITION AND OPERATION --
STATE OF SOUTH DAKOTA

**COMMENTS AND REQUEST FOR CONDITIONS
OF THE STATE OF SOUTH DAKOTA**

The State of South Dakota (the "State") hereby responds to the application of BNSF Railway Company ("BNSF") to acquire approximately 370 miles of State-owned rail lines in South Dakota and Iowa known as the "Core Lines." For nearly twenty-five years, the State and BNSF have engaged in a unique public-private partnership with respect to preservation, rehabilitation and operation of the Core Lines. The State has owned and invested significant resources in the rehabilitation of the Core Lines, and BNSF has maintained and operated the Core Lines on the State's behalf under a modified certificate of public convenience and necessity. BNSF now seeks to assume ownership and full control of the Core Lines and, subject to appropriate conditions, the State does not oppose regulatory approval of that acquisition.

What concerns the State -- and a vast array of public and private entities representing virtually every agricultural transportation constituency in South Dakota -- is what BNSF's acquisition of the Core Lines will leave behind: a remaining network of now-isolated State-owned rail lines and shortline carriers, completely subject for the first time to BNSF pricing and service policies that threaten the existence of those lines and the smaller elevators and grain shippers which they serve. The market access that these lines provide for a large

segment of the South Dakota agricultural community is critically important to the State and, as on the Core Lines, has been the focus of State investment and involvement for two decades. The Board should not allow a Core Lines sale to jeopardize the essential services provided via these rail lines and negate the State's long-standing and publicly-funded efforts to assure that adequate rail service and market access is provided for grain shippers of all sizes within the state.

Yet, without appropriate conditions, that is precisely what can happen upon the disaggregation of the State-owned rail system and the creation of various "island" rail operations connecting to and dependent on the Core Lines that BNSF will now own and fully control. BNSF's recent policy of favoring the movement of South Dakota grain via 110-car elevators and so-called "shuttle train" service has created serious difficulties and dislocations for many smaller elevators and the communities and shippers they serve. While mega-elevators and shuttle trains can themselves provide important benefits, their development has been accompanied by BNSF rate structures and practices that penalize smaller elevators, seek to divert grain to mega-elevators on BNSF's lines (with accompanying increases in the truck transportation of such grain), and ultimately deprive much of South Dakota's rural agricultural base of access to the important markets they need to survive and prosper.

Non-110-car elevators on State-owned and other branchlines, for example, cannot in many instances obtain any effective rates from BNSF for grain transportation to markets like the Pacific Northwest. BNSF even refuses to accept "co-loaded" unit trains -- 110-car trains made up of shipments from more than one elevator -- from connecting lines in South Dakota, even though from BNSF's perspective there is no difference in the costs and efficiencies involved in handling such trains. It is difficult to see how the natural outcome of such a policy is anything other than a world with no branch lines and no smaller elevators.

That may be BNSF's vision of the future, but it is obviously the antithesis of everything the State has worked and invested for during the last twenty-five years. Up until now, the State -- as the owner of the Core Lines and under various provisions of its operating agreement with BNSF -- had forms of leverage and recourse that it could seek to use to assure that rail service on the State-owned Core Lines was adequate and available for all shipping constituencies in the state, and that market forces rather than railroad rate policies would determine the shape of the state's agricultural industry and the health of its rural agricultural communities. Those rights will be lost upon an outright sale of the Core Lines to BNSF. Indeed, it appears that the State's attempted exercise of its rights may have led BNSF to its current pursuit of a Core Lines acquisition.

The straightforward conditions requested by the State will effectively remedy the adverse consequences arising from a Core Lines sale by permitting smaller elevators on other lines and the rail carriers that serve them the opportunity to reach connecting carriers and markets, and thus at least the chance to fight for their survival and prosperity. The rights are intended solely to protect the viability and market position of smaller shippers on the remaining, State-owned and other branch lines in the state, and are narrowly tailored to that result. The conditions will not harm or burden any legitimate interest of BNSF. They do not create competition at any BNSF-served points, on the Core Lines or elsewhere. They do not deprive BNSF of the benefits of owning the Core Lines, or inhibit its further development of 110-car and shuttle train programs. They do not require BNSF to handle traffic it does not want, to provide service on terms it does not desire, to charge lower rates, or to subsidize the unprofitable or inefficient operations or traffic of others. This is not a "competitive access" case, nor one that seeks any broad change in the rate and service practices of Class I railroads.

Indeed, if the true efficiencies and public interest benefits of 110-car elevators and shuttle train service make their predominance in the rail transportation of grain inevitable, nothing requested here by the State can or would forestall that result. The Board is neither required nor requested in this proceeding to determine the proper role of mega-elevators and shuttle trains in national grain transportation. BNSF is free to pursue those policies as its interests warrant. But having invested tens of millions of dollars in a publicly-owned rail infrastructure that reflects the State's own conception of the public interest in serving smaller producers, elevators and communities, the State and its constituents are equally entitled to a reasonable opportunity to make that system work. As the Governor of South Dakota, the Hon. M. Michael Rounds, explains:

[O]ur goal is to ensure that the critical agricultural sector of our State's economy continues to flourish through the preservation of a rail transportation network available to industries throughout the State of South Dakota on an equitable and nondiscriminatory basis.

....

I submit that this Board must act to preserve the benefits of the rail infrastructure which we created and funded.

Verified Statement of M. Michael Rounds, attached hereto at Tab 1 ("Rounds V.S."), at 2, 3.

The conditions requested by the State will protect that strong and legitimate public interest.

South Dakota is not, of course, the only state facing serious issues regarding grain transportation and the availability of rail service for smaller grain shippers. But the *status quo* in other states is not the *status quo* here. South Dakota "put its money where its mouth was," and made substantial investments in a rail infrastructure intended specifically to serve such shippers. It is not now before the Board seeking something for nothing, but simply requests that the Board act to assure that a Core Lines sale does not further deprive the state and its smaller rural grain

producers, elevators and communities of market access and adequate rail service. If Board action to protect the public interest is not appropriate here, it is difficult to see when it ever would be.

SPECIFIC REQUESTS FOR CONDITIONS

The State respectfully requests that approval of BNSF's application to acquire the Core Lines from the State be made subject to the following conditions:

1. The right for the operator of the State-owned Aberdeen-Geneseo Jct. line¹ and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to interchange local and overhead traffic on BNSF track at Aberdeen, South Dakota.
2. Overhead trackage rights on the Core Line for the operator of the State-owned Mitchell-Kadoka line² from Mitchell, South Dakota to Sioux City, Iowa, with the right: (a) to interchange with connecting carriers at Sioux City³; (b) to connect with the State-owned Napa Jct.-Platte line at Napa Junction, South Dakota should that line be reactivated; and (c) to serve the existing elevators on the Core Line at Mitchell and Beardsley, South Dakota, solely for the handling of in-bound grain originating on the Kadoka Line.
3. Overhead trackage rights on the Core Line for the operator of the State-owned Canton-Elk Point and Hawarden-Beresford lines⁴ from Elk Point, South Dakota to Sioux City, with the right to interchange with UP, CN and BNSF at Sioux City.
4. Overhead trackage rights over the Core Lines for DM&E from Wolsey, South Dakota to Sioux City, with the right to connect with the Kadoka Line at Mitchell, the Napa Jct.-Platte line at Napa Junction, and UP, CN and BNSF at Sioux City, and from Mitchell to Canton, with the right to connect with D&I at Canton.

¹ The line from Aberdeen, South Dakota to Geneseo Junction, North Dakota (the "Britton Line") is owned by the State, leased to the Marshall County Regional Railroad Authority, and currently sub-leased for operation to Dakota, Missouri Valley & Western Railroad, Inc. ("DMV&W").

² The line from Mitchell to Kadoka, South Dakota (the "Kadoka Line") is owned by the State, leased to the MRC Regional Railroad Authority, and currently sub-leased for operation to the Dakota Southern Railroad Company ("Dakota Southern").

³ BNSF, Union Pacific Railroad Company ("UP") and Chicago, Central & Pacific Railroad Company, a subsidiary of Canadian National ("CN").

⁴ The lines from Elk Point to Canton, South Dakota and from Hawarden, Iowa to Beresford, South Dakota (the "SVRRRA Lines") are owned by the State, leased to the Sioux Valley Regional Railroad Authority, and currently sub-leased for operation to the D&I Railroad Company ("D&I").

These rights would be limited to handling traffic that originates or terminates at points in South Dakota, and would exclude the handling of coal. Overhead trackage rights to Sioux City would include the right at the State's sole expense to construct improved connections from the State-owned Core Line to UP and CN. Terms and compensation for the trackage rights requested in Conditions 2, 3 and 4 would be subject to negotiations between the parties, with further recourse to the Board to address such matters as appropriate.

As shown in the supporting verified statements and letters accompanying this filing, the State's request for conditions is supported in whole or in part by a large and broad range of parties, both public and private. They include ten state-wide associations representing virtually every agricultural interest in South Dakota and literally tens of thousands of members (Tabs 10-17, 21-22); numerous shippers on the affected rail lines (Tabs 23-32); short-line and regional railroads (Tabs 7-9); the regional railroad authority for each line (Tabs 4-6); and state-wide governmental associations, and development agencies. (Tabs 18-20).

In addition to the verified statement of Governor Rounds, the State also is submitting in support of its requested conditions the Verified Statement of Larry Gabriel, South Dakota's Secretary of Agriculture ("Gabriel V.S.," attached at Tab 2), and the Verified Statement of Dennis Landguth, South Dakota's Secretary of Transportation ("Landguth V.S." attached at Tab 3).

BACKGROUND

South Dakota is one of the largest agricultural production states in the nation. In 2003, South Dakota ranked 6th in the United States in wheat production, 7th in corn production and 8th in soybean production. There were 12 million acres planted with these three commodities in South Dakota in 2003, producing a combined volume of 661 million bushels and

a total market value of \$2.2 billion. South Dakota's total crop production for all commodities in 2003 was in excess of 724 million bushels with a total market value of \$3 billion. Gabriel V.S. at 1. As Secretary Gabriel explains, "[a]griculture and agricultural commodities form the foundation of South Dakota's gross domestic product and touch virtually every facet of the lives of the people and the economy of our State." Gabriel V.S. at 1.

This agricultural economy is built on the existence of a network of elevators throughout South Dakota, serving the state's far-flung rural communities and farmers and producers of all sizes. There are over 200 grain elevators in the state, 75% of which are classified as small or medium-sized -- with less than 800,000 bushels of storage capacity. Gabriel V.S. at 3. This elevator network is critical to assuring that farms and communities throughout the state will continue to have adequate access to facilities and markets. The Board has itself previously recognized the importance of smaller-capacity elevators to the South Dakota agricultural economy. Arbitration -- Various Matters Relating to Its Use as an Effective Means of Resolving Disputes that Are Subject to the Board's Jurisdiction, Ex Parte No. 586 (STB served September 20, 2001) at 4-5, n.11.

In turn, the viability and success of the South Dakota agricultural economy depends on access to sufficient processing and consumption markets. Those markets for South Dakota grain include domestic markets throughout the United States and Canada and export markets reached through ports in the Pacific Northwest and the Texas/Louisiana Gulf. Because of the distance of most of these markets from South Dakota, and because South Dakota grain shippers do not have access to inland waterway transportation, rail is often the only cost-effective transportation choice for those shippers. Gabriel V.S. at 2; see also U.S. Department of Agriculture, Agricultural Marketing Service, Long-Term Trends in Railroad Service and

Capacity for U.S. Agriculture, November 2000 (hereinafter, "USDA Long-Term Trends," relevant sections attached at Tab 35), at 2.

Thus, as Secretary Gabriel explains, "the availability of an efficient and widespread network of grain elevators to collect and ship our agricultural commodities, in combination with a transportation network which provides access to diverse markets, is fundamental to our economic sustenance." Gabriel V.S. at 2. Against this backdrop, the situation which the State confronted in 1980 was grim. The bankruptcy of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (the "Milwaukee Road") had led to the very real prospect of abandonment for literally hundreds of miles of rail line in South Dakota. Faced with this threat to the economic viability of hundreds of farmers, shippers, elevators and communities throughout the state -- and with no prospect of help from either other Class I railroads or the federal government -- South Dakota embarked on what Governor Rounds rightly describes as "a program unique and unprecedented in recent U.S. experience." Rounds V.S. at 1. At a cost of over \$54 million in State funding, South Dakota purchased more than 700 miles of rail line, including not just the Core Lines but several hundred miles of other rail lines as well. The State then spent tens of million dollars more on the rehabilitation of those lines, and in the aggregate has spent nearly \$200 million since 1980 on rail-related infrastructure acquisitions and improvements. Rounds V.S. at 1; Gabriel V.S. at 3; Landguth V.S. at 1-3.

In 1981 and 1982, the State entered into agreements with Burlington Northern Railroad Company ("BN"), BNSF's predecessor, under which BN would provide rail service on nearly all of the rail lines that had been acquired by the State, in most instances for an initial period of five years. BN obtained Modified Certificates of Public Convenience and Necessity under 49 C.F.R. § 1150, Subpart C for these operations. Burlington Northern Railroad

Company -- Operations -- In the States of IA and SD, Finance Docket No. 29672 (ICC served August 17, 1981) (Core Lines and Mitchell-Chamberlain, South Dakota line⁵); Burlington Northern Railroad Company -- Operations -- In the States of IA and SD, Finance Docket No. 29804 (ICC served January 12, 1982) (Canton-Elk Point and Hawarden, Iowa-Beresford, South Dakota lines⁶); Burlington Northern Railroad Company -- Operation -- Between Ortonville, MN and Terry, MT, Finance Docket No. 29907 (ICC served May 4, 1982) ("East-West Line" across northern tier of South Dakota). While, as BNSF indicates, BN agreed to provide service on these lines without operating subsidy, the arrangements were predicated on substantial rehabilitation and capital expenditures by the State. BNSF App. at 12. Landguth V.S. at 3.

In 1986, BN withdrew from operation of the Kadoka Line and the SVRRA Lines. In conjunction with the local regional railroad authorities overseeing those lines, the State was able to develop alternate arrangements with Dakota Southern and D&I, respectively, that allowed rail service on those lines to continue. Landguth V.S. at 4; Huff (Dakota Southern) V.S. at 1; Parliament (D&I) V.S. at 1. At about the same time, the State and BN entered into a new operating agreement regarding the Core Lines which, as amended in 1991, remains in place today (the "Operating Agreement").⁷ As part of the 1991 agreements, the State once again contributed some \$8 million in public funding, for rehabilitation work on the Core Lines and on

⁵ The Core Lines extend from Aberdeen through Wolsey, Mitchell and Elk Point, South Dakota to Sioux City, Iowa, and from Sioux Falls through Canton to Mitchell. The Mitchell-Chamberlain line is part of a longer line extending as far west from Mitchell as Kadoka, South Dakota, referred to herein as the "Kadoka Line." A map showing these lines and the remainder of the South Dakota Rail System is attached at Tab 33.

⁶ The Canton-Elk Point and Hawarden-Beresford lines are referred to herein as the "SVRRA Lines." Unlike the remainder of the state-owned lines, which were formerly owned by the Milwaukee Road, the Hawarden-Beresford line had been owned and abandoned by the Chicago & North Western Transportation Company prior to its acquisition by the State.

⁷ A copy of the Operating Agreement, dated July 10, 1986 and as amended August 7, 1991, is attached as Exhibit B to BNSF's application.

a non-State owned line that BN intended to purchase extending into Minnesota from the East-West Line. Landguth V.S. at 4. In 1992, BN acquired the East-West Line itself from the State. Burlington Northern Railroad Company -- Acquisition and Operation Exemption -- South Dakota Railroad Authority, Finance Docket No. 32017 (ICC served April 2, 1992).

Since that time, there have been significant and often troubling changes in the way BNSF has sought to provide rail service within South Dakota. Beginning in the mid- and late 1990s, BNSF embarked upon a program of favoring shipments of grain at 110-car unit train elevators along the BNSF system -- both on the now BNSF-owned East-West line and on the Core Lines which it currently operates for the State. These mega-elevators are often utilized in conjunction with BNSF "shuttle train" service, which requires multiple 110-car shipments from a single origin to a single destination. USDA Long-Term Trends at 19 & n. 19. As shown on the map attached at Tab 34, BNSF has promoted a high concentration of 110-car unit grain elevators on the lines which it owns or operates.

As that map also shows, however, the State's shipping population consists of far more than just 110-car elevators along BNSF's lines. As discussed further below and in detail in the attached statements, such elevators and shippers face significant and potentially devastating consequences from unfettered exposure to the BNSF rate and service policies that have accompanied its mega-elevator and shuttle train programs. Smaller elevators located on non-BNSF rail lines have found it increasingly difficult to find viable markets because of a BNSF pricing structure intended to divert grain to mega-elevators on BNSF's lines. Many of these smaller elevators are unable to get any legitimate rate quotations from BNSF for important markets such as Kansas City, the Texas/Gulf coast or the Pacific Northwest, unless the traffic is moving in 110-car lots. E.g., Knudson (AgFirst Farmer's Coop) V.S. at 2-3; Yeaton (Farmers'

Union Coop) 1st V.S. at 1-2; Mitzel (Dakota Mill & Grain) V.S. at 1; Kersting (S.D. Soybean Processors) V.S. at 1-3; Schroeder V.S. at 1-2; Anderson (DM&E) V.S. at 2-3, 5-6; Huff (Dakota Southern) V.S. at 2. BNSF has prohibited elevators on lines connecting to the Core Lines from "co-loading" trains to be interchanged to BNSF under 110-car rates -- even though BNSF simultaneously allowed such practices in Minnesota. Anderson V.S. at 2-3; Landguth V.S. at 6. The dislocations and diversions caused by BNSF's rate practices have virtually shut-down operations on the Dakota Southern, which operates the State-owned Kadoka Line. Huff V.S. at 2; Greenway V.S. at 2; Schroeder V.S. at 1-2; Mitzel V.S. at 2. Viewed broadly, the State believed that, left unchecked, BNSF's policies would foreclose market access for small shippers and elevators and the communities they serve, threaten the viability of the railroad infrastructure in which the state had invested so heavily, increase the burden on and damage to the state's highway system, and ultimately result in serious damage to South Dakota's agricultural economy.

Just as it had in 1980, the State stepped in and attempted to fill this void. First, in 2002, the State acquired 70 miles of rail lines north of Aberdeen (the "Britton Line") from BNSF and a short-line carrier. South Dakota Railroad Authority -- Acquisition Exemption -- The Burlington Northern and Santa Fe Railway Company, Finance Docket No. 34125 (STB served January 18, 2002); South Dakota Railroad Authority -- Acquisition Exemption -- Rutland Line, Inc., Finance Docket No. 34216 (STB served August 8, 2002). The BNSF portion of the Britton Line was in deplorable condition and had been embargoed for some time. In conjunction with the Marshall County Regional Railroad Authority, the State spent nearly \$6.5 million in federal, state and local money on rehabilitation of the Britton Line and arranged for DMV&W to provide service on the line. Landguth V.S. at 5-6; Jarrett V.S. at 2. The Britton Line, coupled with

DM&E's trackage rights on the Core Lines south from Aberdeen and BNSF's agreement that DMV&W could interchange with DM&E at Aberdeen, allowed non-110-car loaders on DM&E, who had been shut out by BNSF, to access the Pacific Northwest and Canadian markets as an outlet for South Dakota grain.

After two 75-car grain trains had passed through Aberdeen, however, BNSF blockaded the gateway and no further operations have occurred. *Anderson V.S. at 4-5; Landguth V.S. at 6; Jarrett V.S. at 2.* BNSF asserts that what is essentially a paper barrier exists at Aberdeen, and prohibits most if not all DM&E-DMV&W interchange at that location.⁸ That issue is currently the subject of litigation between the State and BNSF in federal district court in South Dakota.

The State also sought to act to protect the interests of shippers on the State-owned Kadoka and SVRRA Lines who had been denied effective rail service and market access by BNSF's pricing policies on the Core Lines. Pursuant to its rights under the Operating Agreement, the State granted overhead rights on the Core Lines between Mitchell and Sioux City to the MRC Regional Railroad Authority and its operator Dakota Southern, for use in connection with service on the State-owned Kadoka Line. MRC Regional Railroad Authority -- Trackage Rights Exemption -- Lines of State of South Dakota, Finance Docket No. 34630 (STB served December 29, 2004); Dakota Southern Railway Company -- Trackage Rights Exemption -- MRC Regional Railroad Authority, Finance Docket No. 34630 (Sub-No. 1) (STB served December 29, 2004). Similarly, the State granted overhead rights on the Core Lines between Elk Point and

⁸ While contractual interpretation issues are not obviously before the Board, we note that the relevant agreement specifically referenced the right of the State and its designated operator on the Britton Line to interchange with DM&E at Aberdeen. *Jarrett V.S. at 2.* And while Class I railroads are presumably adept at writing iron-clad paper barriers, a federal judge in South Dakota recently concluded that a paper barrier was not evident or logically derived from the face of the agreement itself and set the matter over for trial on the parties' intention. As such matters go, this is a "rice paper" barrier that is thin at best.

Sioux City to SVRRA and its operator D&I, for use in conjunction with service on the State-owned SVRRA Lines. Sioux Valley Regional Railroad Authority -- Trackage Rights Exemption -- Lines of State of South Dakota, Finance Docket No. 34646 (STB served January 19, 2005); D&I Railroad Company -- Trackage Rights Exemption -- Sioux Valley Regional Railroad Authority, Finance Docket No. 34646 (Sub-No. 1) (STB served January 19, 2005).

Once again, however, BNSF has prohibited any such movements, claiming that its consent is required under the Operating Agreement for any State grant of trackage rights on the State-owned Core Lines and refusing to provide such consent. See BNSF App. at 18; Landguth V.S. at 7.⁹ That issue is also the subject of litigation between the parties, this time in South Dakota state court. The Burlington Northern and Santa Fe Railway Company v. State of South Dakota, Civ. No. 04-470 (S.D. 6th Circuit).

It is against the background of these controversies that BNSF has now sought -- despite a remaining term of more than 15 years on the Operating Agreement between the parties -- to exercise a contractual option to acquire the Core Lines. The STB rejected BNSF's attempt to use the class exemption procedures of 49 C.F.R. § 1150.31, et seq. to obtain regulatory approval of that transaction. The Burlington Northern and Santa Fe Railway Company -- Acquisition and Operation Exemption -- State of South Dakota, Finance Docket No. 34645 (STB served December 29, 2004 and January 14, 2005). BNSF's application followed.

DISCUSSION

BNSF's proposed acquisition of the Core Lines is governed by 49 U.S.C. § 10901(c), which provides that a transaction cannot be approved if it is inconsistent with the public convenience and necessity, and further provides that the Board may impose conditions on

⁹ In addition to the MRC/Dakota Southern and SVRRA/D&I trackage rights, the State has at other times sought BNSF's consent for the grant of trackage rights on the Core Lines. BNSF has never provided such consent. Landguth V.S. at 4-5.

the transaction that are "necessary in the public interest." In making that determination, the national Rail Transportation Policy, 49 U.S.C. § 10101, directs the Board (among other relevant things) to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public;" to "foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;" to "prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;" and to allow "competition and the demand for services to establish reasonable rates for transportation by rail." 49 U.S.C. § 10101(1), (4), (5) and (12).

If left unconditioned, BNSF's proposed acquisition of the 370-mile Core Lines owned by the State will have a profound and lasting effect on small elevators and shippers throughout South Dakota and on the national and international movement of grain from the State. The conditions requested by the State are necessary and appropriate to protect the public interest in adequate rail transportation within the State of South Dakota and to preserve existing market access options for South Dakota shippers.

**I. The Relief Sought by the State Protects
and Serves a Compelling Public Interest**

While the trends in the privately-held railroad industry may be toward a grain transportation network with no smaller elevators and no branch lines, the State of South Dakota has a long, dedicated and tangible commitment to a publicly-funded railroad infrastructure that adequately serves the shippers and elevators of all sizes that form the nucleus of the state's agricultural economy and the mainstays of its largely rural communities. Particularly where a state is willing to invest its own resources and attention in such a rail network -- and not simply

demand that Class I railroads be required to provide it -- it is incumbent on the STB to preserve and protect such undertakings when exercising its regulatory authority.

The smaller elevators served by the State-owned and other branch lines in South Dakota are a critical component of the state's economic health and vitality and that of its rural agricultural communities. Rounds V.S. at 1; Gabriel V.S. at 3. As the South Dakota Wheat Commission, representing over 9,000 wheat producers throughout South Dakota, explains, the relatively lower production density of wheat farming makes wheat shipments less amenable to handling in 110-car trains. Englund V.S. at 2. The United States Department of Agriculture in a recent report likewise indicated that the lower yield per acre for wheat may not be able to sustain the use of mega-elevators and shuttle train service. USDA Long-Term Trends at 28. As indicated above, the Board has itself noted that the nature of South Dakota's agricultural base calls for a greater number of smaller elevators.¹⁰

These needs are heightened by the increasing development and importance of so-called "identity preserved" grains, which are segregated by particular product grade and quality, typically shipped in smaller lots, and by their nature not conducive to the type of mega-elevator and shuttle train services that BNSF favors. Gabriel V.S. at 4. See also Witt (Agriliance, LLC) V.S. at 1 ("our ability to market small units of this identity preserved grain will be lost following the acquisition" if only BNSF rates and service are available); Anderson (DM&E) V.S. at 6 ("Once again, DM&E shippers of these commodities tend to focus on smaller car sets, often involving specialty grains, which are not conducive to the mega-units which are fast becoming

¹⁰ Arbitration -- Various Matters Relating to Its Use as an Effective Means of Resolving Disputes that Are Subject to the Board's Jurisdiction, Ex Parte No. 586 (STB served September 20, 2001) at 4-5, n.11 (explaining that "the Upper Great Plains [Montana, North Dakota, South Dakota], which supports relatively lower-yielding wheat crops, tends to gather grain at, and receive rail service from, more numerous, but smaller elevators that have limited storage capacity" and finding that there may be a "natural dividing line" between smaller elevator shippers and larger elevator shippers.).

the bread and butter of the BNSF system."); USDA Long-Term Trends at 24 ("agricultural shipping needs are also trending toward the use of smaller size shipments to protect the identity of specialty grains and of genetically altered commodities [R]ail, in many markets, also offers ways to segregate and economically transport any product for which identity preservation may be required."). In a "110-car only" world, shippers of these types of commodities would ultimately have no rail service available, stifling South Dakota's participation in a promising and profitable new segment of the agricultural market. It is not in the public interest to abandon these shippers and commodities where -- as here -- it can reasonably be avoided.

South Dakota also faces a heavy public burden from the dramatic increases in truck traffic and road deterioration that undeniably occur when grain shippers are no longer able to utilize rail service through their local, smaller elevators. Farmers' Union Coop Elevator, for example, has three smaller 26-car elevators on the Kadoka Line that were previously served by Dakota Southern. After BNSF's 110-car rate structure on the Core Lines essentially eliminated any viable market access for those elevators and resulted in the nearly-complete shut-down of rail operations on the Kadoka Line, Farmers' Union is now in the perverse situation of having to truck all of its grain twice -- once from the farms to the three local elevators, and then an additional seventy miles to another elevator on DM&E for actual rail movement. Yeaton 2nd V.S. at 1-2. The USDA confirms that "the abandonment of rail lines and the increased use of shuttle trains are resulting in increased road maintenance costs in rural areas because of increased heavy truck traffic." USDA Long-Term Trends at 29.

The damage to South Dakota's roads is substantial. South Dakota has over 80,000 miles of public road, 97% of which are in rural areas. State and local governments in South Dakota spent over \$600 million on roadway construction and maintenance annually, with

another \$500 million in current project backlogs. As Secretary of Transportation Landguth explains, on rural South Dakota roads a typical 25-ton tractor-trailer "consumes" the life of the road -- thus increasing the cost to the responsible government authority and the public -- at a rate of \$3.00 for every additional mile it operates on such roads. Landguth V.S. at 8-9. Given that one jumbo rail hopper car is the equivalent of four large semi-trailer trucks, the shutdown or diversion of traffic from even one small, 350,000-bushel capacity elevator could mean at least 400 trucks operating many additional miles on the state's roads. The costs and burden for the State and its taxpayers are drastic.

This is consistent with national data on the phenomenon, and the fact that increased truck traffic exacts a particularly heavy toll on rural roads and taxpayers. Damage to roads increases exponentially rather than linearly with increased truck weights, and heavy truck traffic does more damage to rural roads, which generally are not designed for such traffic. The USDA reports that a loaded semi-trailer truck does 13.5 times the damage to a major rural collector highway and 21 times the damage to a minor rural collector highway than the same truck does to a rural interstate highway. USDA Long-Term Trends at 29, n.31 (citation omitted).

In somewhat ominous tones, the USDA goes on to explain that:

The increased road damage caused by the loss of rail service and shuttle-train shipments also affects rural counties much more than urban counties since they have fewer residents to pay for the increased road damages. When Ottawa County, KS, which has a population of only 6,000, lost rail service, the county's annual road maintenance bill increased from just more than \$1 million to nearly \$7 million.

....

Due to the high costs of maintaining light-duty asphalt roads, rural counties facing such large-scale diversions of rail grain to trucks will likely be forced to allow many roads to revert to gravel.

USDA Long-Term Trends at 29 (citations omitted).

The State of South Dakota's legitimate interest in addressing all of these issues -- the continued health and viability of the state's rural agricultural communities, the availability of market access and rail transportation required by the state's smaller producers and elevators, and the avoidance of increased truck traffic and its resultant burdens on the state's road infrastructure -- are manifest, as is the Board's obligation to consider and address such concerns in making the required public interest determinations under 49 U.S.C. § 10901(c). The compelling and important nature of those interests is brought home by the remarkably unified voice of South Dakota's entire agricultural community supporting the State's position:

- * The South Dakota Wheat Commission, representing over 9,000 wheat producers throughout the State of South Dakota, annually producing over 128 million bushels of high quality winter and spring wheats.
- * The South Dakota Grain & Feed Association representing approximately 125 members comprised primarily of large and small grain elevators/shippers across the State.
- * The South Dakota Association of Cooperatives, representing over 80 farm marketing, farm supply, electric and communication cooperatives located throughout South Dakota.
- * The South Dakota Agri-Business Association, representing more than 350 members throughout the state, varying in size from small independent businesses to large international companies, as South Dakota's unified voice for the crop input industry.
- * The South Dakota Farm Bureau Federation, an association representing more than 10,000 farmers, ranchers and rural families, located throughout South Dakota.
- * South Dakota Wheat, Inc., an association of more than 400 farmer/rancher producers who ship grain to many elevators located throughout South Dakota.
- * South Dakota Farmers Union, an association of over 5000 farmers, ranchers and Cooperatives located throughout South Dakota
- * The South Dakota Corn Growers Association, representing approximately 1500 corn producers from across the state.

The conditions sought by the State respond appropriately and narrowly to the concerns voiced by these and so many other parties and arising from BNSF's proposed acquisition of the Core Lines.

A. Aberdeen Interchange

The State's acquisition and rehabilitation of the Britton Line, together with DM&E's trackage rights operations on the Core Line to Aberdeen, was intended to provide important market access to the Pacific Northwest, Canada and export markets for smaller South Dakota grain shippers who had been effectively precluded from those markets through BNSF rate structures on the Core Lines that favor 110-car elevators and shuttle train operations.¹¹ BNSF's blockading of the Aberdeen interchange has left a situation where: 1) BNSF will itself not provide competitive rail service to important markets in the Pacific Northwest and Canada for smaller shipments with grain movements of less than 110 cars; 2) BNSF will not allow elevators on DM&E or the State-owned line to "co-load" 110-car trains for interchange to and handling by BNSF;¹² and 3) BNSF will not allow any other railroad to use the State-owned Core Lines and Britton Line, via an Aberdeen interchange, to provide such services. Jarrett (MCRRA) V.S. at 2; Landguth V.S. at 6-7.

The consequences of this problem are aptly demonstrated by the fate of the third 75-car train that was to move over the State-owned Core Lines and Britton Line through

¹¹ As indicated above, two 75-car trains did move via the Aberdeen gateway in 2003, via DM&E to Aberdeen, DMV&W (the operator of the State-owned Britton Line) to Hankinson, North Dakota, and Canadian Pacific Railway beyond. BNSF has since refused to permit any further such movements via Aberdeen. Anderson V.S. at 5.

¹² The USDA has identified the refusal of Class I railroads to allowing connecting short line carriers to coload unit trains as one of two major threats to the survival of short line railroads serving agricultural areas. The USDA notes that "[t]he denial of coload to elevators on short line railroads does not appear to be cost based since there is no cost difference between accepting a unit trains from an elevator on its own line or from a short line railroad as long as time limitations and other conditions are met." USDA Long-Term Trends at 31-32. The situation has been even more difficult because BNSF, while denying coload privileges to elevators in South Dakota, was simultaneously granting similar privileges in Minnesota. Anderson (DM&E) V.S. at 2-3.

Aberdeen. After refusing to let the train pass through Aberdeen, thus stranding the train on DM&E, BNSF approached DM&E to indicate that it would deliver the 75-car train to Canadian Pacific at Minot, North Dakota or Winnipeg, Manitoba for delivery to the intended receivers in Canada, at a cost of approximately \$1,000 more per car than the direct interchange routing via DMV&W/CP. The train then sat for an additional period until BNSF agreed, as a one-time accommodation, to move the 75-cars plus an additional 35 cars to form a 110-car train to the Pacific Northwest for export. The rate required was still \$500 more per car than the initially attempted movement to Canada, and BNSF has consistently refused to allow any other assembled trains to move via Aberdeen to either the Pacific Northwest or Canadian markets. Anderson V.S. at 5; Landguth V.S. at 6.

The result of these policies is that smaller elevators on DM&E have been effectively shut out of export markets in the Pacific Northwest, which is usually the best priced market for corn. For AgFirst Farmer's Cooperative, this has meant a facility operating at only three-fifths of its "turn" capacity, with grain sometimes sitting on the ground for months before sale in the local market at disadvantageous prices (and delivery by truck), and an increase in inbound truck traffic required to receive fertilizer from Canada. Knudson V.S. at 3. As Mr. Knudson explains, some of AgFirst's farmer/owners elect to truck their grain to distant 110-car elevators that have adequate pricing for Pacific Northwest markets, increasing the burden on South Dakota roads and decreasing the value of those farmer/owners' equity stake in the AgFirst cooperative. Other farmer/owners do not have the equipment to truck long distances, and therefore have to "take the best price that we [AgFirst] can give them," at price levels often depressed by which lack of access to Canadian and Pacific Northwest markets. Knudson V.S. at 3-4. For this latter group of farmers without long-distance truck fleets, the lack of smaller, rail-

served elevators means the lack of access to rail service altogether -- no matter how efficient or price-competitive distant 110-car elevators may be. In the words of Mr. Knudson, none of this is "good for our facility, our farmer owners or the State of South Dakota."

Another DM&E shipper, South Dakota Soybean Processors, can only access western Canadian markets by truck, and has ceased soybean to such destinations because of the high costs of truck transportation. Kersting V.S. at 1. In addition, in early 2004, South Dakota Soybean Processors was unable to receive an intrastate movement of soybeans from an elevator at a local point on the State-owned Britton Line north of Aberdeen, once again because of BNSF's blockage of the Aberdeen interchange. Kersting V.S. at 1-2. See also Yeaton (Farmers' Union Coop) 1st V.S. at 1-2 (lack of effective market access to Pacific Northwest costs elevator at least \$0.10 per bushel); Anderson V.S. at 5.

Allowing DM&E and DMV&W to interchange traffic between the state-owned Core Lines and Britton Line at Aberdeen will improve the viability and development of the Britton Line as an important public-owned asset, prevent the isolation of that line from the remainder of the state-owned rail network, ensure an adequate opportunity to provide rate, service and market access options that are appropriate and needed for smaller elevators and agricultural shippers in South Dakota, and mitigate the diversion of grain traffic into trucks and onto South Dakota's highway system. Jarrett V.S. at 3; Anderson V.S. at 7-8; Landguth V.S. at 10; Knudson V.S. at 3-4; Yeaton 1st V.S. at 2; Kersting V.S. at 2. Granting that requested condition will thus serve vital and concrete public interests.

B. MRC/Dakota Southern Trackage Rights

The state-owned, 190-mile Kadoka Line has been an important and actively-supported asset for agricultural shippers and rural communities along the southern tier of South

Dakota. Beyond the millions of dollars spent in the 1980s to acquire and rehabilitate the line, since 1995 over \$2.1 million in public monies has been invested in the line to improve service to local shippers. Greenway V.S. at 1-2. Up until 1999, Dakota Southern annually handled between 800 and 2,800 on the line, providing service to four 54-car elevators and three 25-27 car elevators. Huff V.S. at 1; Greenway V.S. at 2.

In the brief time since then, however, BNSF pricing policies that favor the movement of grain via shuttle trains and 110-car elevators on BNSF's main lines have dramatically foreclosed the smaller elevators on the Kadoka Line from the rail marketplace. Because BNSF offers competitive transportation prices only to shuttle train loaders on the BNSF-operated Core Lines, and since the Core Line connection at Mitchell is the Kadoka Line's only outlet to the national rail system, rail traffic on the Kadoka Line declined precipitously and Dakota Southern has suspended nearly all operations on the line. Huff V.S. at 2; Greenway V.S. at 2. Grain from the area served by the Kadoka Line is now trucked significant distances north to points on DM&E, east to larger elevators on the BNSF-operated lines, or out of state. Huff V.S. at 2; Yeaton (Farmers' Union Coop) 2nd V.S. at 1-2; Mitzel (Dakota Mill & Grain) V.S. at 2.

As Mr. Yeaton of Farmers' Union Coop explains, the grain handled by his firm's three elevators on the Kadoka Line is now handled twice: once inbound to the elevators, and then an additional seventy miles north to an elevator on DM&E. Some area farmers who can do so are now trucking their grain longer distances to larger elevators on BNSF, and "literally right past our door." Yeaton 2nd V.S. at 1, 2. The story is similar for Dakota Mill & Grain, whose elevators on the Kadoka Line have been relegated to secondary status and are not nearly as effective, efficient or profitable as would otherwise be the case, Mitzel V.S. at 2, and White Lake Grain & Feed, which has lost half of its business since BNSF's rate restructurings "penalized all

of the small elevators on the Dakota Southern for not being large elevators." Schroeder V.S. at 1-2.

A particularly perverse lost opportunity on the Kadoka Line is the potential handling of grain from the line inbound to larger elevators on the Core Line at Mitchell and Beardsley, South Dakota. All of that traffic now moves by truck, while BNSF handles the subsequent outbound movements of grain from those locations. Handling the inbound traffic by rail would benefit the shippers, the receivers, the Kadoka Line, Dakota Southern and local area highways, with no meaningful impact on BNSF. But such short-haul traffic, which would not move in 110-car lots from stations on the Kadoka Line, is incompatible with current and likely future BNSF pricing policies and objectives. Huff V.S. at 3; Greenway V.S. at 2-3; Mitzel V.S. at 2-3.

Trackage rights for MRC/Dakota Southern over the Core Lines to Sioux City (with limited rights to serve the Mitchell and Beardsley elevators for inbound traffic from points on the Kadoka Line only) would allow Dakota Southern to connect with other railroads and thus have at least the opportunity to provide rate and service options that are appropriate for the smaller elevators on the Kadoka Line. Such an opportunity is all that Kadoka Line constituencies want. E.g., Schroeder V.S. at 2 ("We are not asking the Surface Transportation Board to force BNSF to lower its rates. What we're asking for is that the Board permit a railroad who can provide us with rail rates, be allowed to provide those rates and give us access to rail markets via other carriers at the Sioux City, Iowa gateway.").

What one party aptly calls the "no-brainer" rights to handle inbound grain to the Mitchell and Beardsley elevators will facilitate the retention of needed rail service on the Kadoka Line, take trucks off of local roads, and promote the continued efficient supply of grain to the

Mitchell and Beardsley areas. Greenway V.S. at 3; see also Huff V.S. at 4. Taken together, the requested MRC/Dakota Southern rights are required in the public interest to avoid an untenable isolation of the state-owned Kadoka Line, preserve the availability of a public-owned rail infrastructure for the important rural agricultural communities of southern South Dakota, and maintain a rational and cost-effective balance in the handling of grain by truck and rail.

C. SVRRA/D&I Trackage Rights

The situation is similar on the SVRRA Lines extending between Canton and Elk Point, South Dakota and Hawarden, Iowa and Beresford, South Dakota and operated by D&I. Over four million dollars in public investment has been spent since 1995 on the lines, which are captive at either end to the State-owned Core Lines over which BNSF seeks to assume full ownership and control in this proceeding. The lines provide vital rail service for the communities of Hudson and Beresford, South Dakota and Hawarden and Akron, Iowa, and handle grain as well as ethanol byproducts, cement, fertilizer and lumber. Once again, BNSF marketing and operating policies have severely restricted the available markets for grain from several on-line elevators, threatened the utility of the SVRRA Lines, and encouraged the handling of grain in additional or longer truck movements in place of rail. Hazel (SVRRA) V.S. at 2-3; Parliament (D&I) V.S. at 2; Boyer (Alcester Elevator) V.S. at 1.

Agriliance, LLC, a 27-car elevator located on the SVRRA Lines at Hawarden, is currently working on projects involving "identity preserved" soybeans -- specialty soybeans, uniform in grade and quality, that are highly desired by Agriliance's processor customers and necessarily transported in smaller shipments. Witt V.S. at 1. Agriliance faces the prospect that "with the BNSF proposed acquisition of the Core Lines and the BNSF pricing policies, which focus on large 110-car loaders, our ability to market small units of this identity preserved grain

will be lost following the acquisition." Witt V.S. at 1. Inbound fertilizer receivers on the SVRRA likewise confront loss of their supply markets and inefficient diversion of their traffic to trucks when the SVRRA Lines are isolated from a comprehensive state-owned rail system and subjected on an unfettered basis to BNSF's unfavorable pricing and traffic policies. Dunlap (Sioux Fertilizer Company) V.S. at 1; Witt V.S. at 2.

As D&I's Jack Parliament explains, the existing D&I-BNSF contractual arrangements on the state-owned SVRRA Lines require D&I to refer inquiries regarding rail service on the lines -- both from shippers on the SVRRA Lines themselves and from shippers elsewhere in the United States interested in shipping to the SVRRA Lines -- to BNSF for handling. Often that is the last D&I ever hears of the matter, and the traffic is never seen. Parliament V.S. at 2. By not allowing such routings except when deemed to be in its best interests, BNSF has constrained D&I's ability to adequately serve the needs of shippers on the SVRRA and diminished the utility and economic benefit of the State's substantial investment in that infrastructure. Parliament V.S. at 2-3.

The requested trackage rights for SVRRA/D&I over the Core Lines will allow D&I to reach connections with other carriers at the Sioux City gateway and to have the opportunity to develop transportation options, rate structures and grain and other markets for rural and agricultural shippers that BNSF is increasingly unwilling to serve. Parliament V.S. at 4. Indeed, D&I trains already operate over the Core Lines into Sioux City for the movement of aggregate commodities, and pass literally within sight of the UP and CN interchange tracks. Parliament V.S. at 2; Hazel V.S. at 2. The limited additional overhead trackage rights sought here will assure that D&I's service on the SVRRA Lines does not become a non-viable "island" operation once surrounded by BNSF-owned lines, and protect the State's significant investment

in the SVRRA Lines as a critical lifeline for smaller elevators and agricultural shippers in that area.

D. DM&E Trackage Rights

As is the case with foreclosed Pacific Northwest and Canadian markets, smaller wheat and soybean shippers on DM&E have been placed at a distinct disadvantage by BNSF's pricing structure and shuttle train focus with respect to access to the important grain markets of Kansas City, Omaha and other points to the south. DM&E shippers of these commodities tend to focus on smaller car sets, often involving specialty grains, which are not conducive to handling by the mega-elevators and shuttle trains to which BNSF appears to be exclusively moving. Anderson V.S. at 2, 6. Soybean processors face rates significantly higher per mile via the DM&E interchange to the Core Lines at Wolsey than those applicable to comparable processors on the BNSF system. Kersting (S.D. Soybean Processors) V.S. at 3; see Yeaton (Farmers' Union Coop) 1st V.S. at 2-3; Mitzel (Dakota Mill & Grain) V.S. at 1-2; Anderson V.S. at 6. While DM&E does have a joint-line routing to Omaha via Mason City, Iowa, it is circuitous by several hundred miles and does not provide the important transportation service and market access availability for DM&E's smaller shippers that a Core Line routing from Wolsey to Sioux City for interchange to Union Pacific would. Anderson V.S. at 6.

In addition, while DM&E currently receives over 100,000 tons of ballast annually from a shipper on a D&I-owned line north of Sioux Falls, that heavy traffic is currently trucked to a DM&E line rather than handled by the all-rail movement that is possible over the Core Lines. Anderson V.S. at 8.

The requested trackage rights for DM&E on the Core Lines from Wolsey to Sioux City will ensure that an efficient route exists for movements to Omaha, Kansas City and the

markets beyond for smaller agricultural shippers and elevators in the rural communities served by DM&E's line across South Dakota. Connecting trackage rights on the Core Lines from Mitchell to a D&I interchange at Canton will allow significant aggregate traffic to be removed from South Dakota highways, and provide an important alternate outlet for the State-owned SVRRA lines. Anderson V.S. at 7-8; Landguth V.S. at 10.¹³

**II. The Relief Sought Is Necessary to Address and Mitigate
Adverse Effects Arising From BNSF's Acquisition of the Core Lines**

As the Board knows well, the serious and potentially life-threatening problems that small agricultural shippers, elevators and communities face from the Class I railroad push toward 110-car elevators and shuttle train type services are not unique to South Dakota. What is unique, however, is the current structure of the South Dakota rail system against which those developments have played out. The public owns the rail lines at issue here, and BNSF today operates those lines as a tenant subject to various forms of State oversight and control. BNSF's acquisition of the Core Lines will permanently and fundamentally restructure that long-standing relationship, remove the remedies and leverage that South Dakota currently possesses to secure adequate rail service for shippers of all sizes throughout the state, and leave behind other, now-orphaned state-owned lines that the State will have little if any ability to protect and foster. Whether the Board should affirmatively exercise its regulatory authority to remedy existing granger state rail transportation inadequacies and abuses is an issue for another day and case. But the Board should decline to exercise its jurisdiction in a manner that makes such problems worse. That is precisely what would happen if BNSF's acquisition was approved without the

¹³ The requested DM&E trackage rights on the Core Line from Wolsey to Sioux City also would include the ability to connect with the state-owned Kadoka Line at Mitchell. Both the Dakota Southern and DM&E trackage rights on the Core Line contemplate the ability to connect with the State-owned Napa Junction to Platte line, should that line (which connects to the Core Line at Napa Junction and is largely rail-banked) ever be returned to service.

conditions requested by the State and supported by a myriad of shippers, trade associations, communities, short-line railroads and governmental agencies of every stripe and size throughout South Dakota.

As the State's witnesses explain, the Operating Agreement between BNSF and the State¹⁴ creates significant interplay between the parties with respect to the functioning of the State-owned Core Lines. The State continues to be responsible for the management and administration of the Core Lines, and has the right to admit third-party carriers onto the lines subject to BNSF's consent with respect to any material interference with BNSF's own operations. Landguth V.S. at 4; Operating Agreement, § 2.C. BNSF is required to provide service at levels, frequencies and rates on an equivalent basis with that provided elsewhere; to provide service in an efficient manner; and to maintain the Core Lines to a minimum of FRA Class 2 standards. Operating Agreement §§ 3.A, 3.B, 5.A. BNSF is not permitted to abandon any of the Core Lines, and the State retains control over important leases such as that of the West Yard in North Sioux City to D&I. Parliament V.S. at 3; BNSF App. at 31.

The existing Core Line arrangement thus places certain constraints on BNSF's operation of the Core Lines, and provides the State with substantive rights and remedies. The State has invoked those rights and remedies when the State considered it necessary to ensure the adequacy of rail service and market access provided via the Core Lines. The State has sought in a number of instances to provide access on the Core Lines to third-party carriers, and BNSF's refusal to allow such access is currently the subject of state court litigation between the parties. Landguth V.S. at 4-5; BNSF App. at 18. BNSF's refusal as the Core Line operator to provide co-loading privileges for smaller elevators on DM&E even while doing so for smaller elevators in

¹⁴ Attached as Exhibit B to BNSF's application.

Minnesota is another one of the issues in that litigation. While the outcome of those cases obviously remains to be determined, it is clear that the current structural relationship between the State and BNSF places obligations and responsibilities on both sides. Indeed, it appears that BNSF's exercise of its putative option to acquire the Core Lines may very well have been motivated by the State's aggressive pursuit of its rights and the potential consequences for BNSF.

BNSF itself ultimately concedes the fundamental structural changes that its acquisition of the Core Lines will entail. According to BNSF, the reason it desires to acquire the Cores Lines, and the reason such an acquisition would allegedly be in the public interest, is because "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." BNSF App. at 22. That is simply another way of saying that BNSF faces risks under the current Core Line arrangements, and what is risky for BNSF is by turn leverage for the State. BNSF seeks expressly to remove its risk, eliminating the State's leverage on the Core Lines and leaving the rest of the critical South Dakota rail system open to the kinds of inadequate rail service and self-serving rate-making that the public ownership of and investment in that infrastructure was meant to obviate. BNSF's application confirms the obvious: that when the tenant becomes the landlord there is a significant change in the control of the property.

BNSF is thus misguided when it insists that it cannot be required to "increase the existing level of competition" because the transaction will not reduce competition and the pre-transaction setting has been "preserved, not altered." BNSF App. at 6-7 (citing Portland & Western Railroad, Inc. -- Lease and Operation Exemption -- Lines of Burlington Northern Railroad Company, Finance Docket No. 32766 (STB served October 15, 1997) and Montana

Rail Link, Inc. -- Exemption, Acquisition and Operation -- Certain Lines of Burlington Northern Railway Company, Finance Docket No. 31089 (ICC served May 26, 1988)). The alterations to the "pre-transaction setting" here are significant and fundamental, if unique. BNSF's acquisition of the Core Lines will dismantle an integrated rail transportation infrastructure which the State created and has funded for over twenty years, leaving behind other State-owned lines relegated to "island" status and subjecting smaller elevators and shippers -- and thus large segments of South Dakota's agricultural economy and rural communities -- to the full force of BNSF rate and service policies specifically intended to disadvantage them and shift traffic to 110-car elevators and shuttle train service on BNSF's line. Every one of the parties in the numerous attached supporting statements and letters recognizes that this is a critical and significant moment for the South Dakota rail system, and that what occurs in this transaction will largely determine the fate and future of rail transportation service in the state. See, e.g., V.S. of Englund, Anderson, Forman, Zander, Chase, Vallery, Held, and Wiese.

BNSF's implication that conditions cannot be imposed on this transaction if they would have any incidental pro-competitive effects is neither realistic nor consistent with recent Board policy. In a comprehensive review of nationwide rail access, service and competition issues in 1998, the Board concluded that "it is [] clear that we have reached a regulatory crossroads." Review of Rail Access and Competition Issues, 3 S.T.B. 92, 95 (1998). When it later adopted new regulations governing major railroad consolidations, the Board recognized the difficulty sometimes inherent in addressing transactional harms on a direct, one-to-one basis with remedial conditions, and found that broader conditions were appropriate or desirable where well-understood harms were nonetheless difficult to discern or address. Major Rail Consolidation Procedures, Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001). Even before that, the

Board recognized the need to prevent an approved transaction from expanding the scope or effect of existing detrimental service or rate situations. CSX Corp., et al. -- Control -- Conrail, Inc., et al., 3 S.T.B. 196, 277 (1998).

Here, the impacts arising from BNSF's acquisition of the State-owned Core Lines are clear and troublesome, and the remedies sought by the State are reasonable and appropriate to address them. Those remedies seek only to protect those left behind by a Core Lines sale: the State-owned Kadoka, SVRRA and Britton Lines, and the smaller elevators, shippers and communities that rely on that public infrastructure and DM&E for their continued economic existence and viability. We note that the State seeks no relief with respect to any shippers on the Core Lines themselves,¹⁵ and thus seeks in no way to control, dictate or restrict BNSF's own rates, operations or service, or to otherwise impose "competitive access." The State is not reaching beyond its own legitimate interests in rail lines that have been the subject of two decades of public commitment and investment. The State has proposed, and the Board should impose, rational and targeted conditions that are reasonably designed and intended to protect the strong public interest in an effective and adequate South Dakota rail transportation network.

III. The Relief Sought Will Not Harm BNSF or Deprive It of Any Legitimate Benefits of the Proposed Transaction

The bulk of BNSF's application is dedicated to an occasionally self-congratulatory exposition of the history of its operations on the Core Lines. BNSF, of course, has been a significant beneficiary of its Core Lines relationship with the State: it has built a significant traffic base for itself without capital expenditures for initial acquisition or rehabilitation costs; it pays no rent on overhead traffic moving on the Core Lines, or for the first

¹⁵ The only exception is the right for Dakota Southern to handle inbound grain traffic from the Kadoka Line to the elevators on the Core Lines at Mitchell and Beardsley -- traffic that today moves entirely by truck.

\$36,000,000 of originating or terminating traffic in any year; and, if successful in exercising a contractual purchase option, will be able to acquire a valuable franchise at the State's cost basis. Landguth V.S. at 3.n1; Operating Agreement, § 3.E. And BNSF has not been hesitant to place its corporate interests above South Dakota rail service, as it did when it withdrew from operation of the SVRRA and Kadoka Lines in 1986. Huff V.S. at 1; Parliament V.S. at 1; Landguth V.S. at 4.

Nonetheless, the State finds little to quarrel with in the basic facts of BNSF's story, and does not oppose the underlying regulatory approval of BNSF's acquisition of the Core Lines. The principal purpose of BNSF's arguments seems to be that its 1986 contractual option to acquire the Core Lines was the "quid pro quo" for its years of selfless and successful service on the Core Lines, and that the imposition of any conditions here would unfairly deprive it of the "benefit of its bargain." That is an overwrought and underwhelming argument for a number of reasons.

Initially, of course, the presence or content of a private contractual agreement has little to do with the public interest analysis required by 49 U.S.C. § 10901(c). E.g., Missouri Pac. R. Co. Abandonment, 324 I.C.C. 357, 366 (1965) ("It should be understood, however, that the existence of the contract does not affect the jurisdiction of the Commission in passing upon the question of public convenience and necessity."); Burke County, GA v. U.S., 206 F. Supp. 586, 588 (S.D. Ga. 1962) ("Private agreements cannot thwart the Commission in its Congressionally delegated duty to regulate interstate commerce."); Chicago & N.W. Transp. Co. v. Peoria & Pekin U. Ry. Co., 360 I.C.C. 168, 181 (1979). And of course there have been dramatic changes in the underlying circumstances since 1986 (and the sale of the East-West Line in 1992), when the wholesale diversion of grain traffic from smaller elevators and branch lines to

mega-elevators and shuttle train service was not contemplated. Rounds V.S. at 2; Gabriel V.S. at 4; Landguth V.S. at 5.

The State's requested conditions will not create operational interference with BNSF's own operations on the Core Lines. BNSF indicates that it operates three scheduled trains per week on the relevant line segments,¹⁶ as well as non-scheduled grain trains. BNSF App., Exhibit D (Operating Plan). If the trackage rights sought by the State are granted, Dakota Southern anticipates operating one train per week over the Mitchell-Sioux City segment of the Core Lines, while D&I expects that additional traffic will be handled in its existing train movements over the Core Lines between Elk Point and Sioux City. Huff V.S. at 4; Parliament V.S. at 4. DM&E does not anticipate operating more than one train/day either north through the Aberdeen interchange to DMV&W or south to Sioux City, and three trains per week over the Mitchell-Canton segment. Anderson V.S. at 8-9. DM&E and DMV&W already both operate into BNSF's Aberdeen Yard, and as discussed above two grain trains were interchanged between DM&E and DMV&W before BNSF blockaded the gateway for economic reasons. The operational impacts of these movements on BNSF would be negligible.

Most significantly, however, there is nothing in the State's request for conditions that would deprive BNSF of any legitimate benefit arising from its acquisition of the Core Lines. They do not create additional access or competition at any traffic location served by BNSF on the Core Lines or elsewhere. They do not require BNSF to handle any traffic that it does not want to, or restrict in any way its rate-making freedom. In particular, they do not inhibit BNSF's

¹⁶ The very north end of the Core Lines near Aberdeen is served by a local train six days per week. BNSF App., Exhibit D at 2.

further development of 110-car and shuttle train programs as it sees fit.¹⁷ Indeed, all parties supporting the State understand that such programs will continue and -- if truly efficient and economically beneficial for the public at large -- will and should carry the day no matter what occurs in this case. As South Dakota's Secretary of Agriculture makes clear:

If this is the way of the world for BNSF, then so be it. I am not providing this statement to oppose their pricing structure or to ask the Board to modify that structure. If BNSF's intent is to devise a rail system on which only the mega-elevators operate, then that's fine -- for the BNSF rail system. . . .

If BNSF is correct in its apparent corporate view that grain can and should only move in 110-car units, then operations on much of the remaining South Dakota rail system may face an uphill battle in the future. I am convinced that is not the case, but in the meantime the conditions which the State is seeking here would do nothing to constrict BNSF, to force it to handle traffic it does not want or on terms it does not accept, to charge prices any different than it is now charging, or to compel it to subsidize anybody else's unprofitable or inefficient operations. The conditions sought by the State simply allow our shortline carriers to reach gateways with other carriers and to have the opportunity to develop transportation options, rate structures and grain markets that BNSF is increasingly unwilling to offer. Our success or failure in that endeavor should be of our own making. Transportation companies are not and should not be market makers. They are providers of transportation services.

Gabriel V.S. at 5-6.

Ultimately, the only thing BNSF loses here is the freedom from having to demonstrate that market forces -- and not just its own interests -- genuinely favor its new grain loading and handling techniques and policies. It is difficult to see how that is a legitimate, protectable interest under the public interest criteria of 49 U.S.C. § 10901(c) and the Rail Transportation Policy of 49 U.S.C. § 10101. The citizens, communities and rural agricultural economy of South Dakota, on the other hand, stand to lose much more: a publicly-funded

¹⁷ Indeed, among the many parties supporting the State's position here are agricultural associations with 110-car members. E.g., Anderson (South Dakota Grain & Feed Ass'n) V.S. at 1.

railroad infrastructure with at least the opportunity to provide meaningful, adequate rail service and market access to the vital network of smaller elevators and shippers throughout the State.

REQUEST FOR ORAL ARGUMENT

Given the significant and unique nature of the issues raised by the BNSF's application, and the deep and widely-shared concerns raised with respect to an unconditioned approval of the proposed BNSF Core Lines acquisition, the State respectfully requests that the Board provide for oral argument on this matter, with time divided equally between BNSF and the State.

CONCLUSION

Chairman Nober recently told Congress that, with respect to agricultural states in the Upper Midwest like South Dakota, "[t]he Board must pay close attention to the unique set of concerns of rail shippers in that part of the country." Nober Testimony, House Transportation and Infrastructure Committee, Subcommittee on Railroads, Hearing on the Status of Railroad Economic Regulation, March 31, 2004 at 20. This is a case that calls for particularly close attention. What would the Board suggest that states do to mitigate the withdrawal of Class I railroad service from the rural agricultural areas and smaller elevators that are so critical to granger state economies and health? Until the day, if ever, that regulatory intervention is deemed necessary or appropriate, the Board would presumably say that states and their relevant constituencies need to invest their own resources in a public infrastructure that can serve the public interest as defined by those states. South Dakota has already done that. The Board's sole essential task here is to ensure that the public benefits of that long-standing public investment are preserved.

As the trade organizations representing literally tens of thousands of farmers, producers and elevators in South Dakota have explained, the conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the South Dakota landscape, it should be because market forces favor that result -- not because BNSF's policies dictate it.

WHEREFORE, the State of South Dakota respectfully requests that approval of BNSF's application be made subject to the conditions described herein.

Respectfully submitted,

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**ATTORNEYS FOR
STATE OF SOUTH DAKOTA**

Dated: March 11, 2005



STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

**VERIFIED STATEMENT
OF
GOVERNOR M. MICHAEL ROUNDS**

My name is M. Michael Rounds. I am Governor of the State of South Dakota.

This proceeding before the Surface Transportation Board in which the BNSF Railway Company proposes to buy the State-owned Core Line system is likely to be one of the most significant economic events to impact the State of South Dakota within next several decades. The decision as to whether one railroad, however well-intentioned, should be permitted to dominate and control the market access of the vital agricultural sector of our State's economy, without adequate conditions to preserve the market access which our State has worked so hard to create, must be carefully considered by this Board. This decision will have a dramatic and lasting effect on the people, farms and businesses throughout South Dakota and on the national and international movement of grain from the State.

Not long ago, South Dakota was faced with a rail crisis. The Milwaukee Road had plunged into bankruptcy and hundreds of miles of rail lines throughout South Dakota were set to be abandoned. Hundreds of our grain elevators were at risk and our economy stood at a crossroads. No railroads were rushing in to fill the void, and there were no federal dollars for rail line acquisitions.

In the face of this looming crisis, the State itself embarked upon a program unique and unprecedented in recent U.S. experience. We purchased over 700 miles of rail line in order to preserve the economy of South Dakota and access to markets for our shippers. We contracted with multiple railroads including the BNSF Railway Company, the Dakota Southern, the D&I Railroad, and, more recently, the Dakota, Missouri Valley & Western to operate those rail lines as part of a unified system throughout South Dakota.

South Dakota has spent over \$54,000,000 on the purchase of these lines, but that was just the beginning. We poured money into the rehabilitation of these lines which the Class I railroads had allowed to fall into disrepair. We committed funds to shipper infrastructure so that adequate rail loading and unloading facilities would exist for the movement of grain and other commodities. Over the past 20 years we have committed and spent almost \$200 million in public funds on rail-related infrastructure throughout the state.

South Dakota has forged partnerships with the rail operators of these lines. We have worked with them to nurture the development of this rail infrastructure in order to provide as many options as possible for our industries to market South Dakota products. These rail operators have

acted in the capacity of stewards of the State's trust, always subject to our management, oversight and the various contractual protections delineated in our operating agreements. As such, the unique public-private partnership between the State and BNSF that has governed the Core Lines, as with other State operators on the balance of the State system, has helped to ensure that a publicly-owned rail infrastructure would, in fact, be operated for the benefit of the entire South Dakota public.

Now that our State-owned rail lines have returned to tremendous profitability, BNSF desires to acquire the 370-mile State-owned Core Lines for absorption into the BNSF rail system. This acquisition of over half of the State system, without adequate conditions to preserve market access options on the remainder of the current rail system, will undermine the rail transportation infrastructure and services that we have worked so carefully to preserve and improve.

Under BNSF's proposal, all but one of the major rail access points into and out of South Dakota will be controlled by one railroad alone – BNSF. The balance of the State system will now consist of isolated island operations, totally captive to BNSF, its policies, management interests, and shareholders. Such a circumstance is untenable, and should not be permitted by this Board.

The Board should not misunderstand our intentions. We are prepared to sell the Core Lines to BNSF. While the State and BNSF have disagreed occasionally over various aspects of the Core Line operations and BNSF's rate-making policies, we have not made a filing in this proceeding for the purpose of attacking BNSF or opposing its ability (with appropriate conditions) to buy the Core Lines. Rather, our goal is to ensure that the critical agricultural sector of our State's economy continues to flourish through the preservation of a rail transportation network available to industries throughout the State of South Dakota on an equitable and nondiscriminatory basis.

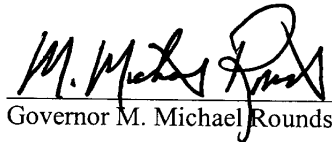
BNSF is the only Class I railroad providing service to shippers in South Dakota. Over the past five years, BNSF has focused its attentions in South Dakota and elsewhere on the movement of grain via 110 and 120-car elevators. There is no question that these large elevators are good for BNSF operational efficiencies, and they provide positive benefits for the State of South Dakota as well. Indeed, we have loaned many millions of dollars to shippers in the State for the construction of these 110-120 car facilities. But these mega-operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers who are so critical to our communities throughout the state. Unfortunately, BNSF has embarked upon a pricing policy which dramatically favors these larger shippers and has begun to foreclose market access for the small shippers and the communities they serve throughout South Dakota. Our response was to commence implementation of interchange and trackage rights via the Core Lines for the shortline carriers serving those smaller shippers, so that all shippers and communities in South Dakota would continue to have adequate and available market access. BNSF's response is the proceeding before you – to acquire the Core Lines and forever foreclose South Dakota from protecting the shippers and economy of this State.

The conditions which we are seeking as a part of this acquisition will have a multitude of benefits for our state, with limited or no impact on BNSF or the acquisition. Our small shippers on the South Dakota system would have continued access to the markets we intended that they should have when we purchased and rehabilitated the rail system. The seamless nature of the

South Dakota rail system will not be undermined by a private enterprise holding all access points out of the state captive to its pricing and management policies. The burden on our extensive road and highway system will be lightened through the continued ability of our shortlines to move loads by rail, again, as we had intended when the system was created. Finally, the South Dakota system will continue to benefit the public throughout the state, a public who has relied upon us to provide an adequate rail infrastructure that the major railroads were not prepared to operate or maintain.

I submit that this Board must act to preserve the benefits of the rail infrastructure which we created and funded. Many of our neighboring states have suffered significant adverse effects from dominance of their market access by one Class I carrier. Such a system does not now exist in the State of South Dakota, and the conditions which we are proposing for this acquisition will ensure that such a circumstance does not exist in the future.

Respectfully submitted on this 9th day of March, 2005.



Governor M. Michael Rounds

**VERIFIED STATEMENT
OF
SECRETARY LARRY GABRIEL**

My name is Larry Gabriel. I am Secretary of Agriculture for the State of South Dakota. I have held this position since February, 2000. I was born and raised on a ranch in western South Dakota, and earned a Bachelor of Science degree in Agricultural Economics from South Dakota State University. Prior to becoming Secretary of Agriculture, I served as a State Representative from 1983 to 1998, and served 6 years as House Majority Leader.

South Dakota is one of the largest agricultural production states in the nation. In calendar year 2003, for example, South Dakota ranked 7th in the United States in corn production, producing 427,350,000 bushels of corn with an estimated market value of over \$974,000,000. That same year, South Dakota ranked 6th in the United States in wheat production, producing 118,391,000 bushels of wheat with a market value of \$408,000,000, and 8th in the United States in soybean production, producing 115,500,000 bushels of soybeans with an estimated market value of \$804,000,000. In 2003 South Dakota had 12,000,000 acres planted with just these three commodities alone, producing a combined volume of 661,000,000 bushels and a total market value of \$2.2 billion. South Dakota's total crop production for all commodities in 2003 was in excess of 724,000,000 bushels with a total market value of \$3 billion.

Over the past 30 years, combined production of corn, wheat, soybeans, oats and barley in the state increased by 78% compared to a 55% increase in production in such commodities in the U.S. overall during that same period. Agriculture and agricultural commodities form the foundation of South Dakota's gross domestic product and touch virtually every facet of the lives of the people and the economy of our State. The total economic impact

of agriculture on the economy of South Dakota is in excess of \$17 billion on an annual basis. Consequently, the availability of an efficient and widespread network of grain elevators to collect and ship our agricultural commodities, in combination with a transportation network which provides access to diverse markets, is fundamental to our economic sustenance.

I spend the vast majority of my time as Agriculture Secretary working with our grain producers to develop internal and external markets for the consumption of our grain. Internally, we have had tremendous success in bringing livestock feedlots and ethanol plants to our state. At the same time, we are continuously and actively engaged in developing markets for our grain throughout the United States and export markets in Asia and Europe. Indeed, as this Verified Statement is being filed, I'm engaged in meetings with South Korean officials and business leaders in an effort to promote consumption of South Dakota grain.

The South Dakota agricultural economy, like those of our neighboring states, cannot survive without access to a multitude of domestic and export markets. Markets for our grain are located throughout the United States, Canada and throughout the rest of the world via the export markets in the Pacific Northwest and the Texas/Louisiana Gulf.

Grain shippers in our state must move their products long distances to these domestic markets for processing and consumption, or to the coastal ports for export. Shippers in our state do not have direct access to inland waterway transportation, and the distances involved make truck transportation costly and uncompetitive. Consequently, rail is the predominant cost-effective transportation choice for our shippers. Over the past five years, agricultural products accounted for over 60% of the rail shipments to and from our state, with an average of over 80,000 carloads of grain and grain products being shipped on an annual basis. It is vital that the

South Dakota economy, so heavily dependant on agriculture, have a superior rail infrastructure and access to markets.

Twenty years ago, the rail picture in South Dakota was bleak, to say the least. The Milwaukee Road was threatening to abandon upwards of 1,000 miles of trackage, and shippers, farmers and communities throughout our state were threatened with the loss of this critical service. The State stepped in and purchased well over 700 miles of rail lines at an acquisition cost in excess of \$54,000,000--all of it State funds. The State has invested another \$135,000,000 of public funds in rehabilitating rail lines throughout the state, and in upgrading shipper facilities to maximize shipper utilization and production capacity. In this way, we have preserved rail access for hundreds of rail elevators and communities throughout the state. It was not the railroads who stepped in and made this commitment, it was the State itself.

These long-standing and far-reaching investments reflect the fact that our agricultural economy is built on the existence of elevators throughout the state, serving our rural communities. We have over 200 grain elevators in the state, 75% of which are classified as small or medium-sized (less than 800,000 bushel storage capacity). We continue to lose, on the average, 2-3 elevators each year, and are working hard to stem the tide, so that the far-flung farms and communities of our state will continue to have adequate access to facilities and to markets.

Among our other efforts, we have been working with the BNSF Railway and the shortline railroads within our state on the development, where appropriate, of 110-120 car unit grain loaders. Indeed, millions of dollars in State funds have been expended in connection with the development of these larger capacity grain elevators. Such elevators ideally provide the Class I railroads with loading and transportation efficiencies and we applaud and support those

efficiencies. However, a few large capacity elevators within any state, South Dakota or otherwise, are not an adequate substitute for a network of elevators throughout the state providing access to our entire community of farmers and producers.

In the past few years, BNSF has seized upon the development of these 110-120 car loaders to create a pricing structure which favors those elevators at the expense of and to the detriment of the smaller 27 and 54-car loaders throughout the state. BNSF's pricing structure for 110-120 car trains is several hundred dollars per car lower, oftentimes \$800-\$1,000 lower, than its rate structure for the smaller elevators.

In addition, South Dakota has embarked upon a program of developing specialty grains known as "identity preserved" grains, which are particularly attractive for wheat and soybean receivers who desire particular grades and quality of product. These identity preserved grains are typically shipped in smaller lots, and by their nature are not conducive to the type of mega "shuttle" system that BNSF desires to create. These shippers as well have been hurt by BNSF's unwillingness to serve the smaller lot shipments.

If this is the way of the world for BNSF, then so be it. I am not providing this statement to oppose their pricing structure or to ask the Board to modify that structure. If BNSF's intent is to devise a rail system on which only the mega-elevators operate, then that's fine – for the BNSF rail system. It is not fine for the State of South Dakota. Fifteen elevators on the State rail system are mega 110-120 car loaders. Over 200 elevators are not. We need to bring our grain from all farms and communities throughout the state, via rail, to market. And we have created a rail infrastructure which allows the opportunity for this market access. The State owns this rail infrastructure. Now BNSF wants to buy quite literally the core of the system, rendering 10 of the 11 rail access points out of the state captive to BNSF. This is not a

prescription for the economic success of our state. Railroads do not have the right to dictate markets--market forces should dictate markets. We need access to these markets via rail lines and carriers that are able and willing to handle all sizes of loads, big and small. We created that type of rail structure, and now BNSF wants to foreclose it. I vehemently take issue with their right to do so.

Rail access for DM&E shippers north through Aberdeen will ensure that non-110-car shippers and producers in the regions served by DM&E have adequate market access to Canada and the Pacific Northwest. Trackage rights for Dakota Southern, D&I and DM&E to Sioux City will ensure that small and medium-sized shippers in our state will have access to Kansas City, Omaha and the Texas Gulf, and will also ensure that our State-owned Dakota Southern and D&I lines don't become isolated and cut off from the rest of the rail world due to the pricing policies of BNSF. Dakota Southern access to the Mitchell and Beardsley elevators and DM&E trackage rights between Mitchell and Canton will keep trucks off the road in a state where we have over 80,000 miles of road, and not nearly enough funds to keep them adequately maintained.

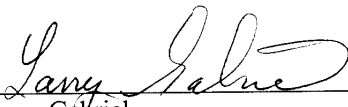
If BNSF is correct in its apparent corporate view that grain can and should only move in 110-car units, then operations on much of the remaining South Dakota rail system may face an uphill battle in the future. I am convinced that is not the case, but in the meantime the conditions which the State is seeking here would do nothing to constrict BNSF, to force it to handle traffic it does not want or on terms it does not accept, to charge prices any different than it is now charging, or to compel it to subsidize anybody else's unprofitable or inefficient operations. The conditions sought by the State simply allow our shortline carriers to reach gateways with other carriers and to have the opportunity to develop transportation options, rate

structures and grain markets that BNSF is increasingly unwilling to offer. Our success or failure in that endeavor should be of our own making. Transportation companies are not and should not be market makers. They are providers of transportation services. We have created a rail infrastructure which facilitates the provision of that service. We should be allowed to continue the existence of that infrastructure and to provide that service to the many elevators and communities throughout our state who vitally depend upon it for their and our survival.

VERIFICATION

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

Executed on March 8, 2005.



Larry Gabriel

**VERIFIED STATEMENT
OF
SECRETARY DENNIS LANDGUTH**

My name is Dennis Landguth. I am the Secretary of the South Dakota Department of Transportation. I graduated from the South Dakota School of Mines and Technology in 1970 with a degree in Civil Engineering. I have been a member of the South Dakota State Government for 35 years in various leadership positions, leading to my present position. As Secretary of the Department of Transportation, I oversee the State highway system as well as air, rail and transit activities statewide.

The South Dakota D.O.T. is dedicated to the welfare and preservation of the economy and people of our state through the development and maintenance of a transportation network and infrastructure of railroad track, roads and highways which serves the needs of communities throughout the state. Our actions have proven that these are not idle words. In the late 1970's, the Milwaukee Road bankruptcy and related abandonment of over 1,000 miles of rail lines threatened to devastate the rail infrastructure and, correspondingly, the economy of our state. We stepped in and committed millions of dollars of State funds to buy and preserve those rail lines.

Our efforts did not cease in the early 1980's following the Milwaukee Road bankruptcy. Over the last 20 years we have continued to commit State funds to the purchase of abandoned or soon to be abandoned rail lines in order to preserve market access for our shippers and economic prosperity for our communities. Indeed, with the most recent acquisition of the rail lines north of Aberdeen (from the BNSF through donation, and from RLI, Inc. through acquisition), the State of South Dakota has purchased 17 rail line segments totaling 1,400 rail track miles at an acquisition cost in excess of \$54,000,000.

South Dakota's efforts are not confined to merely buying rail lines. We are actively engaged in working with private enterprises to purchase and operate portions of the State rail system wherever possible. For example, in 1986 after the Chicago & Northwestern Transportation Company failed in its efforts to abandon its several hundred-mile line from Fort Pierre to Rapid City, we worked with the DM&E Railroad to secure sufficient public funding to complete the acquisition of that and other Chicago & Northwestern lines within the State. Similarly, we worked with BNSF to apply several millions dollars of State funds to the BNSF's acquisition and rehabilitation of the Ortonville to Appleton, Minnesota Line on the extreme northeast corner of our state and, after the State's purchase of the 480-mile East-West main line from Ortonville to Terry, we worked with BNSF to return that line to private (BNSF) hands, after several years of State ownership and operation.

We are also mindful of the fact that railroads and railroad infrastructures are capital intensive as are the associated shipper facilities necessary to access and transport goods via railroads. Consequently, over the past 20 years we have committed and spent over \$135,000,000 toward rehabilitation of rail lines and shipper infrastructure throughout the State. Over the last several years we have continued to spend, on the average, approximately \$5,000,000 each year for the improvement of railroad and rail shipper infrastructure throughout the State. These funds have been expended for the benefit of not only the State-owned system and shippers located on that system, but they have been utilized to improve rail operations and shipper facilities on privately owned railroads throughout the State as well.

Finally, South Dakota has been more than willing to forego revenues when it would benefit the State rail infrastructure. Railroads who are operating State-owned lines on behalf of the State of South Dakota pay no property taxes associated with the revenues derived

from operations on those lines.¹ On non-State-owned rail lines, the railroads of our State receive a property tax credit for each and every dollar that they spend on rehabilitating their rail lines.

Part and parcel of our commitment to railroads and rail shippers throughout the State is that the State itself owns over 700 miles of active railroad lines. An additional 181 miles is rail banked in the hopes of future operation. These lines are operated in a unique public-private partnership with several railroads throughout the State, whereby the State owns and manages the lines, and provides substantial funds for capital improvements. Several private railroads provide the day to day operations, acting as stewards of the public trust, at all times subject to our supervision and control.

Approximately 370 miles of the State-owned system are operated for the State by the BNSF Railway Company. Those lines, extending from Aberdeen south through Mitchell to Sioux City, Iowa, from Mitchell east to Canton, from Sioux Falls to Canton and from Elk Point Junction to Sioux City, Iowa, are known as the "Core Lines." Other State-owned line segments connect to the Core Lines and are operated by shortline carriers. Specifically, the 189-mile Mitchell-Kadoka Line is operated by the Dakota Southern, the 66-mile Canton-Elk Point and Beresford-Hawarden Lines are operated on behalf of the State by the D&I Railroad, and the 70-mile Britton Line is operated on behalf of the State by the Dakota, Missouri Valley & Western Railroad ("DMVW"). Although these rail lines are operated by separate railroads, they are intended to operate as a seamless rail network which provides rail service to a multitude of rail

¹ Also, the rentals which railroads pay for operations on State-owned lines are designed to be a small fraction of total operating revenues and any money which the State does earn from such operations is immediately poured back into rehabilitation of the lines themselves or for the improvement of shipper infrastructures on those lines under the auspices of the State Rail Trust Fund. For example, on the lines which BNSF operates for the State it retains all revenues for overhead traffic, and for the first \$36,000,000 of originating and terminating traffic. Rental over and above those sums is a small fraction of total revenues.

elevators and other shippers/receivers throughout the far flung reaches of the State, at all times under the watchful eye of the State itself.

BNSF commenced operations over the State-owned Core Lines and the lines now operated by D&I and Dakota Southern in 1981 pursuant to an operating agreement, after those lines had been purchased by the State out of the Milwaukee Road bankruptcy proceeding.²

In 1986, the State's Operating Agreement with BNSF was restructured. Operations on the Mitchell-Kadoka Line, the Canton-Elk Point Junction Line and the Beresford-Hawarden Line were not working as well within the BNSF system as we had hoped. As such, those lines were leased to the MRC Regional Railroad Authority for operations by the Dakota Southern (in the case of the Mitchell-Kadoka Line) and to the Sioux Valley Regional Railroad Authority for operations by the D&I Railroad (in the case of the Canton-Elk Point Junction and Beresford-Hawarden Lines).³

As with the State operating agreements for all other carriers, the 1986 Operating Agreement between BNSF and South Dakota provides that the State continues to be responsible for the management and administration of the Core Lines. Additionally, the agreement provides that the State has the right to admit other third-party carriers to operations over the Core Line, subject to BNSF consent, provided, that such consent may only be withheld if those operations would materially interfere with BNSF's ability to operate on the Core Lines. Although the State has periodically attempted to provide access to third-party carriers on the Core Lines, BNSF has

² In 1982, the State also purchased the East-West Ortonville-Terry Line through a combination of \$30,000,000 in bonds and \$30,000,000 in loan guarantees. After those bonds and loans were paid off, that line was transferred to BNSF in 1992.

³ In 1991, the State and BNSF also entered into an Amendment to the Operating Agreement under which the State applied \$8,000,000 to rehabilitation of the Core Lines and BNSF's acquisition and rehabilitation of the Ortonville-Appleton Line segment (which at the time connected to the State-owned Ortonville-Terry Line).

repeatedly resisted these efforts and that issue is encompassed within the ongoing litigation in State Court between the State and BNSF.

In the mid-late 1990's, certain grain elevators in South Dakota and elsewhere in neighboring states, in conjunction with BNSF, began to develop mega-rail operations involving the loading of 110-car unit trains at one time. This large single unit concept appears to have substantial operational benefits for the Class I's such as BNSF, and it undoubtedly provides operational efficiencies for the elevators as well. However, the ability to become a 110-car grain loader is a substantial undertaking. The costs involved are in the range of \$6-\$10 million per elevator, a cost which, by its very nature, limits the number of elevators that can achieve this loading capacity. The State has encouraged the construction of many of these elevators, and, indeed, the State Rail Trust Fund has loaned millions of dollars for the creation of most of the 110-car loaders which now exist in the State and on the State rail system.

Unfortunately, there has been an unintended byproduct from the creation of these mega-elevators. BNSF has instituted a rate structure that is so dramatically higher for the small shippers as compared to the 110-car loaders, that it has effectively squeezed most of our smaller elevators (which make up over 70% of the elevators within the State) out of the valuable Pacific Northwest export markets via the northern Core Line routes and the Kansas City and Omaha markets via the southern Core Line routes. This has been particularly harmful for the small shippers on South Dakota's various shortlines who connect to the Core Line and are dependent for access to markets on the Core Line routes.

Faced with this challenge (and BNSF's unwillingness to adjust its rates), South Dakota did as it has so often done in the past. It acted with bold and innovative steps. In 2001-2002 we acquired, through donation from BNSF and through purchase from RLI, Inc., a 70-mile

rail line extending north from Aberdeen to connections with the Canadian Pacific Railroad (via the Red River Valley Railroad) in North Dakota, and expended \$6,500,000 in State funds on rehabilitation of the line. We also reached agreement (or so we believed) with BNSF to permit interchange of cars between DM&E and our third-party rail operator, DMVW, at Aberdeen.⁴ We believe that such an interchange and the resulting northern outlet to the Canadian Pacific would allow our smaller South Dakota shippers the opportunity to reach the Canadian and Pacific Northwest export markets.

Although DM&E and DMVW were able to move two 75-car trains through Aberdeen into Canada, BNSF has since refused to allow any other grain trains through that interchange. BNSF evidently takes the position that, although DM&E can access BNSF's Aberdeen Yard, and the State through its third-party operator (DMVW) can access BNSF's Aberdeen Yard, we cannot interchange with each other. That matter is also in litigation in Federal Court.

The State and its smaller elevators are now faced with no options. BNSF's rate structure does not, as a practical matter, permit the movement of small (less than 110-car) grain trains to the Pacific Northwest at rates sufficiently competitive to move those trains; BNSF refuses to allow those smaller trains to move through the DM&E-State interchange at Aberdeen (even though those two railroads can literally look at each other across the BNSF yard trackage); and in a related development, BNSF has even refused to allow DM&E to "co-load" trains from multiple shippers in order to make up 110-car trains for movement to the Pacific Northwest. In other words, DM&E could combine smaller units from multiple shippers and hand off those co-loads to BNSF at Aberdeen, but BNSF refuses to take them even though there would be no

⁴ DM&E has preexisting trackage rights from its connection to the Core Line at Wolsey north into Aberdeen.

operational impact on BNSF whatsoever. Evidently, BNSF believes that it should be the only one to determine what grain moves out of South Dakota to the Pacific Northwest export markets.

Due to BNSF's pricing structure favoring the mega-loaders, we have also continued to seek third-party trackage rights for South Dakota shortlines via the Core Lines south to the Sioux City interchanges with CN and UP. We worked with the MRC and Sioux Valley Regional Railroad Authorities, and their rail operators—Dakota Southern and D&I, and DM&E, to grant them trackage rights on the Core Lines to Sioux City, Iowa for interchange with UP, CN and BNSF. However, rather than acceding to these trackage rights, BNSF's response was to institute the proceeding which is currently before this Board – to acquire the Core Lines and to permanently foreclose our smaller shippers on South Dakota shortlines from accessing the southern (and the northern) markets.

BNSF's acquisition of the Core Lines without adequate conditions will thoroughly undermine the rail transportation system that we have worked so hard to create, and will put unbearable pressure on the highway and secondary road structure throughout our State. As the maps accompanying the State's filing indicate, the South Dakota grain infrastructure is based upon a series of large and small elevators disbursed throughout the State which act as grain collectors from local farms and distributors to domestic and export markets.

As discussed in the Verified Statement of Secretary Larry Gabriel, we have over 200 elevators in the State, most of them small and medium-sized. The communities in which those elevators operate are, in large measure, dependent on these elevators for their economic sustenance. Forcing grain away from those elevators to a few large collectors will have a tremendous and deleterious effect on the economies of those communities. Further, from a transportation standpoint, the BNSF rate structure which forces the grain to move via truck from

the farms to the larger elevator collectors means putting a tremendous number of trucks on the road. This is a circumstance which we simply cannot tolerate.

One jumbo rail hopper car is the equivalent of four large semi-trailer trucks on the State's roads. The shutdown of even one small elevator with a capacity of 350,000 bushels puts at least 400 additional or longer truck hauls over local roads.

South Dakota has over 80,000 miles of public roads, 97% of which are located in rural areas. Our expenditures on public roads in the state exceeds \$600,000,000 on an annual basis, an amount that has been increasing steadily, and what we do spend does not begin to address what we should be spending. This year alone, the backlog of projects on the state highway system that we consider necessary, but which we do not have the money or capability to complete, is over \$500,000,000. This backlog grows every year. The last thing we need is for traffic to come off the rails and onto our roads.

With continuing severe constraints on public budgets and scarce federal transportation dollars, we are struggling to keep up with current demands. The addition of thousands, if not tens of thousands of additional or longer truck hauls over the roads of our state would exacerbate an already difficult problem. Moreover, the impact of additional truck traffic caused by the closure of elevators on the state's rail feeder lines is not spread evenly across all roads in the state. It tends to fall disproportionately on the very part of the public road system in South Dakota that can least afford it -- the local road system in rural areas. Increased road damage caused by the diversion of traffic from rails to truck affects rural counties much more than urban centers since they have fewer residents to pay for the increased road damage.

A typical 25-ton tractor semi-trailer with five axles and a gross weight of 80,000 pounds equates to two of what we call "ESALs" ("Equivalent Single Axle Loadings" which is a

unit of measurement equating the amount of pavement consumption caused by an axle or group of axles, based on the loaded weight of the axle group, to the consumption caused by a single axle weighing 18,000 pounds). On a rural local road, we have calculated the marginal cost per ESAL-mile to be \$1.5119 (in 2003 dollars). Thus, each such truck is "consuming" the life of the road -- and thereby increasing the cost to the authority responsible for it -- at a rate of \$3.00 for every additional mile it operates on such roads. When you consider that even a single closed 350,000-bushel elevator means at least 400 trucks operating many additional miles over local roads, the severe impact on the local road system, which typically is not designed to handle such truck traffic, is clear.

Even for major and minor rural collector highways, the incremental impact is staggering. Studies collected by the U.S. Department of Agriculture have shown that the damage a loaded semi-trailer truck does to a major rural collector highway is 13.5 times the amount of damage the same truck does to a rural interstate highway, and on minor collector highways, the same truck does 21 times the amount of damage. Some experts have predicted that in rural areas in the United States, due to the high cost of maintaining light-duty asphalt roads, rural counties facing large-scale diversions of traffic from rail to truck due to a loss of branch line rail service will likely be forced to allow many roads to revert to gravel! As a large granger state – and as South Dakota recognized over 20 years ago – we need a viable network of rail feeder lines in the state to move our increasing volume of agricultural commodities, so as to minimize truck hauls, put more on the rails, and less on our roads.

The BNSF Core Line acquisition, without appropriate conditions, will isolate our shortline feeder lines and render them totally captive to the BNSF, a Class I railroad that shows little propensity or desire to move anything other than 110-car units out of our State. The

acquisition will put more trucks on the road—a circumstance that we can ill afford. BNSF is likely to continue squeezing our shortlines to the point where they dry up in favor of the mega-elevators on what would now become the BNSF system. This is not what our State and its Department of Transportation intended when we created the State rail system, and this is not a result that this Board should permit.

The conditions which are being requested by the State are a reasonable and effective response to the real concerns which the State, its communities, shippers, farmers and businesses have with respect to BNSF proposed acquisition of the Core Line. The ability of DM&E to interchange with the State's third-party operator at Aberdeen for all traffic, and the ability of the State's shortlines, DM&E, D&I and Dakota Southern to reach outlets to the South at Sioux City, Iowa, will enable our smaller shippers to gain and maintain access to needed markets, and will prevent those shortlines from becoming isolated islands, totally captive to the pricing structures of BNSF.

Those conditions, coupled with Dakota Southern direct access to the Mitchell and Beardsley elevators, and DM&E trackage rights from Mitchell to Canton, will keep trucks off the road. Certainly, we value our trucking industry, and we support them. But we must strike an adequate balance in the relative usage of these two modes of transportation, and enable our shippers and communities to move their commodities long distances to market.

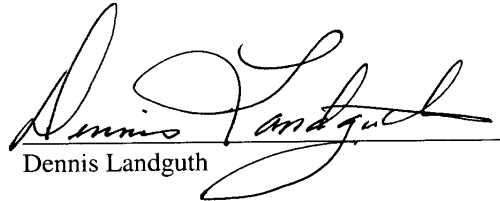
The conditions which the State and others in this filing seek would do nothing to force BNSF to handle traffic it does not want, accept traffic on terms it does not desire, implement a rate structure any lower than its current rates, or subsidize anyone else's unprofitable or inefficient operations. These conditions would have no effect on BNSF's ability to move South Dakota grain in 110-car units, or on the development 110-car and shuttle train

programs within the State. What these conditions would do, however, is prevent BNSF from creating a circumstance in which it controls all but one of the rail access points out of our State and it becomes the decision-maker as to which markets are accessible for our grain and other commodities. No private transportation concern has the right to make those choices. That was not the circumstance that we created when we acquired the State rail system, and it is not the circumstance that should exist after BNSF's acquisition of a critical portion of that system.

VERIFICATION

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

Executed on March 9, 2005.


Dennis Landguth

VERIFIED STATEMENT

OF

DONALD D. JARRETT

My name is Donald D. Jarrett. I am the Chairman of the Marshall County Regional Railroad Authority (MCRRA), Britton, South Dakota 57430. I have served as MCRRA's Chairman since 1982.

MCRRA is a quasi-public entity that was created in 1982 pursuant to South Dakota's Regional Railroad Authorities Act. The purpose of such authorities is help preserve and improve the rail services needed by shippers and communities within their constituent areas. Marshall and Brown Counties formed MCRRA to facilitate the preservation and development of a 72-mile rail line extending from Aberdeen, South Dakota northeast to Geneseo Junction, North Dakota. The State of South Dakota acquired that line (known as the Britton Line) in segments from the Burlington Northern & Santa Fe Railway and Rutland Line, Inc. in 2002. MCRRA leases the Britton Line from the State of South Dakota, and in turn has sub-leased the line to the Dakota, Missouri Valley & Western Railroad (DMVW) for operation.

At its north end, the Britton Line connects via DMVW to the CP/Soo Line Railroad at Hankinson, North Dakota. At its south end, the Britton Line connects with a BNSF east-west line and with the so-called "Core Lines" owned by the State and currently operated by BNSF on the State's behalf. The portion of the Core Lines extending into Aberdeen also is operated by the Dakota, Minnesota & Eastern Railroad (DM&E) pursuant to trackage rights.

At the time of its acquisition by the State, much of the Britton Line was in seriously deteriorated condition and service on the former BNSF segment of the line had been

embargoed. MCRRA worked closely with the State of South Dakota and its Department of Transportation in the financing and other arrangements needed to reopen and rehabilitate the Britton Line. Since 2001, approximately \$6.5 million in federal, state and local money has been invested in the Britton Line to improve service levels and options. While some traffic is currently moving on the line, however, the major market access that the Britton Line provides for South Dakota shippers has been stymied by BNSF. Together with DM&E operations to Aberdeen, DMVW operations to Hankinson, and CP/Soo operations beyond, the Britton Line was to provide important market access to the Pacific Northwest, Canada and export markets for smaller South Dakota grain shippers. BNSF had effectively precluded many non-110-car elevators (particularly those located on the DM&E) from those markets through a rate structure on the Core Lines that favored 110-car elevators and BNSF's "shuttle train" operations.

Our arrangements with BNSF specifically contemplated the interchange of traffic between DVMW and DM&E at Aberdeen, but after only two 75-car grain train movements through Aberdeen in 2003 BNSF blockaded the gateway and no such operations have occurred since. We are left with a situation where BNSF's own operations on the Core Lines do not meet the needs of South Dakota's smaller grain shippers, BNSF has refused to allow use of the Britton Line and the Aberdeen interchange by anyone else to provide such service, and BNSF now wants to purchase the Core Lines outright and remove whatever remaining leverage the State may have to ensure that all South Dakota shippers are well-served by our significant public investment in the state's rail infrastructure.

BNSF's actions and policies have weakened the Britton Line, and undermine the existence of smaller elevators and the economies of the small rural communities of which they are a part -- and which we are dedicated to serving. These actions also increase the movements

of grain, fertilizer and other agricultural commodities by truck throughout the state, with the attendant burdens on South Dakota's public infrastructure. An unconditioned sale of the Core Lines to BNSF will compound these problems, isolate the Britton Line from a comprehensive state rail network, and further harm smaller shippers who need access to efficient and strong markets in order to survive and prosper.

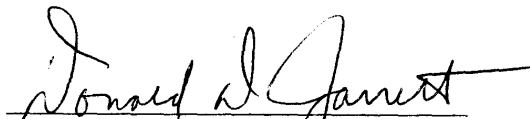
MCRRA supports the conditions requested by the State of South Dakota as a reasonable and effective response to these legitimate concerns arising from BNSF's proposed acquisition of the Core Lines. The ability of DM&E and DMVW to interchange traffic at Aberdeen as intended will improve the viability and development of the Britton Line as an important public-owned asset, and ensure the opportunity to provide rate and service options that are appropriate and needed for the smaller elevators and other shippers in South Dakota. At the same time, the conditions would not harm or burden BNSF. DM&E and DMVW trains already operate into BNSF's Aberdeen Yard, where indeed their crews can look over at each other even though no interchange is allowed. The requested condition would not create competition at any BNSF-served points on the Core Lines or elsewhere. The rights are intended solely to protect the viability and market position of shippers on the remaining rail lines in the state, and are narrowly tailored to that result.

Its actions indicate that BNSF looks favorably to a world where grain moves only in 110-car lots. Whatever the merits of that position, the conditions sought here would do nothing to force BNSF to handle traffic it does not want, accept traffic on terms it does not desire, or subsidize another party's unprofitable or inefficient operations. They will have no effect on BNSF's further development of 110-car and shuttle train programs. They simply allow DM&E and DMVW to reach a gateway with each other via the Britton Line, and to have the

opportunity to develop transportation options, rate structures and grain markets for smaller shippers that BNSF is increasingly unwilling to offer. MCRRA believes that the Board should and must be supportive of that process, and of our public investment and commitment in this state's rail infrastructure..

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.


Donald D. Jarrett

Dated: March 8, 2005

**VERIFIED STATEMENT
OF
THOMAS GREENWAY**

My name is Thomas Greenway. I am the Chairman of the MRC Regional Railroad Authority ("MRC"), with offices at 25129 401st Avenue in Mitchell, South Dakota. I have served as MRC's Chairman since 1982.

MRC was formed in 1982 pursuant to the Regional Railroad Authorities Act, SDCL 49-17A. It is a quasi-public entity composed of the counties of Davison, Aurora, Brule, Lyman, Jones and Jackson in south-central South Dakota. Like all regional railroad authorities in the State, MRC's purpose is to facilitate the preservation and improvement of rail services needed by shippers and communities within our region. We work very closely with the State of South Dakota and its Department of Transportation in these efforts, and in pursuing the financing and other arrangements necessary to retain and develop the rail lines which we oversee.

MRC's primary focus is a 188.5-mile rail line extending from Mitchell west to Kadoka, South Dakota. The Kadoka line was previously owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. It was acquired by the State in 1981, and is today leased to MRC, which in turn sub-leases the lines to the Dakota Southern Railroad Company for operation. The line connects at Mitchell with the so-called "Core Line," another state-owned route extending from Aberdeen, South Dakota through Wolsey, Mitchell and Elk Point, South Dakota to Sioux City, Iowa which is currently operated by BNSF Railway. The Kadoka line has no other outlets to the national railroad system other than through the Core Line connection at Mitchell.

MRC estimates that, since 1995 alone, over \$2.1 million in public monies has been invested in the Kadoka line to improve service to local shippers. This is in addition to the

many millions of dollars spent in the 1980's to initially acquire and rehabilitate the line. The primary traffic on the line is outbound wheat, corn, milo and specialty crops such as sunflower seeds, buckwheat, millet and popcorn. That traffic originates at four elevators capable of loading 54-car unit trains of grain, and three elevators that can 25 or 27 cars of grain at one time. BNSF marketing and operating policies, however, have severely restricted the available markets for grain from these elevators, and indeed have largely shut-down Dakota Southern's operations on the Kadoka line. BNSF is the major Class I railroad providing service to grain shippers in South Dakota and, as indicated above, the sole outlet for traffic moving off of the Kadoka line. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." While such operations can provide benefits for a segment of the market, we believe such operations cannot be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state.

In particular, it can be difficult for smaller elevators located on non-BNSF rail lines -- like the Kadoka line -- to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Many of these elevators are unable to get any legitimate rate quotations from BNSF for important markets such as the Pacific Northwest, unless the traffic moving in 110-car lots. Such policies undermine the existence of smaller elevators and the economies of the small rural communities of which they are a part, and which we are dedicated to serving. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We have witnessed all of these consequences firsthand.

These same policies also have prevented elevators on the Kadoka line from participating in what should be a “no-brainer” rail movement: the handling of grain from the Kadoka line in-bound to larger elevators on the Core Line at Mitchell and Beardsley, South Dakota. All of that traffic now moves by truck, while BNSF handles the subsequent outbound movements of grain from those locations. Handling the inbound traffic by rail would benefit the shippers, the receivers, the Kadoka line, Dakota Southern and local area highways, with absolutely no impact on BNSF. But such traffic, which would not move in 110-car lots, is beneath the radar screen of BNSF and, realistically, incompatible with current and likely future BNSF pricing policies and objectives.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years helped to avoid such counter-productive and self-defeating situations and to ensure that a publicly-owned rail infrastructure would in fact be operated for the benefit of the entire South Dakota public. BNSF operated the lines as a steward for the State, which has important contractual rights to protect the public interest in adequate rail service on those lines. In consultation with MRC, the State sought to exercise one of those contractual rights by granting trackage rights to MRC and, through MRC, to Dakota Southern on the Core Line to reach the Mitchell and Beardsley elevators and to reach interchange with other rail carriers at Sioux City, Iowa. MRC and Dakota Southern submitted notices of exemptions covering those trackage rights grants to the Surface Transportation Board. While BNSF has refused to allow MRC and Dakota Southern to exercise those rights and the matter is now pending in state court litigation, it is clear that the existing public-private relationship that governs the Core Lines quite intentionally contained remedies such as these to allow the State to protect the public interest in rail service on those lines.

BNSF's acquisition of the Core Lines, however, will eliminate those protections, and further threaten smaller elevators, their communities and the railroad lines that serve them. In our case, the transfer of the Core Lines to BNSF would leave the Kadoka line completely orphaned from any other state-owned rail lines. We will have little or no effective leverage to use when BNSF refuses to provide rates that allow less-than-110-car trains to move to important distant markets, or to the nearby Mitchell and Beardsley elevators. The Kadoka line will, effectively, become just another BNSF branch line -- and the fate of such BNSF granger branch lines in the upper Midwest has been plain for all to see. Without the conditions requested herein by the State and MRC, the BNSF's acquisition of the Core Lines may lead very quickly to the abandonment and dismantling of the Kadoka line.

We believe the conditions sought respond in a reasonable and effective way to the legitimate concerns arising from the proposed Core Line sale. The availability of trackage rights for Dakota Southern to reach Sioux City will ensure that Dakota Southern can connect with other railroads and thus would have the opportunity to provide rate and service options that are appropriate for the smaller elevators on the Kadoka line. Also, the ability of Dakota Southern to handle grain shipments from points on the Kadoka line to the existing elevators at Mitchell and Beardsley will not only facilitate the retention of needed rail service on the Kadoka line, but also take trucks off of local roads and promote the continued efficient supply of grain to the Mitchell and Beardsley areas.

At the same time, the conditions do not harm or burden any legitimate interest of BNSF. The conditions do not create competition at any solely-served BNSF points. While Dakota Southern would gain access to the Mitchell and Beardsley elevators, that access would be for in-bound grain movements only -- traffic that now moves entirely by truck and would likely

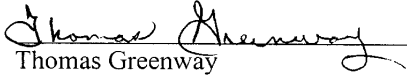
never be handled or even pursued by BNSF in the absence of an arrangement such as this. All of the proposed trackage rights “run with” the Kadoka line; they are granted in the first instance to MRC, which then assigns them to the operator of the Kadoka line (currently Dakota Southern). The rights are intended solely to protect the viability and market position of the remaining, state-owned Kadoka line, and are narrowly tailored to that result. They will have no effect on BNSF service to shippers on the Core Lines or its further development of 110-car and shuttle train programs.

Indeed, if BNSF is correct in its current corporate outlook that grain can and should only move in 110-car lots, then operations such as those on the Kadoka line may face an uphill battle in the future. We are unconvinced that that is the case, but in the meantime the conditions sought here would do nothing to constrict BNSF, to force it to handle traffic it does not want or on terms it does not accept, or to compel it to subsidize another party’s unprofitable or inefficient operations. The conditions simply allow Dakota Southern to reach gateways with other carriers and to have the opportunity to develop transportation options, rate structures and grain markets that BNSF is increasingly unwilling to offer. We intend to do our part to assure the continued availability of adequate rail transportation and market access for shippers on the Kadoka line, building on twenty years of public investment and public commitment in the route. Our success or failure in that endeavor should be of our own making. If BNSF will not be a productive participant in that process, it should get out of the way.

VERIFICATION

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

Executed on March 8, 2005.


Thomas Greenway

**VERIFIED STATEMENT
OF
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY**

My name is Russell Hazel. I am the Chairman of the Sioux Valley Regional Railroad Authority ("SVRRA"), whose mailing address is P.O. Box 511 in Beresford, South Dakota. I have served as SVRRA's Chairman since 2001, and also served as Commissioner representing the city of Hudson for 12 years. In addition, I have been involved in the grain business in Hudson for 12 years.

SVRRA was formed in 1978 pursuant to the Regional Railroad Authorities Act, SDCL 49-17A. It is a quasi-public entity composed of the communities of Akron, Alcester, Beresford, Canton, Fairview, Hawarden, Hudson and Westfield along with various shippers in extreme southeastern South Dakota and Northwestern Iowa, between Sioux Falls and Sioux City, Iowa. SVRRA's purpose is to help preserve and improve the rail services needed by shippers and communities within our constituent counties. We work very closely with the State of South Dakota and its Department of Transportation in the pursuit of the financing and other arrangements necessary to retain and develop the rail lines which we oversee.

SVRRA today leases two rail lines, totaling a distance of approximately 67 miles, which extend from Canton to Elk Point, South Dakota and from Hawarden, Iowa (about the midpoint of the Canton-Elk Point segment) to Beresford, South Dakota. These lines were previously abandoned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and then acquired by the State in 1981. The State leases the lines to SVRRA, which in turn sub-leases the lines to D&I Railroad Company for operation. SVRRA's Canton-Elk Point line connects at either end with the State-owned "Core Lines," currently operated on behalf of the

State by BNSF. From Canton the Core Lines extend north to Sioux Falls and west to Mitchell, South Dakota, while from Elk Point the Core Line extends south to Sioux City, Iowa.

D&I owns and operates its own line north of Sioux Falls, and has the right to operate over Sioux Falls-Canton (Core Lines), Canton-Elk Point (SVRRA line), and Elk Point-Sioux City (Core Lines) to handle aggregate traffic from its own line to interchanges with BNSF, Union Pacific and Canadian National/Illinois Central at Sioux City. D&I also has trackage rights on the Elk Point-Sioux City segment of the Core Lines for the purpose of handling grain and other non-aggregate traffic off of SVRRA's lines (Canton-Elk Point and Hawarden-Beresford) to an interchange with BNSF at Sioux City. These trackage rights prohibit D&I from interchanging SVRRA traffic with any carriers at Sioux City other than BNSF, except as BNSF might direct under a power of attorney for D&I's traffic. This is thus a classic "paper barrier": D&I train crews literally look at the UP and CN/IC interchange tracks in Sioux City as they go by, and indeed interchange other traffic (D&I-originated aggregate from north of Sioux Falls and from Hawarden, Iowa) with UP and CN/IC at that location, but cannot do so for traffic from SVRRA's lines. Thus, the SVRRA lines have no other outlets to the national railroad system other than over the Core Lines to the BNSF connection at Sioux City.

SVRRA estimates that since 1995 alone over four million dollars in public monies have been invested in the SVRRA lines to improve service to local shippers, which would not include monies invested prior to 1995 for other costs. The primary traffic on the line is outbound grain, ethanol byproducts, cement, fertilizer and lumber originates from the communities of Hudson and Beresford, South Dakota, and Hawarden and Akron, Iowa. BNSF marketing and operating policies, however, have severely restricted the available markets for grain from several of these elevators, and threatened the utility of the SVRRA lines. BNSF is the major Class I

railroad providing service to grain shippers in South Dakota and, as indicated above, the sole outlet for traffic moving off of the SVRRA lines. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." While such operations can provide benefits for a segment of the market, including a 110-car elevator located on SVRRA's lines at Beresford, South Dakota, such operations should not be allowed to squeeze out the rail transportation services needed by the remaining smaller shippers in the state.

In particular, it can be difficult for smaller elevators located on non-BNSF rail lines -- like the SVRRA lines -- to find viable markets in the face of a BNSF rate and service structure that disfavors them and seeks to push all grain to mega-elevators on BNSF's lines. Many of these elevators are unable to get legitimate rate quotations from BNSF for important markets such as the Pacific Northwest, unless the traffic is moving in 110-car lots. Such policies undermine the existence of smaller elevators and the economies of the small rural communities of which they are a part, and which we are dedicated to serving. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We are well-acquainted with these consequences.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years helped to avoid such counter-productive and self-defeating situations and to ensure that a publicly-owned rail infrastructure would in fact be operated for the benefit of the entire South Dakota public. BNSF operates the Core Lines as a steward for the State, which has important contractual rights to protect the public interest in adequate rail service on those lines. In consultation with SVRRA, the State sought to exercise one of those contractual rights by granting unrestricted overhead trackage rights to SVRRA and,

through SVRRA, to D&I over the Core Line between Elk Point and Sioux City to reach interchange with other rail carriers at Sioux City. SVRRA and D&I submitted notices of exemptions covering those trackage rights grants to the Surface Transportation Board. While BNSF has refused to allow SVRRA and D&I to exercise those rights and the matter is now pending in state court litigation, it is clear that simply the potential availability of such remedies under the existing public-private relationship that governs the Core Lines helps the State to protect the public interest in rail service on those lines.

BNSF's acquisition of the Core Lines, however, will eliminate those protections, and further threaten smaller elevators, their communities and the railroad lines that serve them. In SVRRA's case, the transfer of the Core Lines to BNSF would completely isolate the SVRRA lines from any other state-owned rail lines, with the connecting lines extending out from Canton and Elk Point now owned outright by BNSF. We will have little or no effective leverage to use when BNSF refuses to provide rates that allow less-than-110-car trains to move to important distant markets or through efficient Sioux City gateways with other carriers. The SVRRA lines will become entirely dependent on BNSF -- and the fate of nearly all other BNSF granger branch lines in the upper Midwest provides little comfort for the future. Without the conditions requested herein by the State and SVRRA, BNSF's acquisition of the Core Lines could jeopardize the viability of the SVRRA lines.

We believe the requested conditions are a reasonable and effective response to the legitimate concerns arising from BNSF's proposed acquisition of the Core Lines. The availability of unrestricted overhead trackage rights would allow D&I to reach Sioux City and will ensure that D&I can connect with other railroads and thus have the opportunity to provide rate and service options that are appropriate for the smaller elevators and other shippers on the

SVRRA lines. At the same time, the conditions do not harm or burden any legitimate interest of BNSF. D&I trains and traffic from the SVRRA lines already operate over the Elk Point-Sioux City segment of the Core Lines to interchange traffic with BNSF (and to UP and CN/IC if BNSF routes the traffic that way under its power of attorney). The requested trackage rights would not change those operations, but simply allow D&I to itself interchange that traffic with UP and CN/IC once the train reached Sioux City. Indeed, we understand that accomplishing a D&I-UP or D&I-CN interchange at Sioux City may be less circuitous and more efficient than the present D&I-BNSF interchange.

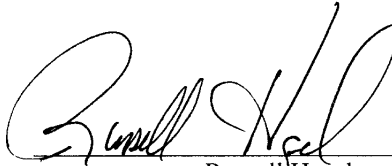
The requested conditions would not create competition at any BNSF points on the Core Lines. The rights are intended solely to protect the viability and market position of the remaining, state-owned SVRRA lines, and are narrowly tailored to that result. The proposed trackage rights “run with” the SVRRA lines; they are granted in the first instance to SVRRA which then assigns them to the particular operator of the SVRRA lines (currently D&I). They will have no effect on BNSF service to shippers on the Core Lines or BNSF’s further development of 110-car and shuttle train programs.

BNSF may believe that grain ultimately can or should only move in 110-car lots. We reject that position, but in any event the conditions sought here would do nothing to force BNSF to handle traffic it does not want, accept traffic on terms it does not desire, or subsidize another party’s unprofitable or inefficient operations. The conditions simply allow D&I to reach gateways with other carriers and to have the opportunity to develop transportation options, rate structures and grain markets for smaller shippers that BNSF is increasingly unwilling to offer. We will do our part to assure the continued availability of adequate rail transportation and market access for shippers on the SVRRA lines, building on twenty years of public investment

and public commitment in the route. The Board should allow us the opportunity to succeed or fail on our own merits and on a level playing field.

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.



Russell Hazel

Dated: March 8, 2005

**VERIFIED STATEMENT
OF
LYNN A. ANDERSON**

My name is Lynn A. Anderson. I am Vice President-Marketing of Cedar American Rail Holdings, Inc. and Dakota, Minnesota & Eastern Railroad Corporation (collectively "DM&E"). Both corporations have their principal place of business in Sioux Falls, South Dakota. Cedar American Rail Holdings is a wholly owned subsidiary of DM&E. I am responsible for DM&E's sales and marketing activities and the development of strategies to market DM&E's rail business in North America.

I joined DM&E at its inception in 1986. Previously, I had been General Manager of Grain Marketing and Pricing for the Chicago and North Western Transportation Company, which also operated rail lines in South Dakota prior to the inception DM&E. Thus, for over 30 years, I have been integrally involved with the South Dakota transportation network, and the efforts of South Dakota railroads and the shippers they serve to market their grain to domestic and export markets.

Traditionally, South Dakota grain shippers have been at a distinct competitive disadvantage relative to their neighbors in Minnesota and North Dakota who are geographically better positioned to source corn, wheat and other feed grains to the Canadian and Pacific Northwest markets. Smaller South Dakota grain elevators such as those located on DM&E, have been particularly disadvantaged because they have been unable to participate in the 110-car shuttle grain train program offered by the BNSF for unit grain train movements to the Pacific Northwest.

Thus, the South Dakota grain elevators on DM&E only have access to the Gulf (via rail direct or rail/Mississippi River barge movements), eastern markets at Chicago and

beyond, and local markets (i.e., South Dakota feedlots and ethanol plants). These markets are limited, and have not been sufficient to allow these elevators to grow significantly, and the elevators have struggled to sustain their existing competitive positions.

Consequently, in order to remain competitive, DM&E and other smaller railroads in South Dakota have worked with the grain elevators and the State of South Dakota to obtain marketing opportunities to market grain. The key to these small shippers' success and their survival is cost-efficient transportation and access to a variety of markets.

In my ongoing efforts to find additional markets for shippers on the DM&E's lines, periodically in 1999 and 2000 DM&E made contact with BNSF in regard to potential shipments of 110-car unit trains of agricultural commodities originating at DM&E served South Dakota facilities and destined to the Pacific Northwest. BNSF had opted to focus its competitive ratemaking efforts for shipments to the Pacific Northwest export market on BNSF served elevators who were capable of loading 110-car unit trains. BNSF's 110-car rate is generally \$500-\$1,000 lower than the rates for the smaller shippers on DM&E's lines and elsewhere on shortlines throughout South Dakota. As a result, DM&E's small elevators are being shut out of access to the Pacific Northwest markets.

DM&E corn elevators south of Aberdeen do not have 110-car loading capacity because they are smaller than many of those on BNSF's lines, and they do not have the financial wherewithal to expend the millions of dollars necessary to become 110-car loaders. However, DM&E has the ability to combine (referred to as "co-load") smaller unit trains of multiple shippers into 110-car units. Therefore, we could have tendered 110-car unit corn trains to BNSF for movement to the Pacific Northwest export market. BNSF had agreed to such co-loadings to

the Pacific Northwest for smaller (non-110 unit loaders) Minnesota shippers. However, BNSF was unwilling to accept South Dakota DM&E-served origins in its 110-car program.

Faced with the limited markets available for South Dakota's smaller shippers due to BNSF's rate structure which focused on the larger 110-car elevators, in 2001 and 2002 the State of South Dakota continued its policy of purchasing and rehabilitating Class I rail lines in disrepair when it acquired approximately 70 miles of rail line north of Aberdeen formerly known as the Britton Line. A portion of the Britton Line, extending from Aberdeen north to Geneseo Junction, was owned by the BNSF and had been repeatedly embargoed throughout the 1990's, effectively stymieing the movement of any rail traffic between South Dakota shippers on DM&E and markets north of Aberdeen. The northernmost segment of the Britton Line, extending from the South Dakota/North Dakota border to Geneseo Junction, where it connects with the Red River Valley and Western Railroad and on to the Canadian Pacific Railroad in North Dakota, had similarly been owned by BNSF and sold to RLI, Inc. in 1997. It too was in a state of substantial disrepair.

As discussed in the Verified Statement of Secretary of Transportation Dennis Landguth, when the State acquired the Britton Line, it believed that it had received the right to interchange any type of traffic with any carrier on BNSF's line at Aberdeen. This interchange access, coupled with DM&E's preexisting rights to interchange railcars at Aberdeen would effectively provide a seamless transportation network for the smaller DM&E shippers to move traffic north and southbound via Aberdeen to and from domestic, Canadian, and the Pacific Northwest export markets.

We believed (and continue to believe today), that the State's acquisition of the Britton Line offers tremendous market opportunities for South Dakota shippers, including

movements of corn and soybean meal to the livestock and feedlot industries in Central and Western Canada as well as to the Pacific Northwest export markets. This would open up a host of sales opportunities for small and medium-sized farmers coop elevators served by DM&E. Other clear shipping opportunities via this line are Potash (fertilizer) from Canadian producers to fertilizer plants located on DM&E; sunflower seeds from several DM&E served elevators to Enderlin, North Dakota; distiller's dried grains to Western Canada and the Pacific Northwest from DM&E served ethanol plants; soybeans from the Britton Line to South Dakota Soybean Processors at Volga; and cement from Rapid City to North Dakota contractors, just to name a few.

DM&E's preexisting access at Aberdeen coupled with the State's acquisition of the Britton Line presented this host of opportunities for South Dakota shippers who had been shut out of the Canadian and Pacific Northwest markets due to BNSF's rate-making policies and lack of alternate economical access to these markets.

Once the State had acquired the Britton Line these market opportunities began to come to fruition.

North Central Cooperative at Northville, SD is a shipper on DM&E's line. In early 2003, North Central requested the shipment of grain from its Northville, South Dakota, facility to various destinations in Canada pursuant to DM&E's published tariff No. 15233-A. Under the tariff, DM&E was to deliver railcars to the operator of the State's Britton Line, Dakota Missouri Valley and Western Railroad, Inc. ("DMVW"), for furtherance to the Canadian Pacific Railway ("CP"). Tariff No. 15233-A was created as a result of revenue requirements for DM&E, DMVW/CP to deliver grain to locations in Canada using the Britton Line.

DM&E delivered two 75-car unit trains of grain from Northville, South Dakota, to the DMVW/CP interchange at Aberdeen, and those trains were transported to Canadian receivers. However, a third 75-car unit train tendered by DM&E on behalf of Northville was refused interchange access to DMVW at Aberdeen by BNSF. BNSF has continued to preclude DM&E/DMVW interchange access at Aberdeen.

After BNSF prohibited further shipments on this route, BNSF approached DM&E, indicating that it would be willing to deliver the 75-car unit train to the CP via Minot, ND or Winnipeg, Manitoba for delivery to receivers in Canada. BNSF provided its revenue requirements for such a shipment. The revenue requirements provided by BNSF were cost prohibitive, as they were approximately \$1,000 per car more than the cost for direct interchange with DMVW/CP.

Ultimately, BNSF agreed, as a one time accommodation, to move these 75-cars plus an additional 35 to comprise a 110-car shipment at \$2,518 per car to the Pacific Northwest export markets. This was still \$500 per car more than the DM&E/DMVW/CP 75-car rate. However, BNSF has steadfastly refused to allow any other Northville assembled trains to move via Aberdeen to either the Pacific Northwest or the Canadian markets.

Similarly, in March of 2004, we attempted to work with DMVW on a shipment requested by South Dakota Soybean Processors at Volga, SD served by DM&E's rail line ("Soybean Processors"). Soybean Processors had been running low on soybeans, and had been searching for sources. The Britton elevator on the Britton Line was ready and able to source the beans to Volga. We and DMVW put together a transportation rate that was agreeable to the shipper. Unfortunately, once again, BNSF refused to allow the interchange between DM&E and DMVW at Aberdeen.

BNSF's pricing structure, which focuses on mega-elevators, has similarly disadvantaged the smaller wheat and soybean shippers on DM&E for movements southbound to the Kansas City and Omaha markets. Once again, DM&E shippers of these commodities tend to focus on smaller car sets, often involving specialty grains, which are not conducive to the mega-units which are fast becoming the bread and butter of the BNSF system. BNSF's rates to smaller DM&E wheat and soybean shippers at the Wolsey interchange are substantially higher than the transportation rates which BNSF provides to the larger shippers on its own system. As such, shippers on DM&E have found it difficult to compete in the Kansas City and Omaha markets favored by many of the wheat and soybean shippers. While DM&E does have a routing to Omaha, NE via Mason City, Iowa, it is several hundred miles more circuitous and not nearly as efficient as a routing from Wolsey to Sioux City, Iowa for interchange to the Union Pacific. We anticipate that such a more direct routing would provide distinct economic advantages for transportation and market access availability for DM&E's smaller shippers.

It is difficult for smaller elevators located on non-BNSF rail lines to find viable markets in the face-off a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Many of these elevators are unable to get any legitimate rate quotations from BNSF for important markets such as the Pacific Northwest, unless the traffic is moving in 110-car lots. Such policies undermine the existence of smaller elevators and the economies of the small rural communities of which they are a part, and which we are dedicated to serving. By their nature, such policies also increase the movements of grain by truck, with the intended burdens on South Dakota's public infrastructure.

The unique public-private partnership between the State and BNSF that has governed the State-owned Core Lines (which connect to DM&E at Wolsey, South Dakota) for

the last 20 years helped to avoid such counter-productive and self defeating situations and to ensure that a publicly-owned rail infrastructure would in fact be operated for the benefit of the entire South Dakota public. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in adequate rail service on those lines. BNSF's acquisition of the Core Lines will eliminate those protections, and further threaten small elevators, the communities and the railroad lines that serve them.

The State of South Dakota, DM&E and the shippers we serve believe the following conditions are necessary to ameliorate the harms which will result from BNSF's acquisition of the Core Lines:

1. A condition that DM&E and the State's third-party rail operator north of Aberdeen (currently DMVW) be allowed to interchange at Aberdeen for traffic moving to or from North Dakota, the Canadian markets and the Pacific Northwest.
2. A condition that DM&E receive trackage rights from its interchange with the Core Lines at Wolsey south to Sioux City, Iowa for interchange with the Canadian National, Union Pacific and BNSF. DM&E would also have the right to interchange with the Dakota Southern at Mitchell and the State's operator of the Napa Junction-Platte Line, if that line ever becomes operational. Additionally, any necessary construction of interchange tracks between DM&E and UP/CN/BNSF at Sioux City would be similarly authorized.
3. A condition that DM&E receive trackage rights from Mitchell to Canton for interchange with the State-owned operator of the Canton-Elk Point

Line (now D&I Railroad). This condition would not only open up access to DM&E for shippers on the State-owned D&I line, but it would most certainly result in the elimination of substantial truck traffic currently moving in South Dakota. DM&E receives well over 100,000 tons of ballast from a shipper on the D&I via a truck and rail haul. Such Mitchell-Canton trackage rights would allow shipments to move all rail and eliminate the existing less efficient truck movements. We would anticipate no more than 2-3 loaded trains per week, which would not in any way impact BNSF's existing service.

We believe that the conditions sought herein respond in a reasonable and effective way to the legitimate concerns arising from the proposed Core Line sale. Interchange with the State's third-party operator at Aberdeen would open up the significant markets in North Dakota, Canada and the Pacific Northwest which the small DM&E shippers have been foreclosed from accessing. Similarly, the availability of trackage rights for DM&E to reach Sioux City will ensure that an efficient route exists for movements to the Omaha, Kansas City and beyond markets for DM&E's grain shippers. Also, the ability of DM&E to interchange with the D&I via the Mitchell-Canton Line will not only provide an important outlet for the State's Canton-Elk Point Junction and Beresford to Hawarden lines, but it will also take trucks off local and interstate roads.

At the same time, the conditions do not harm any legitimate interests of BNSF. The conditions do not create competition at any solely served BNSF points. We do not anticipate more than one loaded train per day through Aberdeen, or south through Sioux City,

and as such, the rail operations by BNSF on the Core Line will not be impacted in any way whatsoever by the limited additional DM&E moves.

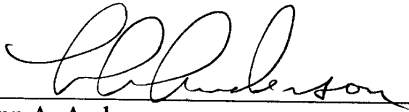
BNSF's actions show that it envisions a world where grain moves only in 110-car units. Whatever the merits of that position, the conditions sought here would do nothing to force BNSF to handle traffic it does not want, accept traffic on terms it does not desire, implement a rate structure one penny lower than its current rates, or subsidize another party's unprofitable or inefficient operations. These conditions will have no effect on BNSF's further development of 110-car and shuttle train programs. They simply allow DM&E and the State's third-party operator (currently DMVW) to reach a gateway with each other via the Britton Line and for DM&E to have a corresponding right at Sioux City to reach an efficient gateway with UP, CN or BNSF. DM&E would thus have the opportunity to develop transportation options, rate structures and grain markets for smaller shippers that BNSF is increasingly unwilling to offer.

As a result of BNSF's actions, significant new markets for shippers of South Dakota agricultural commodities have been foreclosed. BNSF will suffer no harm from allowing the shipments to go forward, as it would not have otherwise carried this traffic due to BNSF's pricing structure, circuitous routing and restrictions.

VERIFICATION

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

Executed on March 9, 2005..



Lynn A. Anderson

**VERIFIED STATEMENT
OF
GEORGE ALEXANDER HUFF, IV**

My name is Alex Huff. I am President of the Dakota Southern Railway Company which was incorporated in 1985.

In 1987, Dakota Southern commenced operations on behalf of the MRC Regional Railroad Authority ("MRC") over the 188.5-mile rail line extending from Mitchell west to Kadoka, South Dakota. The Kadoka Line was previously owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. It was acquired by the State of South Dakota in 1980, and is today leased to MRC which, in turn, subleases the lines to the Dakota Southern. In the early 1980's, the BNSF Railway Company had operated portions of this line on behalf of the State, but the line was downgraded from FRA Class I to "excepted track," and BNSF ultimately exited the Mitchell-Kadoka Line in favor of Dakota Southern in 1987.

The line connects at Mitchell with the "Core Line," another State-owned route extending from Aberdeen, South Dakota through Wolsey, Mitchell, Yankton, and Elk Point, South Dakota to Sioux City, Iowa, which is currently operated by BNSF Railway Company. The Kadoka Line has no other outlets to the national railroad system other than through the Core Line connection at Mitchell.

Following commencement of Dakota Southern's operations in 1987, shipments on the Kadoka Line began to flourish. Throughout the 1990's we handled a variety of commodities including wheat, corn, milo and specialty crops such as sunflower seeds, buckwheat, millet and popcorn. Prior to 1999 Dakota Southern handled from 800-2,800 cars via the line on an annual basis. This traffic originated at four elevators capable of loading 54-car unit trains of grain and three other elevators that could load smaller units. BNSF's marketing and operating policies,

however, have severely restricted the available markets for grain from these elevators and, in fact, have largely shut down Dakota Southern's operations on the Kadoka Line. In the late 90's, BNSF implemented a pricing policy which significantly favored the movement of grain via 110-car elevators on BNSF's main lines through the state and on shuttle trains. This disparity, which equated to several hundred dollars per car, had an almost immediate impact on the Kadoka Line. Our smaller elevators were effectively shut out of the rail marketplace as they could not compete with the dramatically lower transportation prices which BNSF only offered to shuttle train loaders on its own line. Since BNSF was the only outlet for our traffic, the rail traffic ceased on our line.

As grain transportation revenues dried up for the Kadoka Line, we were forced to cease operations over most of the line except for a small one-mile segment near Mitchell which encompasses the shipment of paper products, not agricultural commodities. Grain from our area of South Dakota is now either trucked up north to the DM&E lines, east to elevators on the BNSF-operated lines, or out of state.

Over the years, I and the State have repeatedly attempted to informally enforce the State's contractual rights to provide trackage rights for Dakota Southern over the Core Lines to Sioux City. For a brief period in the 1980's, BNSF had agreed to Dakota Southern trackage rights to a line extending from Napa Junction to Platte (midway between Mitchell and Sioux City). All but the first twelve and a half miles are presently rail banked. The leaseholder has never moved a revenue carload and the trackage rights have been cancelled. However, BNSF repeatedly refused to adhere to its state contractual obligations and permit Dakota Southern to operate on the Core Lines to Sioux City.

The BNSF 110-car pricing policies and its refusal to adhere to its contractual obligations to allow Dakota Southern rights to Sioux City have effectively shut down the Dakota Southern line and severely restricted the ability of shippers on that line to survive. We do not object per se to BNSF's 110-car pricing policies. Certainly such policies can and do provide benefits for a segment of the market. However, Dakota Southern believes that such policies cannot be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. BNSF's pricing policies have undermined the existence of smaller elevators and the economies of the small rural communities along the Mitchell-Kadoka line of which they are a part, and which Dakota Southern is dedicated to serving. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. As discussed above, I have witnessed all of these consequences firsthand.

These same BNSF pricing policies also have prevented elevators on the Kadoka Line from participating in what should be a straightforward rail movement: the handing of grain from the Kadoka Line inbound to larger elevators on the Core Line at Mitchell and Beardsley, South Dakota. All of that traffic now moves by truck, while BNSF handles the subsequent outbound movements of grain from those locations. Handling the inbound traffic by rail would benefit the shippers, the receivers, the Kadoka Line, Dakota Southern and local area highways, with absolutely no impact on BNSF. But such traffic, which would not move in 110-car lots from stations on the Kadoka line, is incompatible with current and likely future BNSF pricing policies and objectives.

I believe the conditions sought in this proceeding respond in a reasonable and effective way to the legitimate concerns arising from the proposed Core Line sale. The

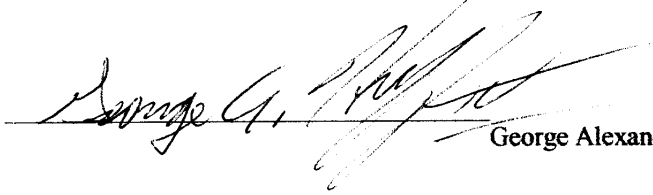
availability of trackage rights for Dakota Southern to reach Sioux City will ensure that Dakota Southern can connect with other railroads and thus would have the opportunity to provide rate and service options that are appropriate for the smaller elevators on the Kadoka line. Also, the ability of Dakota Southern to handle grain shipments from points on the Kadoka line to the existing elevators at Mitchell and Beardsley will not only facilitate the retention of needed rail service on the Kadoka line, but also take trucks off of local roads and promote the continued efficient supply of grain to the Mitchell and Beardsley areas. I anticipate that we would move one train per week utilizing these trackage rights which will not interfere, in any way, with BNSF's or other carriers' operations.

If BNSF is correct in its current corporate outlook that grain can and should only move in 110-car lots, then operations such as those on the Kadoka line may face an uphill battle in the future. I am unconvinced that that is the case, but in the meantime the conditions sought here would do nothing to constrict BNSF, to force it to handle traffic it does not want or on terms it does not accept, or to compel it to subsidize another party's unprofitable or inefficient operations. The conditions simply allow Dakota Southern to reach gateways with other carriers and to have the opportunity to develop transportation options, rate structures and grain markets that BNSF is increasingly unwilling to offer. I intend to do Dakota Southern's part to assure the continued availability of adequate rail transportation and market access for shippers on the Kadoka line. Our success or failure in that endeavor should be of our own making. If BNSF will not be a productive participant in that process, it should get out of the way.

VERIFICATION

I, George Alexander Huff, IV, verify under penalty of perjury under the laws of the United States that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 2, 2005.


George Alexander Huff, IV

**VERIFIED STATEMENT
OF
JACK PARLIAMENT**

My name is Jack Parliament. I am the President of the D&I Railroad Company ("D&I"), whose mailing address is: P.O. Box 5829, Sioux Falls, South Dakota 57117. I have served as President of D&I since 2001.

D&I was originally formed by the L.G. Everist Company in 1980 in order to preserve rail access to the L.G. Everist quarry facility at Dell Rapids, South Dakota. D&I leased portions of the Milwaukee Road's lines south of Dell Rapids in 1980 until the property was sold to the State of South Dakota in 1981. When BNSF no longer desired to serve critical portions of the State-owned rail system in 1986, D&I became the third-party rail operator on behalf of Sioux Valley Regional Railroad Authority ("SVRRA") for the State-owned lines between Canton to Elk Point, South Dakota and from Hawarden, Iowa to Beresford, South Dakota. These lines were previously abandoned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and then acquired by the State in 1981. The State leases the lines to SVRRA, which in turn sub-leases the lines to D&I for operation.

The Canton-Elk Point Line connects at either end with the State-owned "Core Lines," currently operated on behalf of the State by BNSF. From Canton, the Core Lines extend north to Sioux Falls and west to Mitchell, South Dakota while from Elk Point the Core Lines extend south to Sioux City, Iowa.

D&I owns and operates its own line north of Sioux Falls, and has the right to operate over the Sioux Falls-Canton (Core Lines), Canton-Elk Point (SVRRA Line) and Elk Point-Sioux City (Core Line) to handle aggregate (rock and stone) traffic from its own line and an L. G. Everist facility at Hawarden, IA to interchanges with BNSF, Union Pacific and

**VERIFIED STATEMENT
OF
JACK PARLIAMENT**

My name is Jack Parliament. I am the President of the D&I Railroad Company ("D&I"), whose mailing address is: P.O. Box 5829, Sioux Falls, South Dakota 57117. I have served as President of D&I since 2001.

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D&I owns and operates its own line north of Sioux Falls, and has the right to operate over the Sioux Falls-Canton (Core Lines), Canton-Elk Point (SVRRA Line) and Elk Point-Sioux City (Core Line) to handle aggregate (rock and stone) traffic from its own line and an L. G. Everist facility at Hawarden, IA to interchanges with BNSF, Union Pacific and

Canadian National at Sioux City. D&I also has trackage rights on the Elk Point-Sioux City segment of the Core Lines for the purpose of handling grain and other non-aggregate traffic off of SVRRA's lines (Canton-Elk Point and Hawarden-Beresford) to an interchange with BNSF at Sioux City. These trackage rights prohibit D&I from interchanging SVRAA traffic with any carriers at Sioux City other than BNSF. Thus, D&I train crews literally look at the UP and CN interchange tracks at Sioux City as they go by, and indeed interchange D&I originated aggregate and BNSF authorized non-aggregate traffic with UP and CN at Sioux City, but we cannot do so for non-aggregate traffic originating on the State-owned lines. Thus, the Canton-Elk Point and Beresford-Hawarden Lines have no other outlets to the national railroad system other than over the Core Lines to the BNSF connection at Sioux City. On an annual basis, D&I ships approximately 2000 carloads to and from the SVRRA Canton-Elk Point and Hawarden-Beresford lines.

On innumerable occasions, shippers on the State-owned SVRRA lines as well as shippers elsewhere in the United States desiring to ship to those lines have called me about possible movements between the SVRRA lines and origins/destinations on UP and CN. Due to our contractual arrangements, I have been forced to direct our shippers and prospective offline shippers/receivers to BNSF, and, consistently, we never see that traffic. By not allowing these routings except when it is in BNSF's self interest to do so, BNSF has constrained our ability to adequately serve the needs of shippers on the State-owned SVRRA lines.

Carriers like D&I and BNSF in South Dakota are in a unique public-private partnership with the State. We operate the SVRRA lines, and BNSF operates the Core Lines as stewards for the State, and we are subject to clear and defined contractual responsibilities which protect the shippers in their receipt of adequate rail service on those rail lines.

As a part of this contractual protection, the State has the right to grant third-party trackage rights over the SVRRA lines or the Core Lines to other carriers in order to provide this adequate rail service to shippers. The State, in consultation with SVRRA and D&I, sought to grant unrestricted overhead trackage rights to SVRRA and, through SVRRA, to D&I over the Core Lines between Elk Point Junction and Sioux City to reach interchange with all rail carriers at Sioux City. SVRRA and we submitted Notices of Exemptions covering these trackage rights grants to the Surface Transportation Board. As correspondence to the Board has indicated, BNSF is unwilling to permit implementation of these rights.

BNSF's acquisition of the Core Lines will eliminate the protections which exist in its contract with the State, and threatens the shippers on the SVRRA lines, and the communities in which we operate. The transfer of the Core Lines to BNSF would completely isolate the SVRRA from any other State-owned lines, as the connecting lines extending out from Canton and Elk Point would then be owned outright by BNSF. D&I and SVRRA would have no effective leverage if BNSF refuses to provide adequate rates vis-à-vis rates on its own BNSF system. The SVRRA lines will become entirely dependent on BNSF, which is not a prospect that bodes particularly well for future SVRRA shippers. Without the conditions requested in this proceeding by the State and SVRRA, and supported in this statement by D&I, BNSF's acquisition of the Core Lines could very well jeopardize the viability of the SVRRA lines. Additionally, D&I leases substantial yard trackage from the State in Sioux City which is critical to our operations. Retention of these leases will be at risk as a result of the acquisition.

D&I believes that the requested conditions are a reasonable and effective response to the legitimate concerns arising from BNSF's proposed acquisition of the Core Line. The availability of unrestricted overhead trackage rights permitting D&I to reach Sioux City will

ensure that D&I can connect with all railroads at Sioux City, and thus have the opportunity to provide rate and service options that are appropriate for all shippers on the SVRRA lines.

At the same time, the requested conditions do not harm or burden BNSF. D&I trains and traffic from the SVRRA lines already operate over the Elk Point-Sioux City segment of the Core Lines to interchange traffic with BNSF (and to UP and CN if BNSF permits routing of that traffic to those carriers under its power of attorney). The requested trackage rights would not change those operations, but would simply allow D&I to itself interchange that traffic with UP and CN once the train reached Sioux City. In fact, interchanges to UP and CN are closer to the SVRRA lines than is the BNSF interchange at Sioux City and, as such, the routing would be shorter and more beneficial to rail operations in Sioux City.

The requested conditions allow D&I to reach gateways with other carriers and to have the opportunity to develop transportation options, rate structures and grain markets for shippers that BNSF is increasingly unwilling to service. We, along with SVRRA and the State, will continue to do our part to assure the continued availability of adequate rail transportation and market access for shippers on the SVRRA lines. The Board should allow us the opportunity to succeed or fail on our merits, and on a level playing field.

VERIFICATION

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

Executed on March 5, 2005.



Jack Parliament



SOUTH DAKOTA WHEAT COMMISSION
116 N. EUCLID • P.O. BOX 549 • PIERRE, SOUTH DAKOTA 57501

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info@sdwheat.org

**VERIFIED STATEMENT
OF
RANDY L. ENGLUND**

My name is Randy L. Englund. I am the Executive Director of the South Dakota Wheat Commission. On behalf of all South Dakota wheat producers, the South Dakota Wheat Commission strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

A primary responsibility of the South Dakota Wheat Commission is market development for South Dakota wheat production. We represent over 9,000 wheat producers throughout the state, annually producing over 128 million bushels of high quality winter and spring wheats. We work with all elements of the wheat industry to assure market access and delivery.

Our wheat producers and shippers vary in size and location and utilize a number of different forms of transportation -- large railroads, small railroads, trucks -- to market their wheat as well as delivery of production inputs. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well being of all South Dakota wheat producers and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Recent studies indicate that 110-car trains do not work well for wheat shipments because of the necessity to maintain product differentials and lower production density in wheat areas. Domestic millers require grading standards on wheat they receive and in many cases this is not compatible with the use of large unit trains. Another factor is the limited number of domestic flour mills (only two) capable of receiving 110-car trains.

Consideration must be given to delivery of a quality product. We cannot and will not forsake the delivery of quality strictly for the sake of efficiency. This is unacceptable to farmers and the American consumer.

Although BNSF's shuttle train operations may provide benefits for a segment of the market, we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-

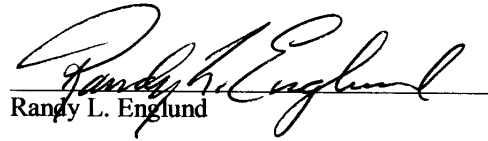
owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "island" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

VERIFICATION

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

Executed on March 10, 2005.


Randy L. Englund

SOUTH DAKOTA
GRAIN & FEED

ASSOCIATION

March 4, 2005

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N W Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Carl Anderson. I am the executive secretary of the South Dakota Grain & Feed Association (SDGF). Our membership of approximately 125 members is made up primarily of grain elevators/shippers large and small across the State of South Dakota. On behalf of our members, the SDGF strongly supports the State of South Dakota's efforts to ensure adequate and affordable market access for South Dakota's shippers regardless of the size. We think the conditions requested by the State in connection with a sale of the State's "Core Lines" to the BNSF are necessary and appropriate to this end.

Ours is an industry in which rail service is absolutely vital to our survival. Shippers in South Dakota are arguably farther than any other state from their primary markets, the Pacific Northwest, Great Lakes, Gulf Coast, etc. Ours is a "high volume/low margin" business in which competitive rail rates are a critical component to the survival of our members and their communities.

The BNSF is our major Class I railroad. They have structured their pricing to encourage the construction of 110-car loading facilities, and they have been very successful. The last time I counted there were 15 of these new facilities on the BNSF in South Dakota.. To my knowledge, there is one additional 110-car facility on the Core Line in Sioux City, IA. Most of the South Dakota facilities belong to our members. We have many other members who operate smaller operations (54-car loading facilities and smaller) and they should not be squeezed out of the rail system. Many predict that these smaller operations will survive by handling specialty crops and "identity preserved" grains not suited to the big "shuttle trains," but they will not prevail without rail competition and rail access.

If steps are not taken to protect the public interest prior to the sale of the Core Lines, it will never happen.

We believe that the State's proposal is reasonable and just without damaging the BNSF or the development of their 110-car program. We are not adversaries of the BNSF and recognize that they are absolutely vital to our industry, but it needs to be said that we can ill afford to have just one railroad in South Dakota.

We wish to thank the Board for considering our comments on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I am qualified and authorized to file this statement.

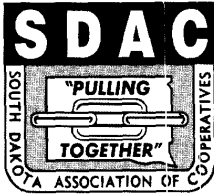
Sincerely yours,
SOUTH DAKOTA GRAIN & FEED ASSOCIATION



Carl G. Anderson
Executive Secretary

cga

cc: SDGF Board of Directors



SOUTH DAKOTA ASSOCIATION OF COOPERATIVES

351 WISCONSIN SW ▲ PO BOX 102 ▲ HURON, SD 57350 ▲ TEL (605) 352-9492 ▲ FAX (605) 352-8718
222 E CAPITOL AVE ▲ SUITE 1 ▲ PIERRE, SD 57501 ▲ TEL (605) 945-2548 ▲ www.sdac.coop

March 7, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Brenda Forman. I am the Executive Secretary of the South Dakota Association of Cooperatives (SDAC) in Pierre, South Dakota. On behalf of our members, SDAC strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

The South Dakota Association of Cooperatives is an association representing over eighty farm marketing, farm supply, electric and communication cooperatives located throughout South Dakota. Our mission is to proactively represent the cooperatives and their members on many issues including transportation. SDAC's members serve all types of agriculture producers, in large to small communities, by providing services and supplies other wise not available.

SDAC's members, as well as their producer owners, utilize a number of different forms of transportation -- large railroads, small railroads, trucks -- to handle their commodities including wheat, corn, soybeans, distillers grain, by-products, oilseeds and many others. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival

★ ★ ★ *Trade Association for Farmer Cooperatives* ★ ★ ★

Mr. Vernon A. Williams
March 7, 2005
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and economic well-being of many of our members and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

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March 7, 2005
Page 3

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda Forman".

Brenda Forman
Executive Secretary



South Dakota
Agri-Business
Association

March 3, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Kathy Zander I am the Executive Director of the South Dakota Agri-Business Association (SDABA). On behalf of our members, SDABA strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

SDABA is an association of more than 350 members located throughout South Dakota. These members are fertilizer and pesticide dealers and the manufacturers and suppliers of products they sell to their farmer customers. The Association is South Dakota's unified voice for the crop input industry. SDABA members vary in size from small independent businesses to large international companies that all utilize a number different forms of transportation -- large railroads, small railroads, trucks -- to handle their commodities. Transportation is a critical component of grain and fertilizer prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult

Mr. Vernon A. Williams
March 3, 2005
Page 2

for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

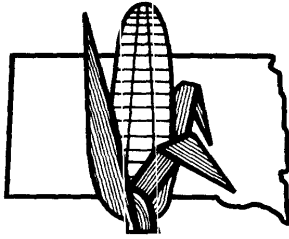
We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Kathleen M. Zander
Executive Director



South Dakota Corn Growers Association

3801 South Western Avenue, Suite 100
Sioux Falls, South Dakota 57105

March 9, 2005

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N W Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Bill Chase. I am the treasurer of the South Dakota Corn Growers Association. Our membership of approximately 1500 members is made up of corn producers from across the State of South Dakota. On behalf of our members, the SDCGA strongly supports the State of South Dakota's efforts to ensure adequate and affordable market access for South Dakota's shippers regardless of the size. We think the conditions requested by the State in connection with a sale of the State's "Core Lines" to the BNSF are necessary and appropriate to this end.

Ours is an industry in which rail service is absolutely vital to our survival. We produce over 500 million bushels of corn, over 400 million gallons of ethanol, and over a million tons of dried distillers grains. Corn producers and processors in South Dakota are arguably farther than any other state from their primary markets, the Pacific Northwest, Great Lakes, Gulf Coast, etc. Competitive rail rates are a critical component to the survival of our members and their communities.

The BNSF is our major Class I railroad. They have structured their pricing to encourage the construction of 110-car loading facilities, and they have been very successful. The last time I counted there were 15 of these new facilities on the BNSF in South Dakota of which 5 are on track currently owned by the BNSF. To my knowledge, there is one additional 110-car facility on the Core line in Sioux City, IA. Most of the South Dakota facilities belong to elevators on the BNSF. These facilities are very competitive and a large amount of our corn moves on these unit trains.

Although BNSF's shuttle train operations may provide benefits for a segment of the market, we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state.



(605) 334-0100 • FAX (605) 334-0505



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In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of BNSF's rate structure. Our corn producers and shippers vary in size and location and utilize a number of different forms of transportation – large railroads, small railroads, and trucks—to market their corn as well as delivery of inputs.

If steps are not taken to protect the public interest prior to the sale of the Core Lines, it will never happen.

We believe that the State's proposal is reasonable and just without damaging the BNSF or the development of their 110-car program. We are not adversaries of the BNSF and recognize that they are absolutely vital to our industry, but it needs to be said that we can ill afford to have just one railroad in South Dakota.

We wish to thank the Board for considering our comments on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I am qualified and authorized to file this statement.

Sincerely yours,
SOUTH DAKOTA CORN GROWERS ASSOCIATION



Bill Chase
South Dakota Corn Growers Association



cc: SDCGA Board of Directors

SOUTH DAKOTA WHEAT INC.

Member National Association of Wheat Growers, Inc.

P.O. Box 667 Pierre, South Dakota 57501 605-224-4418



March 7, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Rick Vallery. I am the Executive Director of South Dakota Wheat Inc in Pierre, South Dakota. On behalf of our members, South Dakota Wheat Inc strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

South Dakota Wheat Inc is an association of more than four hundred farmer/rancher producers who ship grain to many elevators located throughout South Dakota. The purpose of South Dakota Wheat Inc is to promote and encourage (a) interest and welfare of the wheat growers in the State of South Dakota; (b) the advancement and science of wheat growing; (c) the development of markets, new uses and improved strains of wheat and wheat by-products; (d) good farming and farm marketing practices; and (e) the conservation of the natural resources of the State of South Dakota.

South Dakota Wheat Inc members vary in size from less than 500 acres to more than 25,000 acres of planted wheat and utilize a number of different forms of transportation --

large railroads, small railroads, trucks -- to handle their commodities. It is important to understand that the South Dakota wheat industry is evolving from a commodity industry to product industry. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "isolated" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it. South Dakota Wheat Inc believes the future of the wheat industry lies with "specialty wheat's" which may generate higher profits but can only be produced in lower volumes.

Page 3

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in black ink that reads "Rick Vallery". The signature is written in a cursive style with a large, looping "R" and a long, sweeping underline.

Rick Vallery, Executive Director
South Dakota Wheat Inc

SOUTH DAKOTA FARM BUREAU



March 7, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Michael Held. I am the Administrative Director of the South Dakota Farm Bureau Federation in Huron. On behalf of our members, the South Dakota Farm Bureau Federation strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

The South Dakota Farm Bureau Federation is an association of more than 10,000 farmers, ranchers and rural families, located throughout South Dakota. South Dakota Farm Bureau Federation is a general farm/ranch organization representing ag producers of all commodities. South Dakota Farm Bureau Federations members include producers of all sizes and production of all commodities utilizing a number of different forms of transportation -- large railroads, small railroads, trucks -- to handle their commodities. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-

Mr. Vernon A. Williams
March 7, 2005
Page 2

elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Administrative Director
South Dakota Farm Bureau Federation

South Dakota Farmers Union

1410 Dakota Avenue South ♦ PO Box 1388
Huron, South Dakota 57350
Tel (605) 352-6761 ♦ Fax (605) 352-6768 ♦ E-mail: sdfu@sdfu.org
Web site: www.sdfu.org

March 9, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

Re: **Finance Docket No. 34667**
BNSF Railway Company - Purchase and
Operation - State of South Dakota

Dear Secretary Williams:

My name is Dennis Wiese. I am the President of South Dakota Farmers Union in Huron, SD. On behalf of our members, SDFU strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

South Dakota Farmers Union is more than an association of over 5000 farmers, ranchers, and Cooperatives located throughout South Dakota. Members vary in size and utilize a number of different forms of transportation -- large railroads, small railroads, trucks -- to handle their commodities. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members and the communities in which they operate.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such

Mr. Vernon A. Williams
March 9, 2005
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policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

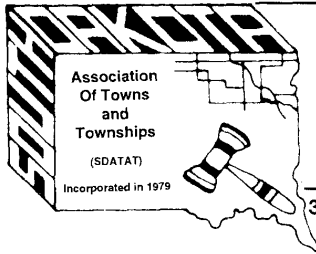
We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Dennis Wiese
President and Chairman of the Board
South Dakota Farmers Union



South Dakota Association of Towns and Townships

351 Wisconsin SW • Box 903 • Huron, SD 57350 • Ph. (605) 353-1439 • Fax (605) 352-5322

March 7, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Gail Brock. I am the Executive Director of the South Dakota Association of Towns and Townships. Our office is located in Huron, South Dakota. On behalf of our members, the South Dakota Association of Towns and Townships strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

The South Dakota Association of Towns and Townships is an association of more than 3000 local government officials located throughout South Dakota. Our membership consists of 89 small towns and 470 townships. Our membership is very much predominantly rural. The well being of our rural communities is very important to our organization. The shippers within our communities utilize a number of different forms of transportation -- large railroads, small railroads, trucks -- to handle their commodities, including corns and soybeans. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face

Mr. Vernon A. Williams
March 7, 2005
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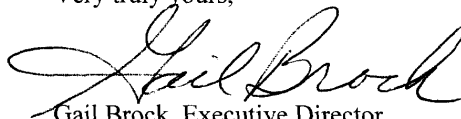
of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gail Brock", with a stylized, flowing script.

Gail Brock, Executive Director
South Dakota Association of Towns and Townships

South Dakota Association of
County
Commissioners

March 9, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Bob Wilcox. I am the Executive Director of the South Dakota Association of County Commissioners in Pierre, SD. On behalf of our members, SDACC strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

SDACC is an association of 66 counties, 64 organized and 2 unorganized. These counties range in size from as little as 412 sq miles to as many as 3471 sq miles with population ranging from 1193 to 148,281 throughout South Dakota. Agricultural land consists of 44 million acres, which is about 90 percent of the state. Of that total, 17.6 million acres produce grains and alfalfa. The shippers within our communities utilize a number of different forms of transportation -- large railroads, small railroads, and trucks -- to handle their commodities. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of our members.

BNSF is the major Class I railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the

Mr. Vernon A. Williams
March 9, 2005
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existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

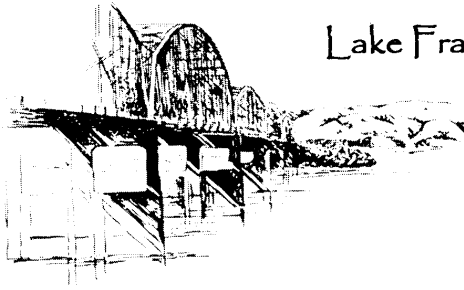
We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bob Wilcox".

Bob Wilcox, Executive Director
South Dakota Association of County Commissioners



Lake Francis Case Development Corporation

115 West Lawler

Chamberlain, SD 57325

Phone/Fax: 605-734-4418

www.dakotadevelopment.com

March 10, 2005

Hon. Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

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

Dear Mr. Williams:

My name is Jessica Schoenhard. I am the Executive Director of the Lake Francis Case Development Corporation in Chamberlain, South Dakota. LFCD Corp. engages in policies and initiatives that promote business opportunity and encourage economic development in Chamberlain and the surrounding areas of Brule and Lyman Counties. As part of those efforts, LFCD Corp. takes an active and serious interest in transportation matters that affect the region.

Chamberlain is located in southeastern South Dakota and is home to a variety of businesses including retail, tourism, commercial and Ag related commerce and trade. Rail service in the Chamberlain area is provided by the BNSF Railway on rail lines owned by the State of South Dakota and extending north, south and east from Mitchell (the so-called "Core Lines"), and by Dakota Southern Railway on a State-owned rail line extending west from Mitchell. Rail service on all of those lines is important to local employers and business and to the economic health of the region, particularly with respect to agricultural commodities. If local grain elevators and farm suppliers are without competitive rail service, then they and their customers have a significant price disadvantage which impacts our local economy negatively.

LFCD Corp. strongly supports the conditions requested by the State of South Dakota, in connection with the pending sale of the Core Lines to BNSF, to ensure the future viability of the Dakota Southern line and the availability of adequate rail service and market access for grain shippers on that line. The recent development of large, 110-car elevators on BNSF main lines, while beneficial in some respects, has also served to penalize and pressure smaller elevators on other rail lines and the smaller railroads that serve them. The sale of the Core Lines to BNSF will exacerbate that problem by isolating the Dakota Southern line from any other state-owned lines. We believe that the Dakota Southern line can and should continue to be a viable component of the transportation network in this region, and that the Board should provide the line with that opportunity.

Hon. Vernon A. Williams
March 10, 2005
Page 2

The conditions sought by the State reasonably and effectively respond to these concerns arising from the proposed Core Line sale. The availability of trackage rights for Dakota Southern to reach Sioux City, Iowa will ensure that Dakota Southern can connect with other railroads and thus would have the opportunity to provide rate and service options that are appropriate for the smaller elevators on the Dakota Southern line. Also, the ability of Dakota Southern to handle grain shipments from points on the Dakota Southern line to the existing elevator at Mitchell will not only facilitate needed rail service on the Dakota Southern line, but also take trucks off of local roads and promote the continued efficient supply of grain to the Mitchell area. At the same time, we do not foresee that these conditions would unfairly impair BNSF, which is an important constituency in our community as well.

The conditions sought by the State are important to the public interest and to the economic well-being of our region. LFCD Corp. supports the consideration and implementation of those conditions in connection with any BNSF purchase of the Core Lines.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,


Jessica A. Schoenhard
Executive Director

SOUTH DAKOTA STOCKGROWERS ASSOCIATION

www.southdakotastockgrowers.org



**SOUTH DAKOTA
STOCKGROWERS ASSOCIATION**

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605.255.4614
foxr1@hotmail.com

Executive Director
Carrie Longwood
carrie.sdsga@midconetwork.com

March 9, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

My name is Carrie Longwood, the Executive Director of the South Dakota Stockgrowers Association in Rapid City, South Dakota. On behalf of our members, the South Dakota Stockgrowers Association supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

The South Dakota Stockgrowers Association is an organization of more than 1,600 cattle producer members located throughout South Dakota. While most of our members do not directly rely on the railroad in their day to day business, our organization is sympathetic to those who do. As ranchers, we do not ship cattle via

railway, but realize that many farmers and other small businessmen do ship products such as grain on the railroad. We believe access for those farmers and others is important because if they are not granted access to this railroad, they may not have the opportunity to market their commodities. This would have a negative impact on the entire state's economy. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of many of South Dakota's farmers and the communities in which they operate.

BNSF is the major Class 1 railroad providing service to grain shippers in South Dakota. In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines through the state and on so-called "shuttle trains." Such operations can provide benefits for a segment of the market and of our membership. But we believe such operations should not be allowed to squeeze out the rail transportation services needed by so many of the remaining smaller shippers in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service structure that penalizes them and seeks to push all grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. By their nature, such policies also increase the movements of grain by truck, with the attendant burdens on South Dakota's public infrastructure. We view these dislocations as important and serious matters.

The unique public-private partnership between the State and BNSF that has governed the Core Lines for the last twenty years provides a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, which has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, leave behind several "orphaned" state-owned lines, and further threaten smaller elevators and their communities. Indeed, once BNSF invests significant capital dollars in a purchase of the Core Lines, BNSF may have even more incentive to force traffic to its lines and away from smaller elevators and communities on non-BNSF lines.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns, without harming BNSF or its further development of 110-car elevator and shuttle train programs on its own lines (including the Core Lines, if they are acquired by BNSF). BNSF remains free to pursue such programs, which should rise or fall on their own efficiencies. The conditions requested by the State simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their survival and prosperity. If a day is to come when only 110-car elevators dot the landscape in South Dakota, it should be because market forces favor that result -- not because BNSF's policies dictate it.

We appreciate the Board's consideration of our views on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Longwood". The signature is written in dark ink and is positioned above the printed name.

Carrie Longwood



March 7, 2005

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

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

Dear Secretary Williams:

My name is Myron L. Rau. I am the Executive Vice President of the South Dakota Trucking Association (SDTA). On behalf of our members, the SDTA strongly supports the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers and elevators of all sizes within the state. We believe that the conditions requested by the State in connection with a sale of the State's "Core Lines" to BNSF Railway are necessary and appropriate to protect that important public interest. We encourage the Board to impose those conditions on any approval of BNSF's pending application to acquire the Core Lines.

The SDTA is comprised of over 500 members that include both truck drivers and trucking companies that ship both raw and processed products throughout South Dakota and across the United States. We ship nearly all types of products indicated by our motto, "If you have it, a truck brought it". The Association's membership varies in size from single truck operations to very large multi-truck operations. We assist in a number of different forms of transportation including both large railroads and small railroads, using trucks to deliver commodities to their final destination and to move grain to elevators of all sizes within the state. Transportation is a critical component of grain prices, and the availability of reasonably priced and accessible rail service is absolutely essential to the survival and economic well-being of these elevators, the surrounding communities, and our members which serve them.

In recent years, BNSF has increasingly favored the movement of South Dakota grain via 110-car elevators on BNSF's main lines. We don't believe such operations should be allowed to squeeze out the rail transportation services needed by the remaining smaller grain shippers and elevators in the state. In particular, it can be difficult for smaller elevators located on non-BNSF rail lines in the state to find viable markets in the face of a BNSF rate and service

Mr. Vernon A. Williams
March 7, 2005
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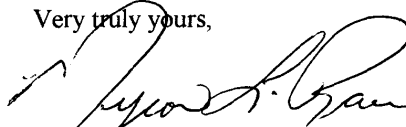
structure that penalizes them and seeks to divert grain to mega-elevators on BNSF's lines. Such policies undermine the existence of smaller elevators, and the economies of the small, usually rural communities of which they are a part. Our members are concerned about these impacts on an important constituency of our own industry.

The long-standing public-private partnership between the State and BNSF that has governed the Core Lines provided a means to address undesirable developments such as these. BNSF operates the lines as a steward for the State, and we understand the State has important contractual rights to protect the public interest in the operation of those publicly-owned lines. BNSF's acquisition of the Core Lines will eliminate those protections, isolate several remaining state-owned lines and the elevators located on those lines, and further threaten smaller elevators and their communities.

We believe the conditions sought by the State of South Dakota reasonably respond to these concerns. BNSF, of course, would remain free to pursue its 110-car elevator and shuttle train programs on the Core Lines and other BNSF-owned lines. The conditions requested by the State would simply permit smaller elevators and the rail carriers that serve them the opportunity to reach connecting carriers and markets and fight for their own survival and prosperity. SDTA's membership is committed to working with those smaller elevators to provide efficient and seamless grain transportation, and we believe they deserve the chance to succeed.

I appreciate the Board's consideration of SDTA's views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Myron L. Rau", written over a horizontal line.

Myron L. Rau
Executive Vice President
South Dakota Trucking Association

**VERIFIED STATEMENT
OF
TERRY KNUDSON**

My name is Terry Knudson. I am the General Manager of AgFirst Farmer's Cooperative ("AgFirst") with grain elevator facilities located at Brookings, SD and Aurora, SD.

I have been General Manager at AgFirst for 6 years. Prior to joining AgFirst, I held positions at various other grain elevators in South Dakota and North Dakota for 26 years.

Between our Brookings and Aurora facilities, we have storage capacity for approximately 2 million bushels of grain and, in an average year, we "turn" the facilities approximately three times. In other words, we effectively receive and ship out about 6 million bushels of grain each year. Our primary commodities are corn (60%), soybeans and wheat.

As a "cooperative," we are owned by farmers who have equity in AgFirst, and who receive a share of the year-end profits of the facilities. In addition to buying and selling grain on behalf of our farmer owners, we provide other services to our owners such as sales of livestock feed, fertilizer and propane. As such, our owners have a vested interest in the survival and profitability of the AgFirst elevators.

As General Manager of the AgFirst, one of my primary responsibilities is to find markets for our grain, and, in particular, markets providing the best prices. Markets are fluid and the prices can vary from day to day, week to week and month to month. In order to maximize our revenues and the returns for farmers utilizing our facilities, we need to have access to as many markets as possible, to take advantage of the price fluctuations that necessarily and consistently occur in the grain markets.

Some of our grain is trucked locally to processors and local ethanol plants. However, on the average, well over 50% of our grain is transported by rail to more distant

markets. In each case, we are competing with other South Dakota elevators, as well as elevators located in Minnesota and North Dakota for access to the best markets and the best prices.

We have a 25-car rail siding at each of our Brookings and Aurora facilities. This means we can load up to a maximum of 25 cars for shipment at one time. We are served by the Dakota, Minnesota & Eastern Railroad ("DM&E"), which has transported our grain to feed lots on the DM&E, local processors, and to the Gulf export markets via barge on the Mississippi River.

However, we and other smaller elevators on DM&E have been effectively shut out of some of the best available grain markets (particularly for corn) due to actions of the BNSF Railway Company ("BNSF"). BNSF has not been willing to provide competitive rail rates for less than 110-car unit corn trains for the export markets in the Pacific Northwest. This has traditionally been (and continues to be) the best-priced market for corn.

With BNSF's refusal to provide competitive freight rates for less than 110-car units, we and other DM&E small shippers had expected to utilize the DM&E's access via the State of South Dakota's rail lines to move our corn up into the Alberta feed markets in Canada, and to the Pacific Northwest via Canadian Pacific rail routes. Unfortunately, BNSF has prevented the State and DM&E from making these rail movements as well.

Access to the Canadian and Pacific Northwest markets is not merely a desire, it is a need. As I indicated above, our facility does approximately three turns per year (totaling about 6 million bushels). However, we have the capacity to do about five turns per year (about 10 million bushels annually). Despite this capacity, we have been repeatedly advised over the last several years by farmers that they would have to truck their grain to larger 110-car elevators on BNSF due to the price differential between the Pacific Northwest markets and the markets which

we can access. I estimate that our facilities have lost over 2 million bushels every year due to lack of this market access and, even when AgFirst obtains the grain from farmers, we often have difficulty sourcing it to markets due to the limited number of markets available to us. For example, during the early part of 2004, we had over a million bushels sitting on the ground for over three months which I was trying to market, but could not do so as a result of lack of market access. Ultimately, we were able to truck the grain to a local market, but the lack of alternate market access cost AgFirst over \$0.03/bushel per month on those million bushels.

The lack of access to Canadian markets forces me to put more trucks on the road. In order to service our farmer owners, AgFirst provides fertilizer imported from Canada. On a yearly basis, we receive approximately 6,000 tons of dry bulk fertilizer from Canadian shippers. However, due to the lack of rail access to Canada, we have had to truck this fertilizer down from Canada.

Market access is a primary key to elevator profitability and survival. We are competing with North Dakota and Minnesota elevators that have access to Canada and the Pacific Northwest now. We are also competing with 110-car elevators in South Dakota who have access to the Pacific Northwest markets via BNSF. AgFirst's lack of access to these markets does not put us on a level playing field with our competitors, and damages us in terms of volume and price availability.

This lack of access also creates a difficult choice for many of our farmer owners. Some of them have the truck capacity to move their grain over South Dakota's roads to 110-car elevators to obtain a better per bushel grain price in the Pacific Northwest markets. But, when they do so, they adversely effect the profitability of our facility in which they have an equity stake, thereby impacting their return on equity. Many of our farmer owners do not have this

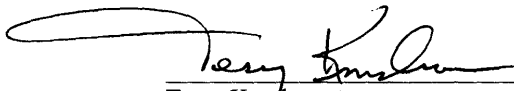
choice. They do not have the equipment to truck long distances, and they, therefore, take the best price that we can give them, which is often below that of competitors who have access to the Canadian and west coast markets. By not having access to Canadian and Pacific Northwest markets, we have lost our ability to leverage those markets vis-à-vis our competitors. This is not good for our facility, our farmer owners or the State of South Dakota.

As such, I support the efforts of the State of South Dakota and the DM&E to request Aberdeen interchange access for movements to Canada and the Pacific Northwest as a necessary condition of BNSF's acquisition of the State-owned Core Lines south of Aberdeen. Once these Core Lines are purchased by BNSF, small shippers such as AgFirst will have no protection whatsoever from the policies of BNSF which have been designed to push grain to a small group of large elevators on BNSF-served lines.

VERIFICATION

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

Executed on March 8, 2005.


Terry Knudson

**VERIFIED STATEMENT
OF
TOM KERSTING**

My name is Tom Kersting. I am Commercial Manager for South Dakota Soybean Processors located in Volga, South Dakota. I have held this position with South Dakota Soybean Processors for 9 years. Previously, I held various merchandising positions with Harvest States Cooperatives.

Our plant processes approximately 28 million bushels of soybeans into soybean meal and oil on an annual basis. We are located on the Dakota, Minnesota & Eastern Railroad ("DM&E"). Our primary soybean meal rail markets have been via DM&E and the Burlington Northern and Santa Fe Railroad ("BNSF") to California and the Pacific Northwest, and via truck to the Canadian Pacific railroad for ultimate delivery to the Canadian markets in Alberta and Saskatchewan.

Markets, prices and market competition are all dynamic, and the ability to react to the pricing available in any given market is totally dependent on the ability to access that market. Our ability to generate a profit for our shareholders is dependent upon having access to as many markets as possible.

Currently, our only access to the Canadian markets is through truck transportation, which is not economical. A railcar can handle four truckloads, and is, therefore, much more cost-effective for us than moving our soybean meal by truck. We have actually ceased shipments to Western Canadian destinations from our Volga facility because the high cost of truck transportation exceeded the higher per ton price differential in Canada for soybean meal.

In light of the State of South Dakota's acquisition of the Britton line (north of Aberdeen) in conjunction with the ability to interchange with DM&E at Aberdeen, we had

anticipated utilizing that northern route for rail movements. In fact, we had arranged a transaction with the elevator at Britton (on the State-owned Britton Line north of Aberdeen) for movement of approximately 100,000 bushels of soybeans to our plant for processing in February–March of 2004. This transaction occurred at a time when our plant was in need of soybeans in order to keep the plant and our employees fully operational. BNSF prevented this movement through the Aberdeen interchange, and that opportunity was lost to us.

Market opportunities in Canada continue to exist for our facility, if we could get the necessary rail access. In fact, based on the growing hog production in Canada, we expect that our market opportunities in Canada will expand in the coming years. For each day that we do not have this Northern access via Aberdeen, we are losing market share to our competitors in Minnesota and North Dakota who do have access to the Canadian Markets.

Additionally, BNSF pricing policies from its interchange with DM&E at Wolsey have priced our rates as much as 34% higher per mile than other processors on the BNSF system. This has severely hampered our ability to competitively ship to the Pacific Northwest and California markets, and it has virtually shut down our ability to ship to Sweetgrass, Montana (transload point into the Canadian markets).

Once the BNSF acquires the State-owned Core Line south of Aberdeen, any control that the State has over the management of those lines will cease and South Dakota shippers will be totally captive to BNSF. This will forever foreclose any access we might have to the Canadian markets, and will further constrain our access to California and the Pacific Northwest. As such, we support the efforts of the State of South Dakota and the DM&E to require that BNSF's acquisition of the Core Lines be conditioned on access via Aberdeen to the northern and Pacific Northwest markets.

Another critical market for our soybean meal is the market at Kansas City and beyond to the south. However, once again, BNSF pricing policies from its interchange with DM&E at Wolsey have priced our rates substantially higher per mile than other processors on the BNSF system. This has dramatically constrained our ability to market to Kansas City and beyond, and, to the extent that we have shipped soybean meal in those directions, we have had to shrink our margins in order to account for the substantially higher transportation prices offered by BNSF relative to our competitors on the BNSF system.

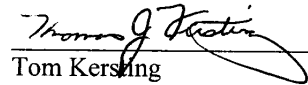
The Kansas City situation will only be exacerbated if BNSF purchases the Core Lines from Aberdeen to Sioux City, Iowa via Wolsey, without adequate conditions to protect DM&E shippers like South Dakota Soybean Processors. A DM&E-Union Pacific routing to Kansas City, with interchange at Sioux City, Iowa, is direct, efficient and is likely to offer us a real opportunity to transport thousands of tons of additional South Dakota soybean meal to that market. If, on the other hand, BNSF controls the routing post-acquisition, we will be relegated to limited market access due to BNSF's rate structure favoring the BNSF system processors, or, alternatively, the extremely circuitous DM&E routing to Kansas City via Mason City, Iowa, which adds hundreds of inefficient rail miles onto this potential routing and renders us non-competitive to these markets relative to our competitors on BNSF.

In consequence, in addition to DM&E Aberdeen access, we strongly support the requests of the State of South Dakota and the DM&E that, as a condition of any BNSF Core Line acquisition, that DM&E receive trackage rights from Wolsey to Sioux City, Iowa for interchange with the CN and Union Pacific railroads.

VERIFICATION

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

Executed on March 9TH, 2005.



Tom Kersting

**VERIFIED STATEMENT
OF
TODD YEATON**

My name is Todd Yeaton. I am Location Manager of Farmers' Union Coop Elevator at Highmore, South Dakota. I have held this position since January of 2004, when construction of the elevator was completed. Previously I was Location Manager for Farmers' Union Coop at Chamberlain, South Dakota for six and-a-half years.

Highmore ships approximately 5 million bushels of wheat on an annual basis as well as an additional 2 million bushels of corn, soybeans, milo and sunflowers. We are located on the Dakota, Minnesota & Eastern Railroad ("DM&E") and thus far our primary wheat markets have been via southbound routes to the Gulf export markets.

As part of my responsibilities, I regularly monitor the relative per bushel wheat prices available domestically and in the export markets. Based on my review of available per bushel wheat prices, it is clear that our elevator could consistently achieve at least a \$0.10 per bushel additional price if we were to gain access to the Pacific Northwest export markets. The rail rates in place via the BNSF Railway Company ("BNSF") are non-competitive and have not enabled us to route traffic via that railroad to the Pacific Northwest.

Through the opening of the Aberdeen interchange after the State's purchase of the rail lines north of Aberdeen, we expected to access Pacific Northwest markets via the Canadian Pacific railroad, with a resulting \$0.10 per bushel benefit to our elevators and our farmers/owners. Unfortunately, BNSF has blocked the State of South Dakota's and DM&E's access between their respective lines at Aberdeen, thereby negating our access to the Pacific Northwest markets.

The \$0.10 per bushel deficit puts our elevator at a competitive disadvantage as compared to our competitors in Minnesota, North Dakota and on BNSF's lines in South Dakota. We have frequently lost grain deliveries from farmers who could afford to truck their grain to elevators with access to the Pacific Northwest. Consequently, we have been forced to shrink our margins in order to match the prices which our competitors (who have access to the Pacific Northwest) offer farmers for wheat. This, in turn, has reduced our profitability and the value of the investment, which our farmer-owners have, in the facility.

So long as BNSF holds the only route from South Dakota to the Pacific Northwest for elevators such as Highmore, we will continue to be shut out of access to this lucrative and necessary market in favor of elevators in Minnesota and North Dakota and on BNSF's lines in South Dakota who have that access.

If BNSF were to acquire the line from Aberdeen, South Dakota to Sioux City, Iowa without our elevator and others on DM&E having access to the Pacific Northwest markets via Aberdeen, we will be captive to a BNSF pricing structure which promotes shipments via BNSF's own lines and unfairly penalizes shippers on non-BNSF lines in South Dakota. Consequently, I fully support and urge the Surface Transportation Board to impose a condition on BNSF's acquisition which permits full DM&E/State of South Dakota interchange access at Aberdeen so that our elevator can adequately compete with those in other states and elsewhere on the BNSF system.

BNSF's rate structure also penalizes Highmore and other DM&E elevators for southbound movements of wheat and milo.

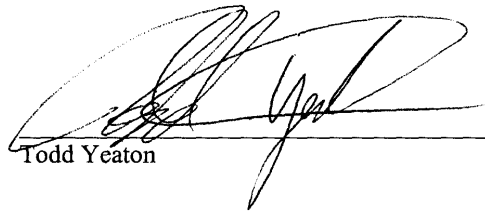
While DM&E gained access to Kansas City through its purchase of the IC&E Railroad, that route is substantially longer and less competitive than the direct route from DM&E at Wolsey south to Sioux City, Iowa for interchange to the CN and Union Pacific railroads.

Once again, with the State's ownership of the Core Line between Wolsey and Sioux City, we had expected to ultimately gain access to the Kansas City market via DM&E trackage rights. However, if BNSF purchases this line, without such DM&E access, we will be permanently foreclosed from this routing and we would expect to lose market share to our competitors on BNSF who are not similarly penalized by the BNSF rate structure. Therefore, we also join with the State of South Dakota and the DM&E Railroad in requesting that, as a condition of any BNSF acquisition of the Core Lines, the Surface Transportation Board impose a requirement that DM&E have trackage rights from Wolsey to Sioux City for interchange to CN and Union Pacific.

VERIFICATION

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

Executed on March 8, 2005.



Todd Yeaton

**VERIFIED STATEMENT
OF
TODD YEATON**

My name is Todd Yeaton. I am the same Todd Yeaton who has also filed a Verified Statement in connection with the Farmers' Union Coop Elevator at Highmore, South Dakota.

I am Assistant Manager of Farmers' Union Coop Elevator with locations at Chamberlain, Kennebec and Reliance, all of which are located on the State-owned line extending from Mitchell west to Kadoka, South Dakota, which is leased from the State by the MRC Regional Railroad Authority and, in turn, operated by the Dakota Southern Railroad. Our three elevators would be classified as small to medium-sized, with Chamberlain having a storage capacity of 515,000 bushels, Kennebec having a storage capacity of 1,625,000 bushels, and the Reliance facility having a storage capacity of 238,000 bushels.

In 1999, BNSF implemented a rate structure which dramatically favored 110-car unit loaders on the BNSF system and on the Core Lines (which BNSF proposes to buy in this proceeding). Rates for the 110-car loaders were reduced by several hundred dollars per car, thereby effectively drying up rail access for our smaller 26-car elevators on the Mitchell-Kadoka Line who did not receive those lowered rates.

This rate structure, in turn, dried up revenues on the Dakota Southern and resulted in the termination of service on much of the Mitchell-Kadoka Line.

In consequence of this rate structure favoring the mega-loaders, and the loss of direct rail access, we have been forced to truck our grain, predominantly wheat and milo, approximately 70 miles from our three elevators on the Mitchell-Kadoka Line up to our elevator located on the DM&E Railroad. This has resulted in the perverse circumstance where our grain

is trucked twice, once from the local farms to our three elevators, and then again northbound to our DM&E elevator.

Our elevators have struggled due to loss of market share resulting from BNSF's pricing structure. Farmers who can do so, are trucking their grain longer distances to elevators on the BNSF system, and literally right past our door. And, because we are a farmer-owned coop, our farmer owners have continued to lose equity as a result of BNSF's actions.

If the MRC Regional Railroad Authority and Dakota Southern were to have access on Dakota Southern to the Canadian National and Union Pacific at Sioux City, Iowa, we would be able to ship hundreds of thousands of bushels of wheat, sunflowers, soybeans, corn, and milo out of our three elevators thereby reducing the number of trucks on the road, and improving overall profitability of our facilities and equity for our farmer owners.

To be clear, we are not asking the Surface Transportation Board to impose any rate restrictions on BNSF. BNSF is free to charge whatever the law allows and whatever it thinks the market will bear. And, if we cannot compete with the mega-elevators on the BNSF system, post-acquisition, then we will have no cause for complaint.

However, BNSF should not be allowed to dictate market forces, and market routings. Nor should BNSF be allowed to dictate where grain flows within South Dakota. Rather, market forces should make those determinations, and if Dakota Southern/MRC had the CN and UP rail interchange access which the State has been attempting to obtain, we would be on a level playing field with our competitors, and the market would decide whether the grain flows from our elevators or elsewhere.

If the BNSF acquires the Core Line between Aberdeen and Sioux City, Iowa, we will be forever foreclosed from direct rail access. Accordingly, I support the efforts of the State

of South Dakota, the MRC Regional Railroad Authority and the Dakota Southern to obtain trackage rights access from Mitchell to interchanges with the Canadian National and Union Pacific at Sioux City as a condition of any BNSF acquisition of the State-owned Core Lines.

VERIFICATION

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

Executed on March 8, 2005.



Todd Yeaton

**VERFIED STATEMENT
OF
RON MITZEL**

My name is Ron Mitzel. I am Vice President of Dakota Mill and Grain with headquarters at Rapid City, South Dakota. We have five elevators on the Dakota, Minnesota & Eastern ("DM&E") rail line extending westerly from the State-owned Core Lines, and we have an additional two elevators on the MRC Regional Railroad Authority/Dakota Southern line extending westerly from Mitchell.

Our primary commodity is wheat, which counts for 80% of our shipments at our elevators on the DM&E. We ship approximately 3-5 million bushels per year from Fort Pierre (storage capacity 500,000 bushels, and 6-10 "turns" per year), 1-2 million bushels per year from Midland (storage capacity 333,000 bushels, and 3-6 "turns" per year), 1.5-2.5 million bushels per year from Wall (storage capacity 225,000 bushels, and 6-10 "turns" per year), 500,000 bushels from Belle Fourche (storage capacity 300,000 bushels, and 2 "turns" per year), and 500,000 bushels from Phillip. Our primary markets currently are mill markets in Minnesota and Eastern United States. In order to remain competitive with our counterparts on the BNSF system and with our competitors in other states we need adequate access to grain markets in Omaha, Kansas City and the Texas, Center and PNW Export markets. However, the BNSF rate structure from DM&E origins to these destinations has virtually closed us out of those markets or made us uncompetitive to these markets.

Markets are fluid and prices can easily vary from day to day, let alone from week to week. In order to maximize our revenues and the returns for farmers using our facilities, we need to have access to as many markets as possible, to take advantage of the price fluctuations that consistently occur in the grain markets. Thus, by not having adequate access to the Kansas

City, Omaha, and the Export markets, we are at a distinct disadvantage relative to our competitors on the BNSF system and in Iowa and Minnesota who have efficient access to these markets. This has, in turn, cost us profit and cost our owners return on equity as a result of this limited market access.

Our Presho and Murdo facilities are located on the MRC/Dakota Southern. We no longer have rail service at all to these elevators. Although Presho has a shipping capacity of 2-3 million bushels and Murdo has a shipping capacity of 1-1.5 million bushels, last year we only shipped 750,000 bushels from Presho and 500,000 bushels from Murdo. This is because we have no service at all to these elevators due to the BNSF pricing policies.

In 1999, the BNSF implemented a pricing strategy that favored 110-car unit grain loader elevators on its system and penalized smaller elevators in general and in particular those on non-BNSF lines. In fact, for about a year, BNSF dropped rates at the Mitchell Elevator (only served by BNSF, but located just off the MRC/Dakota Southern Line) below all other rates in the area, even including other BNSF served elevators. These rate actions effectively dried up rail service on Dakota Southern due to the several hundred-dollar differentials between BNSF system rates and the rates offered by BNSF to shippers on the Dakota Southern.

Once our rail rates via BNSF became non-competitive, Dakota Mill & Grain was forced to ship all of its grain outbound by truck. Since long haul trucking of grain to our markets is not an economical or effective option, after our grain is received inbound by truck, we must truck it again to our facilities on the DM&E where there are some rail outlets for our products. As such, the Presho and Murdo elevators have been relegated to a secondary elevator status, not nearly as effective, efficient, or profitable, as they would have been, but for BNSF's efforts to close down our rail access. If we had Dakota Southern access to Sioux City, as well as to the

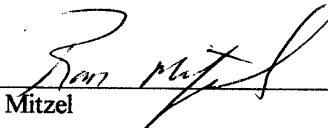
Mitchell and Beardsley elevators, we would have ample markets for our grain, despite BNSF's pricing policies. Presho and Murdo could again flourish and could compete with the elevators (large or small) on the BNSF system. We would also be keeping a substantial number of trucks off the road through the ability to use the more efficient rail network.

If the BNSF buys the State-owned Core Lines, the dye will be cast for BNSF to maintain its pricing strategies and finally and forevermore foreclose adequate rail transportation for non-BNSF system South Dakota shippers. As such, I strongly support the requests of the State of South Dakota, the DM&E, and the MRC/Dakota Southern that, as a condition of any BNSF Core Line acquisition, that DM&E receive trackage rights from Wolsey to Sioux City, Iowa for interchange with the CN and UP railroads, and that the MRC and Dakota Southern receive trackage rights from Mitchell to Sioux City, Iowa for interchange to CN and UP as well as direct rail access into the Mitchell and Beardsley elevators.

VERIFICATION

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

Executed on March 8, 2005.



Ron Mitzel

**VERFIED STATEMENT
OF
TOM SCHROEDER**

My name is Tom Schroeder. I am the Manager of White Lake Grain and Feed at White Lake, South Dakota. I've held this position since June, 1978.

Our elevator is located on the State-owned line extending from Mitchell west to Kadoka, South Dakota, which is leased from the State by the MRC Regional Railroad Authority and is operated by the Dakota Southern Railroad.

We are a smaller elevator that has storage capacity for approximately 400,000 bushels of grain. We can potentially do four turns per year, which means that at full capacity we can ship out up to 1.6 million bushels of grain annually. When rail service was available we could load 12 cars at a time. Our primary commodities are wheat and soybeans.

Until 1999, we had been shipping at levels close to our capacity. However, in 1999 BNSF instituted a series of new grain rates that dramatically favored 110-car unit trains on its own system and on the State-owned Core Lines. As a result of the BNSF restructuring of its rates, which penalize small shippers such as White Lake in the amount of several hundred dollars per car for less than 110-car shipments, our elevator lost over half its business. Other small elevators on Dakota Southern suffered a similar fate.

Farmers in our area that can afford to do so are trucking grain to 110-car elevators on the BNSF system. This has resulted in much longer truck hauls and increased impact on the State's road system.

As a result of our and other shippers' inability to obtain competitive rail rates from BNSF we were unable to move grain by rail. Revenues for the Dakota Southern dried up, and consequently that railroad has not been able to provide rail service to my elevator and others

on the Mitchell-Kadoka Line since 1999. We have been forced to ship our grain by truck and, we, in turn, continue to lose greater market share by virtue of not having this direct rail access. These days, we are shipping approximately 600,000-700,000 bushels per year, which is less than half of what it used to be prior to the 1999 BNSF rate restructuring.

If the BNSF buys the State-owned Core Line from Aberdeen through Mitchell down to Sioux City, Iowa. Our elevator will never see direct rail service again. The State now owns the line from Mitchell to Kadoka and the line from Mitchell down to Sioux City, Iowa. If BNSF acquires the line from Mitchell down to Sioux City, my elevator will be permanently barred from rail access. I know the State has been attempting to grant trackage right to Dakota Southern for movements down to Sioux City, Iowa as well as for movements into the Mitchell and Beardsley elevators, and I fully support those efforts.

BNSF should not be allowed to control market forces. If we had the opportunity to compete fairly with larger elevators elsewhere in the system, we would be able to do so. In fact we were doing so prior to the BNSF's rate restructuring which effectively shut Dakota Southern down and penalized all of the small elevators on the Dakota Southern for not being large elevators.

We are not asking the Surface Transportation Board to force BNSF to lower its rates. What we're asking for is that the Board permit a railroad who can provide us with rail rates, be allowed to provide those rates and give us access to rail markets via other carriers at the Sioux City, Iowa gateway.

For all of the foregoing reasons we urge the Surface Transportation Board to impose a condition on the BNSF's Core Line acquisition that Dakota Southern have trackage

rights between Mitchell and Sioux City, Iowa, for interchange with Canadian National and Union Pacific, as well as trackage rights for access into the Mitchell and Beardsley elevators.

VERIFICATION

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

Executed on March 8, 2005.


Tom Schroeder

**VERIFIED STATEMENT
OF
BILL BOYER**

My name is Bill Boyer. I am President of Alcester Elevator located at Hawarden, Iowa. I've held my position since 2000. We are located on and served by the State-owned rail lines operated by the D&I Railroad.

The Alcester Elevator is a 27-car loader with a capacity of 670,00 bushels. Our primary outbound commodities are corn and soybeans. We are currently trucking our corn and soybeans to local receivers due to market conditions and the limitations on available rail rates to our small facility. However, markets are fluid and prices can easily vary on a regular basis. In order to sustain our facility, we need to have access to as many markets as possible, to take advantage of the price fluctuations that consistently occur on the grain markets.

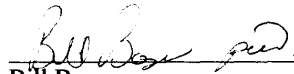
The BNSF proposal to acquire the State-owned Core Lines, including the line running from Elk Point Junction to Sioux City, Iowa, in combination with BNSF's pricing policies which favor larger shippers, present real risk that our rail access to markets will be eliminated.

Therefore, I strongly support the conditions requested by the State of South Dakota in connection with the pending sale of the Core Lines to BNSF, and in particular those that ensure the availability of adequate rail service and market access for shippers on the State-owned line from Canton to Elk Point Junction and Beresford to Hawarden. We urge the Board to ensure this access by requiring that a condition of BNSF's acquisition be Sioux Valley Regional Railroad Authority and D&I Railroad trackage rights from Elk Point Junction to Sioux City, Iowa for interchange of non-aggregate commodities (such as those received by our company) with the Canadian National and Union Pacific railroads.

VERIFICATION

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

Executed on March 1st, 2005.



Bill Boyer

March 9, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Todd Kirby. I am the Manager of the Dimock Farmers Elevator in Dimock, South Dakota. Our cooperative with its 872-stockholder members market corn, soybeans, and wheat. A majority of our corn and soybean sales are currently being transported via the BNSF rail system. Over the past 6 years from 1999 thru 2004 Dimock Farmers Elevator has shipped approximately 13,489,500.00 bushels or 3910 cars of grain products, which amounts to \$5,474,000.00 worth of freight paid to BNSF. These bushels were shipped primarily to southern states and Canada markets which prefer to receive 27 car units as opposed to the larger shuttle trains. If this pending sale is allowed to move forward in favor of the BNSF it is our belief that these markets we have cultivated will be in jeopardy with regards to the current business practices being promoted by the BNSF toward shuttle loading facilities. Our elevator facility is located on the Mitchell-Sioux City rail line owned by the State of South Dakota and currently operated by the BNSF Railway. That facility is capable of loading 27-car trains for outbound movement by BNSF.

We are supportive of the efforts of the State of South Dakota to ensure that adequate rail service and market access is provided for grain shippers of all sizes within the state. We have benefited from the unique public-private partnership that allowed the State to make significant investments in the region's railroad infrastructure, and that ultimately resulted in the preservation and improvement of rail service on the Core Lines which we now utilize. We do not believe that the pending sale of the Core Lines to BNSF should be allowed to threaten the same availability of adequate rail service on other state-owned rail lines elsewhere in South Dakota.

BNSF, as the major Class I railroad providing service to grain shippers in South Dakota, has in recent years increasingly favored the movement of South Dakota grain via 110-

Mr. Vernon A. Williams

March 9, 2005

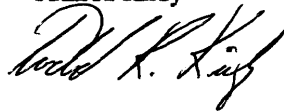
Page 2

car elevators and "shuttle trains." Whatever their benefits, such operations should not be allowed to squeeze out the rail transportation services needed by the many remaining smaller shippers. Anything that expands the competitiveness and market access of South Dakota grain is good for all of us. Conversely, those things, which diminish the market and attractiveness of South Dakota grain, can be a drag throughout the state. Nor is it beneficial if large Class I carriers believe they only have to compete for traffic from large, 110-car elevators, knowing that smaller elevators have been effectively shut out from rail-served markets.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

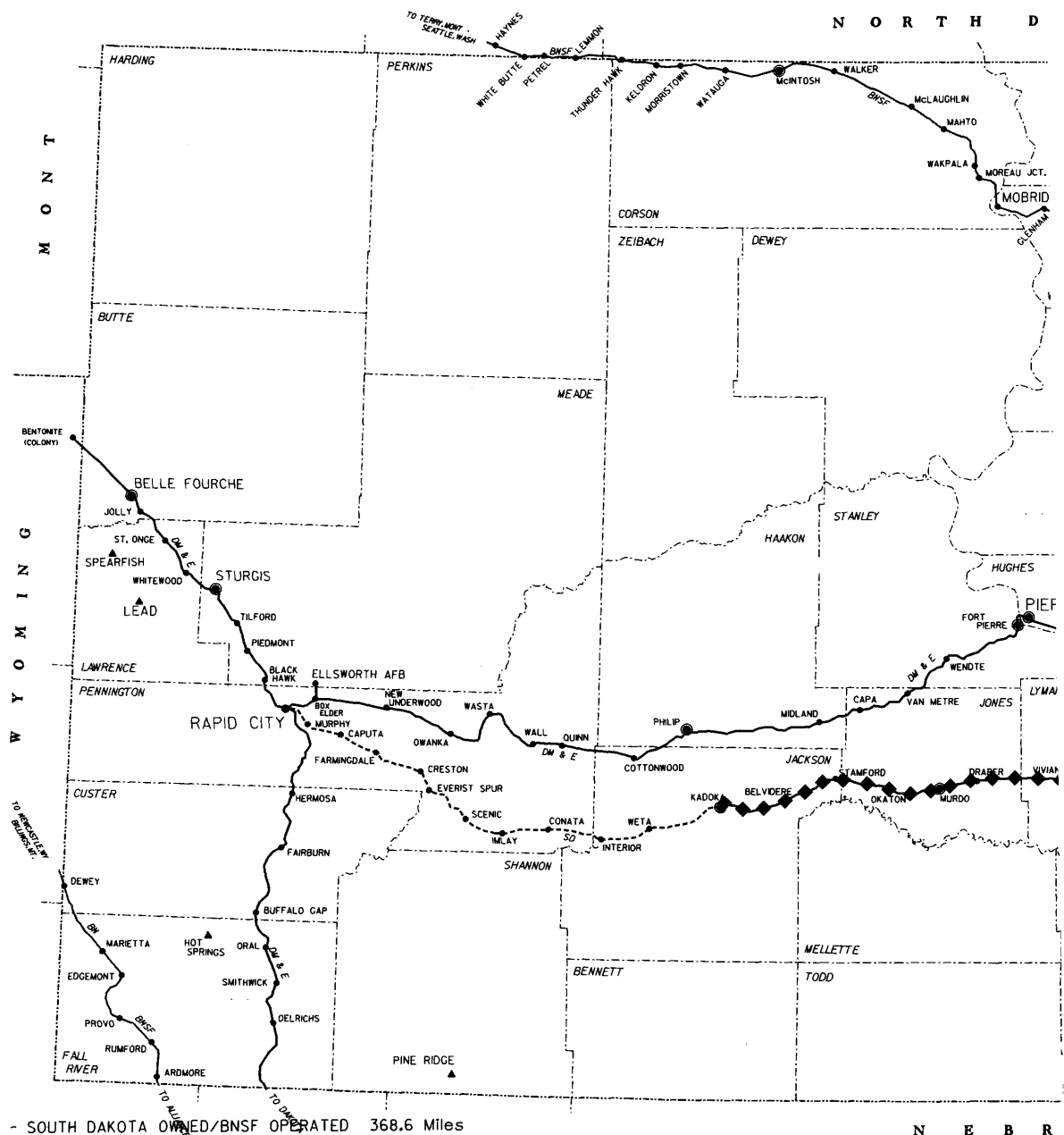
Todd R. Kirby



3/9/05

DIMOCK FARMERS ELEVATOR
Box 68
DIMOCK, SOUTH DAKOTA 57331

OFFICIAL SOUTH DA



- ◆◆◆◆◆ - SOUTH DAKOTA OWNED/BNSF OPERATED 368.6 Miles
- ◆◆◆◆◆ - SOUTH DAKOTA OWNED/DAKOTA SOUTHERN OPERATED 189.7 Miles
- ◆◆◆◆◆ - SOUTH DAKOTA OWNED/D&I OPERATED 66.6 Miles
- ◆◆◆◆◆ - SOUTH DAKOTA OWNED/DAKOTA MISSOURI VALLEY & WESTERN 76.18 Miles
- - DAKOTA, MINNESOTA & EASTERN 585.9 Miles
- - BURLINGTON NORTHERN/SANTA FE 521.8 Miles
- - CP/SOO LINE 6 Miles
- - D&I RAILROAD 16.8 Miles
- - SISSETON/MILBANK RAILROAD 37.1 Miles
- - ELLIS & EASTERN 14.5 Miles
- - RED RIVER VALLEY 5 Miles
- - SUNFLOUR RAILROAD 27.5 MILES

TOTAL ACTIVE RAIL MILES 1839.5 Miles
 TOTAL SOUTH DAKOTA OWNED ACTIVE RAIL MILES 701.08 Miles

----- - KADOKA to RAPID CITY
 SD OWNED RAIL BANKED 98.5 Miles

----- - NAPA LINE
 SD OWNED RAIL BANKED 82.4 Miles

A K O T A

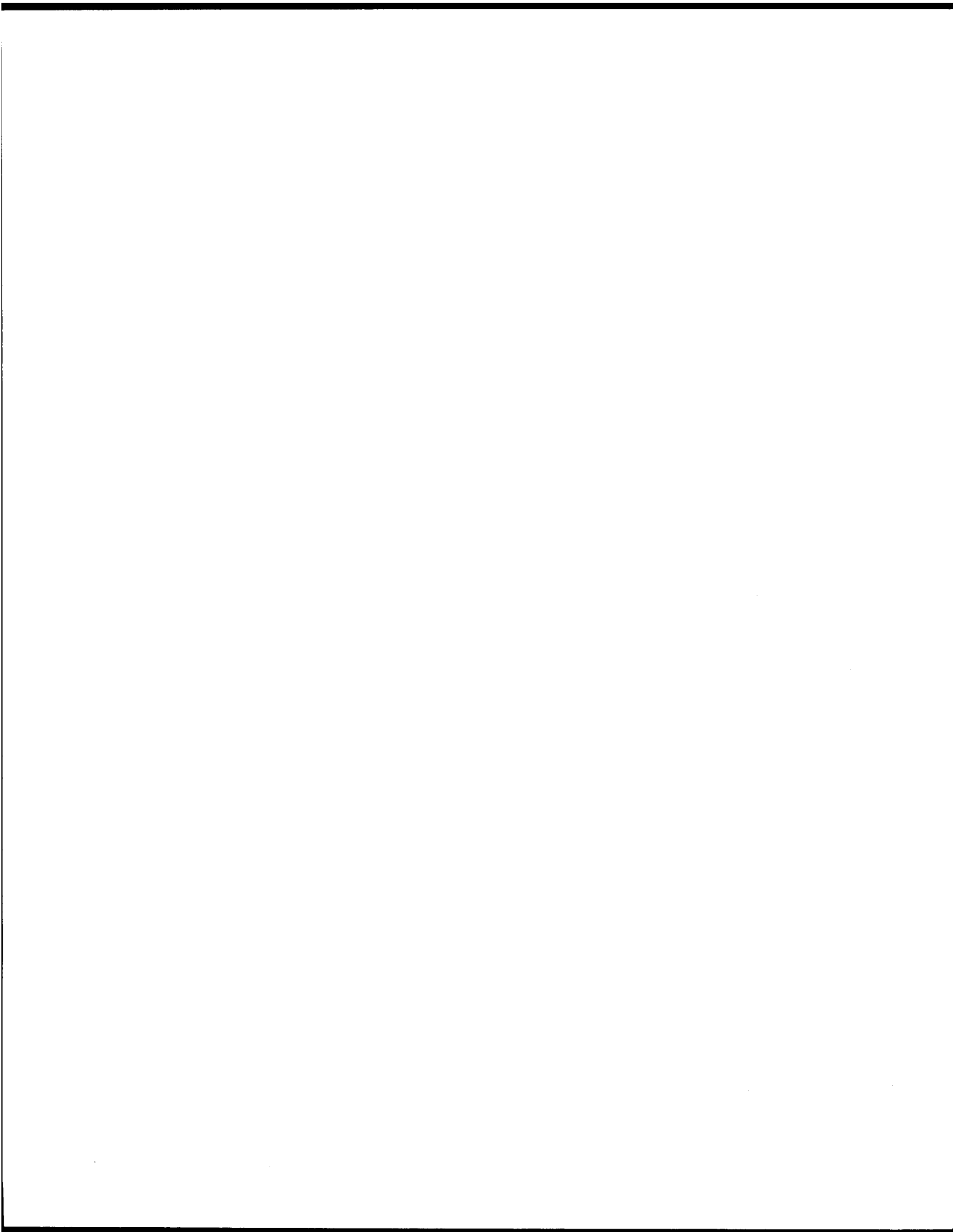


PREPARED BY
OFFICE OF AIR, RAIL & TRANSIT

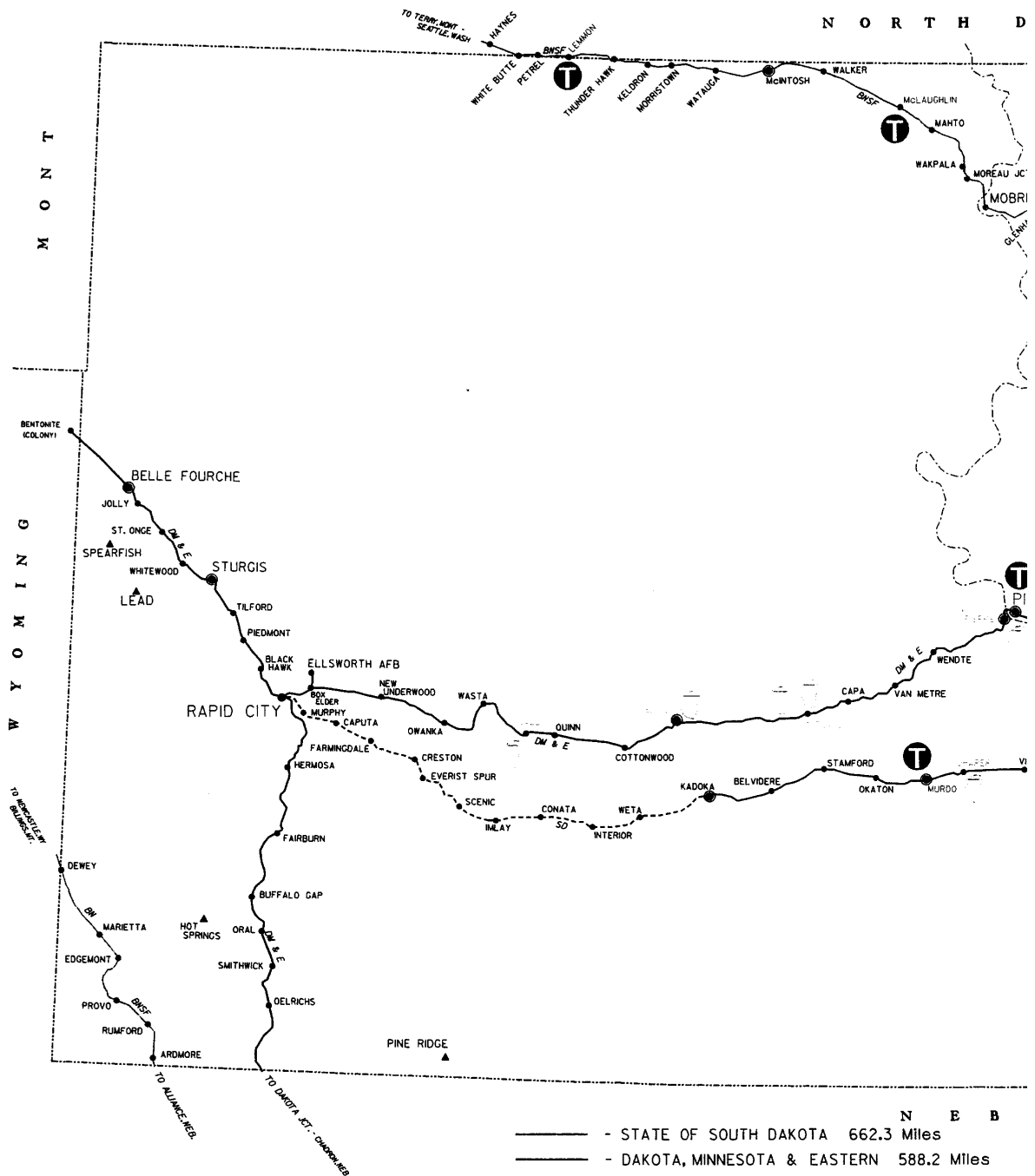
PIERRE, SOUTH DAKOTA 57501

MAY 2004

SIoux CITY, IA.



UNIT TRAIN LOADS



EXISTING 25 OR 27 UNIT TRAIN FACILITIES

EXISTING 54 UNIT TRAIN FACILITIES

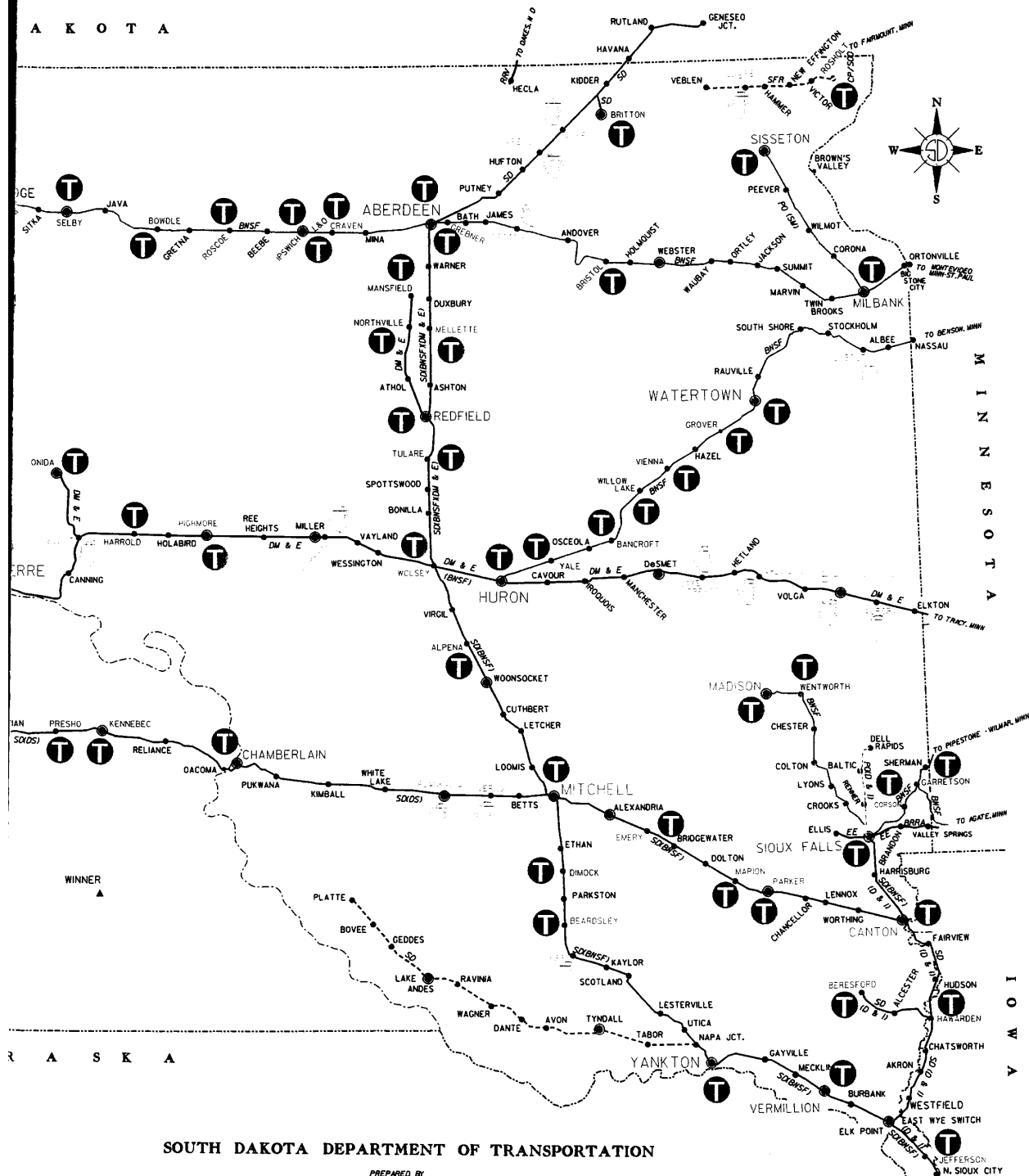
EXISTING 110 CAR SHUTTLE FACILITIES

PROPOSED 110 CAR SHUTTLE FACILITIES

- STATE OF SOUTH DAKOTA 662.3 Miles
- DAKOTA, MINNESOTA & EASTERN 588.2 Miles
- BURLINGTON NORTHERN/SANTA FE 579.3 Miles
- CP/SOO LINE 6 Miles
- D&I RAILROAD 16.8 Miles
- SISSETON/MILBANK RAILROAD 37.1 Miles
- ELLIS & EASTERN 14.5 Miles
- RED RIVER VALLEY 5 Miles
- SUNFLOUR RAILROAD 27.5 Miles

NG FACILITIES - 2003

A K O T A



SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

PREPARED BY

OFFICE OF RAILROADS

PIERRE, SOUTH DAKOTA 57501

JANUARY 15, 2003

SIoux CITY, IA.



Agricultural Transportation Challenges of the 21st Century

Long-Term Trends in Railroad Service and Capacity for U.S. Agriculture

Agricultural
Marketing
Service

November 2000

Marvin Prater
Keith Klindworth¹

Because rail is the only cost-effective transportation mode available to many agricultural shippers who are not located near markets or waterway transportation, long-term trends in railroad service and capacity are critically important to U.S. agriculture. These long-term trends are important because they will define the size of the rail network to which agricultural shippers will have access, the minimum shipment requirements that rail shippers and receivers will have to meet, the amount of intramodal competition that will exist in the industry, and, ultimately, the levels of rail service and capacity that will be available to agricultural shippers and receivers in the 21st century.

In this paper, the long-term trends in railroad services and capacity for U.S. agriculture are identified and described, particularly in terms of what these trends portend for agricultural shippers absent any change in the economically deregulated environment within which the U.S. rail industry has operated during the past 20 years. Before the trends are discussed, however, introductory material on how the U.S. railroad system has evolved over that time will be presented. After the long-term trends are presented, the paper concludes with a brief discussion of the likely long-term implications to U.S. agriculture of these long-term trends in railroad services and capacity.

The Evolution of Railroad Services for U.S. Agriculture

Importance of Rail – Rail and barge transportation are the only cost-effective modes for transporting low-value bulky agricultural commodities such as grains and oilseeds long distances. But, for agricultural shippers located long distances from the marketplace or navigable waterways, rail is typically the only cost-effective transportation alternative. Overall, rail is an important transportation mode in the marketing of grains, oilseeds, and lumber and wood products, as well as for the movement of farm inputs such as fertilizers to rural areas.

¹ Marvin Prater is an economist with the Agricultural Marketing Service, United States Department of Agriculture, Washington, DC. Keith Klindworth, formerly an economist and program manager with the Agricultural Marketing Service, is now chief economist with The Fertilizer Institute.

Each year, the United States produces large quantities of grains and oilseeds whose associated transportation costs are high relative to the value of the commodity being shipped.² While transportation costs vary by mode and origin/destination, the total transportation cost in the delivered price of some grains and oilseeds can exceed 40 percent.³ Because they are such a large part of the cost of marketing agricultural products, transportation costs for agricultural products are a source of constant concern for agricultural producers and shippers. Typically, the highest freight rates paid by agricultural shippers are for rail shipments from relatively remote production regions, particularly where transportation alternatives are limited.

Grain and oilseed shippers in the Upper and Lower Great Plains, for instance, lack cost-effective transportation alternatives to rail and must move their products long distances to domestic markets for processing and consumption or to coastal ports for export. Shippers in these regions do not have direct access to inland waterway transportation, and the distances involved make truck transportation costly. Many of the agricultural shippers in these regions are wheat shippers, and 9 of the 10 top wheat-producing States are more than 150 miles from barge transportation. In fact, from the Plains States, nearly 80 percent of all interstate wheat shipments and more than 90 percent of all export wheat shipments are by rail (Ferguson, 1994).

On average, about 40 percent of grain and oilseeds moved in the United States between 1990 and 1995 were transported by rail (Eriksen, et. al, 1998) (figure 1). However, preliminary data indicate that railroad modal share of domestic grain and oilseed movements decreased sharply to 31.1 percent by 1998, while truck modal share increased to 51.7 percent (figure 1). This sudden shift in market share may be largely a result of rail service problems experienced during 1997 and early 1998. In 1995, railroad share of domestic grain and oilseed movements, where truck is the major competitor, was slightly above 40 percent. For export movements, where barge is the major competitor, rail share was slightly less than 40 percent in 1995 (figures 2 and 3). From 1990 to 1995, rail moved, on average, about one-third of the corn, about two-thirds of the wheat, and about one-quarter of the soybeans in the United States in any year (Eriksen, et. al, 1998)(figure 4). However, preliminary data indicate that rail share decreased to only 25.4 percent of corn, 54.8 percent of wheat, and 19.5 percent of soybean movements by 1998 (figure 4).

² Although production varies by year according to acres planted and weather conditions, the United States generally produces in excess of 300 million metric tons (mmt) of grains and oilseeds each year. In 1999/2000, expectations are that total grain production in the United States will exceed 400 mmt.

³ Burlington Northern Santa Fe Railroad (BNSF) charges about \$1.20 per bushel to ship Hard Red Spring Wheat from North Dakota to Seattle. At a current local price of \$2.27 per bushel, rail transportation costs alone are nearly 53 percent of the crop's on-farm value and more than 31 percent of the delivered price of \$3.86 per bushel (Aasmundstad, 2000; USDA Grain Transportation Report, September 12, 2000). From Kansas City, MO, to Portland, OR, BNSF charges \$1.27 per bushel of Hard Red Winter Wheat. Thus, rail transportation alone is more than 38 percent of the delivered price of \$3.32 per bushel (USDA, Grain Transportation Report, September 12, 2000).

gathering network, originating nearly 20 percent of all U.S. railcar loadings of grain in 1996 (Prater, et al, forthcoming, B).

Some respondents to a recent Delphi survey expect the number of route miles operated by short line and regional railroads to increase by 17 percent by 2010 and for these smaller railroads to maintain their collective market share in the origination of U.S. farm products (Vachal and Bitzan, 2000). Those expecting a decline in route miles operated based their expectations upon doubt that short lines would be able to handle heavier axle-load railcars, the competitiveness of trucks in providing shorter distance grain gathering services, and the continued development of shuttle-train-loading facilities located on Class I lines. Those predicting an increase in route miles operated by short line railroads based their predictions upon expectations of continued rationalization of the Class I railroad network and continued joint marketing ventures with Class I railroads.

The Push to Trainload Operations – The promotion of trainload-size shipments is certain to be a long-term issue for agricultural shippers. Railroad efforts after deregulation to increase productivity and decrease costs is one of the factors resulting in their promotion of unit and shuttle trains through incentive rates and economic development incentives to encourage shippers to build train loading stations.^{19, 20} Since railcars in shuttle-service trains cycle up to 36 times per year, compared to only 15 times per year for railcars in normal service, the use of shuttle trains increases railcar utilization and is extremely attractive to railroads.

Since 1980, railroads have increased the number of railcars handled by 15 percent and the number of ton-miles hauled by 50 percent while decreasing the miles of road operated by nearly 20 percent (AAR, Railroad Facts). One of the ways railroads have been able to handle more cars on a smaller network is with the promotion of unit- and shuttle-train shipping. Gathering individual railcars into larger trains requires substantial switching, which can temporarily block other traffic on a rail line, as well as being time consuming and costly. Unit trains allow railroads to move more freight over the same track since the through lines are not blocked as long by switching activities.

¹⁹ Unit trains are usually 50- to 54-railcar shipments from a single origin to a single destination, but may be as large as 110 railcars. Shuttle-train shipments are defined as multiple 100- to 110-railcar shipments from a single origin to a single destination. Discounts on shuttle trains also vary according to the number of trips contracted—typically 6 to 24 trips in a season. Thus, although all shuttle-train elevators must be able to load 100- to 110-railcar trains, not all elevators capable of loading 100- to 110-railcar trains ship shuttle trains.

²⁰ Changes in the agricultural industry also have encouraged the trend toward unit and shuttle trains, as well as the associated consolidation of grain handling facilities. These factors include investments in local processing plants, increased size of livestock and poultry feeding operations, increased economies of scale for unit- and shuttle-train loading facilities, larger farms, and increased producer ownership of semitrailer trucks which allow the producer to haul longer distances.

Real savings accrue to shuttle-train shippers when they are able to ship 100- to 110-railcar trains and can qualify for multitrip discounts. Using 286,000-pound railcars and getting all the discounts, effective shuttle-train rates on Nebraska corn moving to the Pacific Northwest are 13 cents per bushel less than the corresponding unit-train (54-railcar) rate (Klindworth, 2000). The rate spread between the single-car and unit-train shipment of wheat from Minot, ND, to Portland, OR, narrowed from 23 cents per bushel in 1984 to 12 cents per bushel in the fall of 1997 (Vachal, et al, 1998). Some of these savings are passed back to farmers through higher bid prices but only to the extent necessary to capture the additional grain needed to meet an elevator's unit- or shuttle-train obligations.

Based upon STB's Waybill data, 7 percent of the corn, 5 percent of the soybeans, and 11 percent of the wheat was moved by shuttle trains in 1998. Of all the shuttle-train agricultural shipments in 1998, 84 percent went to export markets—68 percent of soybean, 72 percent of corn, and 99 percent of wheat (Klindworth, 2000). More recently, however, shuttle-train corn operations have expanded to such a degree that currently all corn delivered by rail for West Coast export is delivered by trainload shipments.

Recently, the BNSF railroad has proposed the Scoots program, which is an effort to better compete against trucks for transportation to processing plants. The Scoots program is a variant of the shuttle program designed for domestic processors that are typically unable to handle 100- to 110-railcar shipments. So far, the Scoots program has been proposed primarily for soybeans and corn. Rather than contracting with grain shippers, BNSF would contract with processors (receivers) for a specific number of trips over a 9- to 12-month period for 58-railcar trains.²¹ BNSF has proposed freight rates for the 58-railcar trains at a discount compared to 54-car rates.

The most controversial aspect of the Scoots program is that only elevators handling 100- to 110-railcar shuttle trains will be allowed to participate, excluding unit-train loading stations from participation.²² In addition, as currently proposed, elevators will not be allowed to upgrade their facilities to meet all of BNSF's requirements concerning 58-railcar shipment sizes, loading times, and other terms. Grain elevators that had upgraded their facilities to 52- and 54-railcar loading stations at BNSF's behest believe this to be unfair. Although 52- to 54-railcar loading stations may be allowed to participate in some instances, as the program is currently designed, this will occur only if that elevator is not within the draw territory of a shuttle-train loader. Many of those elevator operators excluded from the Scoots program believe that it allows the railroad to force grain to a given location, thereby giving the railroad the ability to decide which firms survive in the grain business. Thus, in its present form, adversely affected shippers believe Scoots to be anticompetitive.

²¹ Since the Scoots program is still in the formulation stage, the size of shipment has not been decided upon.

²² Since the Scoots program is still in the formulation stage, it may be redesigned to reflect the concerns of all shippers.

Another issue related to unit trains is Class I railroad cancellation of coload privileges when shuttle-train programs are implemented in an area.²³ Although BNSF experimented with forming 108-railcar trains by coload two sets of 54 cars, it believes coload resulted in an uncompetitive cost structure due to a lack of operating efficiency. Railroads argue that coload hampers their operations because it requires additional switches and reinspection of air lines to brakes. Sometimes, the switching process required in coload delays other trains which require use of the same track.

Class I railroads also tend not to allow coload in any instance where it would undermine a customer's investment in unit-train loading facilities. Thus, in addition to denying coload privileges on their own lines, Class I railroads generally deny coload privileges to those shippers served by short line and regional railroads.

Decreasing Importance of the Common Carrier Obligation – Another trend expected to continue is the decreasing importance of the historical common carrier obligation by railroads to provide a minimum level of service to all shippers, large and small, at least as it has historically been applied.

The origin of the common carrier obligation lies in the importance of transportation in connecting producers to markets. Not only is the ability to transport goods important to individual citizens, it affects the collective interests of all by affecting interregional commerce. To satisfy these needs, the common carrier obligation—which requires a carrier to render transportation services without discrimination based upon set rates for specific commodities—evolved under English common law (Coyle, et al, 1994). The common carrier obligation was also a major part of later statutes regulating transportation in the United States.

Even though the common carrier obligation was preserved in the Staggers Act and ICCTA, it is now being applied somewhat differently reflecting the intent of both acts to allow the market system to allocate resources. Carriers now have the ability to price services differentially according to the cost of providing service. For instance, carriers are able to offer incentives for larger shipments and use carlot guarantee systems to allocate railcars. While railroads point to the gains in operating efficiency and return on investment that market-based decision making provides, many shippers express concern over the role that railroads can now play in their competitive access to markets. These shippers note particularly that railroads now have the opportunity to design incentives not universally and uniformly available to all shippers similarly situated. In effect, railroads can now determine which shippers remain competitive.

Continued Transfer of Logistical Costs to Shippers – A further trend affecting agricultural shippers has been the continued transfer of logistical costs to shippers, which previously had been assumed by their rail carrier.

²³ Coload allows two or more shippers to combine their shipments into a single unit train and receive the unit-train price for the shipment.

Data illustrate the increasing significance of other commodities (like coal, automobiles, and chemical traffic) and decreasing significance of agricultural commodities. Intermodal traffic originated by Class I railroads nearly tripled from 3.06 million containers and trailers in 1980 to 8.77 million containers and trailers in 1998. Between 1980 and 1998, coal originated by Class I railroads increased more than 40 percent to 749 million tons, and coal revenues increased 62 percent. Coal traffic accounted for 45 percent of total Class I rail tonnage and 23 percent of total Class I railroad revenue in 1998, as compared to 35 percent of tonnage and less than 18 percent of revenue in 1980. Chemical traffic on Class I railroads increased 30 percent to 141 million tons, and automotive traffic increased 36 percent to 32 million tons over the 1980-1998 period (AAR, Railroad Facts; AAR, Ten-year Trends).

Yet, although the overall tonnage originated by Class I railroads increased more than 10 percent between 1980 and 1998, the tonnage of farm products originated by Class I railroads decreased 17 percent to 129 million tons in 1998. In 1980, farm product tonnage accounted for 10.4 percent of total Class I railroad tons originated and nearly 9 percent of Class I railroad revenues. However, by 1998, farm product tonnage was less than 8 percent of the total tonnage, and farm product revenue was only 7.25 percent of total Class I revenues (AAR, Railroad Facts; AAR, Ten-Year Trends).

Long-term Implications for U.S. Agriculture

This section relates the long-term trends for railroad service to their effects upon agricultural producers. In addition, we speculate on the type of rail service and capacity that might be available to U.S. agriculture in the future, given these trends and a continuation of current regulatory and transportation infrastructure funding policies.

Decreasing Railroad Market Share – A shrinking rural rail network and the decreasing significance of rail to agricultural traffic point to decreasing railroad share of grain movements in the future. Moreover, given that agricultural shipping needs are also trending toward the use of smaller size shipments to protect the identity of specialty grains and of genetically altered commodities and toward shipments to domestic destinations for further processing, U.S. railroads are likely to lose a substantial part of their agricultural traffic to truck. Some of this traffic, such as the shorter distance movements to processing destinations, may be more naturally suited to the cost structure of truck transportation. But rail, in many markets, also offers ways to segregate and economically transport any product for which identity preservation may be required.

Prior to 1985, rail consistently was the dominant transportation mode for grain and oilseeds. In 1980, for instance, rail moved nearly 50 percent of all grain and oilseeds transported. By the early 1990's, however, trucks had become the predominant transportation mode for grain and oilseeds, attaining a market share of nearly 52 percent in 1998. Meanwhile, the rail market share dropped to a low of 31 percent in 1998 (figure 1), in part due to the Western rail service crisis of 1997 and 1998.

Two factors account for this increasing reliance on trucks and the decreasing importance of rail in grain movements: higher levels of domestic processing and off-farm feeding. While U.S. exports

Although many believe that the competitive effects of end-to-end mergers are trivial, such need not be the case. For instance, many economists believe that end-to-end railroad mergers are relatively free of competitive impacts because the number of captive shippers does not increase in purely end-to-end railroad mergers and other forms of competition—such as intermodal, geographic, and product—are assumed to be sufficient to constrain prices.²⁸ Other economists, however, believe that end-to-end mergers allow competitive impacts through the creation of “bottlenecks” and the vertical foreclosure of markets.²⁹ The argument is that vertical foreclosure of markets can be accomplished by the denial of permission for competing railroads to use their track or facilities; the elimination or cancellation of joint-line rates, through routes, and reciprocal switching agreements; and the closing of gateways (Tye, 1991).³⁰ The latter view seems to be supported by recent shipper complaints that past railroad consolidations have resulted in Class I railroads canceling reciprocal switching rights shortly before a planned merger is announced, closing gateways, and refusing to quote rates on newly created bottleneck segments.

Increased Costs to Access Rail Service – Trends in the rationalization of rail infrastructure in the United States since 1980 and the likelihood of further rationalization in the future will likely result in agricultural producers having to truck their products longer distances and incur greater costs to access rail service. Shippers are also likely to face changes in service terms which impose greater responsibility and costs on them simply to ship by rail.

The increased market power derived from railroad consolidations allows Class I railroads to change service terms involving demurrage, railcar supply, and shipment size, which affects agricultural shippers, producers, and rural communities. Examples are increased demurrage penalties and shorter loading windows in recent years. The most recent demurrage rate increases by Union Pacific and BNSF railroads have met stiff opposition from members of the National Grain and Feed Association (NGFA) due to the current soft market for railcars. Since railcars are currently in plentiful supply, NGFA believes that the most current demurrage charge increases are a way of disguising tariff rate increases. NGFA states that “unless railroads enhance their own accountability for timely notice and delivery of equipment, as well as movement of loaded railcars, higher demurrage rates would not be effective in raising performance levels in car and equipment utilization (NGFA Newsletter, October 19, 2000).” Although some of the Class I railroads have made efforts to improve communications with grain shippers, such as through the establishment of

²⁸ As part of its rulemaking on merger guidelines involving major railroad mergers, STB is currently reassessing its assumptions that end-to-end mergers are free of anticompetitive impacts.

²⁹ When two railroads compete for a haul from a single origin to a single destination but the second railroad has to rely on the other railroad for a portion of the haul, a “bottleneck” exists. The railroad able to complete the entire haul on its own line is able to charge the competing railroad an abnormally high price for the portion of the haul that it controls, thereby forcing the entire haul to its own line.

³⁰ **Joint-line rate:** tariff rate over a route involving two or more rail carriers. **Through route:** a route from origin to destination involving more than one rail carrier. **Reciprocal switching agreement:** a railroad gives shippers access to a second rail carrier in return for the second rail carrier giving the first railroad access to some of its shippers. **Gateway:** a major rail interchange point.

“grain desks,” many agricultural shippers still complain that Class I railroad changes in service terms often impose additional “discipline” and costs on shippers without a commensurate increase in responsibilities by the carrier.

The trend toward train loading stations has resulted in increased costs of accessing rail service for most producers due to increased truck transportation costs. Although many producers have a net benefit from train loading stations since the higher prices received for their commodities offset their additional costs for truck transportation, those producers located farthest from train loading stations may have a net loss.

Due to the cost efficiencies of unit- and shuttle-train hauls, Class I railroads offer tariff rate incentives to grain elevators located on their mainlines for upgrading their facilities to train loading stations. However, some grain elevators have considered the risk of building train loading stations substantial in relation to the benefits of these tariff rate incentives. Although shuttle trains result in substantially lower rail tariffs for those elevators capable of loading those trains, the substantial investment required to increase storage and load-out capacity and the higher prices paid to producers to induce them to truck their crops longer distances can offset a large portion of these cost savings.

Class I railroads have shared the cost of constructing some train loading stations through industrial development incentives. Since these industrial development incentives are not universally and uniformly available to all shippers, some shippers have criticized them as being unfairly discriminatory—allowing the railroad to discriminate against some shippers in favor of a few. BNSF’s response to these criticisms is that “BNSF does make industrial development incentives available to customers in an effort to bring new business to our railroad. These incentives generally support facility investments required to shift business from other railroads or other transportation modes, or investments required to develop new non-traditional markets.” (Bobb, September 25, 2000).

Since train loading stations must draw grain from a large area to support the volume required to fill unit and shuttle trains, only a limited number of train loading stations can be supported in a region. Due to variability of crop yield in some regions and the fact that additional truck transportation costs can exceed the gain from higher commodity prices, some train loading stations have been unable to consistently draw enough volume. This is a particular problem to those train loading stations located in the major western wheat growing States, where the yield per acre is closer to 40 bushels than 140 bushels.

Those railroads having dominance over a geographic region, may have an increased ability to induce grain elevators to upgrade to train loading stations due to the lack of competition from nearby grain elevators which are located on competing railroads. In addition, the gathering services of some short line railroads become less critical to the success of Class I railroads having dominance over a geographic region. This could result in the loss of branch-line rail service.

Finally, agricultural producers and local taxpayers bear the increased costs of additional truck transportation and transshipment costs due to loss of local rail service and longer truck hauls to

train-load shipping stations. Producers more distant from unit-train loading facilities not only must incur the cost of transporting their crops longer distances by truck, but also must consider the cost of longer trip times during harvest, which reduces the availability of each truck to haul more loads. Taxpayers are impacted by the costs of additional semitrailer truck damage to rural roads.

The abandonment of rail lines and the increased use of shuttle trains are resulting in increased road maintenance costs in rural areas because of increased heavy truck traffic. Although the user fees (fuel taxes, registration and license fees, etc.) assessed on heavy trucks appear at first glance to be adequate, the damage to roads increases exponentially, rather than linearly, with increased weight. For example, the 1997 Federal Highway Cost Allocation Study concluded that user fees collected from 5-axle tractor-semitrailer trucks registered at 80,000 pounds pay for only 90 percent of the costs they impose upon the Federal Highway System, and heavier trucks pay only 60 percent of the costs they impose (U.S. Department of Transportation, 1998). However, since Federal-aid highways comprise only about 25 percent of the total road infrastructure, they do not include most of the rural road system used by these heavier trucks. Because heavy truck traffic does much more damage to rural roads—which were not designed for such traffic—it is likely that those user fees pay for only 60 to 67 percent of the costs tractor-semitrailer trucks impose upon the entire highway and road system.³¹

The increased road damage caused by the loss of rail service and shuttle-train shipments also affects rural counties much more than urban counties since they have fewer residents to pay for the increased road damages. When Ottawa County, KS, which has a population of only 6,000, lost rail service, the county's annual road maintenance bill increased from just more than \$1 million to nearly \$7 million (Baccus, 2000). Similarly, it will cost Harper County, KS, which has a population of 6,400, \$27 million to rebuild the county's roads and bridges to a standard that will withstand the increased truck traffic caused by the loss of rail service in 1997 (Griekspoor, 2000). Due to the high costs of maintaining light-duty asphalt roads, rural counties facing such large-scale diversions of rail grain to trucks will likely be forced to allow many roads to revert to gravel.

In fairness to the Class I railroads, it appears that unequal public promotion of transportation modes is contributing to the divergence between what is good for the individual and the overall public good. Although rail firms are privately owned and financed, the competing transportation modes of truck and barge operate on publicly financed infrastructure and do not pay the full costs of their use. Thus, the cost of transporting freight on those modes is artificially low compared to rail, giving shippers an incentive to use the subsidized modes of transportation.

Fewer Shipper Options – Deregulation, combined with increased railroad market power, has also resulted in fewer shipping options for agricultural producers. This is due to Class I railroad restrictions on shipment routing and access to the rail network as well as differential service given to captive shippers. In addition, consolidation taking place in the grain-handling network—

³¹ The damage a loaded semitrailer truck does to a major rural collector highway is 13.5 times the amount of damage the same truck does to a rural interstate highway and, on minor collector highways, the same truck does 21 times the amount of damage (Tolliver, 1998).

influenced, among other things, by Class I railroad incentives to ship in unit- and shuttle-train lots—has also led to fewer shipper options.

Recent railroad mergers have had a mixed effect upon the number of shipping options available to agricultural producers. Although recent mergers have given shippers access to markets that could not be economically accessed before and have preserved rail service that otherwise may have been lost, these mergers have also given railroads greater market power and the ability to influence shipper decisions.

Prior to the Staggers Act, shippers were allowed to specify the routing for their shipments and were guaranteed nondiscriminatory rail service. The enactment of the Staggers Act gave railroads much more freedom to close gateways, route traffic as they chose, abandon excess rail lines, apportion rail services among competing users, and price rail services at market levels. Railroads used these newly gained operating freedoms to reduce costs and increase the efficiency of the rail network. Because railroads were no longer required to quote tariffs between any two stations, tariffs for many of the less efficient shorter hauls were eliminated as quickly as competitive conditions allowed. Railroads also had more freedom to price longer distance movements more competitively than shorter movements, thus encouraging longer hauls which capitalize on rail's long-distance cost advantage over trucks as well as increasing the efficiency of the rail network. In addition, to attain greater efficiency, railroads offered tariff incentives that encouraged consolidation of shipping to fewer shippers, each shipper handling a greater volume.

Class I railroads also began to use various methods to encourage traffic to move on their own lines—rather than on those of competing railroads—and to those destinations on their own lines. Examples of this include noncompetitive bottleneck rates, elimination of coloadng privileges for unit trains, and quoting less competitive tariff rates to off-line destinations. Also, Class I railroads began to limit access to the rail network itself by canceling reciprocal switching agreements (especially prior to planned but unannounced rail mergers), closing gateways to competing railroads, and canceling joint-line rates with connecting railroads. All of these tactical competitive decisions seem to place the benefits of the individual railroad above that of the network itself and that of the shippers.

The consolidation of grain-loading stations has also limited shipping options for agricultural producers. As the number of grain-loading stations decrease, agricultural producers have fewer options as to where to sell their commodities. Thus, this consolidation also results in less competition for the purchase of commodities produced by the growers.

When the demand for rail service exceeds supply—as is often the case with seasonally transported commodities—Class I railroads have shown a tendency to serve first those shippers having viable transportation alternatives to avoid losing that business. Typically, once those shippers having other transportation alternatives are served, railroads then serve captive shippers. This is a difficult situation to resolve since the loss of that competitive traffic also would result in the loss of the contribution that traffic makes toward total rail system costs. Thus, although paying the highest rates, captive shippers also tend to receive the worst service (Christianson, 1998). In effect, captive shippers are put at a competitive disadvantage in accessing markets. This is

particularly harmful to producers in those regions since the demand for rail service is highest during those periods when grain and oilseed prices are rising.

Thus, the net results for many agricultural shippers have been fewer shipping options, fewer marketing choices, and increased transportation costs. When agricultural producers are restricted in their access to markets, they are unable to obtain the best prices for their products and often are unable to sell when prices are highest.

An Uncertain Future for Small Railroads – Many of the trends previously cited suggest an uncertain future for the many small railroads that have provided rail service to rural areas in lieu of abandonment of service by a Class I railroad.

Yet, due to a customer focus and lower costs, America's small railroads have built a remarkable record of success in recent years (Saylor, 1999). Since 1980, these short line and regional railroads have preserved access to rail service on more than 29,000 route miles of rail line that otherwise would have been abandoned (Prater, et al, forthcoming, B). These small railroads link rural communities with the core railroad system, allowing those rural communities to retain their employment bases and compete for new industry.

As discussed earlier, short line and regional railroads provide an important gathering function for producers of grain and oilseed crops. Should these short line railroads be lost, agricultural producers would lose vital rail connections to markets and would have to ship by more expensive transportation modes. Since grain transportation costs ultimately come out of farmers' pockets, the loss of short line railroads would result in decreased community income and smaller municipal budgets. In addition, the diversion of rail traffic to truck—one railcar can haul up to four truck loads—dramatically affects road maintenance costs. Certainly, no one would argue that all smaller railroads should be saved. In some cases, the costs of preserving these railroads would exceed the costs experienced due to their loss. However, agricultural producers and communities should thoroughly weigh the costs that the loss of smaller railroads will place upon them.

Numerous studies have shown that the viability of railroads is critically dependent upon freight traffic density (Dooley 1991; Due, 1987; Sidhu, et. al., 1977; Prater, 1997; and Wolfe, 1989). Thus, any factor that threatens the traffic base of short line railroads also threatens their viability. Although short line railroads face numerous threats to their survival, their survival is particularly jeopardized by two recent trends: the shift to 286,000-pound railcars and restrictions against coloadings of unit trains.

Much of the rural rail network was built when typical carload weights were only 100,000 pounds; today these lines are handling 263,000-pound railcars at greatly reduced speeds. In addition, much of the track operated by short line railroads was in poor condition when these lines were purchased from Class I railroads and typically was constructed using much lighter rail weights. Although much of the track operated by short line railroads has been improved since its purchase, short line railroads have been unable to make major improvements in the condition of many lines because of low freight traffic densities and profitability. Thus, much of the short line and regional

railroad network is unable to handle the larger 286,000-pound railcars. Many of the bridges on these lines will also need to be upgraded to handle the additional weight.

Since the upgrading of track and bridges is expensive, the trend toward heavier axle-load railcars has the potential to affect the lower traffic-density short line railroads much more than it does the Class I railroads, particularly those lines serving rural agricultural regions. The estimated cost to the short line railroad industry of upgrading track and bridges to handle 286,000-pound railcars is nearly \$7 billion (Zeta-Tech, 2000). The revenue small railroads receive from handling heavier railcars is not sufficient to pay for the upgrade in most cases. With only \$3 billion in revenue for nearly 50,000 route miles, the short line and regional railroads average only about \$60,000 per track mile in annual revenue, compared with an average of \$269,000 per mile for Class I railroads in the United States (Zeta-Tech, 2000). Nevertheless, they must maintain a physical plant capable of handling the heaviest freight cars allowed in interchange on North American railroads.

The heavier axle-load railcars force a choice between rebuilding rail lines or further network shrinkage since a dual-weight standard for rail lines cannot survive. Thus, if not upgraded to handle heavier axle-load railcars, lighter duty rural feeder lines will disappear, and the communities they serve will lose the economic benefits of continued rail service on those lines.

Thus, short line railroads serving rural areas must quickly find massive amounts of funding with which to upgrade track and bridges to handle heavier axle-load freight cars that shippers and large railroads are bringing on line (Saylor, 1999). Internally generated funds and conventional lending sources are insufficient for small railroads to meet this challenge. Due to the huge investment required, both State and Federal Governments, as well as short line railroads, may need to cooperate to develop funding for these track improvement projects. An important public policy issue is whether Federal assistance should be provided to stabilize the remaining rural rail infrastructure, given that truck competitors operate over publicly financed highways and the loss of rail service to rural communities will result in greatly increased highway maintenance costs.

The viability of short line railroads is also threatened by the refusal of Class I railroads to allow short lines to coload unit trains and provide multiple switching services. The denial of coload to elevators on short line railroads does not appear to be cost based since there is no cost difference between accepting a unit train from an elevator on its own line or from a short line railroad as long as time limitations and other conditions are met.

Conclusion

This paper has identified trends in railroad service and capacity for U.S. agriculture over the past 20 years and described what these trends portend for future rail service and capacity for U.S. agriculture absent any changes in the regulatory environment within which railroads currently operate. This paper has made scant reference to the successful aspects of the railroad deregulation that occurred with the Staggers Rail of 1980; the U.S. rail industry is now, for the most part, on sound financial footing, and the industry has responded to the incentives of deregulation and greatly reduced costs.

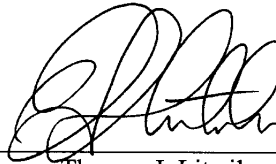
CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2005, a copy of the foregoing
Comments and Request for Conditions of the State of South Dakota was served by electronic
mail and overnight delivery upon:

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