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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34685

D & I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

ENTERED
Office of Proceedings

MAR 31 2005

Part of
Public Record

Jack Parliament
President
D & I Railroad Company
P. O. Box 5829
Sioux Falls, SD 57117-5829
(605) 334-5000

FOR D&I RAILROAD COMPANY

Dated: March 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34685

D & I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

D&I Railroad Company ("D&I"), a Class III common carrier by rail, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of certain non-exclusive trackage rights over a line of railroad owned and operated by BNSF Railway Company ("BNSF"). The trackage is located in Sioux Falls, South Dakota between milepost 145.91 and milepost 145.45 on BNSF's Corson Subdivision as well as between milepost 0.0 and milepost 1.09 on BNSF's Madison Subdivision, a total distance of approximately 1.55 miles, as shown on the map attached hereto as Exhibit 1. The trackage rights will be perpetual in nature.

These trackage rights will provide D&I with an alternate route in lieu of trackage that is being removed in Sioux Falls, in connection with a re-development project by the City of Sioux Falls. D&I and BNSF had previously filed a notice to terminate their operating authority over this latter portion of track in Burlington Northern Railroad Company -- Operations -- In States of Iowa and South Dakota, Finance Docket No. 29672 (Notice filed on June 16, 2004) and D&I Railroad Company -- Termination of Modified Certificate and Notice of Interim Trail Use, Finance Docket No. 29910 (Sub-No. 1) (Decision served on October 6, 2004).

The trackage rights grant herein is provided pursuant to Supplemental Agreement Nos. 1 and No. 2, dated December 15, 2000 and October 6, 2003, respectively, between BNSF and D&I, which are supplements to a trackage rights agreement dated September 4, 1986.

The utilization of these trackage rights is based on a written agreement and is not filed or sought in responsive applications in a rail consolidation proceeding.

In accordance with the requirements of 49 C.F.R. §1180.4(g), D&I submits the following information:

Description of Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

BNSF has granted trackage rights to D&I in Sioux Falls, South Dakota between milepost 145.91 and milepost 145.45 as well as between milepost 0.0 and milepost 1.09, a total distance of approximately 1.55 miles. The term of the trackage rights will be perpetual. D&I will operate its own trains with its own crews over the aforementioned trackage.

The full name and address of the applicant carrier herein is as follows:

D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117

The full name and address of the granting carrier herein is as follows:

BNSF Railway Company
2650 Lou Menk Drive, 2nd Floor
P.O. Box 961057
Fort Worth, Texas 76161-0057
(817) 352-1000

Any questions concerning this Notice should be directed to D&I's representative at the following address:

Jack Parliament, President
D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117
(605) 334-5000

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Consummation of the transaction will occur on or after April 7, 2005.

Purpose Sought To Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will provide D&I with an alternate route to replace trackage being removed in connection with a re-development project in the City of Sioux Falls.

States In Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

D&I owns or operates rail property in the States of South Dakota and Iowa. The trackage involved in this trackage rights transaction is located in the State of South Dakota.

Map – Exhibit 1: 49 C.F.R. § 1180.6(a)(6).

A map of the rail lines over which D&I proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement – Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

Copies of Supplemental Agreement Nos. 1 and 2, designated as Exhibit 2, are attached hereto.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

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

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), respectively, the proposed acquisition of trackage rights by D&I is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights by D&I is exempt from historic preservation reporting requirements.

Respectfully submitted,

By: 

Jack Parliament

President

D&I Railroad Company

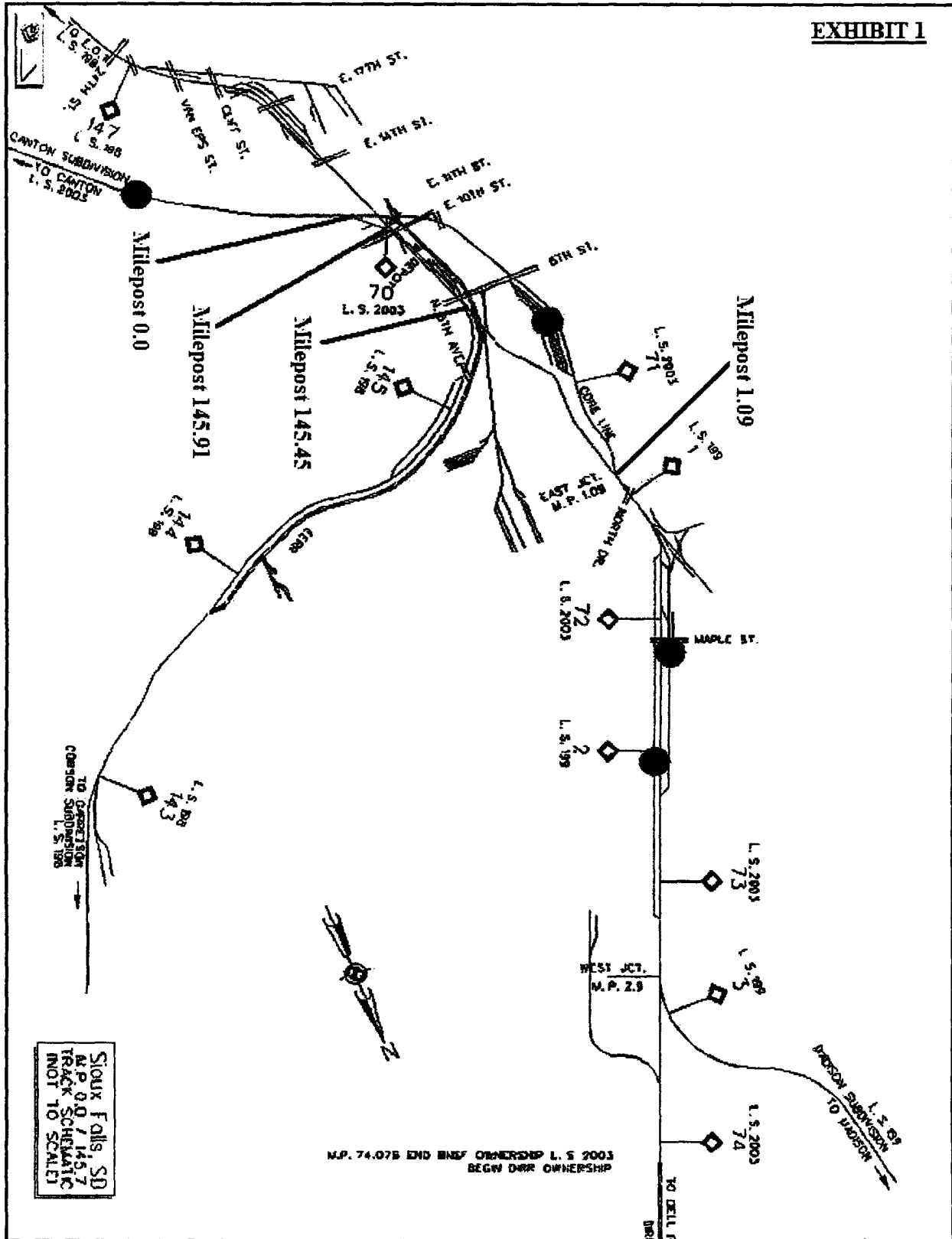
P.O. Box 5829

Sioux Falls, South Dakota 57117

(605) 334-5000

Dated: March 29, 2005

EXHIBIT 1



Supplement No. 1 to the Transportation and Switching
Agreement Between
BNSF and DAKOTA & IOWA RAILROAD

COPY

SUPPLEMENTAL AGREEMENT NO. 1 made and entered into this 15TH day of December, 2000, by, and between THE BURLINGTON NORTHERN and SANTA FE RAILWAY COMPANY, a Delaware Corporation, hereinafter called "BNSF" and the DAKOTA & IOWA RAILROAD, a South Dakota Corporation, herein after called "D&I"

RECITALS:

CONFIDENTIAL

1. BNSF's predecessor the BURLINGTON NORTHERN RAILROAD COMPANY entered into a Transportation and Switching Agreement dated September 4th, 1986, as amended, hereinafter called "Basic Agreement" granting D&I trackage rights over BNSF's main line between Sioux Falls, South Dakota, MP 74.1 and Canton, South Dakota MP 49.9 and between Elk Point, South Dakota, MP 533.4 to Sioux City, Iowa MP 512.6.
2. D&I has requested from BNSF, and BNSF has agreed to grant Perpetual Trackage Rights limited to the BNSF's main between Sioux Falls, South Dakota, MP 74.1 and Canton, South Dakota MP 49.9 and between Elk Point, South Dakota, MP 533.4 to Sioux City, Iowa MP 512.6.

NOW, THEREFORE, The parties now desire to amend and modify the Basic Agreement covering BNSF granting of Perpetual Trackage Rights and BNSF assigning a fixed cost to the D&I for the normal maintenance of way expenses between 2001 and 2008 on the joint trackage operation under the following terms and conditions:

1. Grant of Perpetual Rights. The first sentence contained in Section 1.1 of the Basic Agreement shall hereby be amended by the deletion of the phrase "Northern grants to D&I the nonexclusive trackage rights to use the Joint Trackage" and substituting therefore the following phrase.

'Northern grants to D&I the perpetual, nonexclusive trackage rights to use the Joint Trackage'.

2. Compensation and Billing. The first full paragraph of Section 3.1 and all of Subsection 3.1(a) of the Basic Agreement are hereby deleted in their entirety and replaced with the following:

"3.1 For the rights and privileges granted herein, D&I shall pay to BNSF the flat rate annual sum (hereinafter the "Base Rate") as follows:

<u>YEAR</u>	<u>BASE RATE</u>
2001	D&I maintenance expense will be \$12,900
2002	D&I maintenance expense will be \$15,000
2003	D&I maintenance expense will be \$ 30,000
2004	D&I maintenance expense will be \$ 50,000
2005	D&I maintenance expense will be \$ 85,000

Beginning in the year 2006 and each year thereafter, the Base Rate shall be \$125,000. The Base Rate shall be paid to BNSF on or before the 1st day of September of each year (the "Payment Date"). The Base Rate shall be adjusted July 1 of each year, beginning July 1, 2007, by the percentage of change in the Association of American Railroads Railroad Cost Recovery Index, Series RCR (1977-100), Table A-1, for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel) for the year 2005, which shall be used as the "base year" to the calendar year immediately prior to the year in which the change is to be made effective. Thus, the percentage change from the year 2005 to the year 2006 will be used to adjust the Base Rate as of July 1, 2007. In no event shall any adjusted rate be less than the Base Rate.

3.1a The Base Rate shall be for the purpose of D&I assisting BNSF in BNSF's payment of real estate taxes, normalized, ordinary maintenance and operating expenses concerning the Joint Trackage.

Normalized, ordinary maintenance shall not include the following extraordinary expenses. D&I agrees to pay for its portion of the extraordinary expenses based upon a usage rate devised from the percentage of the total gross ton miles utilized over the prior (12) month period.

1. Personal injury or other liability expenses.
2. Large replacement of facilities or renewals or replacements as covered by work orders (AFE's) including retirement losses or expenses associated with ACTS OF GOD.
3. Work performed for the purposes of preventing or repairing washouts.
4. Contract work performed by outside firms other than the usual repair work which may be required.

The foregoing shall be collectively designated as "Capital Projects".

3.1b D&I agrees to pay for its proportion of all future Capital Projects *based upon a usage rate devised from the percentage of the total gross ton miles utilized over the prior (12) month period. The end of the monthly reporting period prior to the commencement of the AFE project shall be considered the date from which the gross ton count for the 12 month period shall be calculated.* D&I shall furnish monthly the Gross Ton Miles for their trains operating over the Joint Trackage. The statement shall include Date, Train ID, and gross tons moved including locomotive power.

3. Liability. The last sentence of Section 4.3 of the Basic Agreement shall be amended by the deletion of *the phrase "shall be shared between the parties hereto on a use proportion basis the month in which the incident occurred or was discovered."* and substituting therefore the following phrase: "shall be shared between the parties hereto based on a use proportion basis for the twelve (12) month period prior to the date of the incident or of the discovery."

4. Confirmation of Basic Agreement The parties hereby confirm, by their execution and delivery hereof, that the Basic Agreement as amended hereby remains in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized representatives to sign and deliver this Amendment No. 1 to the Transportation Agreement as of the date first written above.

THE BURLINGTON NORTHERN
and SANTA FE RAILWAY

DAKOTA & IOWA RAILROAD

By: _____

By: _____

Title: _____

Title: _____

CONFIDENTIAL

COPY

**Supplement No. 2 to the Transportation and Switching
Agreement Between BNSF and D & I RAILROAD CO.**

SUPPLEMENTAL AGREEMENT NO. 2 made and entered into this 6th day of October, 2003, by, and between **THE BURLINGTON NORTHERN and SANTA FE RAILWAY COMPANY**, a Delaware Corporation, hereinafter called "**BNSF**" and the **D & I RAILROAD CO.**, a South Dakota Corporation, hereinafter called "**D&I**"

RECITALS:

1. BNSF and D&I are parties to a Transportation and Switching Agreement dated September 4th, 1986, as amended, ("Basic Agreement") granting D&I trackage rights over BNSF's main line between Sioux Falls, South Dakota, MP 74.1 and Canton, South Dakota MP 49.9 and between Elk Point, South Dakota, MP 533.4 and Sioux City, Iowa MP 512.6.
2. The City of Sioux Falls, SD, the State of South Dakota, and BNSF are parties to an Agreement dated as of September 11, 2003 covering a track re-location project referred to as the South Dakota, BNSF, City of Sioux Falls - Rail Relocation - Phillips to the Falls, Phase 1 Project ("Project") which includes building two (2) sidings ("Benson Sidings") and Water Works Wye Track between MP 71.5 and MP 74.1 and which necessitates the removal of track between the Eleventh Street underpass, MP 70.1 and East Junction, MP 71.5 in Sioux Falls, SD in which D&I has been granted trackage rights.

NOW, THEREFORE, The parties now desire to amend and modify the Basic Agreement to grant D&I an alternate route through Sioux Falls, SD as well as provide for alternate interchange locations in Sioux Falls, SD as follows:

1. BNSF grants D&I trackage rights over its solely owned track in Sioux Falls, SD between MP 145.91 and MP 145.45 on BNSF's Corson Sub-Division, and between MP 0.0 and MP 1.09 on BNSF's Madison Sub-Division as an alternate route (hereinafter referred to as the "Bridge Line") to be used only upon the removal of track in Sioux Falls, SD between the Eleventh Street underpass, MP 70.1 and East Junction, MP 71.5. The trackage rights granted herein shall not become effective unless and until BNSF obtains final authority to abandon the track.
2. D&I shall not be required to pay for any extraordinary expenses as listed in Section 3.1a (2), namely, "Large replacement of facilities or replacements as covered by work orders or Authorizations for Expenditures"; that are being undertaken in connection with the Project between BNSF MP 71.5 (East Jct.)

and BNSF MP 73.4 (West Jct.), including the Benson Sidings and Water Works Wye Track and any future phases of the Sioux Falls, SD Rail Relocation Project.

3. D&I shall have the right to use BNSF's 5000 foot Benson Siding, for the express purpose of delivering to and/or receiving from BNSF all general commodity and aggregate (STCC 14412-series, 14919-series, 14219-series and 14413-series) carloads at Sioux Falls, SD. The 5000 foot Benson Siding is intended to replace the so called Sears Tracks, and the former Milwaukee 6th Street Yard at Sioux Falls, SD which are provided for the use of interchange in Section 1.2 of the original Basic Agreement. BNSF's local operating officer may designate from time to time other trackage for the purpose of interchange, allowing D&I to reach such trackage as may be necessary. The 5000 foot Benson Siding, or other tracks as the case may be, will be considered "Joint Trackage" when used for interchange purposes pursuant to the Agreement. It is understood and agreed that the 5000 foot Benson Siding or any other track so designated for interchange may be used by BNSF for other purposes so long as it does not unreasonably interfere with the interchange provided for herein, and this Agreement does not vest any right of ownership to D&I in any trackage.
4. The management and operation of the Joint Trackage, including the Bridge Line, the 8000 foot Benson Siding, the 5000 foot Benson Siding and any other alternate interchange tracks shall be under the exclusive direction and control of BNSF and shall be reasonable, just, and fair between all parties using the same, and shall not unjustly discriminate against any of them. Notwithstanding D&I's access to the Benson Sidings as appurtenances to the Joint Trackage as well as interchange purposes, the parties acknowledge that the 8000 foot Benson Siding is intended as a staging area for BNSF trains and is meant to be used in a manner that will preclude BNSF from storing its trains on the main line
5. All provisions of this Supplement are contingent upon and shall be effective upon the execution of the Project which includes BNSF obtaining final approval to abandon the track being removed in Sioux Falls, SD.
6. D&I shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by D&I thereunder. BNSF, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. D&I and BNSF agree to cooperate fully to procure all such necessary consent, approval, or authority.

Except as otherwise stated herein, the "Bridge Line" the 8000 foot and 5000 foot Benson Sidings and any other alternate interchange tracks provided for above, will be subject to all terms and conditions of the Basic Agreement, as amended. All other terms and conditions of the Basic Agreement, as amended, will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Basic Agreement to be duly executed as provided above.

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

By: J. B. Valentine

Printed: J. B. VALENTINE

Title: AVP CONTRACTS & JOINT FEE

Date: 10/01/2003

D & I RAILROAD COMPANY

By: [Signature]

Printed: Jack Parliament

Title: President / Gen. mgr.

Date: 10-6-03

EXHIBIT 3
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34685

D & I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

BNSF Railway Company ("BNSF") has agreed to grant certain non-exclusive trackage rights to D&I Railroad Company ("D&I") in Sioux Falls, South Dakota between milepost 145.91 and milepost 145.45 on BNSF's Corson Subdivision as well as between milepost 0.0 and milepost 1.09 on BNSF's Madison Subdivision, a total distance of approximately 1.55 miles. The term of the trackage rights will be perpetual.

The trackage rights will be effective on April 7, 2005.

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

Dated: _____, 2005

By the Board

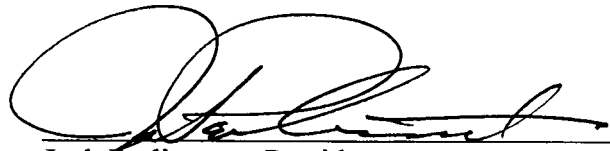
Vernon A. Williams

Secretary

VERIFICATION

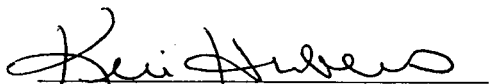
STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF MINNEHAHA)

Jack Parliament, being duly sworn, deposes and says that he is President of D&I Railroad Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Jack Parliament, President
D&I Railroad Company

SUBSCRIBED AND SWORN TO
before me this 29 day
of March, 2005.



Notary Public
My Commission expires: 11-18-05