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APR 14 2005

**SURFACE
TRANSPORTATION BOARD**

KARL MORELL
OF COUNSEL

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

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APR 14 2005

TRANSPORTATION BOARD

kmorell@bjllp.com

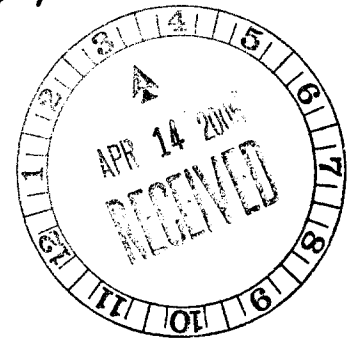
213771
April 14, 2005

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

ENTERED
Office of Proceedings

Part of
Public Record



**RE: Finance Docket No. 34693, Kaw River Railroad, Inc. -- Lease
Exemption -- BNSF Railway Company**

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.41 and a check covering the \$1,500.00 filing fee. Also enclosed is a 3.5-inch diskette containing the Notice and Summary.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell
Karl Morell

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34693

KAW RIVER RAILROAD, INC.
--LEASE EXEMPTION--
BNSF RAILWAY COMPANY



VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

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Washington, D.C. 20005
(202) 638-3307

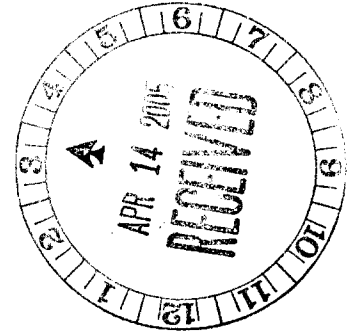
Attorney for:
KAW RIVER RAILROAD, INC.

Dated: April 14, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34693

KAW RIVER RAILROAD, INC.
--LEASE EXEMPTION--
BNSF RAILWAY COMPANY



VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

The Kaw River Railroad, Inc. ("KRR"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit KRR to lease from BNSF Railway Company ("BNSF") approximately 15.69 miles of rail lines in Missouri. As part of this transaction, KRR will also acquire incidental trackage rights over rail lines owned by BNSF.

In support of this Notice of Exemption, KRR submits the following information as required by 49 C.F.R. § 1150.43:

- (a) Full name and address of applicant:

Kaw River Railroad, Inc.
315 West 3rd Street
Pittsburg, KS 66762

(b) Applicant's Representative:

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(c) Statement of Agreement:

KRR will shortly enter into an agreement with BNSF for the lease of the rail lines and acquisition of the incidental trackage rights.

(d) The operator of the property:

KRR will become the operator of the lines being leased.

(e) Summary of proposed transaction:

(1) The name and address of the railroad transferring the subject property is:

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

(2) KRR's lease of the rail lines is expected to be consummated on or shortly after April 21, 2005.

(3) The rail lines being leased by KRR are located: (1) between milepost 215.55, near Birmingham, Missouri, and milepost 199.86, at Kearney, Missouri; and (2) in BNSF's Birmingham Yard, including Track Numbers 1501, 1502, 1503, 1504, 1547, 1555, 1550, 9956, 1560 and 9955 and the ladder track located between Track Numbers 1504 and 1599. In conjunction with the lease of these rail lines, KRR will acquire incidental

overhead trackage rights: (1) over the portion of Track Number 1599 in BNSF's Birmingham Yard located between milepost 216.76 and milepost 216.18 on BNSF's Kearney Subdivision; and (2) between milepost 216.18 and milepost 215.55, near Birmingham, MO.

- (4) The length of the lines being leased is approximately 15.69 miles, not including the lines in BNSF's Birmingham Yard. The length of the incidental trackage rights being acquired is approximately 1.21 miles.

(f) A map of the rail lines being leased and the incidental trackage rights being acquired is attached as Exhibit A.

(g) KRR hereby certifies that KRR's projected revenues as a result of this transaction will not result in KRR becoming a Class II or Class I rail carrier. KRR further certifies that its projected annual revenues from operation of the leased lines, when combined with KRR's projected annual revenue, will not exceed \$5 million. Accordingly, the requirements of 49 C.F.R. § 1150.42(e) do not apply to this transaction.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

ENVIRONMENTAL AND HISTORIC IMPACTS

KRR is leasing the rail lines from BNSF for continued rail operations. Further Board approval is required for KRR to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

KRR's lease will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50

carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. KRR's lease of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karl Morell", is written over a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

Suite 225

1455 F Street, N.W.

Washington, DC 20005

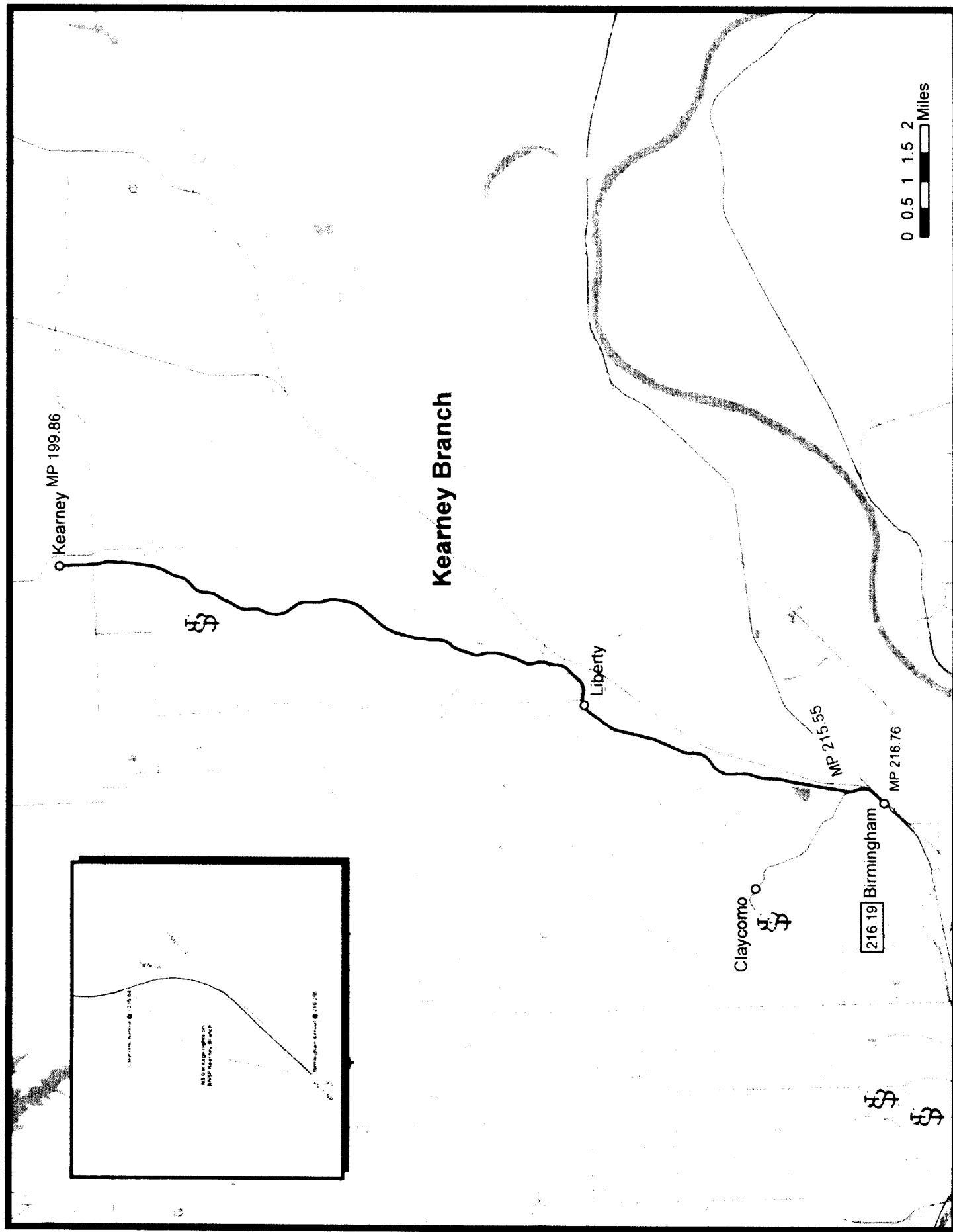
(202) 638-3307

Attorney for:

KAW RIVER RAILROAD, INC.

Dated: April 14, 2005

EXHIBIT A



SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34693

KAW RIVER RAILROAD, INC.
--LEASE EXEMPTION--
BNSF RAILWAY COMPANY

Kaw River Railroad, Inc. (KRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease approximately 15.69 miles of rail lines owned by BNSF Railway Company (BNSF). The lines being leased are located: (1) between milepost 215.55, near Birmingham, Missouri, and milepost 199.86, at Kearney, Missouri; and (2) in BNSF's Birmingham Yard, including Track Numbers 1501, 1502, 1503, 1504, 1547, 1555, 1550, 9956, 1560 and 9955 and the ladder track located between Track Numbers 1504 and 1599. In conjunction with the lease of these rail lines, KRR will acquire incidental overhead trackage rights: (1) over the portion of Track Number 1599 in BNSF's Birmingham Yard located between milepost 216.76 and milepost 216.18 on BNSF's Kearney Subdivision; and (2) between milepost 216.18 and milepost 215.55, near Birmingham, MO.

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION

STATE OF KANSAS)
)
) SS.
COUNTY OF CRAWFORD)

I, Arthur E. McKechnie, III, being duly sworn depose and state that I am Assistant Secretary of Kaw River Railroad, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate to the best of my knowledge, information, and belief.

Arthur E. McKechnie, III

SUBSCRIBED AND SWORN TO before me this 13th day of April, 2005, in the County of Crawford, State of Kansas.

My Commission Expires: 11-12-08

Jameela Haroon
Notary Public