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November 29, 2005

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VIA HAND-DELIVERY

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

Re: **Finance Docket No. 34125 (Sub-No. 1)**
South Dakota Railroad Authority –
Operation Modification Exemption -- BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)**, of South Dakota Department of Transportation, successor-in-interest to the South Dakota Railroad Authority, dated November 29, 2005. A disk containing the Caption Summary is enclosed. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

I have included an extra copy of this transmittal letter and would request that you date-stamp this to show receipt of this filing and return it to me in the envelope provided.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

FILED
NOV 29 2005

Michael J. Barron, Jr.
Michael J. Barron, Jr.

FILE RECEIVED

MJB: arw

Enclosures.

cc: Adrian L. Steel, Jr., Esq.

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
NOV 30 2005
Part of
Public Record

NOV 29 2005
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOV 29 2005
RECEIVED

FINANCE DOCKET NO. 34125 (Sub-No. 1)

SOUTH DAKOTA RAILROAD AUTHORITY
-- ACQUISITION AND OPERATION MODIFICATION EXEMPTION --
BNSF RAILWAY COMPANY

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

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

**ATTORNEY FOR
SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

Dated: November 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34125 (Sub-No. 1)

SOUTH DAKOTA RAILROAD AUTHORITY
-- ACQUISITION AND OPERATION MODIFICATION EXEMPTION --
BNSF RAILWAY COMPANY

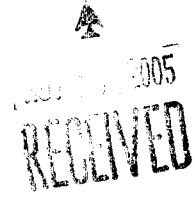
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Pursuant to an agreement executed between South Dakota Department of Transportation, successor-in-interest to the South Dakota Railroad Authority (hereafter referred to as "User") and BNSF Railway Company (hereinafter referred to as "Owner"), dated November 22, 2005, User files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the purpose of amending existing operating rights over a line of railroad on Owner's track as set forth below. This amendment, a copy of which is attached hereto, is referred to herein as the "Amendment."

Pursuant to 49 C.F.R. § 1180.4(g), User submits the following information:

**SECTION 1180.6(a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION**

Pursuant to the Amendment executed between Owner and User, User proposes to amend and supplement certain incidental trackage rights previously granted to User as part of the purchase and sale of BNSF's former Aberdeen-Kidder, South Dakota line (previously approved by the Board in Finance Docket No. 34125). The incidental trackage rights over Owner's line of



railroad shall be modified and supplemented as set forth below and referred to as "Joint Trackage"¹.

Owner grants User and its designee the right to interchange traffic on and/or via Owner-owned trackage at Aberdeen in connection with movement of authorized interchange traffic to, from, or via the User's tracks between Kidder, SD and Aberdeen, SD ("Rail Line") pursuant to the following terms and conditions:

(1) Subject to all other applicable terms and conditions set forth in the Amendment, Owner shall permit Dakota, Minnesota & Eastern Railroad Corporation ("DME") and User or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line (as that is defined in an agreement between the parties) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in this Amendment, Owner shall permit DME and User or its designee to interchange with one another at Aberdeen Yard or on State owned trackage north of Aberdeen via Owner's trackage, via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in (a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot) and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); provided said rights shall extend only to movements of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest products, and provided further that such rights shall be subject to unit train limitations for North Dakota points as described in the Amendment.

(3) (a) Subject to all other applicable terms and conditions set forth in this Amendment and other agreements between Owner and User, Owner shall permit User or its designee to interchange with lessees and operators of State-owned rail lines (as defined hereinbelow) all traffic (excluding coal and intermodal traffic) originating or terminating on said State-owned rail lines.

(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by Owner in haulage service for said operators/lessees pursuant to terms of a haulage agreement, the interchange with Owner or the Rail Line operator shall occur at the Aberdeen Yard (or other location in the Aberdeen vicinity at Owner's discretion) on trackage designated by Owner. In the event that the traffic is being moved to the Rail Line by the

¹ User will withdraw this Notice if the sale to BNSF Railway Company described in FD 34794 does not close.

operators/lessees pursuant to exercise of trackage rights over Owner trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees request to interchange at Aberdeen Yard and Owner local operating personnel consent thereto, at such tracks in Aberdeen Yard as may be designated by Owner.

(c) State-owned rail lines as referenced in this description refer to the Mitchell-Kadoka Line and the Napa-Platte lines as those lines existed in South Dakota as of April 25, 2005, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, "extensions" means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from the Rail Line of, rail traffic moving to/from new industries that located on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided above, User or its designee shall not move, or cause or allow to be moved traffic on, over, or via the Rail Line or the Interchange Access Line traffic that neither originates nor terminates on the Rail Line.

The full name and address of the User is:

South Dakota Department of Transportation,
Successor-in-interest to South Dakota Railroad Authority
700 East Broadway Avenue
Pierre, South Dakota 57501

Any questions concerning this Notice should be sent to the applicant's representative at the following address:

Michael J. Barron, Jr.
Attorney for South Dakota Department of Transportation
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
(312) 252-1500

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

User intends on consummating this transaction no sooner than December 6, 2005.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED

Subject to the terms and conditions herein contained, Owner grants User the modified rights at Aberdeen, SD so that User may have expanded interchange rights at Aberdeen.

SECTION 1180.6(a)(5)
STATES IN WHICH APPLICANT'S PROPERTY IS LOCATED

User owns rail property interests located in the states of South Dakota and Iowa.

SECTION 1180.6(a)(6)
MAP – EXHIBIT 1

A map of the rail line over which User will have operating rights is attached hereto as Exhibit 1.

SECTION 1180(a)(7)(ii)
AGREEMENT – EXHIBIT 2

A copy of the Amendment between Owner and User is attached hereto as Exhibit 2.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIVE CONDITIONS

User does not anticipate any adverse labor impacts as a result of this transaction. Moreover, since this exemption applies to modification of incidental trackage rights granted pursuant to a line sale transaction authorized under 49 U.S.C. Section 10901, User submits that labor protective conditions should not apply to this transaction. Nevertheless, if the Board determines labor protective conditions apply, as a condition of this exemption, User agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. – Lease and Operate, 260 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

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

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. § 1105.6(c)(4), the transaction is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the transaction also is exempt from historic preservation reporting requirements. The proposed rights will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

By: Michael J. Barron, Jr. /dl

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

**ATTORNEY FOR
SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

Dated: November 29, 2005

Exhibit 1

OFFICIAL SOUTH DAKOTA RAIL MAP *Openly Rights*

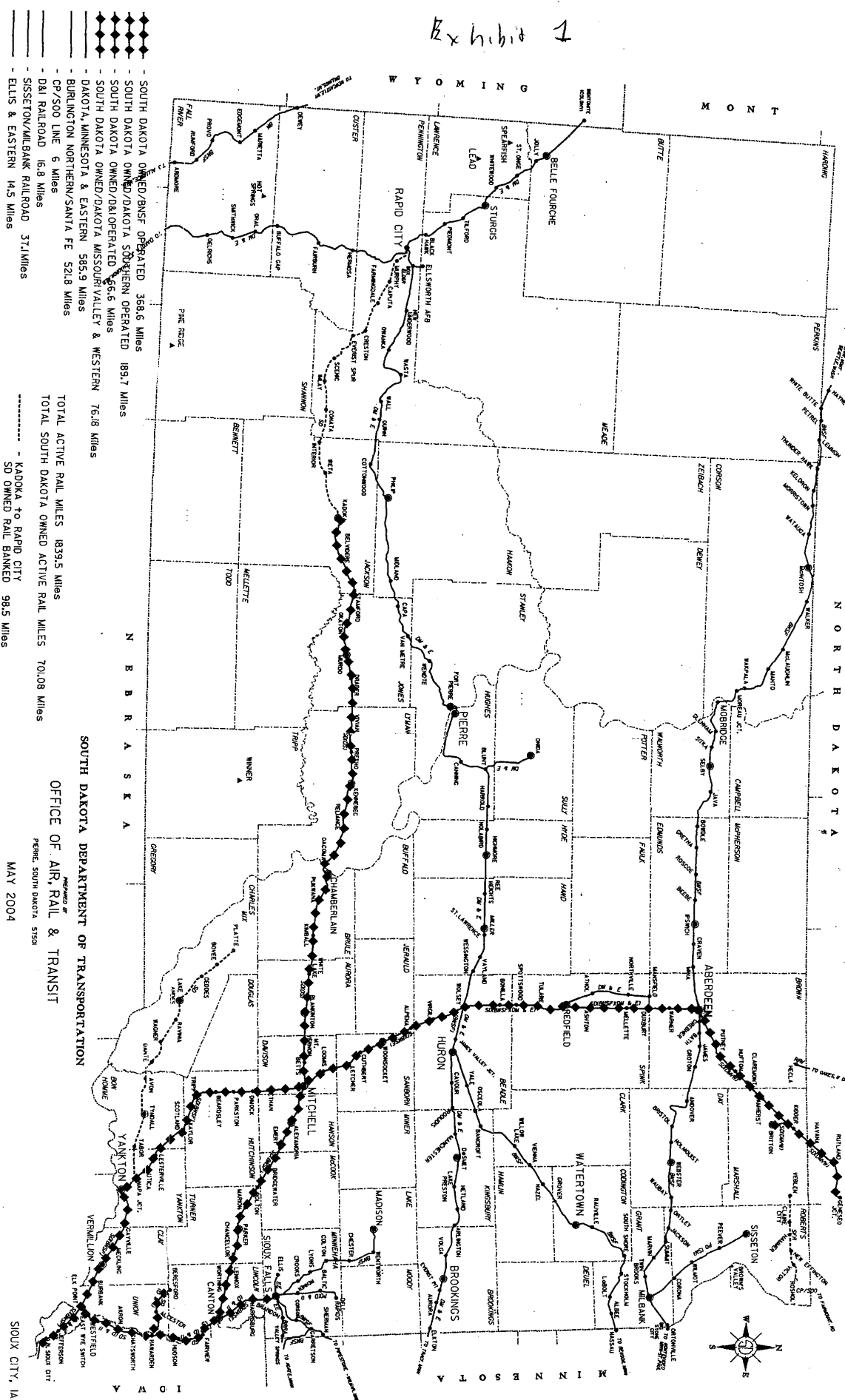


Exhibit 2

Revised

**FIRST AMENDMENT TO
AGREEMENT FOR DONATION OF CERTAIN ASSETS, RIGHTS AND
OBLIGATIONS OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH DAKOTA RAILROAD AUTHORITY**

This **First Amendment** is entered into as of November 22, 2005, between **BNSF RAILWAY COMPANY**, formerly known as **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter referred to as "**BNSF**" or "**Donor**" and State of South Dakota by the **DEPARTMENT OF TRANSPORTATION**, successor in interest to **SOUTH DAKOTA RAILROAD AUTHORITY**, a governmental agency of the State of South Dakota "**State**" or "**Donee**".

WITNESSETH:

WHEREAS, BNSF and the South Dakota Railroad Authority (State's predecessor in interest) entered into an Agreement for Donation of Certain Assets, Rights and Obligations, dated as of June 15, 2001 (the "Donation Agreement"), under which BNSF donated to South Dakota Railroad Authority certain BNSF lines; and

WHEREAS, BNSF and the State of South Dakota, a body politic by and through its South Dakota State Railroad Board and the South Dakota Department of Transportation entered into that certain Settlement Agreement Between BNSF Railway Company and the State of South Dakota, dated April 25, 2005 ("Settlement Agreement"); and

WHEREAS, said Settlement Agreement contemplates certain amendments to this Donation Agreement; and

WHEREAS, BNSF and State hereby wish to amend the Donation Agreement (this "Amendment") in partial satisfaction of certain terms of the Settlement Agreement.

NOW, THEREFORE, the parties agree as follows:

I. Section 1. (d) shall be amended as follows: 1) add "Subject to the terms of Section 1(g) at the beginning of the first sentence; and 2) delete the 5th sentence.

II. Section 1(f) shall be deleted in its entirety and replaced with the following:

(f) For purposes of this Donation Agreement as amended herein, the term "designee" shall mean a designated qualified rail service operator acting as agent by and through and for and on behalf of another entity.

III. A new subparagraph 1 (g) shall be added as follows:

(g) Notwithstanding any provisions to the contrary herein, as of the Effective Date (as hereinafter defined), BNSF grants State and its designee the right to interchange traffic on and/or via BNSF-owned trackage at Aberdeen in connection with movement of the traffic to, from, or via the Rail Line, pursuant to the following provisions:

(1) Subject to all other applicable terms and conditions set forth in this Amendment, BNSF shall permit Dakota, Minnesota & Eastern Railroad ("DME") and State or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in this Amendment, and further subject to the mutual written agreement of third parties (i.e., DME, State's designee, or Marshall County Regional Railroad Authority ("MCRRA"), if necessary, BNSF shall permit DME and State or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in (a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot) and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines), subject to the following terms:

(i) These rights extend only to movements of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest products;

(ii) These rights do not extend to movements of coal or any commodity not listed in section (i) above absent advance written waiver of BNSF; and

(iii) For North Dakota points, these rights will also exclude any unit train movements, unit trains being defined as trains of cars or more of a single commodity moving from a single origin to a single destination pursuant to a single bill of lading.

(3) (a) Subject to all other applicable terms and conditions set forth in this Amendment, BNSF shall permit State or its designee to interchange with the lessees and operators of State-owned rail lines (as defined in and subject to the terms of Sections 2(a), (b), and (c) of the Settlement Agreement) all traffic (excluding coal and intermodal traffic) originating or terminating on those State-owned rail lines.

(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by BNSF in haulage service for said

operators/lessees pursuant to the terms of a haulage agreement, the interchange with BNSF or the Rail Line operator shall occur at the Aberdeen Yard (or other location in the Aberdeen vicinity at BNSF's discretion) on trackage designated by BNSF. In the event that the traffic is being moved to the Rail Line by the operators/lessees pursuant to exercise of trackage rights over BNSF trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees request interchange at Aberdeen Yard and BNSF local operating personnel consent thereto, at such tracks in the Aberdeen Yard as may be designated by BNSF.

(c) State-owned rail lines as referenced in this Subsection 3 refers to the Mitchell-Kadoka line and the Napa-Platte line as those lines exist in South Dakota on the effective date of the Settlement Agreement, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, "extensions" means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from the Rail Line of, rail traffic moving to/from new industries that locate on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided in subsections 1(g) (1)-(3) above, State or its designee shall not move, or cause or allow to be moved traffic on, over, or via the Rail Line or the Interchange Access Line traffic that neither originates nor terminates on the Rail Line.

(5) No trackage for railcar or rail equipment storage capacity at Aberdeen will be provided by BNSF to facilitate the interchange movements referenced in this section 1(g). Cars and trains interchanging at Aberdeen between DME and State or its designee between Aberdeen and Kidder, SD shall not be held in Aberdeen yard longer than a period of [REDACTED] hours from arrival to departure ("Interchange Free Time") unless otherwise approved by BNSF. The parties will comply with Association of American Railroads interchange standards for notification of arrival. Cars and trains exceeding Interchange Free Time shall, on direction by BNSF's local operating personnel, depart BNSF property immediately. Any cars or locomotives allowed to be held in Aberdeen Yard on BNSF trackage beyond the Interchange Free Time at the discretion of BNSF local operating personnel may, at BNSF's option and without prejudice to any other rights or remedies available at law or in equity, be charged a holding fee of [REDACTED] per car per day and [REDACTED] per locomotive per day for each 24-hour period hour or fraction thereof, provided that such charges shall not apply to the extent Interchange Free Time is exceeded as a result of events of force majeure beyond the reasonable control of DME and/or State or State's designee operating the Rail Line or acts of BNSF. In the event Interchange Free Time is materially exceeded on [REDACTED] or more of all trains interchanged in Aberdeen Yard within a six-month period, BNSF may at its option and without prejudice to any other rights or remedies available at law or in equity, on 30 days' written notice and opportunity to cure, suspend rights of interchange within Aberdeen Yard until operating

and/or infrastructure changes are demonstrated or additional support trackage is constructed and placed in service at no net cost to BNSF which would reasonably assure that efficient interchange operations can be reinstated. Suspension of interchange operations within BNSF's Aberdeen Yard shall not preclude the DME and the State's designee from performing interchange on State-owned trackage as described in subsection (6) hereinbelow.

(6) Rights provided under this subparagraph 1 (g) shall apply to DME and MCRRA and their successors (and MCRRA's and its successor's designee) at no additional charge, insurance or liability requirements, beyond that provided under applicable law and/or in DME's existing trackage rights agreement with BNSF, in the case of DME, and the Donation Agreement as amended herein, in the case of MCRRA or its designee.

(7) In the event that DME and MCRRA (by and through its designee), and/or MCRRA (by and through its designee) elect to interchange cars on the State-owned trackage north of Aberdeen in lieu of interchange on BNSF's trackage at Aberdeen Yard, BNSF shall permit them to utilize BNSF's trackage at Aberdeen (including the Interchange Access Line) to accommodate the through movement of such trains for interchange beyond Aberdeen on State-owned trackage; provided such through movement and interchange beyond the Interchange Access Line does not allow any party to circumvent or breach, in whole or in part, the interchange restrictions specified in this subparagraph 1 (g).

(8) Wherever access rights granted herein result in operations on BNSF lines, such operations shall be subject to BNSF's exclusive management, dispatch control, compliance with BNSF operating rules, compliance with BNSF and industry standard electronic data exchange requirements.

(9) Wherever access rights granted herein result in transport of dead-in-tow locomotive on or over BNSF lines shall be subject to the operating restrictions and all terms and conditions contained in BNSF's dead-in-tow locomotive tariff in effect at the time of transport.

(10) Wherever access rights granted herein result in operations on BNSF lines of any transport of high, wide, or dimensional cars or cars or equipment subject to special handling, such as weight, speed, or clearance restrictions or accommodations shall require advance approval of local BNSF operating personnel. In the event such movement(s) is approved, the movement thereof shall be in accordance with all BNSF operating and mechanical rules and restrictions in effect at the time of the proposed transport and any additional commercial or liability conditions applicable to such movements generally on BNSF's system.

(11) (a) Prior to initial commencement of the aforementioned rights, BNSF and State will consult on volumes to be moved on a lane-specific basis,

methods of operation and interchange, and necessary changes in infrastructure, if any, to permit unobstructed operations for both BNSF and State.

(b) All such capital investments, if any, necessary for initial commencement of operations and/or services under this Amendment are set forth in that letter agreement between BNSF and the State of South Dakota dated November 22, 2005 ("Improvement MOA") and such improvements, if any, to the extent related to and required for the commencement of operations under this Amendment, shall be performed as a condition of exercise of the rights under this Amendment, in accordance with the terms of the Improvement MOA. The terms of the Improvement MOA are attached hereto as Exhibit "I-MOA" and to the extent applicable to this Amendment the terms thereof shall be deemed a part of this Amendment. The terms of this Amendment shall be subject to and conditioned upon the terms of the Improvement MOA.

(12) To the extent required by applicable laws and regulations, any necessary amendment to the Donation Agreement which may be required to be filed with the STB shall be the responsibility of State/MCRRA or their designee with BNSF's advance review and approval of the text of any such filings.

(13) State shall cause its lease with MCRRA to be amended, and likewise shall cause MCRRA to include in any new sublease(s) entered into after the date of this Agreement with MCRRA designees to conform to the provisions of this First Amendment, with BNSF designated as a third-party beneficiary of such amendments and subleases with rights to enforce the terms of this Amendment as against MCRRA and any entities which may become sublessees pursuant to any new subleases entered into after the date of this Amendment. Execution of said amendments with MCRRA shall be accomplished prior to the Effective Date of this Amendment and the rights granted under this Amendment shall be conditioned upon execution of said amendments.

IV. Section 15(a) of the Donation Agreement shall be amended to have added "Except as expressly provided otherwise in Section 1(g)" at the beginning of the first sentence thereof.

V. BNSF shall have no obligation to perform haulage pursuant to the provisions of Section 20 of the Donation Agreement, except in the event of i) a claim of breach by MCRRA or State alleging BNSF has failed to accommodate rights of interchange pursuant to the terms of Article III of this First Amendment; and ii) rights of interchange pursuant to the terms of Article III of this First Amendment are not being exercised, in whole or in part, as a result of the claimed breach.

VI. Section 15 (c) of the Donation Agreement shall be deleted in its entirety.

VII. Section 22 shall have added the following sentence, "Any disputes concerning the construction, interpretation, enforcement, or performance of any of the terms of this First Amendment shall be finally resolved pursuant to neutral binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association."

VIII. The terms of this First Amendment shall be conditioned upon and shall become effective upon the date of dismissal of all litigation referenced in the Settlement Agreement ("Effective Date") and shall remain in effect thereafter for so long as the Donation Agreement remains in effect.

IX. Except as expressly provided otherwise herein, all other terms of the Donation Agreement shall remain in effect without amendment thereto.

IN WITNESS WHEREOF, the parties have executed this First Amendment, effective as of November 22, 2005.

EXECUTED BY BNSF RAILWAY COMPANY THIS 22nd DAY OF NOVEMBER, 2005.

By: 
Peter S. Rickershauser
Vice President, Network Development

EXECUTED BY STATE THIS 22nd DAY OF NOVEMBER, 2005. State of South Dakota by the DEPARTMENT OF TRANSPORTATION.

By: _____

Printed: _____

Title: _____

IN WITNESS WHEREOF, the parties have executed this First Amendment, effective as of November 22, 2005.

EXECUTED BY BNSF RAILWAY COMPANY THIS 22nd DAY OF NOVEMBER, 2005.

By: _____
Peter J. Rickershauser
Vice President, Network Development

EXECUTED BY STATE THIS 22nd DAY OF NOVEMBER, 2005, State of South Dakota by the DEPARTMENT OF TRANSPORTATION.

By:  _____

Printed: Judith M. Payne

Title: Secretary

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34125 (Sub-No. 1)

SOUTH DAKOTA RAILROAD AUTHORITY
-- ACQUISITION AND
OPERATION MODIFICATION EXEMPTION --
BNSF RAILWAY COMPANY

BNSF Railway Company ("Owner") has agreed to amend existing operating rights of South Dakota Department of Transportation, successor-in-interest to South Dakota Railroad Authority ("User") at Aberdeen, South Dakota pursuant to an amendment ("Amendment") to an existing agreement. Pursuant to the Amendment, Owner grants User and its designee the right to interchange traffic on and/or via Owner-owned trackage at Aberdeen in connection with movement of the traffic to, from, or via the User's tracks between Kidder, SD and Aberdeen, SD ("Rail Line") pursuant to the following terms:

(1) Subject to all other applicable terms and conditions set forth in the Amendment, Owner shall permit Dakota, Minnesota & Eastern Railroad Corporation ("DME") and User or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line (as that is defined in an agreement between the parties) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in this Amendment, Owner shall permit DME and User or its designee to interchange with one another at Aberdeen Yard or on the State owned trackage north of Aberdeen via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in (a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot) and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); provided, such rights shall extend only to movements

of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest products, and provided further that certain unit train restrictions apply for North Dakota points as set forth in the Amendment.

(3) (a) Subject to all other applicable terms and conditions set forth in this Amendment and other agreements between Owner and User, Owner shall permit User or its designee to interchange with lessees and operators of State-owned rail lines (as hereinafter defined) and all traffic (excluding coal and intermodal traffic) originating or terminating on said State-owned rail lines.

(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by Owner in haulage service for said operators/lessees pursuant to terms of a haulage agreement, the interchange with Owner or the Rail Line operator shall occur at the Aberdeen Yard (or other location in the Aberdeen vicinity at Owner's discretion) on trackage designated by Owner. In the event that the traffic is being moved to the Rail Line by the operators/lessees pursuant to exercise of trackage rights over Owner trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees request to interchange at Aberdeen Yard and Owner local operating personnel consent thereto, at such tracks in Aberdeen Yard as may be designated by Owner.

(c) State-owned rail lines as referenced in this summary refer to the Mitchell, SD-Kadoka, SD Line and the Napa, SD-Platte, SD lines as those lines existed in South Dakota as of April 25, 2005, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, "extensions" means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from the Rail Line of, rail traffic moving to/from new industries that located on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided above, User or its designee shall not move, or cause or allow to be moved traffic on, over, or via the Rail Line or the Interchange Access Line traffic that neither originates nor terminates on the Rail Line.

The operating rights will be effective on or after December 6, 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: _____

By the Board

Vernon A. Williams

Secretary

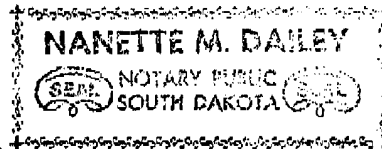
VERIFICATION

State of South Dakota)
) SS:
County of Hughes)

Bruce Lindholm, being duly sworn, deposes and says that he is Program Manager of the South Dakota Department of Transportation, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

Bruce Lindholm

Subscribed and Sworn to
Before me this 29th day of
November, 2005



Nanette M. Dailey
Notary Public

My Commission Expires: 11-21-2011

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34125 (Sub-No. 1)

SOUTH DAKOTA RAILROAD AUTHORITY
-- ACQUISITION AND
OPERATION MODIFICATION EXEMPTION --
BNSF RAILWAY COMPANY

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(1) Subject to all other applicable terms and conditions set forth in the Amendment, Owner shall permit Dakota, Minnesota & Eastern Railroad Corporation ("DME") and User or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line (as that is defined in an agreement between the parties) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in this Amendment, Owner shall permit DME and User or its designee to interchange with one another at Aberdeen Yard or on the State owned trackage north of Aberdeen via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in (a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot) and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); provided, such rights shall extend only to movements of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest

products, and provided further that certain unit train restrictions apply for North Dakota points as set forth in the Amendment.

(3) (a) Subject to all other applicable terms and conditions set forth in this Amendment and other agreements between Owner and User, Owner shall permit User or its designee to interchange with lessees and operators of State-owned rail lines (as hereinafter defined) and all traffic (excluding coal and intermodal traffic) originating or terminating on said State-owned rail lines.

(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by Owner in haulage service for said operators/lessees pursuant to terms of a haulage agreement, the interchange with Owner or the Rail Line operator shall occur at the Aberdeen Yard (or other location in the Aberdeen vicinity at Owner's discretion) on trackage designated by Owner. In the event that the traffic is being moved to the Rail Line by the operators/lessees pursuant to exercise of trackage rights over Owner trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees request to interchange at Aberdeen Yard and Owner local operating personnel consent thereto, at such tracks in Aberdeen Yard as may be designated by Owner.

(c) State-owned rail lines as referenced in this summary refer to the Mitchell, SD-Kadoka, SD Line and the Napa, SD-Platte, SD lines as those lines existed in South Dakota as of April 25, 2005, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, "extensions" means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from the Rail Line of, rail traffic moving to/from new industries that located on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided above, User or its designee shall not move, or cause or allow to be moved traffic on, over, or via the Rail Line or the Interchange Access Line traffic that neither originates nor terminates on the Rail Line.

The operating rights will be effective on or after December 6, 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: _____

By the Board

Vernon A. Williams
Secretary