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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. 34685 (Sub-No. 1)**
D&I Railroad Company -- Trackage Rights 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 D&I Railroad Company, 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,


Michael J. Barron, Jr.

MJB: arw

Enclosures.

ENTERED
Office of Proceedings

NOV 30 2005

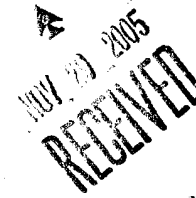
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SURFACE
TRANSPORTATION BOARD

215237



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34685 (Sub-No. 1)

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

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

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ATTORNEYS FOR --
D&I RAILROAD COMPANY

Dated: November 29, 2005

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NOV 29 2005

U.S. DEPARTMENT OF
TRANSPORTATION

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SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34685 (Sub-No. 1)

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

11/20/2005
RECEIVED

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

D&I Railroad (D&I) (hereinafter referred to as "User") files this verified notice for exemption of a modified agreement governing D&I and BNSF Railway Company (hereinafter referred to as "Owner"), User files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the modification and supplementation of an agreement governing acquisition of overhead trackage rights over a line of railroad on what will be Owner's track as set forth below.

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**

1. Pursuant to an agreement ("Original Agreement") executed between Owner and User dated September 4, 1986, as amended, User presently operates overhead trackage rights over Owner's line of railroad over Owner's main line in South Dakota as set forth below:

- a) Sioux Falls, South Dakota, Owner Milepost 71.5 (East Junction) to Milepost 74.1 (just north of West Junction), Owner Milepost 0.0 and Owner Milepost 1.09 (on the Madison Subdivision) and Milepost 145.45 and Milepost 145.91 on the Corson subdivision),
- b) Sioux Falls, South Dakota (Milepost 69.9) and Canton, South Dakota (Milepost 49.9) on the Canton Subdivision, and
- c) South Wye Switch, South Dakota Owner Milepost 533.4 (just south of Elk Point, South Dakota), formerly known as East Wye Switch and also referenced as Elk

Point, South Dakota, and Sioux City, Iowa Owner Milepost 512.6 on the Aberdeen subdivision.

2. Pursuant to the terms of a supplemental agreement entitled Supplement No. 3 to the Transportation and Switching Agreement Between BNSF and D&I Railroad Company, dated November 22, 2005 (attached hereto and referred to herein as the "Supplemental Agreement"), the Original Agreement is modified to extend the Joint Trackage and to revise certain restrictions pertaining to usage of the Joint Trackage.

a) **Extension of Overhead Trackage Rights Limits**

- i) At Canton, South Dakota, User's overhead trackage rights over Owner's trackage from Sioux Falls, South Dakota to Canton, South Dakota will be extended from Milepost 49.9 to Milepost 49.4, (Engineering Survey Number 6651.08=97+08.5 E.C.), where centerline of track leaves Owner property and enters Sioux Valley Regional Railroad Authority Property;¹ and
- ii) User's overhead trackage rights over Owner from South Wye Switch, South Dakota to Sioux City, Iowa will be extended from Milepost 512.6 to just east of Steuben Street, Milepost 512.36 (collectively extended trackage referenced in subsections (i) and (ii) shall be referred to as the "Additional Joint Trackage"). The Supplemental Agreement also grants D&I additional operating rights on BNSF's "Blood Line" in Sioux City, IA solely for the purpose of effecting interchange with Union Pacific Railroad Company (UP) and Canadian National Railway Company (CN) at Sioux City, Iowa until

¹ The Supplemental Agreement provides for D&I's assumption of maintenance functions for a segment of the Additional Joint Trackage between MP 49.4 and to the clearance point of the switch to Dakota Fertilizer located at MP 49.9 in order to better align the parties' maintenance obligations relative to usage.

such time as a direct connection to the UP and CN is built as contemplated in a letter agreement between BNSF and the State of South Dakota, dated November 22, 2005.

b) Modification of Trackage Rights Terms

(i) Traffic Originating or Terminating on West Junction, SD-Dell Rapids, SD Line

The Original Agreement had restricted D&I's use of its trackage rights solely for transportation of (1) aggregates and (2) non-aggregates to and from Owner. The Supplemental Agreement amends the Original Agreement and provides that D&I may use its trackage rights granted under the Original and Supplemental Agreement for traffic originating or terminating on the User-owned line between just north of West Junction, Owner Milepost 74.1 and Dell Rapids, South Dakota, for the operation of User's trains, locomotives, cabooses, end of train devices and cars in its account to transport any commodity (except coal, forest products, building materials and/or intermodal traffic), originating or terminating on its line, as it currently exists as of April 25, 2005,² from just north of West Junction (Owner Milepost 74.1) to Dell Rapids, South Dakota to Sioux City, Iowa solely for interchange with all railroad carriers connecting at Sioux City, Iowa.

(ii) Traffic Originating or Terminating on Canton/South Wye Switch, SD-Hawarden, IA

The Original Agreement had restricted D&I's use of its trackage rights solely for transportation of (1) aggregates and (2) non-aggregates to and from Owner. The Supplemental Agreement amends the Original Agreement and provides that D&I may use its

² However, D&I shall be entitled to utilize these rights to serve new industries which locate on its line subsequent to April 25, 2005.

trackage rights granted under the Original and Supplemental Agreements to transport traffic originating or terminating on the state of South Dakota-owned lines between Canton, South Dakota and South Wye Switch, South Dakota, including Beresford, South Dakota to Hawarden, Iowa, for the operation of User's trains, locomotives, cabooses, end of train devices and cars in its account to transport all traffic, except that which is defined below, originating or terminating on the State of South Dakota-owned lines between Canton, South Dakota and South Wye Switch, South Dakota including Beresford, South Dakota to Hawarden, Iowa, as those lines existed as of April 25, 2005 ("Existing Hawarden Line"),³ solely for interchange to and from the UP and CN at Sioux City, Iowa. The rights in this Section (ii) apply on all traffic, to all customers, to all origins and destinations except:

(A) Customers at origins or destinations accessed by Owner directly as of April 25, 2005, or

(B) Customers at origins or destinations accessed by Owner indirectly via reciprocal switching, or indirectly via Owner affiliated shortlines as of April 25, 2005, with an Owner affiliated shortline defined as any Class II or Class III Railroad that has Handling Carrier Agreement with Owner, or

(C) Traffic to or from Mexico, or

(D) To or from any United States/Mexican border crossing for furtherance beyond to or from points in Mexico.

Under the Supplemental Agreement, the rights granted pertaining to movement of traffic between Canton-Elk Point/Hawarden-Beresford line and Sioux City, IA shall automatically be assigned to any state lessee of the Existing Hawarden Line who succeeds

³However, D&I shall be entitled to utilize these rights to serve new industries which locate on the lines subsequent to April 25, 2005.

Sioux Valley Regional Railroad Authority ("SVRRA") as lessee (other than the Dakota, Minnesota & Eastern ("DME"), or a successor thereto, or Class I or Class II Railroad), and may be assigned by SVRRA and its successor to another operator of all or a part of the Existing Hawarden Line acting as agent for the SVRRA or otherwise assigned in whole to an entity acquiring ownership of or a leasehold interest in the Existing Hawarden Line, provided such operator is not DME, or a successor thereto, or a Class I or Class II Railroad.

3. The full name and address of the carriers involved in this transaction are:

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

BNSF Railway Company
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth TX 76161

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

Edward J. Krug
Krug Law Firm, PLC
401 First Street, SE
P.O. Box 186
Cedar Rapids, IA 52406
(319) 297-7515

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

The applicant intends to consummate this transaction no sooner than December 6, 2005, contingent upon the closing of the BNSF purchase and State of South Dakota sale of the Core Line which is the subject of FD 34794 which is currently pending before the STB and

dismissal of other litigation pending between BNSF and the State of South Dakota. User will withdraw this Notice if the sale to BNSF described in FD 34794 does not close and/or the BNSF/South Dakota litigation is not dismissed.

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

The trackage rights are intended to facilitate D&I access to additional markets, including expanding D&I's ability to move additional commodities for interchange with other carriers at Sioux City, IA. The additional market access is granted as part of a settlement of litigation between BNSF and the State of South Dakota, which settlement was entered into on April 25, 2005.

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

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

SECTION 1180.6(a)(6)
MAP – EXHIBIT 1

A map of the rail line over which User proposes to acquire trackage rights is attached hereto as Exhibit 1.

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

A copy of the Supplemental Agreement executed between Owner and User is attached hereto as Exhibit 2.

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

User anticipates no adverse labor impact, however 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 proposed acquisition of trackage rights is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights also is exempt from historic preservation reporting requirements. The proposed trackage rights will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

By: Michael J. Barron, Jr. /als

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ATTORNEYS FOR
D&I RAILROAD COMPANY

Dated: November 29, 2005

OFFICIAL SOUTH DAKOTA RAIL MAP

Joint Trackage

- ◆ SOUTH DAKOTA OWNED/BNF OPERATED 366.6 Miles
- ◆ SOUTH DAKOTA OWNED/DAKOTA SOUTHERN OPERATED 189.7 Miles
- ◆ SOUTH DAKOTA OWNED/DAKOTA SOUTHERN OPERATED 66.6 Miles
- ◆ SOUTH DAKOTA OWNED/DAKOTA MISSOURI VALLEY & WESTERN 76.18 Miles
- ◆ DAKOTA, MINNESOTA & EASTERN 585.9 Miles
- ◆ BURLINGTON NORTHERN/SANTA FE 52.8 Miles
- ◆ CP/500 LINE 6 Miles
- ◆ D&I RAILROAD 16.8 Miles
- ◆ Sisseton/MILBANK RAILROAD 37.1 Miles
- ◆ ELLIS & EASTERN 14.5 Miles

TOTAL ACTIVE RAIL MILES 1839.5 Miles
 TOTAL SOUTH DAKOTA OWNED ACTIVE RAIL MILES 70.08 Miles

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
 OFFICE OF AIR, RAIL & TRANSIT
 MAY 2004
 PIERRE, SOUTH DAKOTA 57501

SIOUX CITY, IA.

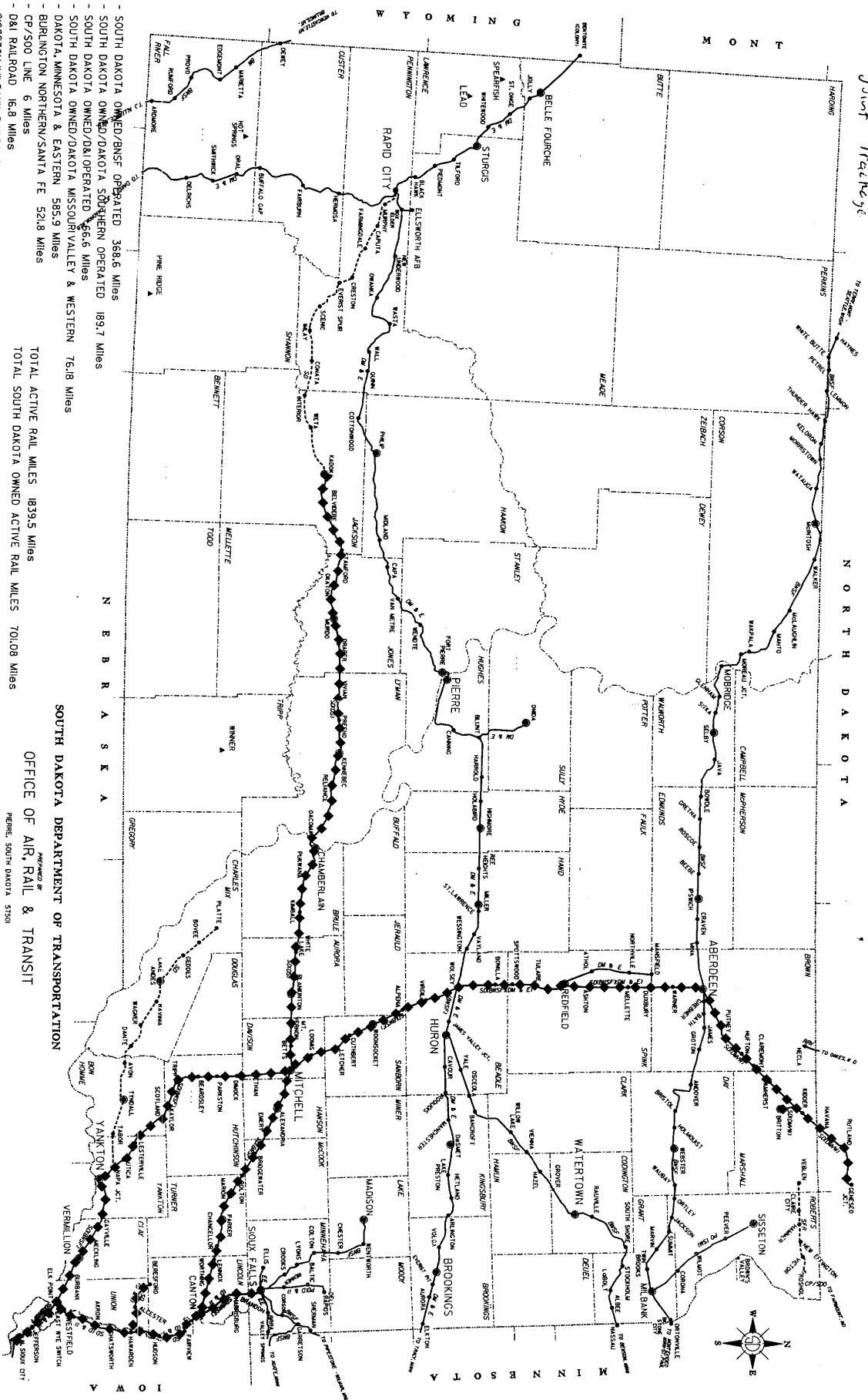


Exhibit 1
 p 1 of 2

Exhibit 1
p 2 of 2

Joint Trackage Construction from large map
for Joint Trackage coming into Sioux City

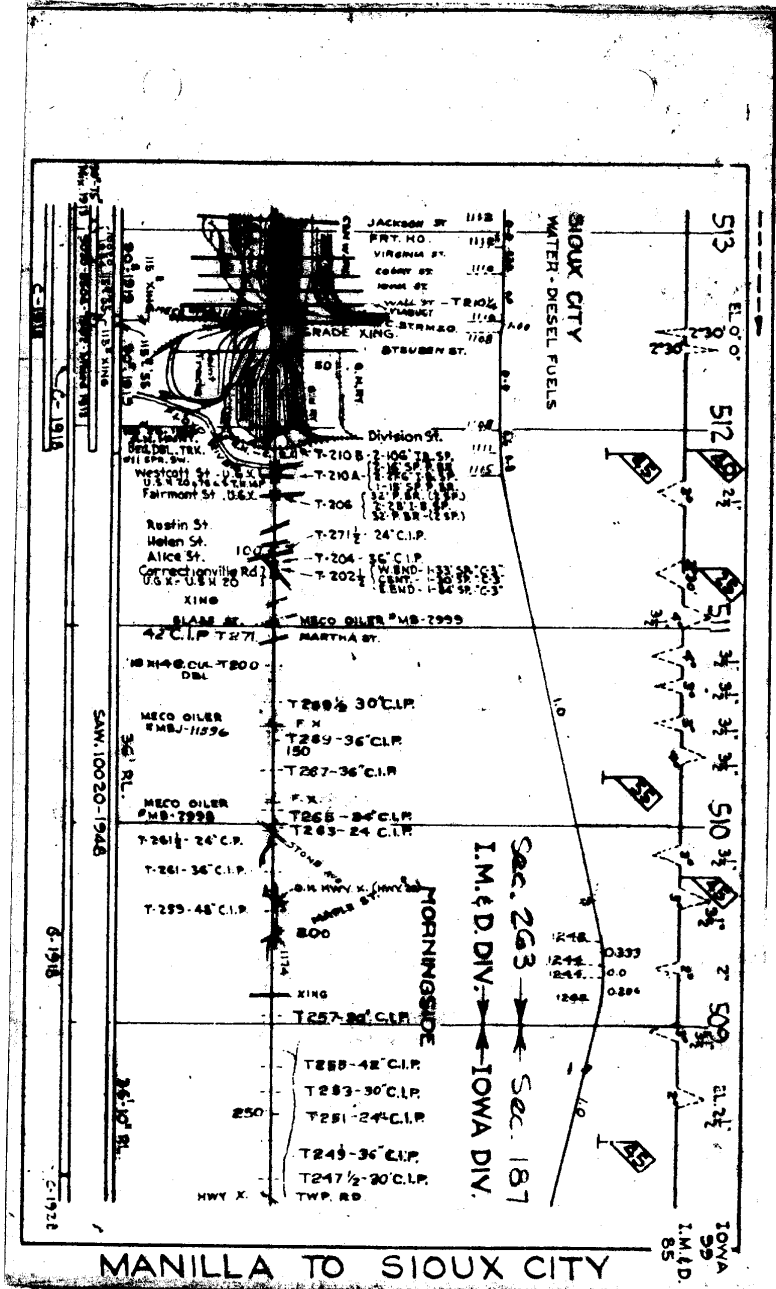


Exhibit 2
Revised

**Supplement No. 3 to the Transportation and Switching Agreement Between
BNSF and D & I Railroad Company**

SUPPLEMENTAL AGREEMENT NO. 3 ("Supplemental Agreement") made and entered into this 22nd day of November, 2005, by, and between **BNSF RAILWAY COMPANY**, formerly known as **The Burlington Northern and Santa Fe Railway Company** a Delaware Corporation, (hereinafter "**BNSF**") and the **D & I RAILROAD CO.**, a South Dakota Corporation, (hereinafter called "**D&I**").

WITNESSETH:

WHEREAS, BNSF and D&I are parties to a Transportation and Switching Agreement dated September 4th, 1986, as amended, ("**Base Agreement**") with provisions for:

1. D&I trackage rights over BNSF's main line in Sioux Falls, SD, from:
 - a) Sioux Falls, SD, BNSF Milepost 71.5 (East Junction) to Milepost 74.1 (just north of West Junction), BNSF Milepost 0.0 and BNSF Milepost 1.09 (on the Madison Subdivision) and Milepost 145.45 and Milepost 145.91 on the Corson subdivision),
 - b) Sioux Falls, SD (Milepost 69.9) and Canton, SD (Milepost 49.9) on the Canton Subdivision, and
 - c) South Wye Switch, SD BNSF Milepost 533.4 (just south of Elk Point, SD), formerly known as East Wye Switch and also referenced as Elk Point, SD, and Sioux City, IA BNSF Milepost 512.6 on the Aberdeen subdivision; and
2. BNSF marketing authority, car supply, compensation and interchange for general commodity (non aggregate) traffic originating on Sioux Valley Regional Railroad Authority (hereinafter referred to as "**SVRRA**") trackage between Canton, SD and Elk Point, SD (including between Beresford, SD and Hawarden, IA); and
3. D&I marketing authority and interchange of aggregate traffic.

WHEREAS, for the purposes of this Supplemental Agreement and the Base Agreement, the references to Elk Point, SD shall mean "South Wye Switch" located at BNSF's Milepost 533.4; and

WHEREAS, BNSF and the State of South Dakota, by and through the South Dakota State Railroad Board and the South Dakota Department of Transportation (collectively referred to as "State") were involved in federal and state court litigation concerning various rights and obligations of the BNSF and State, relative to railroad operations in South Dakota, with the ultimate resolution of said litigation being a settlement which provided, inter alia, an agreement dated April 25, 2005 (hereinafter "**Settlement Agreement**") with various conditions benefiting D&I, and culminating in this Supplemental Agreement No. 3, as well as several other agreements executed on or about the date of this agreement.

WHEREAS, D&I desires to amend the Base Agreement to allow movement by D&I of selected commodities that originate or terminate on the D&I-owned line as it currently exists between West Junction (north of Sioux Falls) and Dell Rapids to connect and interchange with all other rail carriers at Sioux City, IA; and

WHEREAS, D&I desires to amend the Base Agreement to permit D&I to handle traffic to and from customers accessed on the State-owned Canton-Elk Point and Hawarden-Beresford lines as those lines exist as of April 25, 2005 to and from interchange with Chicago, Central and Pacific Railroad, also known as the Canadian National Railway (CCP) or (CN) and Union Pacific Railroad Company (UP) at Sioux City, IA; and

WHEREAS, in compliance with the Settlement Agreement BNSF is agreeable to such an amendment under the terms and conditions hereinafter set forth.

NOW, THEREFORE, The parties now desire to amend and modify the Base Agreement as follows:

Section 1. Extension of Trackage Rights Limits

a.) At Canton, SD, D&I trackage rights over BNSF trackage from Sioux Falls, SD to Canton, SD will extend from Milepost 49.9 to Milepost 49.4, (Engineering Survey Number 6651.08=97+08.5 E.C.), where centerline of track leaves BNSF property and enters Sioux Valley Regional Railroad Authority property ("Additional Joint Trackage").

b.) All provisions of the Base Agreement concerning the operations and control of the Additional Joint Trackage shall apply to the Additional Joint Trackage described in Section 1.a.) above at Canton, SD, except that D&I shall be responsible for the repair and maintenance of all BNSF owned trackage (including turnouts, switches and signals) which may be located between MP 49.4 and to the clearance point of the switch to Dakota Fertilizer located at MP 49.9. Should D&I fail to repair any defect or maintain the Additional Joint Trackage to FRA Class 2 standards as provided for in the Base Agreement within thirty (30) days after BNSF shall have given written notice thereof to D&I specifying the defect or deviation from standard and requesting that it be repaired, then BNSF shall have the right to make the necessary repairs which shall be paid for by D&I.

c.) As the attached Exhibit A reflects, D&I trackage rights over BNSF from South Wye Switch, SD to Sioux City, IA will extend from Milepost 512.6 to just east of Steuben Street, Milepost 512.36.

d.) For the sole purpose of effecting interchange with UP and CN at Sioux City, IA, D&I shall be granted additional operating rights on the "Blood Line", the former Chicago and North Western Railway ("former CNW") trackage and BNSF's Sioux City subdivision main track.

These additional operating rights will extend:

- i) easterly on the "Blood Line" and former CNW trackage from the southerly end of L. G. Everist's property line to the clearance point of the turnout to BNSF's Sioux City subdivision, located at approximately milepost 107.79, and southerly from milepost 107.79 to milepost 107.0 on BNSF's Sioux City subdivision main track; and
- ii) westerly on the former CNW trackage to the connecting track of the UP near Third Street, and the connecting track of the CN near Third Street.

These operating rights will be granted until such time as a direct connection to the UP and the CN is built as contemplated in that letter agreement between BNSF and the State of South Dakota dated November 22, 2005, ("Improvement MOA"). At such time and provided that a direct connection to UP and CN is built as contemplated and becomes operational, the operating rights as described in this Section 1 d.) i) and ii) shall be terminated.

Section 2. Traffic Originating or Terminating on the D&I Owned Line between just north of West Junction, BNSF Milepost 74.1 and Dell Rapids, SD.

- a.) BNSF grants D&I nonexclusive overhead trackage rights to use the Joint Trackage for the operation of its trains, locomotives, cabooses, end of train devices and cars in its account to transport any commodity originating or terminating on its line, as it currently exists as of April 25, 2005, from just north of West Junction (BNSF Milepost 74.1) to Dell Rapids, SD ("Existing Dell Rapids Line"), provided, however, it is understood that D&I shall be entitled to move traffic from and to new industries which may locate on its Existing Dell Rapids Line subsequent to April 25, 2005, to Sioux City, IA, solely for interchange with all railroad carriers connecting at Sioux City, IA, except Restricted Commodities as defined in 2.b. below.
- b.) The nonexclusive overhead Trackage Rights granted above shall apply to all commodities except coal, forest products, building materials and/or intermodal traffic (hereinafter referred to as "Section 2(b) Restricted Commodities").
- c.) D&I may establish its own rate tariffs, contracts, rate quotes or other commercial pricing options as it deems appropriate on this traffic.
- d.) No additional compensation other than as provided in the Base Agreement, as amended, will be due BNSF for the movement of this traffic. D&I will receive no additional compensation from BNSF related to the movement of this traffic. D&I will be responsible for all car hire on traffic governed by this Section 2.

Section 3. Traffic Originating or Terminating on State of South Dakota Owned Lines between Canton, SD and South Wye Switch, SD, Including Beresford, SD to Hawarden, IA.

a.) BNSF grants D&I nonexclusive overhead Trackage Rights to use the Joint Trackage for the operation of its trains, locomotives, cabooses, end of train devices and cars in its account to transport all traffic originating or terminating on the State of South Dakota owned lines between Canton, SD and South Wye Switch, SD including Beresford, SD to Hawarden, IA, as those lines exist as of April 25, 2005 ("Existing Hawarden Line"), provided, however, it is understood that D&I shall be entitled to move traffic from and to new industries which may locate on its Existing Hawarden Line subsequent to April 25, 2005, solely for interchange to and from the UP and the CCP or CN at Sioux City, IA excluding Restricted Traffic as defined below in Section 3.b.

b.) The nonexclusive overhead Trackage Rights granted above apply on all traffic, to all customers, to all origins and destinations except:

i.) customers at origins or destinations accessed by BNSF directly as of April 25, 2005, or

ii.) customers at origins or destinations accessed by BNSF indirectly via reciprocal switching, or indirectly via BNSF affiliated shortlines as of April 25, 2005, with a BNSF affiliated shortline defined is any Class II or Class III Railroad that has a Handling Carrier Agreement with BNSF, or

iii) traffic to or from Mexico, or

iv) to or from any United States/Mexican border crossing for furtherance beyond to or from points in Mexico,

(hereinafter referred to as "3(b) Restricted Traffic").

c.) D&I may establish its own rate tariffs, contracts, rate quotes or other commercial pricing options as it deems appropriate on this traffic.

d.) D&I agrees to pay BNSF on a monthly basis \$ [REDACTED] for each car D&I moves over the Joint Trackage governed by this Section 3. Locomotives will be counted at a rate of two cars.

[REDACTED]

[REDACTED]

e.) D&I will receive no additional compensation from BNSF related to the movement of this traffic. BNSF has no obligation to supply and D&I will not intentionally use any BNSF owned or leased cars on traffic moved under the provisions of this Section 3. D&I will be responsible for all car hire on traffic governed by this Section 3.

Section 4. Implementation Requirements, Capital Investment, Connections, and Additions

a.) Prior to initial commencement of any operations under this Supplemental Agreement, Owner and User 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 User.

b.) All such capital investments, if any, necessary for initial commencement of operations under this Supplemental Agreement are set forth in that letter agreement between Owner 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 performance of any operations under this Supplemental Agreement, shall be performed as a condition of exercise of the rights under this Supplemental Agreement, 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 Supplemental Agreement the terms thereof shall be deemed a part of this Supplemental Agreement. The terms of this Supplemental Agreement shall be subject to and conditioned upon the terms of the Improvement MOA.

Section 5. Default

a.) Except to the extent expressly provided otherwise herein, either party hereto claiming material default of any of the provisions of this Supplemental Agreement, including but not limited to moving Restricted Traffic or Restricted Commodities shall furnish written notice and demand to the other party for performance or compliance with the covenant or condition of this Supplemental Agreement claimed to be in material default, which notice shall specify wherein and in what respect such material default is claimed to exist and shall specify the particular Section or Sections of this Supplemental Agreement under which such claim of default is made.

b.) If the material default shall continue for an additional period of fifteen (15) days after receipt of such written notice, and such material default has not been remedied within an additional seven (7) day period, and such default relates to a material provision of this

Supplemental Agreement, including without limitation provisions and terms concerning unauthorized movements of commodity, or commercial, or geographic restrictions under this Supplemental Agreement, BNSF has the right to cancel this Supplemental Agreement provided, however, that the party or parties purportedly in material default have the right to resort to arbitration as set forth in Section 5 of the Base Agreement. Cancellation of this Supplemental Agreement shall be stayed pending a decision by the arbitration or board convened under said Section 5. Such rights of termination may be exercised without prejudice to any other rights or remedies available to the parties at law or in equity.

c.) Failure of a party to claim a default shall not constitute waiver of such default. Either party hereto entitled to claim default may waive any such default in writing, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 6. Assignment

a.) The overhead Trackage Rights provided pursuant to Section 2 and Section 3 above may not be assigned to any Class I Railroad, or Class II Railroad, including the Dakota, Minnesota & Eastern Railroad Corporation ("DME") and its successors or assigns without BNSF's advance written consent; provided however, this non-assignment provision shall not apply to D&I's Core Line rights and obligations under existing operations and trackage rights, including, but not limited to D&I's rights pursuant to the Base Agreement, to the extent they existed prior to the effective date of this Supplemental Agreement.

b.) Subject to the limitations set forth in Section 6(a), the rights granted under this Supplemental Agreement pertaining to movement of traffic between Canton-Elk Point/Hawarden-Beresford line and Sioux City, IA shall automatically be assigned to any state lessee of the Existing Hawarden Line who succeeds SVRRA as lessee (other than the DME, or a successor thereto, or Class 1 or Class 2 Railroad), and may be assigned by SVRRA and its successor to another operator of all or a part of the Existing Hawarden Line acting as agent for the SVRRA or otherwise assigned in whole to an entity acquiring ownership of or a leasehold interest in the Existing Hawarden Line, provided such operator is not the DME, or a successor thereto, or a Class 1 or Class 2 Railroad.

c.) The extension of D&I trackage rights to include the "Blood Line" and the former CNW trackage pursuant to Section 1 d) may not be assigned to any Class I Railroad, or Class II Railroad, including DME and its successors or assigns without BNSF's advance written consent.

Section 7. Audit

a.) Each party shall maintain records of operations and activities conducted pursuant to this Agreement to the same extent and in the same form and detail as those normally maintained by

that party with respect to other identifiable portions of its rail system. Records pertaining to individual rail movements shall be maintained for a period of three (3) years from the waybill date of each such movement.

b.) Upon reasonable notice, each party shall allow the other party to examine applicable records of the other party at its place of business during normal business hours for purposes of verifying that party's compliance with the terms and conditions of this Agreement; provided, however, that the party whose records are to be examined may refuse access to records which that party is required to keep confidential pursuant to the express terms of any law, ordinance, decree or regulation of any governmental authority with jurisdiction over the party.

c.) The auditing party will keep non public audit records confidential, except to the extent disclosure may be required by applicable law.

d.) In the event BNSF desires to perform an audit of D&I's records related to performance of this Supplemental Agreement and D&I and/or SVRRA demands an independent audit in lieu of an audit using BNSF personnel or consultants, such independent audit shall be accommodated in lieu of performance thereof with BNSF resources, provided that the party(ies) demanding an independent audit (in lieu of an internal BNSF audit at no expense to such party) shall share equally the expense of an independent consultant/auditor.

e.) No audit of records may be conducted for movements which occurred more than three (3) years prior to the request for audit.

Section 8. Term

a.) This Supplemental Agreement shall become effective ("Effective Date") as of the later of the:

- i.) the date last signed below,
- ii.) the date of dismissal of all litigation referenced in the Settlement Agreement.

and shall continue in full force for an initial term of fifty (50) years from April 25, 2005, subsequent to D&I at its own cost and expense having secured all necessary consent, approval or authority from appropriate governmental agencies for the sanction of this Supplemental Agreement upon terms and conditions satisfactory to Owner. Owner and User agree to cooperate fully to procure all such necessary consent, approval or authority.

b.) Upon termination or expiration of this Supplemental Agreement, for whatever reason, D&I if necessary shall fully cooperate, consent, participate and jointly file with BNSF to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Supplemental Agreement. D&I shall assist and support BNSF's filing and any associated proceedings to facilitate any termination or expiration, which shall include without

limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in Owner's sole discretion, be prepared and made at any time after this Supplemental Agreement has been terminated or expired. Such filing shall be coordinated by and at the expense of BNSF. D&I shall surrender possession and operation of the Joint Trackage as promptly as D&I is able to do so under applicable laws and regulations. Notwithstanding any provision to the contrary herein, D&I shall not contest the right of BNSF at any time to abandon, transfer, or discontinue all or any part of the Joint Trackage. Any liability created under this Supplemental Agreement shall survive any termination of this Supplemental Agreement.

Section 9. NON-DISCRIMINATION.

The grant of trackage rights to D&I by BNSF pursuant to this Supplement shall be provided on a non-discriminatory basis, and BNSF shall treat the trains/cars of D&I on an equal basis with BNSF's trains/cars, of the same or similar type volume and commodity moving over the same route.

Section 10. CONTINUATION OF WEST YARD LEASES.

Notwithstanding any provisions to the contrary therein, those certain leases, Lease No. T217 dated December 12, 1987 (with a February 16, 1990 addendum) and Lease No. 1362, dated February 28, 1990, respectively, by and between the State and D&I, shall remain in effect for so long as this Supplemental Agreement remains in effect; provided, however, BNSF shall have the right to make reasonable adjustments to compensation terms from time to time pursuant to the terms of said lease agreements where applicable and/or in the event such lease terms come up for renewal where applicable; and provided, further, that BNSF shall maintain rights of termination in the event of material default.

Section 11. AMENDMENTS.

The State and SVRRA shall be deemed to be third-party beneficiaries of this Supplemental Agreement except to the extent that rights granted hereunder pertain to D&I's Existing Dell Rapids Line ("Beneficial Rights") with rights to enforce the terms the Beneficial Rights of this Supplemental Agreement in the event of material breach of the terms thereof, and no amendment to the Base Agreement or this Supplemental Agreement affecting movement of traffic to/from the Canton-Elk Point/Hawarden-Beresford line shall be made without the specific written consent of the State and SVRRA.

All other terms and conditions of the Base Agreement, as amended, will remain in full force and effect.

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

BNSF RAILWAY COMPANY

By: 

Printed: Peter J. Rickershauser

Title: VP Network Development

Date: November 22, 2005

D & I RAILROAD COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

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

BNSF RAILWAY COMPANY

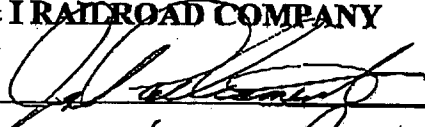
By: _____

Printed: _____

Title: _____

Date: _____

D & I RAILROAD COMPANY

By:  _____

Printed: Jack Parliament

Title: President / Gen. Mgr.

Date: 11-22-05

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)

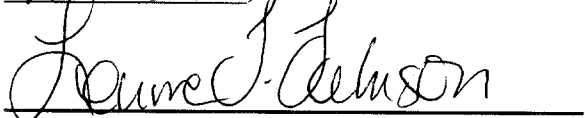
County of Minnehaha)

SS:

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



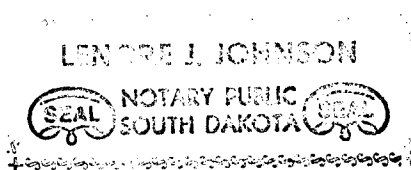
Subscribed and Sworn to
Before me this 20th day of
November, 2005



Notary Public

My Commission Expires:

My Commission Expires 6-1-09



SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34685 (Sub No. 1)

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

1. Pursuant to an earlier trackage rights agreement between BNSF Railway Company ("Owner") and the D&I Railroad Co. ("User") agreement, User presently has overhead trackage rights over Owner's main line in South Dakota from:

a) Sioux Falls, South Dakota, Owner Milepost 71.5 (East Junction) to Milepost 74.1 (just north of West Junction), Owner Milepost 0.0 and Owner Milepost 1.09 (on the Madison Subdivision) and Milepost 145.45 and Milepost 145.91 on the Corson subdivision),

b) Sioux Falls, South Dakota (Milepost 69.9) and Canton, South Dakota (Milepost 49.9) on the Canton Subdivision, and

c) South Wye Switch, South Dakota Owner Milepost 533.4 (just south of Elk Point, South Dakota), formerly known as East Wye Switch and also referenced as Elk Point, South Dakota, and Sioux City, Iowa Owner Milepost 512.6 on the Aberdeen subdivision.

2. BNSF Railway Company ("Owner") has agreed to modify said trackage rights agreement to grant additional overhead trackage rights to D&I Railroad Company as set forth below:

a) Pursuant to a supplement to that earlier agreement, at Canton, South Dakota, User's overhead trackage rights over Owner's trackage from Sioux Falls, South Dakota to Canton, South Dakota will be extended from Milepost 49.9 to Milepost 49.4, (Engineering Survey Number 6651.08=97+08.5 E.C.), where centerline of track leaves Owner property and enters Sioux Valley Regional Railroad Authority Property.

b) Also under the supplement, User's overhead trackage rights over Owner from South Wye Switch, South Dakota to Sioux City, Iowa will be extended from Milepost 512.6 to just east of Steuben Street, Milepost 512.36. The Supplemental Agreement also grants D&I additional operating rights on BNSF's "Blood Line" in Sioux City, IA solely for the purpose of effecting interchange with Union Pacific Railroad Company (UP) and Canadian National Railway Company (CN) at Sioux City, Iowa until such time as a direct connection to the UP and CN is built as contemplated in a letter agreement between BNSF and the State of South Dakota, dated November 22, 2005.

c) Under the supplemental agreement, the rights granted therein pertaining to movement of traffic between Canton, SD and South Wye Switch, SD including Beresford, SD to Hawarden, IA (as those lines existed as of April 25, 2005) ("Existing Hawarden Line") shall automatically be assigned to any State of South Dakota lessee of the Existing Hawarden Line who succeeds Sioux Valley Regional Railroad Authority ("SVRRA") as lessee (other than the Dakota, Minnesota & Eastern ("DME"), or a successor thereto, or Class I or Class II Railroad), and may be assigned by SVRRA and its successor to another operator of all or a part of the Existing Hawarden Line acting as agent for the SVRRA or otherwise assigned in whole to an entity acquiring ownership of or a leasehold interest in the Existing Hawarden Line, provided such operator is not DME, or a successor thereto, or a Class I or Class II Railroad.

The modified trackage 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