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FIFTH FLOOR
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TEL 202 628 2000
FAX 202 628 2011

March 31, 2006

BY HAND

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

ENTERED
Office of Proceedings
MAR 31 2006
Part of
Public Record



Re: STB Finance Docket No. 34859, Red River & Western Railroad Company –
Trackage Rights Exemption – BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and 10 copies of the Verified Notice of Exemption (the "Notice") of Red River & Western Railroad Company ("RRVW"), pursuant to 49 C.F.R. § 1180.2(d)(7). In accordance with 49 C.F.R. § 1180.6(a)(6), also enclosed for filing in this proceeding are an additional 20 copies of each map exhibit attached to the Notice. Finally, enclosed is a check in the amount of \$1000 to cover the cost of the filing.

The trackage rights agreement, attached to the Notice as an exhibit, is redacted to protect against the release of certain confidential, proprietary and/or commercially sensitive information. Concurrent with this filing, RRVW has filed with the Surface Transportation Board in this proceeding (i) an unredacted version of the trackage rights agreement, "under seal," and (ii) a Motion for Protective Order.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

FILED

MAR 31 2006

SURFACE
TRANSPORTATION BOARD

Enclosures

A handwritten signature in cursive script, appearing to read 'Rose-Michele Nardi'.

Rose-Michele Nardi

FEE RECEIVED
MAR 31 2006
SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34859

**Red River Valley & Western Railroad Company
-- Trackage Rights Exemption --
BNSF Railway Company**

Applicant's name, address and telephone number:

49 C.F.R. § 1180.6(a)(1)(i)

Red River Valley & Western Railroad Company
116 4th St. S.
Wahpeton, ND 58075
(701) 642-8257

Applicant's representative to receive correspondence:

49 C.F.R. § 1180.6(a)(1)(i)

The representative of Red River Valley & Western Railroad Company to receive correspondence in this matter is:

Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
(202) 628-2000

Brief Summary of the proposed transaction:

49 C.F.R. § 1180.6(a)(1)(i)

Red River Valley & Western Railroad Company ("RRVW") files with the Surface Transportation Board (the "Board") this Verified Notice of Exemption, under 49 C.F.R. § 1180.2(d)(7), with respect to the grant of overhead trackage rights by BNSF Railway Company ("BNSF") to RRVW. The subject trackage rights extend for approximately 74.0 miles from

Jamestown, ND (approx. BNSF Milepost 93.2) to Casselton, ND (approx. BNSF milepost 28.4), and includes the BNSF main line trackage from the switch at the intersection of RRVW's line to Ypsilanti running west to the crossovers into the Jamestown yard tracks.

Proposed time schedule for consummation:

49 C.F.R. §1180.6(1)(ii)

The subject transaction is expected to be consummated on or after April 7, 2006.

Purpose sought to be accomplished:

49 C.F.R. §1180.6(a)(iii)

The proposed trackage rights will provide RRVW with an alternate route to other lines in its system. This alternate route has heavier rail, better quality track materials and can sustain higher operating speeds, thereby promoting safety and operating efficiencies.

States in which applicant's property is located:

49 C.F.R. §1180.6(a)(5)

All of RRVW's rail property is located in the States of North Dakota and Minnesota.

A map of the rail line :

49 C.F.R. §1180.6(a)(6)

A map of the subject trackage rights is attached hereto as Exhibit A-1. A general system map of RRVW is attached hereto as Exhibit A-2. Also, pursuant to 49 C.F.R. §1180.6(a)(6), twenty additional, unbound copies of each of the maps have been provided.

A copy of the relevant agreement:

49 C.F.R. §1180.6(a)(7)

A redacted version of the trackage rights agreement between RRVW and BNSF, dated March 10, 2006 (the "Agreement") is attached hereto as Exhibit B. Concurrent with the filing of this Verified Notice of Exemption, RRVW has filed with the Board (i) a Motion for Protective

Order with respect to the Agreement (the "Motion"), and (ii) an unredacted version of the Agreement, which is being filed "under seal," subject to the Motion.

Labor Protection:

49 C.F.R. §1180.4(g)(i)

RRVW anticipates that any employees adversely affected by this transaction will be afforded the level of protection set forth in *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).

Environmental and historic reporting requirements:

49 C.F.R. §§ 1105.6, 1105.7, 1105.8

Environmental documentation normally need not be prepared for an acquisition of trackage rights. See 49 C.F.R. §1105.6(c)(4). In addition, trackage rights transactions are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a), if such transactions "will not substantially change the level of maintenance of railroad property." See 49 C.F.R. §1105.8(b)(3). RRVW's exercise of the subject trackage rights will not have a

substantial, adverse effect on the maintenance level of the Subject Line. Accordingly, a historic report is not required for this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rose-Michele Nardi". The signature is fluid and cursive, with the first name "Rose" and last name "Nardi" being the most legible parts.

Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W.
Fifth Floor
Washington D.C. 20036

Attorneys for:

Red River Valley & Western Railroad
Company

Dated: March 31, 2006

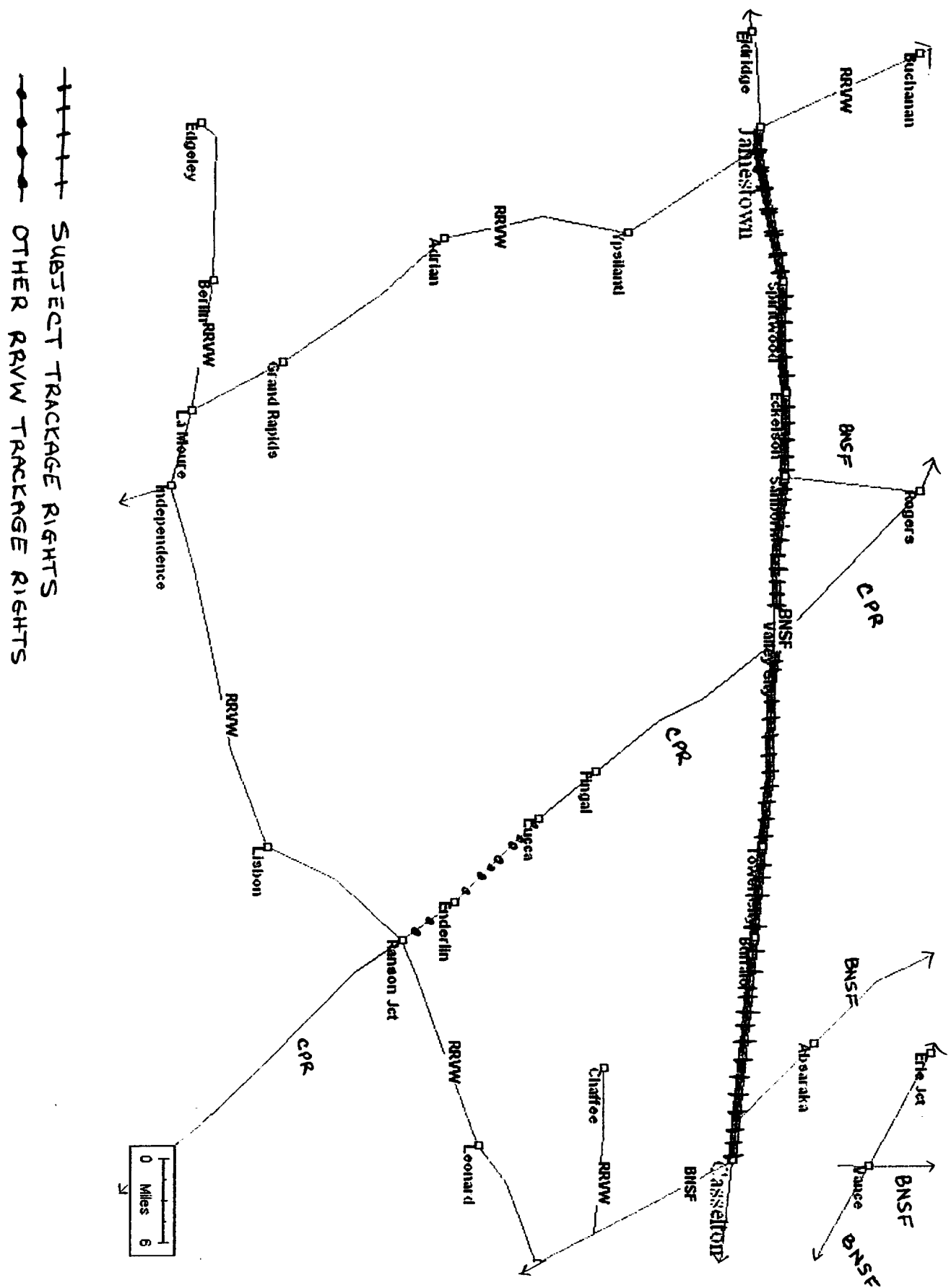
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34859

Red River Valley & Western Railroad Company
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT A-1

MAP OF TRACKAGE RIGHTS LINE



SUBJECT TRACKAGE RIGHTS

OTHER RR/VV TRACKAGE RIGHTS

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34859

Red River Valley & Western Railroad Company
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT A-2

MAP OF RRVW



VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34859

Red River Valley & Western Railroad Company
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT B

REDACTED TRACKAGE RIGHTS AGREEMENT

REDACTED

Overhead Trackage Rights Agreement Jamestown to Casselton

THIS AGREEMENT, made and entered into this 10th day of March, 2006 ("Effective Date") by and between BNSF RAILWAY COMPANY formerly known as THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF" or "Owner", and RED RIVER VALLEY & WESTERN RAILROAD COMPANY, a Minnesota corporation, hereinafter called "RRVW" or "User".

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between a connection with RRVW at Jamestown, ND, and BNSF's trackage at Casselton, ND; and

WHEREAS, RRVW desires to obtain overhead trackage rights upon those certain lines of BNSF's railroad, for the sole purpose of moving its cars, engines, cabooses and end of train devices over said trackage; and

WHEREAS, BNSF is agreeable to said trackage rights but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. TRackage SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad over which RRVW will be granted overhead trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF TRackage RIGHTS.

The General Conditions covering the grant of trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this agreement, and RRVW's agreement to file a "Notice of Exemption" filing for the trackage rights with the STB, BNSF grants to RRVW the nonexclusive right to use the Joint Trackage for the operation by RRVW's employees of the Equipment (as defined in Exhibit "B" of this agreement) that is in RRVW's account while moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to

hereinafter be considered BNSF for the purpose of this agreement. Said grant of overhead trackage rights shall be between Jamestown, ND, (BNSF's Milepost 93.2) and Casselton, ND, (BNSF's Milepost 28.4), a distance of approximately 74.0 miles which includes the BNSF main line trackage from the switch at the intersection of RRVW's line to Ypsilanti running west to the crossovers into the Jamestown yard tracks.

It is understood and agreed that RRVW shall not have a right to:

- (a) set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or
- (b) handle any traffic other than overhead (bridge) traffic to or from points north of Jamestown, ND and south of Casselton, ND; or
- (c) enter at Casselton and exit to the RRVW's line south of Jamestown without first yarding the train at Jamestown, or enter from RRVW's line south of Jamestown and exit at Casselton, without first yarding the train at Jamestown.
- (d) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by RRVW; or
- (e) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of RRVW.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

BNSF, at its expense, shall maintain the Joint Trackage. In the event that for, operating convenience, necessity or emergency, BNSF permits or directs RRVW to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. LIMITATIONS OF TRACKAGE RIGHTS TRAINS.

RRVW and BNSF agree that RRVW's use of the trackage rights granted herein shall be for a maximum of

Trains will be limited to

Should RRVW request and BNSF permit more than

. Request for additional trains will be made in writing by RRVW and will be subject to the written consent and approval of BNSF, which approval may be granted or denied in BNSF's sole and absolute discretion for any reason or no reason whatsoever.

Section 5. COMPENSATION.

Section 6. CONNECTIONS AND ADDITIONS.

At the current operating levels contemplated, no additional connections are deemed necessary. However, if a connection is deemed necessary at some future time to facilitate Trackage Rights governed by this Agreement, the entire cost of construction of any connection necessary for the implementation of the trackage rights granted in this Agreement shall be at RRVW's sole expense. BNSF, at RRVW's sole expense, shall construct, own and maintain the part of any connection on BNSF's property.

Section 7. LIABILITY

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto.

Section 8. ENGINEER CERTIFICATION

RRVW shall submit its written program for certifying the qualifications of locomotive engineers

REDACTED

per CFR 49 part 240.101. Such written program shall be approved by BNSF prior to RRVW commencing operations as contemplated herein.

Section 9. INSURANCE

REDACTED

Section 10. APPLICABLE LAW

This Agreement shall be governed and construed in accordance with the laws of the state of Texas, without regard to its conflicts of laws provisions.

Section 11. TERM AND TERMINATION.

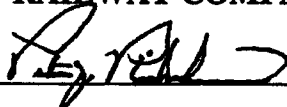
Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this Agreement shall become effective upon the date RRVW first commences operations over the Joint Trackage pursuant to this Agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to RRVW. Once activated by the commencement of RRVW's operations, this Agreement shall remain in effect indefinitely thereafter. After an initial period of ten (10) years, the terms and conditions of this Agreement may be subject to re-negotiation by either party giving not less than sixty (60) days written notice of its intentions to do so. In the event the parties are not able to agree upon the terms within a reasonable time, at the request of either party the re-negotiation of this Agreement will be submitted to arbitration under the provisions of Section 6 of the General Conditions (Exhibit B to this Agreement). BNSF may terminate this agreement based upon a material default by RRVW of its obligations hereunder if RRVW fails to cure such default within sixty (60) days following receipt of written notice of such default, or in the case of contested matters, if the default continues for sixty (60) days after the final resolution of such contest. BNSF may also terminate this agreement upon sixty (60) days written notice in the event that RRVW abandons both its track from Jamestown south to Ypsilanti and its track from Jamestown north to Buchanan. In the event of termination by Owner, User shall upon written request of Owner

promptly and in good faith pursue and prosecute to conclusion any necessary regulatory approvals to discontinue use of the Joint Trackage. User shall not contest the right of Owner to obtain regulatory authority and act upon any such authority granted at any time to abandon, transfer, or discontinue use of all or any part of the Joint Trackage.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

WITNESS:

BNSF RAILWAY COMPANY

By: 

Printed: Peter J. Rickershauser

Title: VP, Network Development

Date: _____

WITNESS:

**RED RIVER VALLEY & WESTERN
RAILROAD COMPANY**

By: 

Printed: William F. DRUSCH

Title: President & C.E.O.

Date: 3/1/06

Exhibit "A"

Trackage Rights Agreement - RRVW over BNSF between Casselton, ND and Jamestown, ND



EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B".

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, end of train devices vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Annual" shall mean a calendar year.

1.7 "Car" shall mean one (1) rail car; however, in the case of an articulated rail car of two (2) or more platforms, each platform shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology and each locomotive shall be counted as two (2) cars.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions and/or Capital Improvements" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of the Agreement.

1.10 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Except as provided in sections 4 and 5, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User

shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User provided there shall at all time be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property

damaged thereby shall be borne by the party or parties liable therefor in accordance with Sections 4 and 5 of these General Conditions.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Section 2.12 of these General Conditions.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.15 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees

depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit "B".

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the

Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. **BILLING DEFAULT**

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

REDACTED

REDACTED

Section 5. LIABILITY

REDACTED

REDACTED

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other

Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the American Arbitration Association, or its successor entity, from a roster of a distinguished panel of neutral dispute resolution professionals, upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 User 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 User thereunder. Owner, 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. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for

User's use, and User shall have and shall make no claim or protest of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than owner) having the right to use the Joint Trackage, Owner shall, concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to make appropriate application to secure all necessary governmental authority for such abandonment, and User will not oppose such abandonment or discontinuance. User agrees that at such time, on request of Owner, it will concurrently make application for and obtain all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment,

surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User, and upon request of Owner, User shall pursue any regulatory authority which may be required to terminate use of all or a part of the Joint Track, as the case may be. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving

the same upon the AVP-Contracts & Joint Facilities for the BNSF, and the President of the RRVW.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

End of General Conditions

SURFACE TRANSPORTATION BOARD

Verified Notice of Exemption

STB Finance Docket No. 34859

Red River Valley & Western Railroad Company
-- Trackage Rights Exemption --
BNSF Railway Company

BNSF Railway Company has agreed to grant overhead trackage rights to Red River & Western Railroad Company that extend for approximately 74.0 miles from Jamestown, ND (approx. BNSF Milepost 93.2) to Casselton, ND (approx. BNSF milepost 28.4), and includes the BNSF main line trackage from the switch at the intersection of RRVW's line to Ypsilanti running west to the crossovers into the Jamestown yard tracks. The subject transaction is expected to be consummated on or after April 7, 2006.

This notice is filed under § 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 stay the transaction.

Dated:

By the Board.

Vernon A. Williams,

Secretary

VERIFICATION

I, William F. Drusch, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this Verified Notice of Exemption to be filed.

A handwritten signature in black ink, reading "William F. Drusch", with a long, sweeping horizontal flourish extending to the right.

William F. Drusch, President
Red River Valley & Western
Railroad Company

Dated: March 31, 2006