



Robert T. Opal
General Commerce Counsel

May 25, 2006

216621



Via UPS Overnight

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

FILED

MAY 26 2006

**SURFACE
TRANSPORTATION BOARD**

**Re: Finance Docket No. 34880; Union Pacific Railroad Company – Trackage
Rights Exemption – BNSF Railway Company**

Dear Secretary Williams:

Enclosed for filing in the above proceeding are the following:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$1,000.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40)(iv).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose. Thank you for your time and attention to this matter.

FEE RECEIVED

MAY 26 2006

**SURFACE
TRANSPORTATION BOARD**

Sincerely,

cc: (w/ attachments)
Sarah Bailiff -- BNSF Railway Company

**ENTERED
Office of Proceedings**

MAY 26 2006

**Part of
Public Record**

Contains Color Images

216621

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34880

UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

ORIGINAL



VERIFIED NOTICE OF EXEMPTION

FILED

MAY 26 2006

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

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TRANSPORTATION BOARD

ENTERED
Office of Proceedings

MAY 26 2006

Part of
Public Record

UNION PACIFIC RAILROAD COMPANY
Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-3072
(402) 501-01323393 (FAX)

Dated: May 25, 2006
Filed: May 26, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34880

UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION



ENTERED
Office of Proceedings
MAY 26 2006
Part of
Public Record

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7) for exemption of overhead, trackage rights over a line railroad of BNSF Railway Company ("BNSF") between BNSF Milepost 0.69 near Portland, OR and BNSF Milepost 8.1 near North Portland Junction, OR, a distance of approximately 7.41 miles, as shown on the map attached as Exhibit 1.¹

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice (i) are to be covered by the written agreement attached as Exhibit 2, and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

¹ Mileposts and distances shown represent the length of the trackage rights corridor. As shown by the agreement attached as Exhibit 2, UP will be permitted to use BNSF Main Track 1 for the entire length of the corridor, and BNSF Main Track 2 for the portion of the corridor between BNSF Milepost 0.91 and BNSF Milepost 8.1.

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

1180.6(a)(1) Description of the Proposed Transaction

The transaction covered by this Notice is the acquisition overhead trackage rights by UP over BNSF between BNSF Milepost 0.69 near Portland, OR and BNSF Milepost 8.1 near North Portland Junction, OR, a distance of approximately 7.41 miles, as shown on the map attached as Exhibit 1.

1180.6(a)(1)(i) Summary of the Proposed Transaction.

See answer to § 1180.6(a)(1), above.

1180.6(a)(1)(i) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-3072
(402) 501-0132 (FAX)

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on or after June 1, 2006.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the trackage rights is to create an additional overhead routing for UP trains in the Portland, OR area.

§ 1180.6(a)(5) States in which Property of the Applicant is Situated

UP property is situated in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

1180.6(a)(7)(ii) Agreement (Exhibit 2)

A draft of the trackage rights agreement showing the principal terms proposed is attached as Exhibit 2.

1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions are those imposed 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).

1180.4(g)(2)(iii) Caption Summary (Exhibit 3)

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

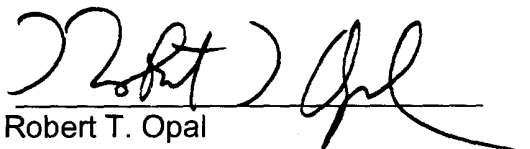
1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

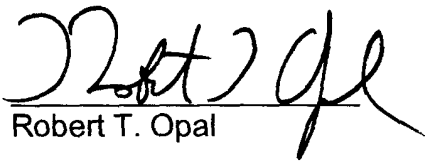
By:


Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-3072
(402) 501-0132 (FAX)

VERIFICATION

I, Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declare and verify that I have read the foregoing Notice of Exemption in Finance Docket No. 34880, know the facts stated therein, and believe to the best of my knowledge and ability that said facts are true as stated.

Dated: May 25, 2006


Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by E-Mail:

Sarah Whitley Bailiff, Esq.
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828
sarah.bailiff@bnsf.com

Dated at Omaha, Nebraska this 25th day of May, 2006.

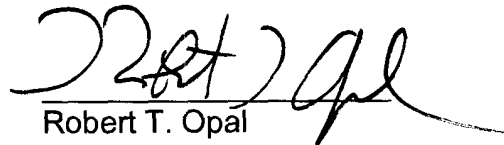
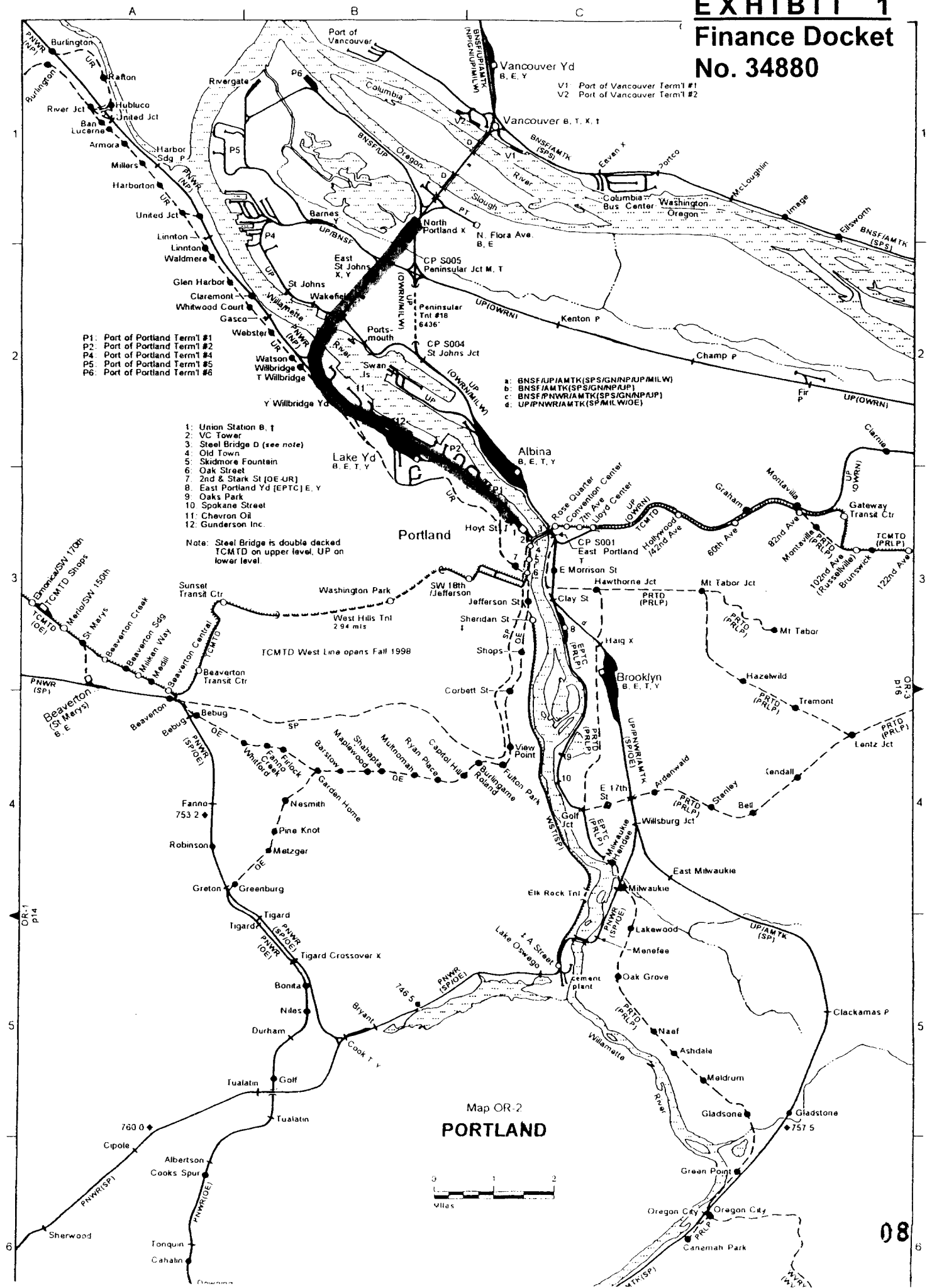

Robert T. Opal

EXHIBIT 1
Finance Docket
No. 34880



TRACKAGE RIGHTS AGREEMENT

UP over BNSF

PORTLAND TO NORTH PORTLAND JCT., OREGON

THIS AGREEMENT made as of this ____ day of May 2006 (The "Execution Date"), between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "Owner" or "BNSF") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as "User" or "UP").

WITNESSETH:

WHEREAS, BNSF owns a line of railroad consisting of track structure extending between Portland, Oregon, in the vicinity of BNSF's Main Track 1 Milepost 0.69 and BNSF's Main Track 2 Milepost 0.91 on BNSF's Fallbridge Subdivision, and North Portland Jct., in the vicinity of BNSF's Milepost 8.1 on BNSF's Fallbridge Subdivision for a distance of 7.41 miles on Main Track 1 and 7.19 miles on Main Track 2 as shown by bold dashed lines on the attached print identified as (Exhibit A) and further described in Section 1.8 of Exhibit B, which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, UP operates between Portland BNSF Milepost 0.69 and Guilds Lake Yard, BNSF Milepost 2.0 to access the Portland Terminal Railroad ("PTR"), per the Portland Terminal Railroad Operating Agreement; and

WHEREAS, UP desires to use the Joint Trackage for overhead movement of its trains between Portland and North Portland Jct., Oregon; and

WHEREAS, BNSF is willing to grant UP limited use of the Joint Trackage for the sole purpose of overhead movement of UP freight trains between Portland and North Portland Jct., Oregon; and

WHEREAS, UP will enter into a separate supplemental agreement with BNSF of even date granting BNSF the right to allow the Portland & Western R.R., Inc. ("PNWR") to act as BNSF's agent between Portland, OR and Labish, OR ("Agency Rights"); and

WHEREAS, BNSF and UP wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

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

Section 1. General Conditions; Conflicts Between Provisions:

The General Conditions set forth in Exhibit B attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

Section 2. UP's Rights:

(a) Subject to the terms and conditions contained herein, BNSF grants to UP the nonexclusive right to use the Joint Trackage for the limited operation for up to a total of two (2) trains per day of Equipment in UP's account 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 in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered BNSF for the purposes of this Agreement, it being understood and agreed that UP shall not have the right to:

- (i) Switch industries or transload upon the Joint Trackage; or
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.12, 2.13 and 2.14 of Exhibit B; or
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or
- (v) Connect with itself at any location along the Joint Trackage; or

- (vi) Connect with any other railroad at any location along the Joint Trackage except that UP may enter or exit the Joint Trackage for the purpose of connecting with the PTR under the terms and conditions of the PTR Operating Agreement, as amended; or
- (vii) Build-in to or build out from any point on or along the Joint Trackage; or
- (viii) Interchange with any other railroad or perform haulage services for any other railroad on or along the Joint Trackage.

(b) The rights granted in Section 2 (a), above, shall be for rail freight traffic, carload and intermodal, of all commodities.

(c) UP agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ("UP's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, except as may be expressly agreed otherwise by the parties in writing, UP agrees that if sufficient trackage is not available at such location(s) to facilitate UP's Operations, BNSF may require UP to construct additional trackage ("Additional Trackage") in the vicinity of such location as may be required in the reasonable judgment of BNSF, the cost and expense of which shall be borne solely by UP. In the event such Additional Trackage is constructed at the cost and expense of UP, and BNSF shall choose to use such Additional Trackage, BNSF shall pay UP fifty percent (50%) of the cost of constructing such Additional Trackage plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by BNSF commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Additional Trackage. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e., the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

Section 3. UP Train Operations:

BNSF grants UP access to the Joint Trackage for up to a total of two (2) trains per day over the Joint Trackage. UP's northbound trains must secure from the appropriate dispatch personnel an operational slot (hereafter "Landing Spot") north of North Portland Jct. before entering the Joint Trackage, and secure a Landing Spot from the appropriate dispatch personnel for southbound trains either at PTR's Guilds Lake Yard or south of Portland before entering the Joint Trackage at North Portland Jct.

Section 4. GTM Rates:

- (a) In addition to other payments to be made under this Agreement, UP shall remit to

BNSF for the use of the Joint Trackage in the operation of its Equipment there along and there over, the total amount of those sums computed pursuant to Section 9(a) of the Settlement Agreement, adjusted as provided in the joint filing submitted by UP and BNSF to the United States Surface Transportation Board on December 11, 2002, which sums per GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes:

- (i) 2.9 mills per GTM for all Equipment, except as provided in Subsection (a) (ii) of this Section 4.
- (ii) 2.8 mills per GTM for unit trains (trains consisting entirely of sixty-seven (67) or more rail cars of bulk freight of a single commodity (except for intermodal shipments, unless of a single commodity), loaded or empty.

(b) For the purpose of computing the GTM's under this Section 4, it is mutually agreed that the distances between the designated UP ingress and egress points of the Joint Trackage is 7.3 miles between Portland and North Portland Junction, and 5.0 miles between Guilds Lake Yard and North Portland Junction. In the event that for whatever reason there is a change in the Joint Trackage that results in a change in the mileage provided herein, then the distances listed above will be adjusted up or down to reflect the new mileage and the new mileage will be used to calculate GTM's effective with the commencement of train operations over the new track.

(c) The parties agree that UP's utilization of that portion of the Joint Trackage between BNSF Milepost 0.69 and BNSF Milepost 2.0, for the sole purpose of accessing the PTR, is covered by the PTR Operating Agreement and is not subject to the provisions of this Agreement.

(d) The GTM Rates set forth in Section 4 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 2006, as follows:

The GTM Rates shall be adjusted upward or downward effective July 1 of each year during the term of this Agreement by the difference in the two (2) preceding years in UP's system average URCS costs for the categories of maintenance and operating costs covered by the GTM Rates. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such re-negotiation, either party may request binding arbitration under Section 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

Section 5. Additions:

(a) Expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: The cost of Changes in and/or Additions to the Joint Trackage made in the first twelve (12) months after UP begins permanent operations on the Joint Trackage shall be shared by BNSF and UP based on the projected proportion of UP's number of GTM's moved over the Joint Trackage to the total number of GTM's moved over the Joint Trackage in the first twelve months of usage, adjusted for actual number of GTM's moved over the Joint Trackage at the end of the twelve (12)-month period. Any Changes in and/or Additions to the Joint Trackage subsequent to the first twelve (12) months of permanent UP operations shall be shared by BNSF and UP on the basis that the parties' respective number of GTM's operated over the Joint Trackage bear to total number of GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to BNSF for purposes of computing respective GTM's for purposes of this Section 5.

(b) If UP terminates this Agreement at any time as provided for in Section 9.1 of the General Conditions, UP will not be entitled to any refund of any amount paid by it for Changes in and/or Additions to the Joint Trackage.

Section 6. Effective Date, Term and Termination:

Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), this Agreement shall be effective as of the date STB approval is effective ("Effective Date"), and shall remain in effect for the Term stated in the General Conditions. Liabilities created under this Agreement shall survive any such termination.

Section 7. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

Executive Vice President-Operations
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

With a copy to:

General Manager Joint Facilities
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

AVP Contracts and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 7.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: _____

By: _____

Its: General Manager Joint Facilities

Its: Vice President Transportation

Exhibit A
Portland to North Portland
Trackage Rights Agreement

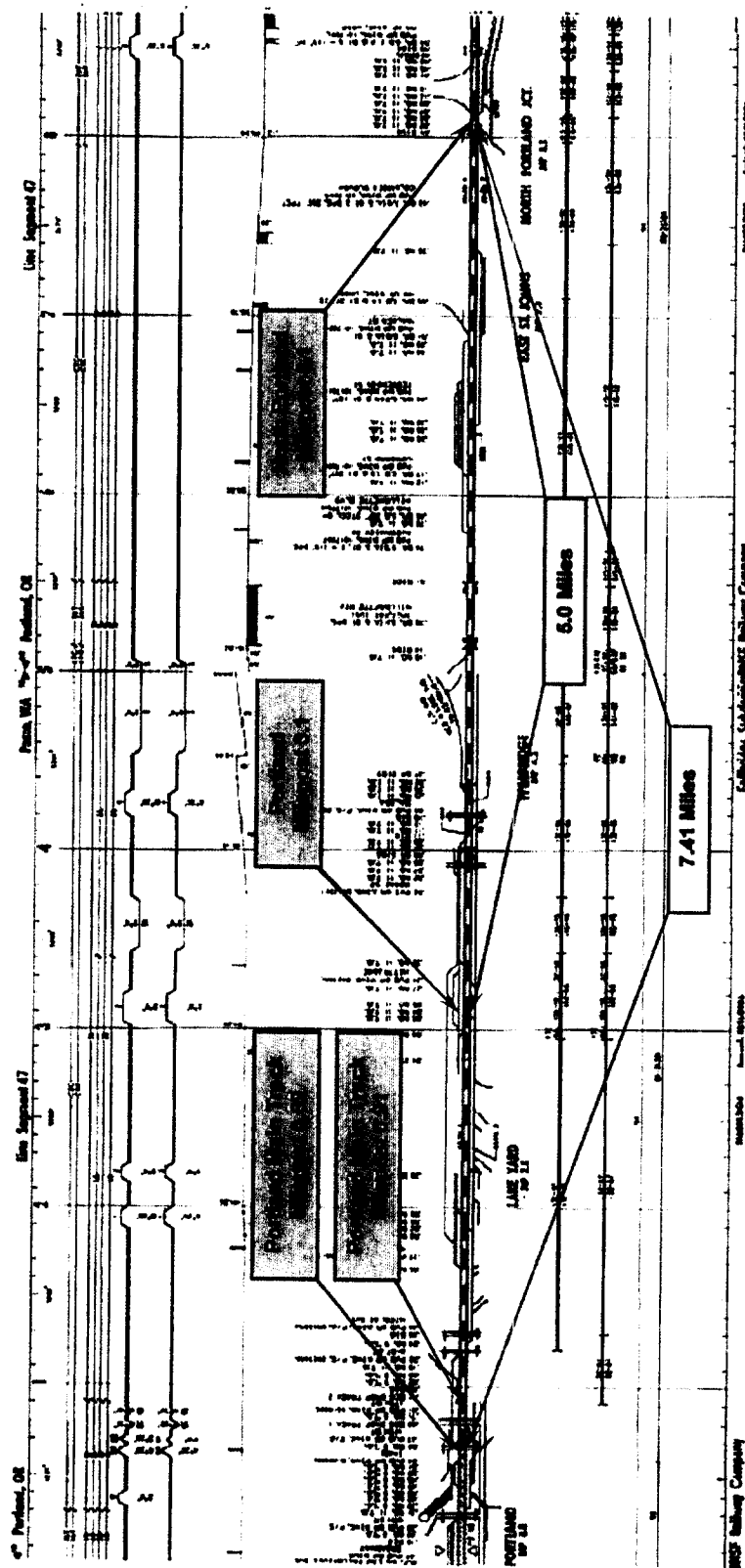


EXHIBIT "B"

Exhibit B to the trackage rights agreement will be filed with the final, executed copy of the agreement.

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34880**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

BNSF Railway Company ("BNSF") will agree to grant overhead trackage rights to Union Pacific Railroad Company ("UP") between BNSF Milepost 0.69 near Portland, OR and BNSF Milepost 8.1 near North Portland Junction, OR, a distance of approximately 7.41 miles. The trackage rights will be effective on June 1, 2006.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(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