

WEINER BRODSKY SIDMAN KIDER PC

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Office of Proceedings
SEP 25 2006
Part of
Public Record

1300 19TH STREET, NW
FIFTH FLOOR
WASHINGTON, DC 20036-1609
TEL 202 628 2000
FAX 202 628 2011

September 25, 2006

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



Re: STB Finance Docket No. 34911, Montana Rail Link, Inc. -- 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 Montana Rail Link, Inc. ("MRL"), 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 unbound copies of each map exhibit attached to the Notice. Finally, enclosed is a check in the amount of \$1,000 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, MRL 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 acknowledgement copy and returning it to our messenger.

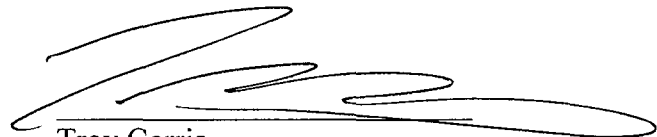
Very truly yours,

FEE RECEIVED

SEP 25 2006

**SURFACE
TRANSPORTATION BOARD**

Enclosures



Troy Garriss

FILED

SEP 25 2006

**SURFACE
TRANSPORTATION BOARD**

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

STB Finance Docket No. 34911

**Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company**



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Applicant's name, address and telephone number:
49 C.F.R. § 1180.6(a)(1)(i)

Montana Rail Link, Inc.
101 International Way
Post Office Box 16390
Missoula, Montana 59808-6390

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SEP 25 2006
SURFACE
TRANSPORTATION BOARD

Applicant's representative to receive correspondence:
49 C.F.R. § 1180.6(a)(1)(i)

The representative of Montana Rail Link, Inc. to receive correspondence in this matter is:

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

ENTERED
Office of Proceedings

SEP 25 2006

Brief Summary of the proposed transaction:
49 C.F.R. § 1180.6(a)(1)(i)

Part of
Public Record

Montana Rail Link, Inc. files with the Surface Transportation Board this Verified Notice of Exemption, under 49 C.F.R. § 1180.2(d)(7), with respect to the grant to MRL of limited overhead trackage rights by BNSF Railway Company. The subject trackage rights extend for

approximately 29.6 miles from approximately milepost 51.07 at or near Garrison, Montana to approximately milepost 21.5, a location south of Warm Springs, Montana.¹

Proposed time schedule for consummation:

49 C.F.R. §1180.6(1)(ii)

The subject transaction is expected to be consummated on or before October 2, 2006.

Purpose sought to be accomplished:

49 C.F.R. §1180.6(a)(iii)

The proposed trackage rights will provide BNSF and MRL the opportunity to transport designated traffic for approximately 29.6 miles from approximately milepost 51.07 at or near Garrison, Montana to approximately milepost 21.5, a location south of Warm Springs, Montana. BNSF has agreed to grant MRL trackage rights solely for the purpose of handling this traffic.

States in which applicant's property is located:

49 C.F.R. §1180.6(a)(5)

MRL's rail property is located in the States of Montana, Idaho, and Washington.

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. 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)(ii)

A redacted version of the trackage rights agreement between MRL and BNSF, dated May 30, 2006 (the "Agreement") is attached hereto as Exhibit B. Concurrent with the filing of this Verified Notice of Exemption, MRL has filed with the Board (i) a Motion for Protective Order

¹ Under separate cover we are also filing a petition to partially revoke the tracakge rights contemplated hereunder (F.D. No. 34911 Sub. No.1)

with respect to the Agreement, 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)

MRL 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

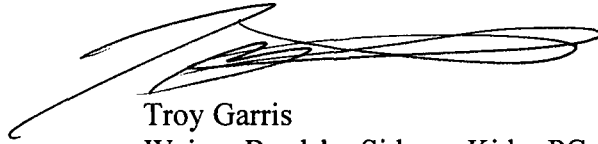
Environmental documentation normally need not be prepared for an acquisition of trackage rights. *See* 49 C.F.R. §1105.6(c)(4). In addition, trackage rights transactions are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a), if such transactions “will not substantially change the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

Caption Summary:

49 C.F.R. § 1180.4(g)(iii)(2)(i)

The required caption summary is attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Troy Garris', with a long, sweeping horizontal stroke extending to the right.

Troy Garris
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W.
Fifth Floor
Washington D.C. 20036
Attorneys for:

Montana Rail Link, Inc.

Dated: September 25, 2006

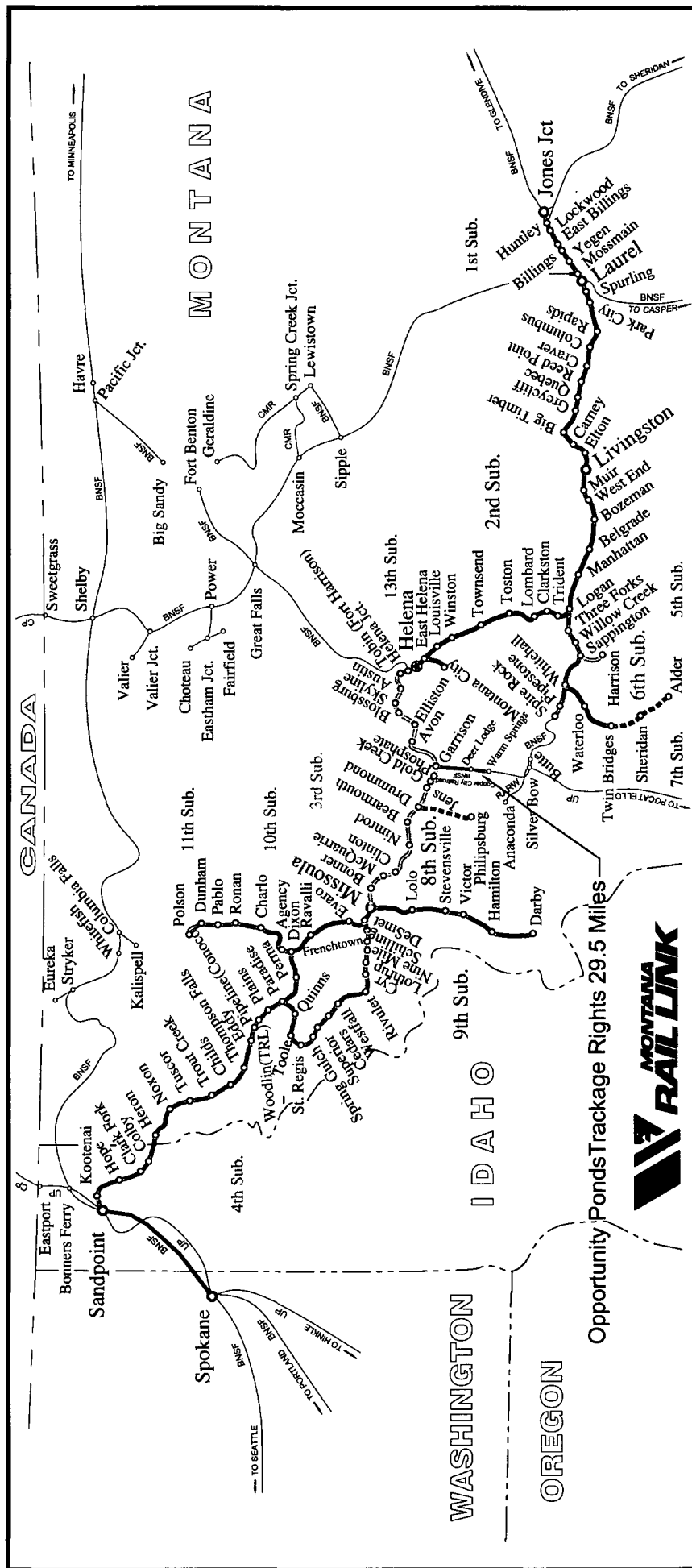
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

STB Finance Docket No. 34911

Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT A-1

MAP OF TRACKAGE RIGHTS LINE



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

STB Finance Docket No. 34911

Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

EXHIBIT B

REDACTED TRACKAGE RIGHTS AGREEMENT

**Overhead Trackage Rights Agreement
Garrison, Montana to Warm Springs, Montana**

THIS AGREEMENT, made and entered into this 30th day of May, 2006 by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **MONTANA RAIL LINK, INC.**, a Montana corporation, hereinafter called "MRL" or "User".

WHEREAS, MRL is the lessee and operator of a certain segment of rail line between Bonner, Montana and Garrison, Montana; and

WHEREAS, BNSF is the owner and operator of a certain segment of railroad between Garrison, Montana and Warm Springs, Montana; and

WHEREAS, BNSF and MRL have the opportunity to transport Hazardous Waste, Solid, N.O.S., (STCC=4860107), originating from the Clark Fork River between Garrison and Missoula ("Milltown Dam Area") near Bonner, Montana to Opportunity Ponds, Montana, a location south of Warm Springs, Montana; and

WHEREAS, BNSF agrees to grant MRL limited overhead trackage rights ("New Movement") between Garrison, Montana and Milepost 21.5, a location south of Warm Springs, Montana, solely to facilitate the proposed New Movement, solely for the purpose of handling sediment traffic, and only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the following 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 MRL will be granted limited 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 LIMITED OVERHEAD TRackage RIGHTS.

The General Conditions covering the grant of overhead 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 and conditioned upon the terms and conditions of Exhibit "B", this Agreement, and MRL's agreement to file a "Notice of Exemption" filing and simultaneous "Petition to Revoke" for the overhead trackage rights and termination thereof with the STB, BNSF grants to MRL the nonexclusive right to use the Joint Trackage for the limited operation by MRL's employees of the Equipment (as defined in Exhibit "B" of this Agreement) that is in MRL'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 rights shall be between Garrison, Montana BNSF's Milepost 51.1 and Milepost 21.5 south of Warm Springs, Montana, a distance of approximately 29.6 miles.

In addition, the overhead trackage rights granted herein apply only to the movement of Hazardous Waste, Solid, N.O.S., (STCC=4860107) ("Permitted Traffic") moving in MRL's cars, using MRL locomotives, using MRL train crews, using MRL end of train devices, from Milltown Dam Area to final destination at Opportunity Ponds, Montana a location south of Warm Springs, Montana and work trains and equipment necessary to fulfill the provisions of Sections 3 and 4 of this agreement. The operation by MRL on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of BNSF. Trains will be powered to a minimum horsepower of 1.2 per trailing ton. The gross weight limit on the rail per car load will not exceed 286,000 lbs.

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

- (a) Handle any traffic other than Permitted Traffic over the Joint Trackage; or
- (b) 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
- (c) 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 MRL, except for the track to be built from Warm Springs, Montana to Opportunity Ponds, Montana as provided below; or
- (d) Connect with any railroad at any location along the Joint Trackage; or
- (e) Interchange with any other railroad or perform haulage services for any other railroad on or along the Joint Trackage; or
- (f) 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 MRL.

Section 3. CONSTRUCTION OF TRACK TO OPPORTUNITY PONDS

Prior to the movement of trains, MRL will at its own cost construct, to BNSF standards, two (2) turnouts, one near Milepost 24.1, and one near Milepost 22.6 on BNSF's Copper City Division south of Warm Springs, Montana (the "Turnouts"), to access Opportunity Ponds, MRL will also construct or cause to be constructed, at its cost and on the property of ARCO (the "Customer"),

the necessary track from said Turnouts to the unload site at Opportunity Ponds (the "Additional Tracks").

After construction, the Turnouts will be maintained by BNSF from its main line to the clearance points and will be defined as Joint Trackage for the purpose of this Agreement. Trackage beyond the clearance points will be maintained by MRL (or a third party) and will not be considered Joint Trackage for the purpose of this Agreement.

Upon termination of this Agreement, MRL will remove the Turnouts at its sole expense and return BNSF's track and property, in the vicinity of the Turnouts to a condition satisfactory to BNSF. Prior to removal, MRL will offer BNSF the option to acquire the Turnouts.

Section 4. REHABILITATION OF JOINT TRACKAGE BETWEEN GARRISON, MONTANA AND WARMS SPRINGS, MONTANA

Prior to the movement of trains, MRL will rehabilitate the Joint Trackage between Garrison, Montana and Warms Springs, Montana. The scope and general terms of said rehabilitation will involve the installation of ties and the resurfacing of track as specified in the letter from Richard L. Keller to Larry Parker dated June 28, 2004, a copy of which is attached hereto and by this reference incorporated herein into this Agreement as Exhibit "C".

The rehabilitation will be done by MRL employees at MRL's sole cost and expense. However, MRL will be reimbursed for the actual cost and expense incurred as provided in Section 6 of this Agreement. While engaged in the rehabilitation such employees will be deemed "Sole Employees" of the MRL for purposes of this Agreement.

Prior to commencing construction of Turnouts as described in Section 3 of this Agreement, and rehabilitation of Joint Trackage as described in this Section 4, MRL agrees to enter into BNSF's standard Contract for Construction.

Section 5. MAINTENANCE AND OPERATION OF TRACKAGE.

Except as expressly provided otherwise in this Agreement, BNSF, at its expense, shall maintain the Joint Trackage. In the event that for operating convenience, necessity or emergency, BNSF permits or directs MRL to use adjacent BNSF track and/or track connections between or beyond the terminal of the Joint Trackage as an alternative route, then 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 for the limited time and scope necessary to effect BNSF's directed reroute.

Section 6. COMPENSATION.

On a monthly basis, MRL agrees to pay BNSF:

- a) per car, loaded or empty, for each car on all equipment registered in the Universal Machine Language Equipment Register (UMLER) to load to a maximum gross weight limitation on the rail of 268,000 lbs. that MRL moves over the Joint Trackage.
- b) per car, loaded or empty, for each car on all equipment registered in the Universal Machine Language Equipment Register (UMLER) to load to a maximum gross weight limitation on the rail of 286,000 lbs. that MRL moves over the Joint Trackage.

REDACT

The per car fee shall be subject to annual increase or decrease commencing on July 1, 2006, and July 1st of each year thereafter, based on the percentage of change in the Association of American Railroads Railroad Cost Recovery Index, Series RCR (1977=100), Table A-1, attached as Exhibit D, for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel) for the year 2004, which shall be used as the "base year," to the calendar year immediately prior to the year in which the charge is to be made effective. Thus, the percentage change from the year 2005 to the year 2004 will be used to adjust the charge July 1, 2006.

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. The parties intend that the liability provisions as provided in Exhibit "B" will not be applicable until after the commencement of train operations.

Section 8. INSURANCE

MRL insurance requirements will be as provided in the Agreement made between Burlington Northern Railroad Company and Montana Rail Link, Inc. dated July 21, 1987 as amended, which by this reference is incorporated herein.

Section 9. ENGINEER CERTIFICATION

MRL shall submit its written program for certifying the qualifications of locomotive engineers per CFR 49 part 240.101. Such written program shall be approved by BNSF prior to MRL commencing operations as contemplated.

Section 10. APPLICABLE LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Montana.

Section 11. NOTICES

All notices, demands, requests, 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 addressed as follows:

- (a) If to the BNSF:
Assistant Vice President Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76161-0034
- (b) If to the MRL:
President
Montana Rail Link, Inc.
P. O. Box 16390
Missoula, MT 59808-6390

Section 12. TERM AND TERMINATION

This Agreement shall become conditioned upon and effective upon the later of: i) the STB's issuance of a Notice of Exemption to approve this transaction; and ii) the STB's advance partial revocation of the exemption authority to allow the term of this agreement to expire by its terms as of the Expiration Date defined herein below. It is understood and agreed that the limitation of the term of this Agreement and the STB's advance approval that this Agreement may expire by

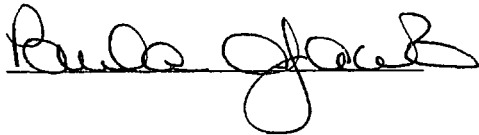
its terms as of the Expiration Date are a fundamental condition of the effectiveness of this Agreement, without which the overhead rights herein shall not be granted to MRL.

From and after the Effective Date, unless the term of this Agreement is extended by mutual written agreement of the parties, this Agreement shall remain in effect until the Expiration Date defined as the earlier of December 31, 2010 or the date upon which MRL permanently ceases shipments of Permitted Traffic pursuant to the terms of this Agreement ("Expiration Date").

Upon termination or expiration of the term of this Agreement, MRL shall relinquish all trackage rights granted herein and immediately surrender possession of the Joint Trackage. Where applicable, MRL shall fully cooperate, consent, and participate with BNSF and file to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the overhead rights granted herein in accordance with the terms of this Agreement. Where requested in writing by BNSF, MRL shall assist and support BNSF's filing and any associated proceedings, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Without prejudice to any other rights or remedies available at law or in equity, the parties agree that BNSF shall have rights of specific performance to enforce the terms of this Section.

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

WITNESS:



BNSF RAILWAY COMPANY

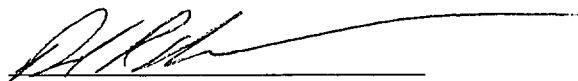
By: 

Printed: Peter J. Rickershauser

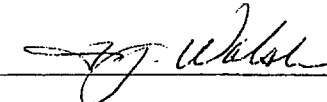
Title: VP, Network Development

Date: 5/17/06

WITNESS:



MONTANA RAIL LINK, INC.

By: 

Printed: Thomas J. WALSH

Title: PRESIDENT

Date: 5/30/2006

Exhibit "A" - MRL Trackage Rights between Garrison, MT and Warm Springs,

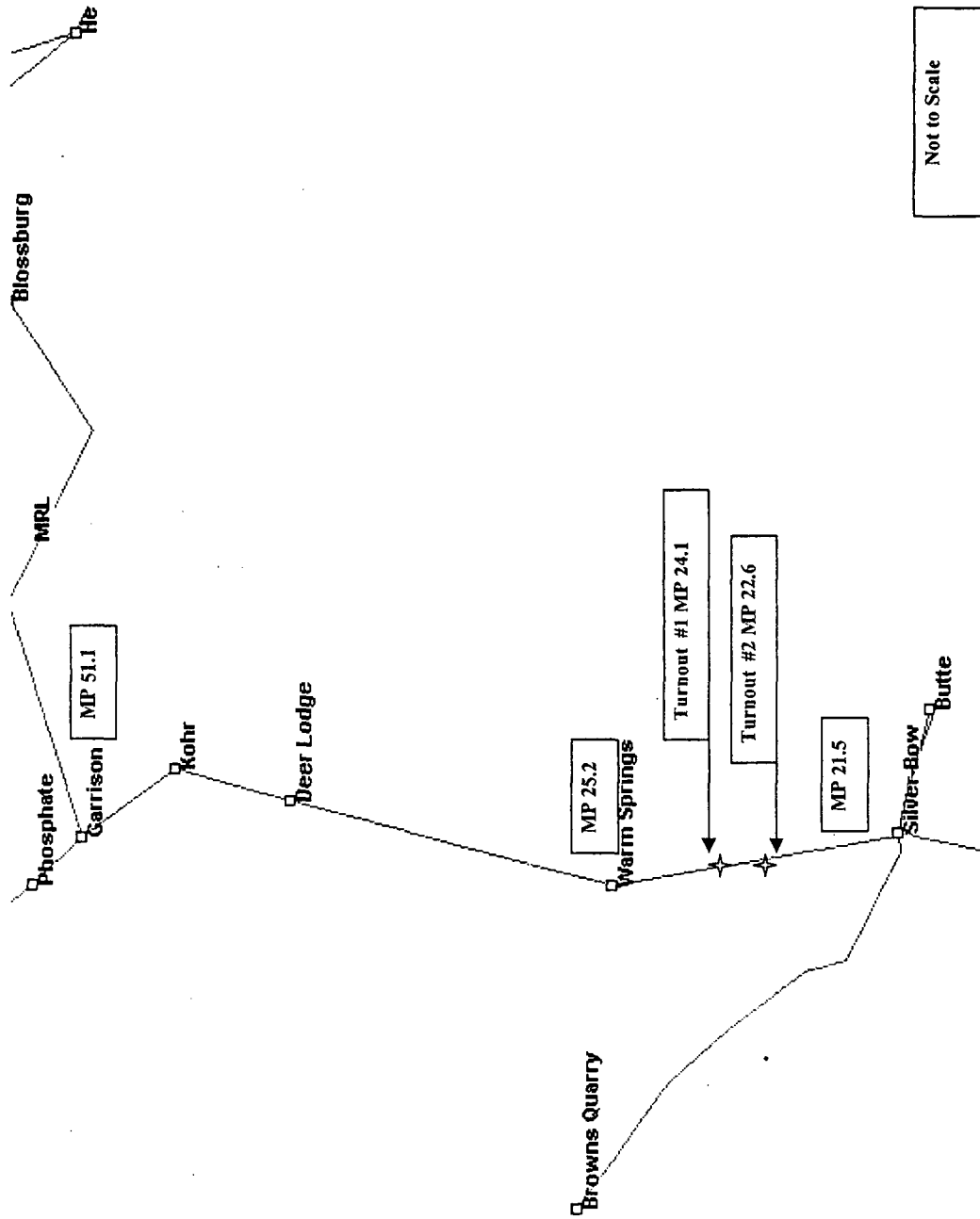


EXHIBIT "B"

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 "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.

1.5 "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 Equipment of the parties hereto.

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, Betterments 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 Except as expressly provided otherwise in the Agreement, 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. User 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 to the extent that the express terms of Section 5.2 of this Agreement would allocate liability in connection with an incident to Owner, 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. 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 User shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of trains over the Joint Trackage. In the event Owner does furnish such labor, fuel, or train supplies to User, User shall promptly, upon receipt of billing therefor, reimburse Owner 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 Section 4 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 (x) 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, or (y) claims asserted under Sections 4 or 5 of these General Conditions, which claims shall be subject to the applicable statute of limitations.

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, with reasonable prior written notice, be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with laws and regulations, and Generally Accepted Accounting Principles.

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 material 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, and User shall, upon written demand of Owner, pursue and obtain any required regulatory filings to discontinue use of the Joint Track; provided that failure to make any disputed payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, a cause for forfeiture hereunder.

Owner may agree to waive a default by User, but no such action shall be deemed to waive any rights to pursue a remedy for subsequent defaults of User or otherwise impair any rights of Owner for the future as a result of such written waiver.

3.6 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage; provided that this Section 4.1 shall not prohibit User from transporting Hazardous Waste, Solid, N.O.S. (STCC 4860107) or related lading.

4.2 Responsibility for Environmental Claims (as defined in Section 4.8 below) as between the parties shall be borne by the party or parties liable therefore pursuant to the allocation of liability in Section 5 of this Exhibit "B". To the extent this Section 4 allocates responsibility to a party in connection with a Derailment, release of Hazardous Materials, Response Action or Environmental Claim, such party shall undertake such responsibilities, but

the Loss or Damage as a result thereof shall be allocated pursuant to Section 5 hereof except as may expressly be provided otherwise herein.

a) Notwithstanding any provision to the contrary in Section 4 or Section 5, User shall be responsible for Environmental Claims to the extent they result from the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to the terms of this Agreement.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

4.5 Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.7, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

4.6 If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.7 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its

contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.8 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.9 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.10 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 4 and Section 5 of this Exhibit "B".

Section 5. LIABILITY

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the operation by the parties to the Agreement on the Joint Trackage.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property (as hereinafter defined) or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees while enroute from the

performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in and/or Additions thereto for the benefit of all the parties hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the Parties hereto. Without limiting the foregoing, for purposes of this Agreement (i) train and engine employees operating a train on behalf of one of the parties hereto shall be Sole Employees of that party, and (ii) the locomotives, rail cars and end-of-train devices in a train operated by a party hereto shall be the Sole Property of that party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 Allocation

(a) As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the parties whose Sole Employees and/or Sole Property contributed to the same shall bear all of the costs of such Loss or Damage equally.

(b) Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent, or otherwise of Sole Employees and/or by defects in the Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or

Sole Property contributed to the same, or equally if more than one party's Sole Employee and/or Sole Property shall have contributed to the same.

(c) Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned equally among all of the parties.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purpose of this Section 5.

Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property for the benefit of both parties shall be deemed acts and decisions of a Joint Employee.

5.5 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement; provided, a party shall obtain the prior, written consent of the other party (which shall not be unreasonably

withheld) to enter into a settlement that (i) would expressly obligate the other party to incur liability in excess of One Hundred Thousand Dollars (\$100,000) ("Settlement Threshold") or would directly result in obligating the other party to incur sole or substantial liability for any amount exceeding the Settlement Threshold where the non-settling party would not have incurred such liability but for the settlement or (ii) would expressly obligate the other party to take action in the future or refrain from taking action in the future. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; AND (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS.

Section 6. ARBITRATION

(a) If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

(b) If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators experienced in railroad commercial matters which may be agreed upon between the parties, upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed in the same manner hereto before stated.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both 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 the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. The arbitrator(s) shall have authority to permit the parties to conduct reasonable discovery and to submit dispositive motions. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

(d) 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 and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this 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.

(e) Each party to the arbitration shall pay all 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.

(f) The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(g) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

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 and expiration of the term of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application(s) or petition(s) 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 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 quitclaim 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, if any may be required, for such abandonment. In such event, User shall not oppose any such abandonment directly or indirectly. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage and prosecute same to conclusion. 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. 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 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and permitted assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld, in the event of assignment by way of a sale of all or substantially all of User's assets pursuant to merger, sale, consolidation, combination, or order or decree of court.

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 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.

8.5 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.

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

End of General Conditions



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June 28, 2004

Larry Parker
BNSF
2600 Lou Menk Drive
Fort Worth, Texas 76131

Dear Larry,

Enclosed is a revised estimate, per your request, to install 5,000 ties and surface 20 miles of track between Garrison and Opportunity Ponds.

Sincerely,


Richard L. Keller
Chief Engineer

tjm

enclosure

RK/C-4020....General

SCOPE OF WORK

The work to be done is to install 5000 ties and to surface the 20 miles of track between Garrison and Opportunity Ponds on the BNSF track.

ASSUMPTIONS OF ESTIMATE

Ties

Ties that are to be replaced will be marked by BNSF personnel with a visible mark on each end of the top of tie. Ties and all costs involved with the purchasing and distribution of the ties, purchasing and distribution of all materials associated with the installation of the ties such as the spikes, bolts, anchors, plank, tie plates, etc. will be provided by BNSF. Tie disposal will also be done by BNSF.

Montana Rail Link forces will install the ties and Montana Rail Link will provide the track machinery associated with the installation of the ties. MRL personnel will maintain the equipment and provide fuel and lubricants. A daily stipend will be charged for each machine used and the costs will be part of the estimate.

Surfacing of the Track

The entire 20 miles of main track will be surfaced including the turnouts. Ballast will be purchased and distributed by BNSF prior to the tie work. Montana Rail Link will provide the equipment and all costs to maintain and operate the equipment used to surface the track. A daily stipend will be charged for each piece of equipment used which will be part of the estimate.

The track will be smoothed, lined and tamped only with a 'skin lift'. After being tamped, the track will be regulated and broomed to provide a finished product to acceptable standards. Crossings will be run into and out of unless otherwise directed. On any crossings that are to be tamped through, BNSF personnel will remove the crossing surface materials prior to the tamper getting there and replace the crossing surface after the tamper has tamped through it. If ties need to be replaced in the crossings, BNSF personnel will do the work. Turnouts will be surfaced on the main line and on the turnout side to a proper runoff.

TIE and SURFACING ESTIMATES
BNSF MAIN LINE TRACK - GARRISON TO OPPORTUNITY PONDS

TIES

Estimated cost by MRL forces to install 5000 ties between Garrison and Opportunity Ponds

Labor to install 5000 ties	\$46,808
Labor Additives	\$30,753
Equipment Usage	\$22,080
Gang Lodging & Meal Per Diem	<u>\$17,334</u>
TOTAL COST TO INSTALL TIES	\$116,975

SURFACING

Estimated cost by MRL forces to surface 20 miles of track between Garrison and Opportunity Ponds

Labor to surface 20 miles	\$18,316
Labor Additives	\$12,034
Equipment Usage	\$36,792
Gang Lodging & Meal Per Diem	<u>\$6,741</u>
TOTAL COST TO SURFACE TRACK	\$73,883

**TOTAL COST TO INSTALL TIES &
SURFACE TRACK** **\$190,858**

Table A
ANNUAL INDEXES OF CHARGEOUT PRICES AND WAGE RATES (1977=100)

WEST

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Wage rates	251.3	250.9	251.0	264.8	273.6	274.2	281.6	282.3	304.6	314.1	316.7	328.6
Wage supplements	377.7	369.1	366.4	373.8	366.2	395.3	367.6	372.4	391.2	441.0	490.0	494.9
Fuel	184.4	185.6	175.0	175.8	205.8	200.1	161.0	164.7	261.9	255.5	220.1	265.3
Materials and supplies	208.9	217.1	223.9	224.1	225.0	231.5	232.3	230.8	228.3	234.0	228.1	229.0
Equipment rents	218.9	222.8	225.7	235.4	239.4	236.6	240.0	239.9	240.3	243.4	242.8	241.4
Purchased services	266.8	267.0	268.2	278.8	283.4	289.9	289.9	290.9	309.1	325.0	334.4	343.5
Depreciation	229.3	240.4	248.3	286.4	300.9	321.8	363.8	369.8	386.9	408.8	427.5	432.3
Interest	291.3	280.6	270.7	291.0	330.4	353.7	420.6	414.7	422.0	396.1	367.6	338.0
Taxes (other than income and payroll)	170.7	176.6	221.7	239.6	244.0	218.3	240.9	202.7	230.0	251.7	265.8	283.8
All other operating expenses	180.4	183.1	185.5	192.0	196.5	196.5	191.6	193.3	204.3	206.6	202.1	212.8
Wage rates and supplements	279.3	277.2	276.7	290.2	295.6	302.1	302.0	303.6	325.8	343.7	355.9	366.5
All materials (incl. fuel)	189.1	193.8	192.2	191.9	208.7	208.4	185.8	187.4	255.3	252.4	225.5	257.8
Matl. prices & wage rates combined (excl. fuel)	242.1	244.1	246.0	256.3	263.5	265.2	271.2	271.4	288.8	297.5	298.6	308.4
Matl. prices & wage rates combined (incl. fuel)	232.3	234.1	233.5	241.5	253.7	253.8	248.5	249.6	295.2	299.6	289.3	310.7
Materials prices, wage rates and supplements combined (excl. fuel)	266.8	267.0	268.2	278.8	283.4	289.9	289.9	290.9	309.1	325.0	334.4	343.5
Materials prices, wage rates and supplements combined (incl. fuel) - QMPW	256.6	257.1	256.1	264.9	274.4	278.7	270.1	271.7	315.4	326.1	323.7	343.3
Taxes, purchased serv. and other expenses	210.5	212.6	219.3	226.7	231.1	230.1	230.4	227.1	240.4	249.4	251.9	262.5
Equip. rents, deprec. and interest	239.3	240.0	246.2	269.0	282.9	290.8	317.7	319.1	327.1	332.2	333.9	330.3
Equip. rents, taxes, deprec., purch. serv., interest & other expenses	227.2	228.7	235.3	250.7	259.7	263.9	278.1	277.2	287.8	295.0	297.1	300.4
Total excl. fuel	250.2	251.0	254.7	268.1	275.0	280.6	288.1	288.2	302.6	314.0	319.6	325.7
Total excl. interest	244.3	246.4	248.3	260.2	268.6	272.3	272.0	272.7	301.5	312.0	312.8	326.4
Total excl. interest and depreciation	243.8	245.0	246.3	255.3	262.9	264.9	260.2	260.4	289.8	299.1	298.3	312.5
Railroad Cost	246.1	246.9	249.1	261.4	270.8	275.1	277.2	277.7	306.4	315.5	315.2	327.3
Recovery Index												

Note: The final annual wage rates and wage supplements are derived from the Annual Wage Statistics and the Annual Report Form R-1, consequently the final annual values may not equal the average of the four quarterly figures. The preliminary annual indexes, which appear in the December publication each year (indicated by a "p"), are averages of the four quarters.

SURFACE TRANSPORTATION BOARD

Verified Notice of Exemption

STB Finance Docket No. 34911

Montana Rail Link, Inc.
-- Trackage Rights Exemption --
BNSF Railway Company

BNSF Railway Company has agreed to grant limited overhead trackage rights to Montana Rail Link, Inc. The subject trackage rights extend for approximately 29.6 miles from approximately milepost 51.07 at or near Garrison, Montana to approximately milepost 21.5, a location south of Warm Springs, Montana. The subject transaction is expected to be consummated on or after October 2, 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, Thomas Walsh, 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.


President

Montana Rail Link, Inc.

Dated: September 12, 2006