

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 34554 (Sub-No. 6)]

**Union Pacific Railroad Company—
Temporary Trackage Rights
Exemption—BNSF Railway Company**

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP¹ over BNSF's line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.²

The transaction is scheduled to be consummated on January 28, 2007.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 4) to further extend the expiration date to on or before December 31, 2007. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the

conditions 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).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 19, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 6), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: January 4, 2007.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

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DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Docket No. AB-6 (Sub-No. 446X)]

**BNSF Railway Company—
Abandonment Exemption—in Beltrami
Country, MN**

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5.29-mile line of railroad between milepost 90.87 and milepost 95.15, including the 1.01-mile depot spur between milepost 94.78 and milepost 93.77, near Bemidji in Beltrami County, MN. The line traverses United States Postal Service Zip Code 56601.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with

any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 14, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 22, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 1, 2007 with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 19, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

¹ UP submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 7), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2007. That petition will be addressed by the Board in a separate decision.

² The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended local trackage milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), and on March 23, 2006, in STB Finance Docket No. 34554 (Sub-No. 5), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on February 11, 2005, and in STB Finance Docket No. 34554 (Sub-No. 4), served on March 3, 2006, to expire. At the time of the last extension, it was anticipated by the parties that the rights would expire on or about December 31, 2006. However, this authority has not yet been exercised.