

236674

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
September 15, 2014  
Part of  
Public Record

---

FINANCE DOCKET NO. 35855

---

SOUTHWESTERN RAILROAD, INC.  
--LEASE EXEMPTION--  
BNSF RAILWAY COMPANY

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

---

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
SOUTHWESTERN RAILROAD, INC.

Dated: September 15, 2014

BEFORE THE  
FILED  
September 15, 2014  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
September 15, 2014  
SURFACE  
TRANSPORTATION BOARD

SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 358\_\_

---

SOUTHWESTERN RAILROAD, INC.  
--LEASE EXEMPTION--  
BNSF RAILWAY COMPANY

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

---

Southwestern Railroad, Inc. ("SW"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit SW to continue to lease and operate approximately 227.6 miles of rail lines located in New Mexico from BNSF Railway Company ("BNSF").

In support of this Notice of Exemption, SW submits the following information as required by 49 C.F.R. § 1150.43:

- (a) Full name and address of applicant:

Southwestern Railroad, Inc.  
3811 Airport Road  
Ogden Utah 84405

- (b) Applicant's Representative:

Karl Morell  
Of Counsel

BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, DC 20005  
(202) 638-3307

(c) Statement of Agreement:

SW entered into a lease Agreement with BNSF in 2004. *See* STB Finance Docket No. 34533, *Southwestern Railroad Company, Inc. – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Company* (not printed), served October 22, 2004. SW recently entered into the Third Amendment to the Agreement between BNSF and SW (“Third Amendment”) which, among other things, extends the term of the lease to December 31, 2023.

(d) The operator of the property:

SW will continue to be the operator of the property.

(e) Summary of proposed transaction:

(1) The name and address of the company leasing the subject property is:

BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131

(2) The involved transaction is expected to be consummated on or shortly after the effective date of this notice of exemption.

(3) The rail lines that will continue to be leased by SW are located: (1) on the Carlsbad Subdivision between milepost 0.5, at Clovis, New Mexico, and milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard;<sup>1</sup> (3) on the Carlsbad

---

<sup>1</sup> There are no mileposts associated with the approximately 5.1 miles of rail lines located in the Carlsbad Yard.

Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, at Loving, New Mexico

- (4) The length of the rail lines that will continue to be leased is approximately 227.6 miles.
- (f) A map of the rail lines that will continue to be leased is attached as Exhibit A.
- (g) SW hereby certifies that SW's projected revenues as a result of this transaction will not result in SW becoming a Class II or Class I rail carrier. SW's annual revenues exceed \$5 million. Accordingly, the requirements 49 C.F.R. § 1150.42(e) apply to this transaction. Providing the 60-day notice, however, would serve no useful purpose since SW already operates the leased lines. Consequently, SW is seeking a waiver of the notice period set forth in Section 1150.42(e).
- (h) Neither the original 2004 lease Agreement nor the Third Amendment contains an interchange restriction.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

### **ENVIRONMENTAL AND HISTORIC IMPACTS**

SW will continue to lease the rail lines from BNSF for continued rail operations. Further Board approval is required for SW to discontinue or abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

SW's lease will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. SW's lease of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

---

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, DC 20005  
(202) 638-3307

Attorney for:  
SOUTHWESTERN RAILROAD, INC.

Dated: September 15, 2014

# **EXHIBIT A**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35855

SOUTHWESTERN RAILROAD, INC.

-- LEASE EXEMPTION--

BNSF RAILWAY COMPANY

---

Southwestern Railroad, Inc., a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41, to continue to lease from BNSF Railway Company the rail lines located: (1) on the Carlsbad Subdivision between milepost 0.5, at Clovis, New Mexico, and milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard;<sup>2</sup> (3) on the Carlsbad Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, at Loving, New Mexico

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 655 Fifteenth Street, N.W., Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

---

<sup>2</sup> There are no mileposts associated with the approximately 5.1 miles of rail lines located in the Carlsbad Yard.

**VERIFICATION**

**STATE UTAH** )  
 ) **ss.**  
**COUNTY OF WEBBER** )

I, Eddie Hale, being duly sworn depose and state that I am Executive Vice President of Southwestern Railroad, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief.

\_\_\_\_\_  
Eddie Hale

SUBSCRIBED AND SWORN TO before me this \_\_\_ day of August, 2014, in the County of Webber, State of Utah.

