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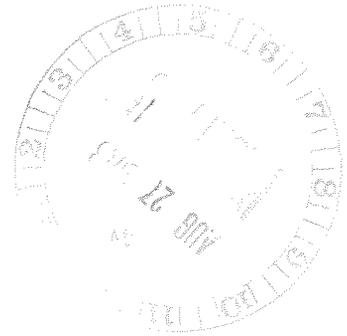
MICHAEL J. BARRON, JR.
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August 26, 2013

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

234717
ENTERED
Office of Proceedings
August 27, 2013
Part of
Public Record



Re: **Finance Docket No. 35759**
John D. Nielsen -- Control Exemption --
Nebkota Railway, Inc.

Dear Chief Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Exemption of John D. Nielsen**, dated August 26, 2013. A check in the amount of \$9,600.00, representing the appropriate fee for this filing, and a diskette containing the text of the Petition in MS Word format also are enclosed. Please note that expedited consideration of the Petition is requested.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael J. Barron, Jr.".

Michael J. Barron, Jr.
Attorney for John D. Nielsen

MJB/ekf

Enclosures (11)

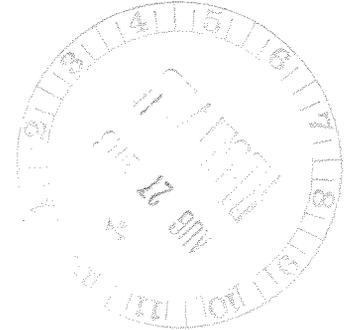
FEE RECEIVED
August 27, 2013
SURFACE
TRANSPORTATION BOARD

FILED
August 27, 2013
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35759

JOHN D. NIELSEN
-- CONTROL EXEMPTION --
NEBKOTA RAILWAY, INC.



**PETITION FOR EXEMPTION OF
JOHN D. NIELSEN**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. § 1121, John D. Nielsen (“Nielsen”), a non-carrier, submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 11323(a)(5) for Nielsen to acquire control of Nebkota Railway, Inc. (“NRI”), a Class III rail carrier, through the purchase of all of NRI’s stock from West Plains, LLC (“WP”). Nielsen currently controls one other Class III rail carrier, the Nebraska Northwestern Railroad, Inc. (“NNW”), which operates a rail line that connects with NRI. But for that connection, Nielsen’s proposed control of NRI would qualify for the class exemption provided in 49 C.F.R. § 1180.2(d)(2). As demonstrated further below, individual exemption of the proposed transaction clearly is warranted under the relevant standards of Section 10502.

Nielsen seeks expedited consideration of this petition so that Nielsen’s acquisition of NRI will allow West Plains to quickly convey NRI to Nielsen and allow Nielsen to comply with his commitment to WP to acquire the stock of NRI as quickly as possible. Nielsen also intends on replacing ties on the NRI trackage once he has control and seeks to do this before winter.

A map showing the rail line of NRI and other rail lines in the vicinity is attached

hereto as Exhibit A. In support of this Petition for Exemption, Nielsen submits the following:

I. BACKGROUND

A. Identification of Parties

Petitioner Nielsen is an individual and non-carrier who currently controls through stock ownership NNW, which owns and operates approximately 7.22 miles of rail line between Chadron, Nebraska and Dakota Junction, Nebraska and leases and operates approximately 20.88 miles of rail line between Dakota Junction, Nebraska and Crawford, Nebraska, in the northwestern part of the state. See, Nebraska Northwestern Railroad, Inc. v. Acquisition and Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 35346 (ICC served February 10, 2010).

The complete name and address of petitioner Nielsen is:

John D. Nielsen
Diamond Hill Farms
PO Box 7
Alliance, NE 69301

NRI is a Class III rail carrier which owns approximately 4.5 route miles of rail line extending east from Chadron, Nebraska between milepost 404.5 at Chadron and milepost 400 east of Chadron. NRI also has overhead trackage rights between Crawford, Nebraska and Chadron, Nebraska, the line currently operated by NNW. See generally Nebkota Railway, Inc. – Acquisition and Operation Exemption – Line of Chicago and North Western Transportation Company, Finance Docket No. 32442 (ICC served January 24, 1994)¹. NRI is a wholly-owned subsidiary of WP. WP is a business focusing on the sourcing, sorting, storage and shipment of

¹ The NRI line east of milepost 400 has been railbanked pursuant to 16 U.S.C. § 1247(d). See, Nebkota Railway, Inc. – Abandonment Exemption – in Sheridan and Cherry Counties, NE, AB-988X, and Nebkota Railway, Inc. – Abandonment Exemption in Dawes and Sheridan Counties, NE, AB-988 (Sub-No. 1X).

agricultural products. It owns no other railroads. Currently, there are no customers on the lines owned by NRI, and NRI has no current, active rail operations.

NNW connects at Chadron with NRI. But for NRI's currently inactive overhead trackage rights, NRI's connection at Chadron to NNW serves as NRI's sole link to the remainder of the national rail system.

B. The Proposed Transaction

Pursuant to a Stock Purchase Agreement executed by Nielsen, NRI and WP, Nielsen proposes to acquire control of NRI through the purchase from WP of all of the stock of NRI. Following consummation of the transaction, Nielsen will seek to develop business and rail transportation opportunities for NRI as part of an effort to restore service on NRI. No future shipper will lose rail service or any existing interchange options as a result of the proposed control transaction.² WP, the current owner, strongly supports the proposed transaction.

II. JURISDICTION AND STATUTORY STANDARDS

Pursuant to 49 U.S.C. § 11323(a)(5), acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board. Because Nielsen's proposed control of NRI does not involve two or more Class I railroads, the Board would be required to approve the transaction unless: 1) the transaction was likely to result in a substantial lessening of competition; and 2) the anticompetitive effects of the transaction outweighed the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Sections 11323-

² There are no interchange restrictions or interchange commitments with any carriers in conjunction with the proposed transaction.

11325) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,³ which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Sections 11323-11325 for Nielsen's acquisition of control of NRI would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 11323, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the

³ Pub. L. No. 104-88, 109 Stat. 803 (1995).

objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

III. EXEMPTION CRITERIA

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101.

Nielsen's acquisition of control of NRI is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The proposed transaction is strongly supported by NRI's current owner. See Exhibit B hereto. The transaction will bring to NRI the strengths and resources of a committed short-line carrier operator, and will assure the preservation and viability of the potential local rail service on the NRI. As such, an exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). Nielsen's common control of NNW and NRI will allow coordination of the railroads' connecting operations, enhancing effective rail management and the economic benefits of NRI's service. Thus, this transaction also will promote efficiency, coordination among rail carriers and competition with other transport modes. See 49 U.S.C. §§ 10101(5) and (9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Sections 11323-11325. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. E.g., Livonia.

Avon & Lakeville Railroad Corporation -- Acquisition and Operation Exemption -- Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996) at 4. Other aspects of the rail transportation policy will not be adversely affected.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

Nielsen's acquisition of control of NRI will have no adverse impact on competition. While NNW and NRI connect at Chadron, they do not serve any common industries. Indeed NRI currently has no customers. In addition, the common control of both carriers will not increase NNW's market power or otherwise lessen competition or transportation options for any potential shipper on NRI's line that may locate there in the future. Any traffic that may originate or terminate on the NRI that moves west, whether on NRI trackage rights or as an NNW train, must interchange to BNSF Railway Company at Crawford or to Dakota, Minnesota & Eastern Railroad Corp. ("CP") at Dakota Junction. Those interchanges will remain. Instead, NRI's operations will simply be coordinated with those of NNW, and potential shippers potentially will benefit from greater efficiencies while receiving better service. Genesee & Wyoming Inc. -- Control Exemption -- Georgia Southwestern Railroad, Inc., Finance Docket No. 35183 (STB served December 15, 2008) at 4 (no abuse of market power likely where no shipper located on a rail carrier's line "is expected to lose rail service options as a result of the control transaction."⁴ Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

⁴ But for the fact that the rail lines of NRI and NNW connect at Chadron, the proposed transaction would be subject to the class exemption for control of non-connecting carriers at 49 C.F.R. § 1180.2(d)(2).

C. The Transaction Is Limited in Scope

Because regulation is not necessary to protect shippers from an abuse of market power, Nielsen need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C. § 10502(a)(2); Finger Lakes Railway Corp. -- Control Exemption -- Ontario Central Railroad Corp., Finance Docket No. 35062 (STB served October 5, 2007) at 2. Nevertheless, it is clear that Nielsen's acquisition of NRI satisfies this criterion as well. The proposed transaction involves a change in control of a small, 4.5-mile long rail carrier in a single locale that currently serves no shippers. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. However, pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction. NRI and NNW are Class III rail carriers.

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(b). Under 49 C.F.R. § 1105.6(c)(2)(i), Nielsen's proposed acquisition of control of NRI is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of control of NRI by Nielsen also is exempt from historic preservation reporting requirements. Common control of NRI and NNW will not substantially change the level of maintenance of railroad property.

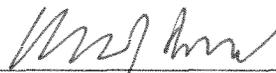
VI. EXPEDITED CONSIDERATION

Nielsen respectfully requests expedited consideration of this petition. Nielsen has committed to WP to close on the purchase of the stock of NRI from WP as quickly as possible. There are no current shippers of NRI who will be impacted by the transaction, and NRI has no current employees. In addition, Nielsen intends on replacing ties on the NRI trackage once he has control and hopes to do so prior to winter. As such, expedited consideration of a very small transaction will not have any adverse impact on any possible party in interest and allow the parties to complete the stock sale quickly and tie replacement work quickly.

WP, the current owner of NRI, strongly supports both approval of the proposed transaction and the request for expedited consideration. See Exhibit B hereto.

WHEREFORE, Nielsen respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. §§ 11323-11325 for Nielsen's acquisition of control of NRI through stock purchase, and allow such exemption to become effective in an expedited fashion.

Respectfully submitted,

By: 

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEY FOR JOHN D. NIELSEN

Dated: August 26, 2013

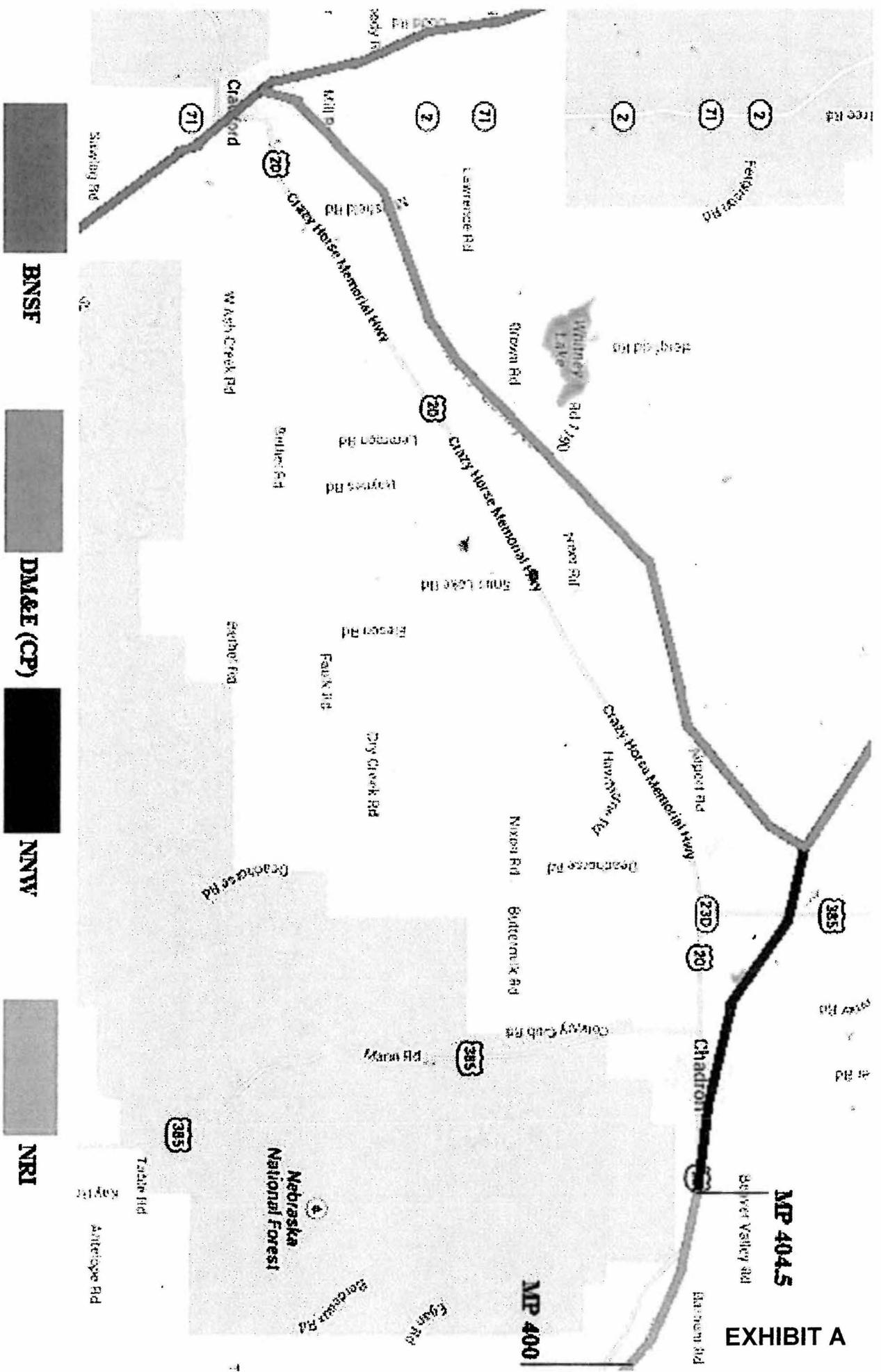


EXHIBIT A



WEST PLAINS, LLC

August 22, 2013

VIA FEDERAL EXPRESS

Ms. Rachel D. Campbell
Director, Office of Proceedings
Surface Transportation Board
Washington, DC 20024

Re: Finance Docket No. 35759
John D. Nielsen – Control Exemption – Nebkota Railway, Inc.

Dear Director Campbell:

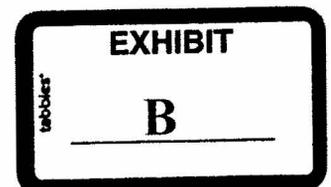
I am writing on behalf of West Plains, LLC (“WP”) to express WP’s strong support for the petition of John D. Nielsen in the above-captioned proceeding, in which Nielsen seeks approval by exemption to acquire Nebkota Railway, Inc. (“Nebkota”). WP is Nebkota’s current owner, and believes Nielsen’s acquisition of Nebkota will significantly increase the potential of Nebkota to develop a viable rail service.

WP also supports Nielsen’s request for expedited consideration of this matter. The parties hope to close the transaction as soon as possible. In addition, expedited consideration of the transaction will allow Nielsen, after closing on the transaction, to replace ties on Nebkota trackage before the onset of winter.

Thank you for your consideration of WP’s position on this matter.

Respectfully submitted,

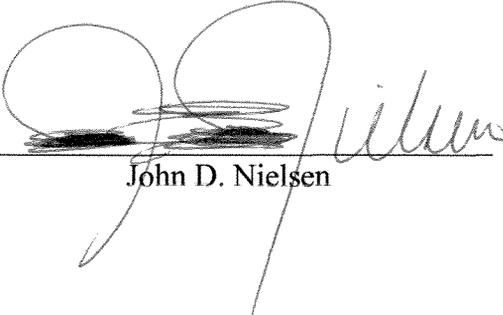
Steve Rhodes, CEO



VERIFICATION

State of Nebraska)
County of Box Butte) ss:

John D. Nielsen, being duly sworn, deposes and says that he is the Petitioner herein, that he has read the foregoing Petition for Exemption and knows the facts asserted therein, and that the same are true as stated.



John D. Nielsen

SUBSCRIBED AND SWORN TO
before me this 12 day
of ~~September~~, 2013.
AUGUST

Sharron K. Jones
Notary Public

My Commission expires: 9-15-2013

