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SERVICE DATE – OCTOBER 4, 2012

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35676]

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

Pursuant to a written trackage rights agreement dated August 10, 2012, Union Pacific Railroad Company (UP) has agreed to grant restricted temporary trackage rights to BNSF Railway Company (BNSF) over UP's lines between: (1) UP milepost 93.2, at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4, at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4, at Elsey, and UP milepost 280.7, at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles.

The transaction is scheduled to be consummated on October 18, 2012, the effective date of the exemption (30 days after the verified notice was filed).

The purpose of this transaction is to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, which is adjacent to the UP rail line. The parties' agreement provides that the trackage rights are temporary in nature and are scheduled to expire at midnight on December 31, 2012.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage

Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

This notice is filed under 49 C.F.R. § 1180.2(d)(7).<sup>1</sup> 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 October 11, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35676, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005.

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<sup>1</sup> BNSF states that the verified notice is not filed under the Board’s class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8) because the trackage rights are local rather than overhead. See R.R. Consolidation Procedures, 6 S.T.B. 910 (2003). Instead, BNSF has filed under the trackage rights class exemption at 1180.2(d)(7) and concurrently has filed, in BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company, Docket No. FD 35676 (Sub-No. 1), a petition for partial revocation of this exemption to permit these proposed local trackage rights to expire at midnight on December 31, 2012, as provided in the parties’ agreement. The Board will address that petition in a separate decision.

Decided: October 1, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.