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SERVICE DATE – APRIL 24, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35238]

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

Pursuant to a written trackage rights agreement dated January 20, 2009, Union Pacific Railroad Company (UP) has agreed to grant temporary local trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles.¹

The transaction is scheduled to be consummated on or after May 9, 2009, the effective date of the exemption (30 days after the exemption is filed).

¹ BNSF 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, BNSF concurrently has filed a petition for partial revocation of this exemption in STB Finance Docket No. 35238 (Sub-No. 1), BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company, wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire at midnight on December 31, 2009, as provided in the parties' agreement. The petition will be addressed by the Board in a separate decision.

The trackage rights agreement will permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, CA, which is adjacent to the UP rail line. The trackage rights are temporary in nature and are scheduled to expire at midnight on December 31, 2009.

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 the notice 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 May 1, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35238, 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, Suite 225, 1455 F Street, N.W., Washington,
DC 20005.

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Decided: April 16, 2009.

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

Anne K. Quinlan
Acting Secretary