

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35800



235609

**GENESEE & WYOMING INC.** Office of Proceedings  
- CONTINUANCE IN CONTROL EXEMPTION - March 11, 2014  
**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.** Part of  
Public Record

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**NOTICE OF EXEMPTION**

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*(contains color images)*

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March 11, 2014  
Surface Transportation Board

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March 11, 2014  
Surface Transportation Board

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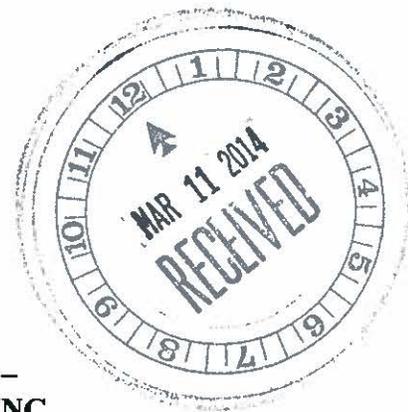
Dated: March 10, 2014

Attorneys for Genesee & Wyoming Inc.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35800

**GENESEE & WYOMING INC.  
– CONTINUANCE IN CONTROL EXEMPTION –  
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.**



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**NOTICE OF EXEMPTION**

Genesee & Wyoming Inc. (“GWI”), a publicly-traded non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(2) to exempt from the provisions of 49 U.S.C. §11323, its continuance in control of Rapid City, Pierre & Eastern Railroad, Inc. (“RCP&E”) together with the other railroads currently controlled directly and indirectly by GWI. GWI currently controls, directly or indirectly, one Class II carrier and 100 Class III carriers operating in the United States.<sup>1</sup> This Notice is related to the notice of exemption being filed on this date by RCP&E in STB Docket No. FD 35799 with respect to the acquisition and operation by RCP&E, currently a non-carrier, of approximately 670 miles of rail lines of the Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway (“DM&E”) located west of Tracy, Minnesota (the “DM&E West Lines”).

GWI is filing this Notice to enable it to continue in control of RCP&E together with the other railroads in GWI’s corporate family. The rail lines of RCP&E do not connect with the other railroads in GWI’s corporate family, nor is the control of RCP&E described herein part of a series of anticipated transactions that would connect RCP&E with the rail lines of any other

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<sup>1</sup> Most recently, GWI was authorized to control RailAmerica, Inc. and its subsidiary railroads. See STB Docket No. FD 35654, *Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al.* (served December 20, 2012) (“*GWI – Control – RailAmerica*”).  
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carriers in GWI's corporate family. The common control transaction does not involve a Class I railroad. Accordingly, this transaction qualifies for the class exemption described in 49 C.F.R. §1180.2(d)(2).

### **Required Information**

In accordance with the provisions of 49 C.F.R. 1180.4(g), GWI provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

#### ***1180.6(a)(1)***

(i) The proposed transaction, as more fully described above, involves the common control of RCP&E together with the other carriers already in GWI's control when RCP&E becomes a carrier through its acquisition and operation of the DM&E West Lines. The full name and address of the petitioner is: Genesee & Wyoming Inc., 20 West Avenue, Darien, CT 06820.

The name, address and telephone number of GWI's counsel who should receive correspondence is: Eric M. Hocky, Esquire, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(ii) RCP&E expects to acquire the DM&E West Lines, and become a rail carrier, as soon as the Notice of Exemption in STB Docket No. FD 35799 is effective, and all other closing conditions have been met. By this Notice, GWI seeks to continue in control of RCP&E from and after that date (which will be more than 30 days after the filing of this Notice).

(iii) The purpose of the transaction is to allow GWI to continue in control of RCP&E together with the other carriers in its system, and to allow RCP&E to take advantage of the administrative, marketing and operational support that GWI can provide. In addition, as a

long-term holder of short line railroads, GWI's ownership of RCP&E should provide shippers with the comfort of stable ongoing rail service. The new operations will broaden GWI's geographic footprint by adding operations in an area where GWI does not have a presence.

**1180.6(a)(5)**

RCP&E will own and operate rail lines in Nebraska, Minnesota, South Dakota and Wyoming.<sup>2</sup> The railroads currently controlled by GWI<sup>3</sup> operate in the following 36 states:

Alabama	Louisiana	Ohio
Arizona	Maine	Oklahoma
Arkansas	Maryland	Oregon
California	Massachusetts	Pennsylvania
Colorado	Michigan	South Carolina
Connecticut	Minnesota	Tennessee
Florida	Mississippi	Texas
Georgia	Missouri	Utah
Illinois	New Hampshire	Vermont
Indiana	New Mexico	Virginia
Kansas	New York	Washington
Kentucky	North Carolina	Wisconsin

None of the railroads controlled by GWI will connect with the rail lines being acquired by RCP&E, or with the incidental trackage rights associated with RCP&E's acquisition.<sup>4</sup>

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<sup>2</sup> RCP&E will also be acquiring a line in Nebraska that is currently leased to and operated by Nebraska Northwestern Railroad, Inc.

<sup>3</sup> The individual railroads controlled by GWI and the states in which they operate are shown in the Application filed on August 6, 2012, in *GWI – Control – RailAmerica*.

<sup>4</sup> Only Otter Tail Valley Railroad Company, Inc. (“OTVR”) operates in a state (Minnesota) in which RCP&E will operate, but it does not connect with the DM&E West Lines. A separate map of the OTVR showing that its lines do not connect with the DM&E West Lines is included as part of Exhibit B.

***1180.6(a)(6)***

A map showing the DM&E West Lines to be acquired and operated by RCP&E is attached as Exhibit A. A map of the United States generally showing the locations of the GWI controlled railroads, and a map depicting the lines of OTVR in relation to the DM&E West Lines, are attached as Exhibit B. Twenty extra copies of the maps are also included.

***1180.6(a)(7)(ii)***

There are no documents that will govern the common control of RCP&E and the other carriers already controlled by GWI (other than corporate governing documents).

**Labor Protection**

GWI recognizes that under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction will involve the control of two Class II carriers<sup>5</sup> and a number of Class III carriers, the labor protection requirements of 49 U.S.C. §11326(a) will apply to this control transaction.

**Environmental and Historic Reports**

The proposed common control involves only corporate control, and will not affect the level of operations on the rail lines to be operated by RCP&E or of any carriers in GWI's corporate family. As such, the proposed transaction should be exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(ii). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the proposed common control will not substantially change the level of operations over, or

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<sup>5</sup> RCP&E will be a Class II carrier when it commences operations.  
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maintenance of, the rail lines of either RCP&E or any carrier in GWI's corporate family. *See* 49 C.F.R. §1105.8(b)(3).

**Conclusion**

For the foregoing reasons, GWI requests that the Board issue a notice of exemption pursuant to 49 C.F.R. §1180.2(d)(2).

Respectfully submitted,



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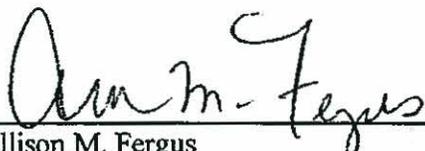
Dated: March 10, 2014

Attorneys for Genesee & Wyoming Inc.

**VERIFICATION**

I, Allison M. Fergus, General Counsel & Secretary of Genesee & Wyoming Inc.,  
verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am  
qualified and authorized to file the foregoing document.

Executed on March 10, 2014.

  
Allison M. Fergus

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid:

Terence M. Hynes  
Sidley Austin LLP  
1501 K Street, NW  
Washington DC 20005

Hon. John Thune  
United States Senate  
511 Dirksen Senate Office Building  
Washington, DC 20510

Hon. Dennis Daugard  
Office of the Governor  
500 E Capitol Ave  
Pierre, SD 57501

Hon. Tim Johnson  
United States Senate  
136 Hart Senate Office Building  
Washington, DC 20510

Darin Bergquist, Secretary  
South Dakota Department of Transportation  
Becker-Hansen Building  
700 East Broadway Avenue  
Pierre, SD 57501-2586

Hon. Kristi Noem  
United States Congress  
1323 Longworth House Office Building  
Washington, DC 20515

Hon. Dave Heineman  
Office of the Governor  
P.O. Box 94848  
Lincoln, NE 68509-4848

Nebraska Department of Roads  
Attention: Rail & Public Transportation  
Division  
PO Box 94759  
1500 Nebraska Highway 2  
Lincoln, NE 68509-4759

Hon. Mark Dayton  
Office of the Governor  
130 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Tom Sorel, Commissioner  
Minnesota Department of Transportation  
Transportation Building, MS-100  
395 John Ireland Boulevard  
St. Paul, MN 55155-1899

Hon. Matt Mead  
Office of the Governor  
State Capitol  
200 West 24<sup>th</sup> Street  
Cheyenne, WY 82002-0010

John Cox, Director  
Wyoming Department of Transportation  
5300 Bishop Boulevard  
Cheyenne, WY 82009-3340

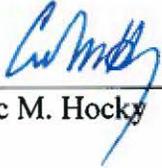
Erika A. Diehl-Gibbons  
Assistant General Counsel  
SMART – Transportation Division  
(formerly United Transportation Union)  
24950 Country Club Blvd., Ste. 340  
North Olmsted, OH 44070-5333

Hon. Fred W. Romkema  
State Capitol  
500 East Capitol Ave.  
Pierre, SD 57501

Joseph Guerrieri, Jr.  
Carmen Parcelli  
Guerrieri, Clayman, Bartos & Parcelli, PC  
1900 M. Street, NW  
Suite 700  
Washington, DC 20036

Richard S. Edelman  
O'Donnell, Schwartz and Anderson, P.C.  
1300 L Street, N.W.  
Suite 1200  
Washington, DC 20005

and to the shippers shown on the attached list who represent approximately 75% of the volume of local traffic and traffic originating or terminating on the DM&E West Lines.

  
\_\_\_\_\_  
Eric M. Hocky

Dated: March 10, 2014

Craig Havlik  
Manager, Rail Transportation  
American Colloid Co.  
2870 Forbs Avenue  
Hoffman Estates, IL 60192

Ken Applegate  
Vice President, Transportation Services  
Valero Marketing & Supply Co.  
One Valero Way  
San Antonio, TX 78249-1616

Dan Mack  
Vice President, Transportation  
CHS Inc.  
5500 Cenex Drive  
Inver Grove Heights, MN 55077-1733

Roger Krueger  
Sr. Vice President, Grain  
South Dakota Wheat Growers Assoc.  
908 Lamont Street South  
Aberdeen, SD 57401

Rick Jones  
Manager, Transportation  
Bentonite Performance Minerals LLC  
3000 N. Sam Houston Parkway, East  
Houston, TX 77032

Tom Kersting  
President & CEO  
South Dakota Soybean Processors  
100 Caspian Avenue  
P.O. Box 500  
Volga, SD 57071

Tom Lien, CEO  
Dakota Mill & Grain Inc.  
P.O. Box 2340  
Rapid City, SD 57709-2340

Randy Brown, Vice President - Grain  
Harrold Grain Company  
Harrold Terminal LLC  
19723 321<sup>st</sup> Avenue  
Harrold, SD 57536

Tim Luken, General Manager  
Oahe Grain Corp.  
300 Ash Avenue  
Onida, SD 57564

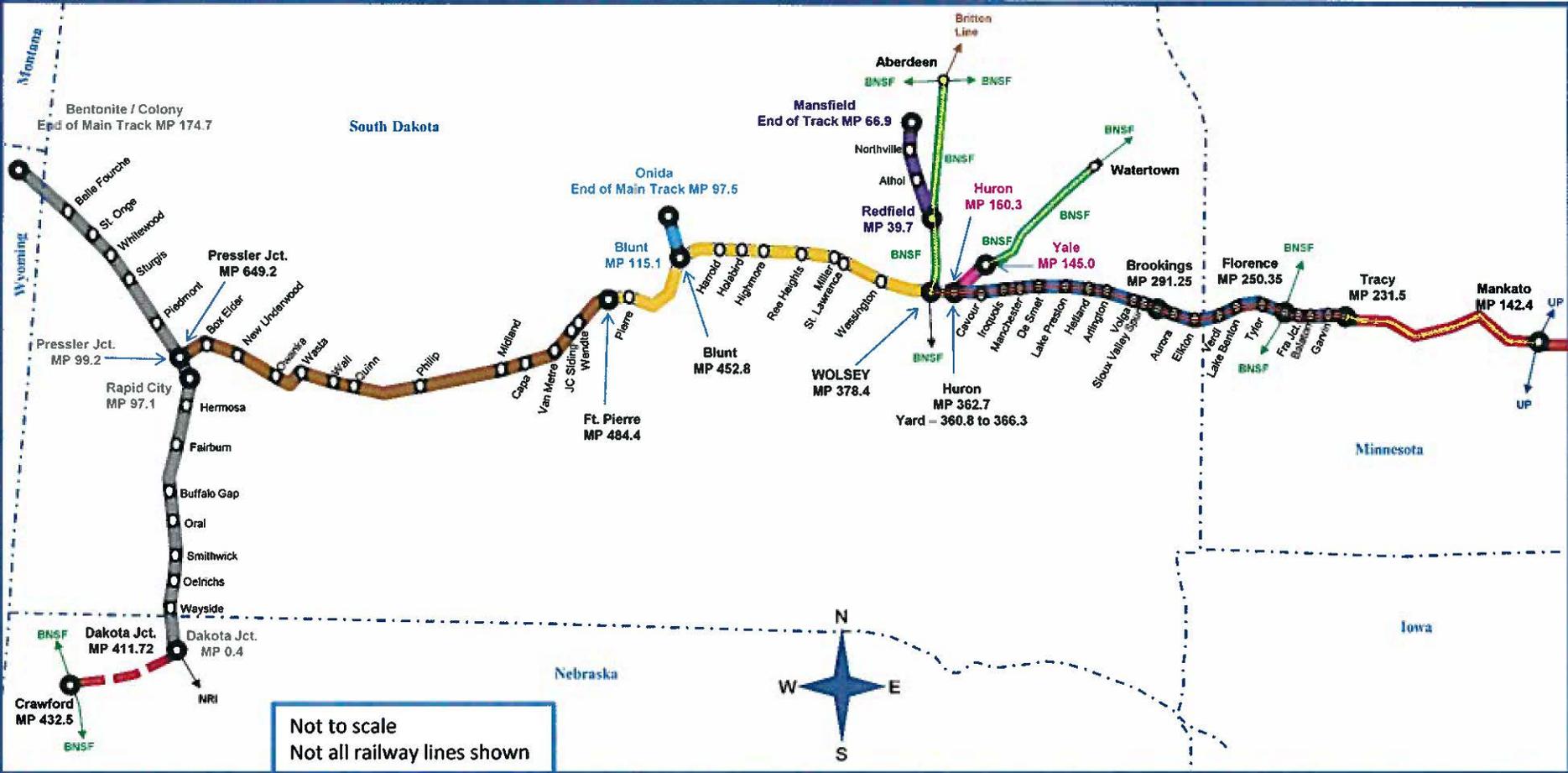
Stevie Ambrose  
Vice President, Sales & Logistics  
GCC Dacotah Inc.  
600 South Cherry Street, 10<sup>th</sup> Floor  
Glendale, CO 80246

**EXHIBIT A**

**MAP OF RCP&E PROPOSED OPERATIONS**

**(DM&E WEST LINES)**

# Main System Map for STB – Slide 1 of 2



# Main System Map for STB – Slide 2 of 2

## LEGEND

LINES	
	CP
	Huron
	Yale
	Mansfield
	Pierre
	Onida
	PRC
	Black Hills
	Crawford

NEWCO TRACKAGE RIGHTS	
	-Tracy to Mankato
	-Wolsey to Aberdeen (BNSF)
	-Yale to Watertown (BNSF)

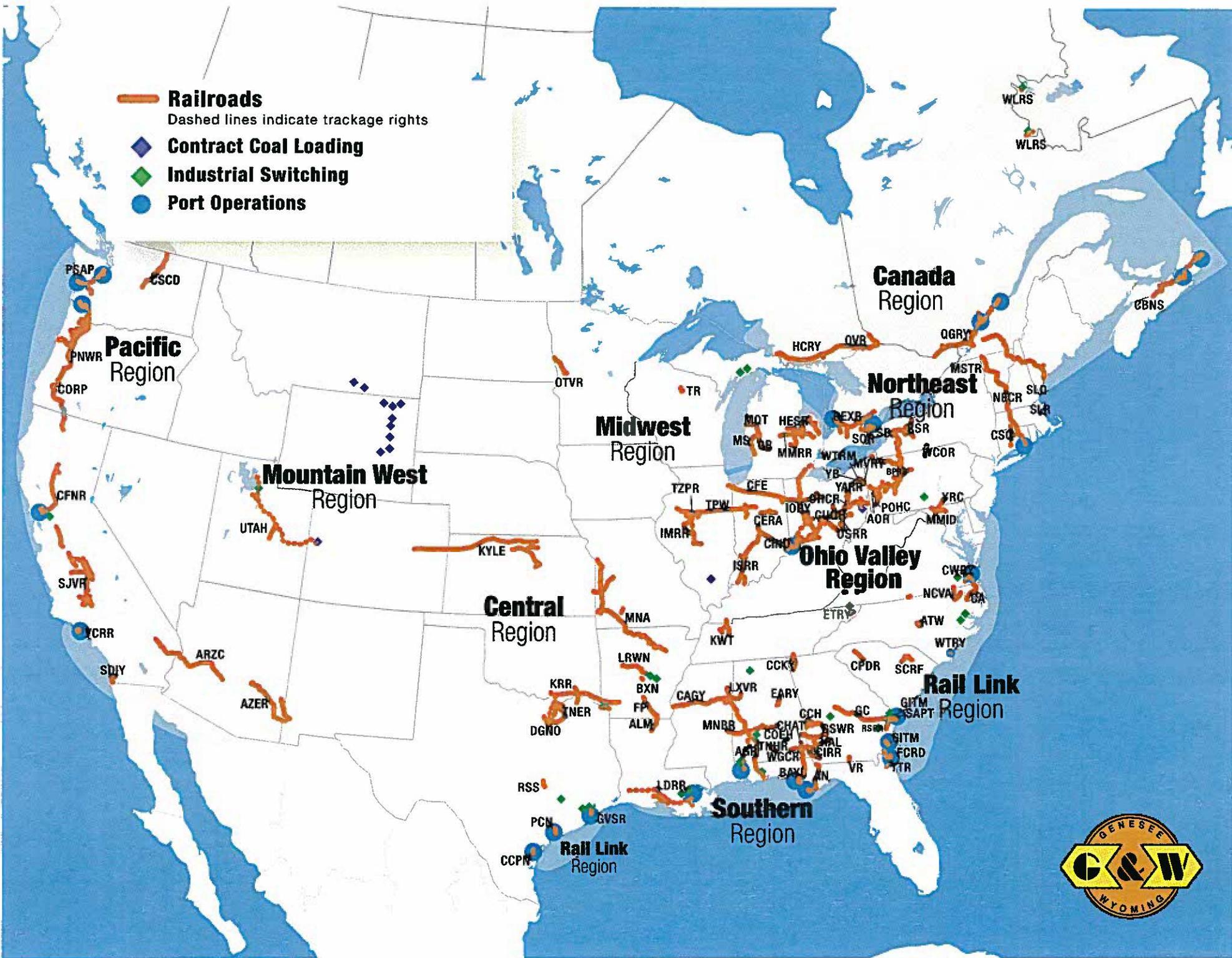
  

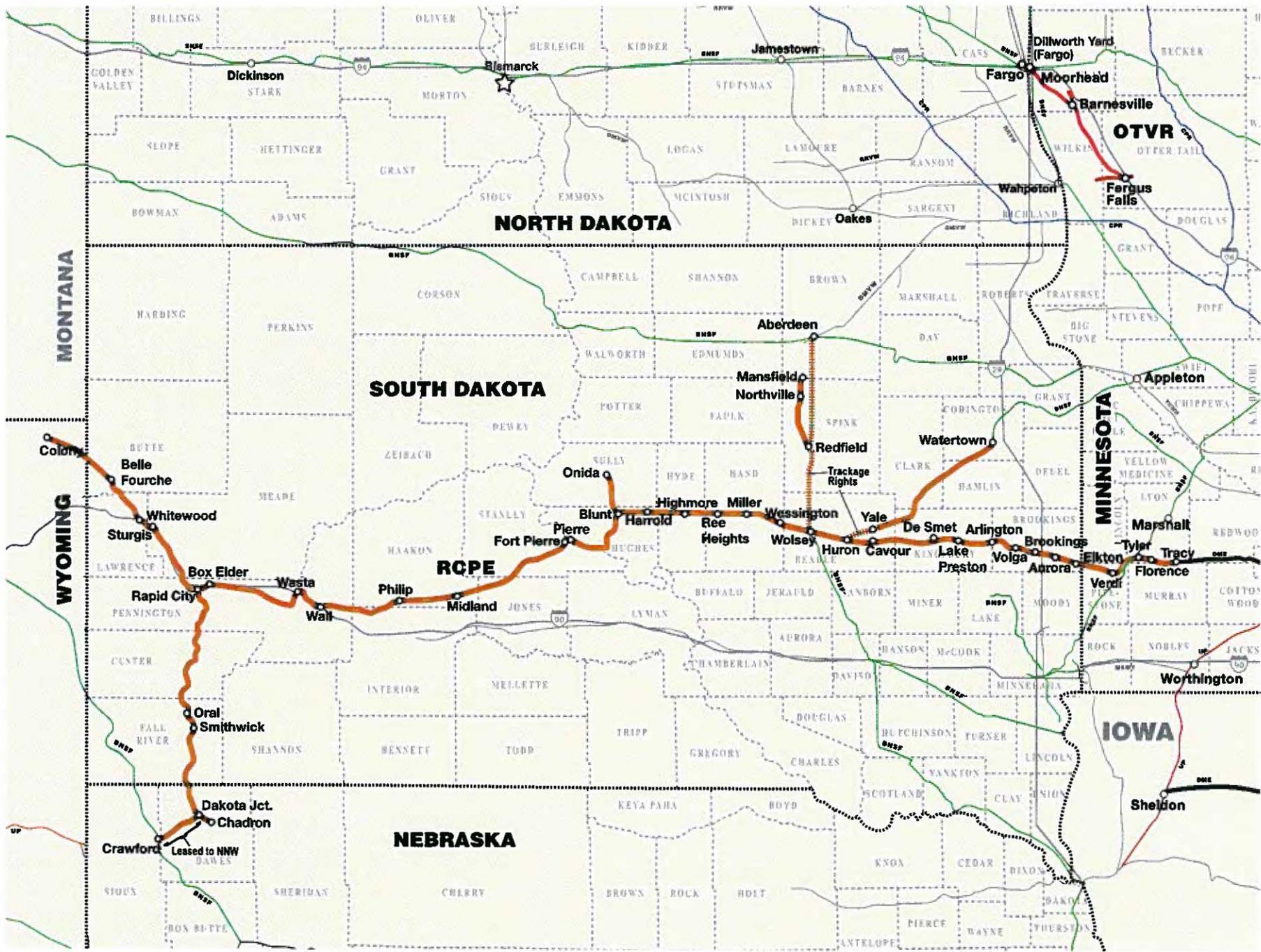
CP TRACKAGE RIGHTS	
	-Tracy to Florence
	-Tracy to Brookings
	-Tracy to Wolsey

**EXHIBIT B**

**MAP OF LOCATIONS OF CONTROLLED RAILROADS  
AND MAP OF OTVR**

-  **Railroads**  
Dashed lines indicate trackage rights
-  **Contract Coal Loading**
-  **Industrial Switching**
-  **Port Operations**





**NORTH DAKOTA**

**SOUTH DAKOTA**

**RCPE**

**NEBRASKA**

**OTVR**

**MINNESOTA**

**IOWA**

**MONTANA**

**WYOMING**

Dickinson

Bismarck

Jamestown

Fargo

Moorhead

Barnesville

Fergus Falls

Wahpeton

Oakes

Aberdeen

Mansfield

Northville

Redfield

Watertown

Appleton

Colorado

Belle Fourche

Whitewood

Sturgis

Box Elder

Wasta

Rapid City

Wail

Phillip

Midland

Onida

Blunt

Pierre

Harrod

Highmore

Miller

Ree Heights

Wessington

Wolsey

Yale

De Smet

Arlington

Lake

Volga

Brookings

Aurora

Preston

Marshall

Tyler

Tracy

Florence

Vendur

Worthington

Oral

Smithwick

Dakota Jct.

Chadron

Crawford

Leased to NW

Sheldon