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Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Finance Docket No. 35963, BNSF Railway Company – Temporary Trackage Rights Exemption – Union Pacific Railroad Company

Dear Ms. Brown:

Attached for filing with the Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7) covering the trackage rights agreement between BNSF Railway Company and Union Pacific Railroad Company. Enclosed is a check in the amount of $1,200 to cover the filing fee. Also attached is a CD containing the Notice of Exemption.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

Karl Morell

Enclosures

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SURFACE
TRANSPORTATION BOARD

F I L E D
October 30, 2015
SURFACE
TRANSPORTATION BOARD

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35963

BNSF RAILWAY COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

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Courtney Biery Estes
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131

Karl Morell
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Attorneys for:
BNSF Railway Company

Dated: October 30, 2015

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35963

BNSF RAILWAY COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

BNSF Railway Company ("BNSF"), submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), for temporary trackage rights over two rail lines owned by Union Pacific Railroad Company ("UP"). The temporary trackage rights will expire midnight on December 31, 2018.[1]

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this notice are based on a written agreement between BNSF and UP, attached as Exhibit B, and are not being sought in a responsive application in a rail consolidation proceeding. Under these circumstances, the Section 1180.2(d)(7) class exemption is applicable.

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[1] Because the temporary trackage rights covered by this Notice are "local" rather than "overhead" rights, this filing is not being made under the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8).

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The agreement between BNSF and UP grants BNSF restricted, temporary trackage rights over the UP rail lines located 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 126.2 miles; and (2) UP Milepost 219.4, at Elsey, CA, on UP's Canyon Subdivision, and UP Milepost 280.7, at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles. The use of the trackage rights lines by BNSF is restricted to movements of BNSF unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, CA. The trackage rights are temporary in nature and will expire midnight December 31, 2018.

Name and address of tenant railroad:

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

Questions regarding this transaction are to be addressed to BNSF's counsel:

Karl Morell
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 595-9045

(a)(1)(ii) Consummation Date

The trackage rights will be consummated on the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The trackage rights are temporary in nature and are intended to permit BNSF to move empty and loaded ballast trains to and from the ballast pit located at Elsey, CA adjacent to the UP rail line. The trackage rights will expire midnight on December 31, 2018.

(a)(5) List of States in which the Party's Property is Situated

The involved trackage rights are located in the State of California.

(a)(6) Map

A map illustrating the trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the Trackage Rights Agreement is attached as Exhibit B.

Labor Protection

BNSF is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate,* 360 I.C.C. 653 (1980).

Environmental and Historic Matters

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R §§ 1105.6(c)(4) and 1105.8(b)(3).

Respectfully submitted,

Karl Morell

Karl Morell
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Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Attorneys for:
BNSF Railway Company

Courtney Biery Estes
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131

Dated: October 30, 2015

EXHIBIT A

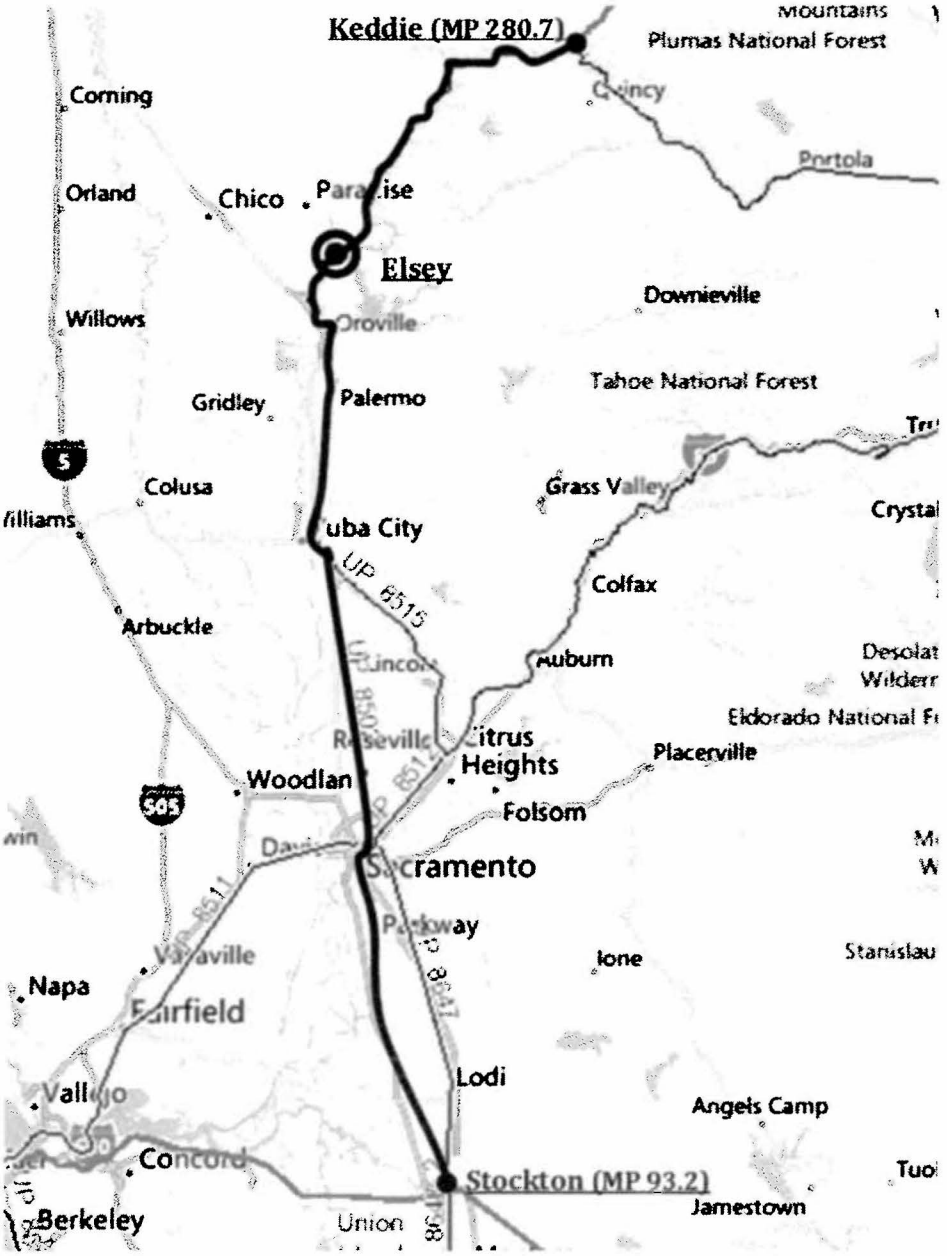
Keddie (MP 280.7)
Plumas National Forest
Corning
Orland
Chico
Elsey
Downieville
Willows
Oroville
Tahoe National Forest
Gridley
Palermo
Colusa
Grass Valley
Crystal
Colfax
Arbuckle
Auburn
Desolat
Wilderr
Eldorado National F
Citrus
Heights
Placerville
Woodlan
Folsom
Sacramento
Napa
Fairfield
Lodi
Angels Camp
Concord
Stockton (MP 93.2)
Berkeley
Jamestown
Union

EXHIBIT B

Temporary Trackage Rights Agreement
Stockton, California to Elsey, California
and
Keddie, California to Elsey, California,

December 1, 2015 through December 31, 2018

THIS AGREEMENT, made and entered into this 1st day of November, 2015 by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "**UP**" or "**Owner**", and **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "**BNSF**" or "**User**."

WHEREAS, UP is the owner and operator of certain lines of railroad extending between BNSF connections over UP's railroad system;

WHEREAS, BNSF and UP are parties to that certain Maintenance Materials Transportation Agreement ("**MMTA**"), dated January 2, 2004, as amended from time to time;

WHEREAS, BNSF desires to obtain temporary trackage rights upon two lines of UP's railroad, for the sole purpose of handling ballast trains of company material for use in the maintenance of BNSF's tracks; and

WHEREAS, UP is agreeable to said temporary trackage rights, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. TRACKAGE SUBJECT TO AGREEMENT

Attached hereto, marked "**Exhibit A**" and by this reference incorporated herein, is a print which depicts the portions of lines of UP railroad over which BNSF is by this agreement granted temporary trackage rights, and which are hereinafter referred to collectively as the "**Joint Trackage**" (as further defined in Exhibit B of this agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF TEMPORARY TRACKAGE RIGHTS

The General Conditions covering the grant of temporary trackage rights are set forth in Exhibit B. If any conflict between Exhibit B and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit B, UP grants to BNSF the temporary, nonexclusive right to use the Joint Trackage for Equipment (as defined in Exhibit B)

that is in its account while moving over the Joint Trackage in common with UP and such other railroad company or companies as UP has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered UP for the purpose of this agreement. Said grant of rights shall be between: 1) Stockton, California, UP's Oakland Subdivision, UP's Milepost 93.2 and Elsey, California, UP'S Canyon Subdivision, UP's Milepost 219.4, a distance of 126.2 miles, and 2) Keddie, California, UP's Canyon Subdivision, UP's Milepost 280.7 and Elsey, California, UP'S Canyon Subdivision, UP's Milepost 219.4, a distance of 61.3 miles, for the period of December 1, 2015 through December 31, 2018.

It is understood and agreed that:

(a) BNSF shall not have the right to set out, pick up or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route;

(b) BNSF shall not have the right to serve any industry, team or house track now existing or constructed in the future along the Joint Trackage, except the temporary right, as provided in this agreement, to move BNSF unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, California;

(c) Only the BNSF ballast trains authorized to operate by this agreement may operate in accordance with this agreement's terms. No other BNSF trains may operate in accordance with this agreement's terms.

(d) BNSF shall not permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or on the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or on the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of BNSF; provided, however, that the foregoing shall not prevent BNSF, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement;

(e) The temporary trackage rights granted to BNSF in this agreement are for the sole purpose of moving loaded and empty ballast trains of company material. The ballast will be used for BNSF maintenance projects, have no commercial value, and cannot be interchanged with another railroad;

(f) BNSF's use of the temporary trackage rights will only be permitted when a schedule for the movement of unit ballast trains of company material from Elsey pursuant to Section 1(B) of the MMTA is in full force and effect.

(g) UP will not provide fuel for locomotives powering BNSF trains operating pursuant to the trackage rights granted in this agreement;

(h) BNSF shall provide qualified BNSF crews per Section 2.14 of Exhibit B;

(i) BNSF will be responsible for the 1,000- or 1,500-mile inspections of its trains operating pursuant to the trackage rights granted in this agreement.

Section 3. OTHER AGREEMENTS

The parties acknowledge the existence of that certain Trackage Rights Agreement between the UP and BNSF dated June 1, 1996, governing BNSF trackage rights over UP's line from Denver, Colorado to Stockton and San Jose, California (the "**Denver–San Jose Agreement**"). Although certain trackage covered by the Denver–San Jose Agreement may also be considered Joint Trackage under this agreement, in no event shall the terms of this agreement amend or supersede the terms of the Denver–San Jose Agreement.

Section 4. COMPENSATION

BNSF shall pay to UP, in addition to other payments to be made under this Agreement, for the use of Joint Trackage in the operation of its trains thereover the rate prescribed in Section 2, of the MMTA.

Section 5. MAINTENANCE AND OPERATION OF TRACKAGE

UP, at its expense, shall maintain the Joint Trackage in a manner generally permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and permit BNSF to operate at such speeds unless by mutual written agreement a different standard is provided. In the event that for operating convenience, necessity or emergency, UP permits or directs BNSF to use adjacent UP track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this agreement.

Section 6. LIMITATIONS AND MEASUREMENT OF TEMPORARY TRACKAGE RIGHTS TRAINS

BNSF and UP agree that BNSF's use of the trackage rights granted herein shall be for a maximum of three BNSF unit ballast trains of company material per week. Trains will be limited to 2,400 feet and must meet the tons per equivalent operative axel ("**TPA**") requirement for the Joint Trackage as determined by UP.

There may be situations where UP will not be able to allow BNSF train operation on the Joint Trackage. In the event of refusal to grant such BNSF train operation on the Joint Trackage, BNSF shall have no claim of any nature against the UP by reason of such refusal.

Section 7. CONNECTIONS AND ADDITIONS

The entire cost of construction of any connection necessary for the implementation of the temporary trackage rights granted in this Agreement shall be at BNSF's expense. UP, at BNSF's expense, shall construct, own and maintain the part of any such connection on UP's property.

Section 8. LIABILITY

Any liability for loss, damage, injury or death which arises from the operation under this agreement shall be assumed, settled and paid as provided in Exhibit B, General Conditions, attached hereto.

Section 9. TERM AND TERMINATION

Subject to the provisions of subsections 7.2, 7.3 and 7.4 of Exhibit B, this agreement shall become effective on the date BNSF first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies on terms and conditions satisfactory to BNSF, and shall remain in effect for the period of time specified in Section 2 hereof.

Section 10. CHOICE OF LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

Section 11. NONWAIVER OF RIGHTS AND OBLIGATIONS

The failure of either party to this agreement, in any one or more than one instance, to insist upon the performance of any of the terms or conditions of this agreement, or to exercise any rights or privileges under this agreement, or the waiver by either party to this agreement of any breach of the terms or conditions of this agreement, shall not be construed thereafter as waiving any such terms, covenants, rights, privileges or obligations, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 12. ENTIRE AGREEMENT

This agreement constitutes the entire understanding of the parties with respect to the temporary BNSF trackage rights granted herein. No amendment, change or modification of this agreement shall be valid unless in writing and signed by the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

WITNESS:

BNSF RAILWAY COMPANY

By:

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By:

EXHIBIT A
Temporary Trackage Rights – BNSF on UP

Keddie to Elsey, CA or Stockton to Elsey, CA
December 1, 2015 through December 31, 2018

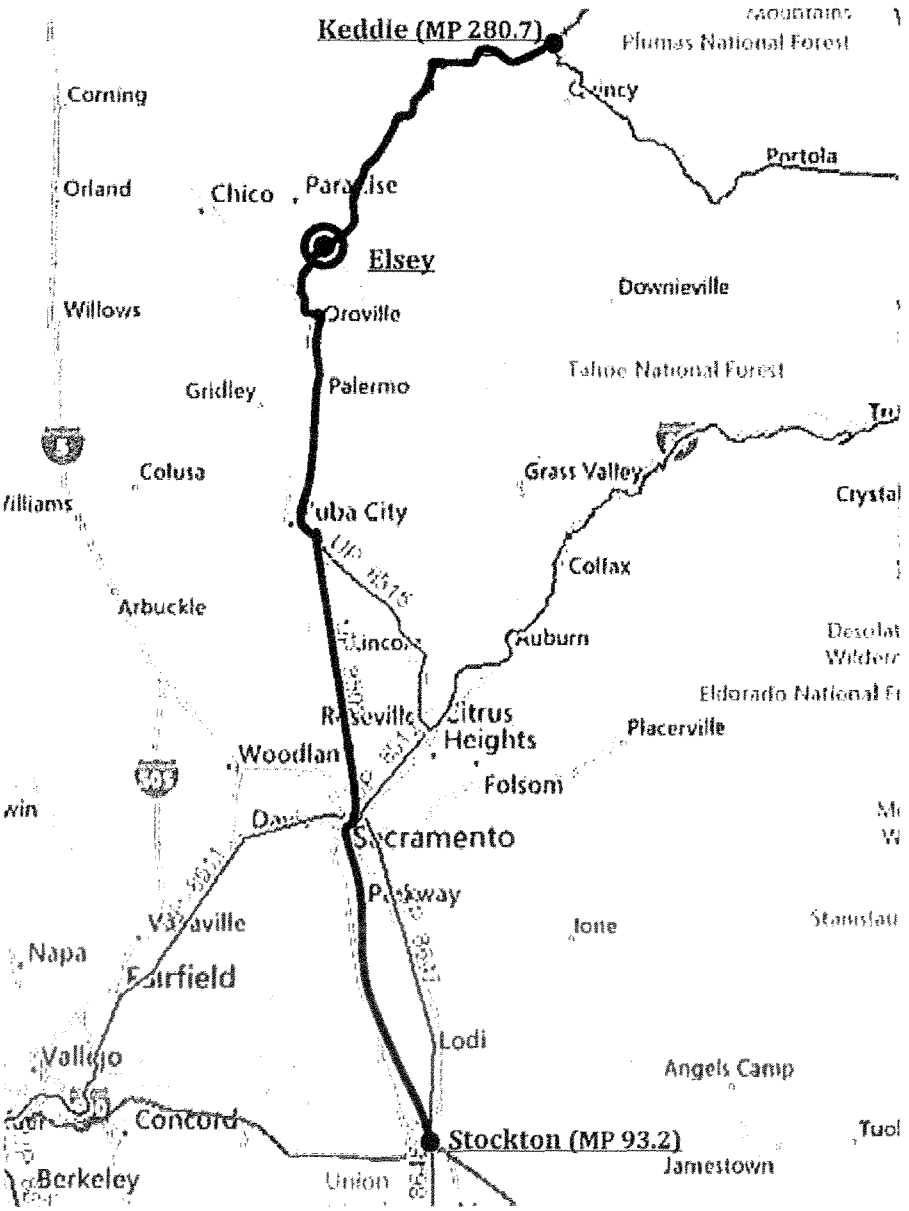

EXHIBIT B
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "**Agreement**" shall mean that certain agreement to which this Exhibit B is appended. The term "Agreement" will include this Exhibit B.

1.2 "**Owner**" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "**User**" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "**Joint Trackage**" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions (as that term is hereinafter defined) to, thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "**Equipment**" shall mean trains, locomotives, cars, cabooses, vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "**STB**" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any changes in and/or additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any changes in and/or additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction

become part of the Joint Trackage. User may request changes in and/or additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User provided there shall at all time be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 4 of this Exhibit B.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, clean up will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Section 4 of this Exhibit B.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.15 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint

Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered sole employees of User and sole property of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "**Interchange Rules**", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit B.

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or

derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "**Derailment**" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "**Hazardous Materials**" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the clean up effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway

completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in Accordance with 49 U.S.C. Section 11161 et seq. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-3, et seq.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit B shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. There upon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

(a) User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or

invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

(b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, Attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "**Derailment**") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "**Hazardous Materials**") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties, Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any clean up, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "**Response Action**"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work

plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "**Environmental Claim**" means the direct costs of any clean up, response, removal, remediation, natural resource damage, closure and/or post closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of this Exhibit B.

Section 5. **LIABILITY**

5.1 Owner shall not be held liable for or on account of any loss, damage, or delay, to the trains, engines, cars or other property of any kind of either company, nor to freight, baggage or other property of any kind carried in or upon such trains, engines or cars, nor for or on account of any injury to or death of passengers or employees of either company, or for or on account of any injury to the person or property of any other individual or individuals, company or companies, corporation or corporations whatsoever, which may be incurred or sustained by reason of such trains being operated on the Joint Trackage, or by reason of such trains being delayed in such operation, in whatever manner the same may be caused or occasioned, whether by or through the negligence of the Owner, its agents or servants, or by reason of defects in tracks, structures, or facilities furnished by Owner, or otherwise, it being understood and agreed that all risk of such delays, loss, damage, injury and death shall be and is hereby assumed by User, and User shall and will hold harmless Owner from and against all liabilities or claims for all such delay, loss, damage, injury and death and shall and will execute and deliver, or cause to be executed and delivered, to Owner, upon request, a full and complete release, satisfaction and discharge of all claims therefor, and will pay, or cause to be paid, all costs and expenses incurred by either party in the clearing of wrecks and repairs to equipment, track and property in which by reason of such movement covered by this Agreement the engines, trains, or cars of User are concerned, expenses and attorney's fees incurred in defending any action which may be brought against the Owner on account of any such claim or liability and any judgment which may be rendered against the Owner on account thereof. User shall pay all fines, penalties, costs and expenses

imposed upon or incurred by Owner by reason of any violation by User of the Safety Appliance or other State or Federal Laws, and hold Owner harmless therefrom.

5.2 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of User is involved.

5.3 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and there upon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars ($50,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expensed of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

5.4 THE LIABILITY ASSUMED BY USER SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, INJURY OR DEATH WAS CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF OWNER OR ITS EMPLOYEES OR AGENTS, EXCEPT TO THE EXTENT SUCH DAMAGE, INJURY OR DEATH IS PROXIMATELY CAUSED BY THE WANTON, WILLFUL AND/OR INTENTIONAL ACTS OR THE GROSS NEGLIGENCE OF OWNER.

THE INDEMNIFICATION OBLIGATION ASSUMED BY USER SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE,

WHETHER ACTIVE OR PASSIVE, WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY RESULTING FROM VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYER'S LIABILITY ACT (FELA), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), THE RESOURCE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), THE CLEAN WATER ACT (CWA), THE OIL POLLUTION ACT (OPA), AND ANY SIMILAR STATE STATUTES IMPOSED OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF OWNER FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT, EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY THE WANTON, WILLFUL AND/OR INTENTIONAL ACTS OR THE GROSS NEGLIGENCE OF OWNER.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "**Demanding Party**") shall notify in writing the other party or parties to such dispute (the "**Noticed Parties**"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of

arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL, ABANDONMENT

7.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the

Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit B and the Agreement, the provisions of the Agreement shall prevail.

8.7 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

End of Exhibit B

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35963

BNSF RAILWAY COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company ("UP") has agreed to grant restricted, temporary trackage rights to BNSF Railway Company ("BNSF"), over the UP rail lines located 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 126.2 miles; and (2) UP Milepost 219.4, at Elsey, CA, on UP's Canyon Subdivision, and UP Milepost 280.7, at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles. The use of the trackage rights lines by BNSF is restricted to movements of BNSF unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, CA. The trackage rights are temporary in nature and will expire midnight on December 31, 2018.

The trackage rights will be consummated on or after December 1, 2015.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board,

VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

I, Susan Odom, being duly sworn depose and state that I am Manager Contracts and Joint Facilities of BNSF Railway Company, 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.

NICOLE A HIGHTOWER
Notary Public, State of Texas
My Commission Expires
August 19, 2019

Susan Odom

SUBSCRIBED AND SWORN TO before me this 28th day of October, 2015, in the County of Tarrant, State of Texas.

State of Texas
County of Tarrant
Sworn to and subscribed before me on the 28th
day of October, 2015
Nicole A Hightower
Notary Public's Signature
My commission expires August 19, 2019