

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35962

239337

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS –
TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

ENTERED
Office of Proceedings
October 8, 2015
Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

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October 8, 2015
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Asim S. Raza
Terminal Railroad Association of St. Louis
415 S.18th Street, Suite 200
St. Louis, Missouri 63103

*Counsel for Terminal Railroad Association
of St. Louis*

Dated: October 7, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35962

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS –
TRackage RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

The Terminal Railroad Association of St. Louis (“TRRA”) submits this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), for TRRA's acquisition of trackage rights over a line of railroad owned by Norfolk Southern Railway Company (“NS”) pursuant to a written Trackage Rights Agreement (the “Agreement”) between TRRA and NS. The Agreement grants TRRA limited local trackage rights over that portion of NS’ rail line between TRRA’s connection with NSR at approximately North Market Street, St. Louis, Missouri, and the Kiesel Facility at approximately Dock Street, St. Louis, Missouri, a distance of approximately 0.49 miles (the “Subject Trackage”). TRRA will also assume maintenance of the Subject Trackage until NSR decides to resume active operations over the Subject Trackage. The Agreement shall become effective according to its terms and will be consummated on the effective date of this Notice, which shall be on or after November 9, 2015.

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 upon a written agreement, a redacted version of which is attached hereto as Exhibit 2, and are not being sought in a responsive application in a rail consolidation proceeding. Thus, the § 1180.2(d)(7) class exemption is applicable.

Section 1180.6 Supporting Information

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

In the Agreement, NS grants limited local trackage rights to TRRA over that portion of NS' rail line between TRRA's connection with NSR at approximate North Market Street, St. Louis, Missouri, and the Kiesel Facility at approximate Dock Street, St. Louis, Missouri, a distance of approximately 0.49 miles.

Name and address of tenant railroad:

Terminal Railroad Association of St. Louis
415 S.18th Street, Suite 200
St. Louis, Missouri 63103

Questions regarding this transaction are to be addressed to the representative designated below:

Contact; Asim S. Raza
415 S.18th Street, Suite 200
St. Louis, Missouri 63103
(314) 241-4729

(a)(1)(ii) Consummation Date

The trackage rights will be consummated on or after November 9, 2015.

(a)(1)(iii) Purpose of Transaction

The Kiesel Facility is the only active shipper accessible via the Subject Trackage, generating less than 5 carloads in the past two years. Currently, NS must operate over TRRA via

trackage rights to access the Subject Trackage and serve the Kiesel Facility.¹ NS, for operating convenience, intends to discontinue a nearby two-mile segment of trackage in St. Louis, Missouri, between Milepost S-3 and Milepost S-5. Granting TRRA limited local trackage rights over the Subject Trackage for the sole purpose of serving the Kiesel Facility will allow NS and TRRA to operate more efficiently in this area after NS's nearby discontinuance while also preserving rail access to an existing customer. TRRA's assumption of maintenance responsibilities during the time period that TRRA is the only carrier operating over the Subject Trackage will better align service and maintenance responsibilities and management of the Subject Trackage. Should NS resume active operations over the Subject Trackage, maintenance responsibilities would automatically revert back to NS under the terms of the Agreement.

(a)(5) States in which Property of the Applicant is Situated

TRRA owns rail lines in the following states: Missouri, Illinois.

(a)(6) Map

A map is attached hereto as Exhibit 1.

(a)(7)(ii) Agreement

A redacted version of the Agreement is attached as Exhibit 2, with highly confidential material redacted. An unredacted version of the Agreement will be provided to any party requesting it and upon issuance of an appropriate protective order.

Labor Protections

The applicable labor protection conditions are those imposed in *Norfolk & Western Railway-Trackage Rights-Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in

¹ NSR accesses that line via NSR's trackage rights over a line of railroad of TRRA between May Street and Tyler Street and between North Market Street and Clinton Street, in accordance with agreement between Norfolk and Western Railway Company and Terminal Railroad Association of St. Louis dated September 1, 1981

Mendocino Coast Railway–Lease & Operate–California Western Railroad, 360 I.C.C. 653 (1980).

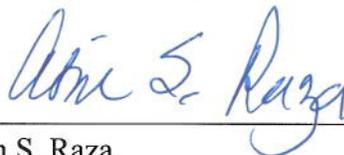
Environmental Documentation and Historic Reports

Pursuant to 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3), neither environmental documentation nor a historic report is required for this transaction.

Caption Summary

In accordance with 49 C.F.R. § 1180.4(g)(2), a caption summary is attached as Exhibit 3.

Respectfully submitted,



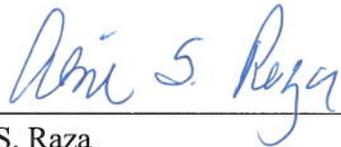
Asim S. Raza
Terminal Railroad Association of St. Louis
415 S.18th Street, Suite 200
St. Louis, Missouri 63103

Counsel for Terminal Railroad Association of St. Louis

Dated: October 7, 2015

VERIFICATION

I, **Asim S. Raza**, declare under penalty of perjury that I am authorized to make this verification on behalf of the Terminal Railroad Association of St. Louis, and that the information included in the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.

A handwritten signature in blue ink that reads "Asim S. Raza". The signature is written in a cursive style and is positioned above a horizontal line.

Asim S. Raza
Chief Legal Officer

Dated: October 7, 2015

EXHIBIT 1

Exhibit 1 – Maps

Page 2 – Detail Map

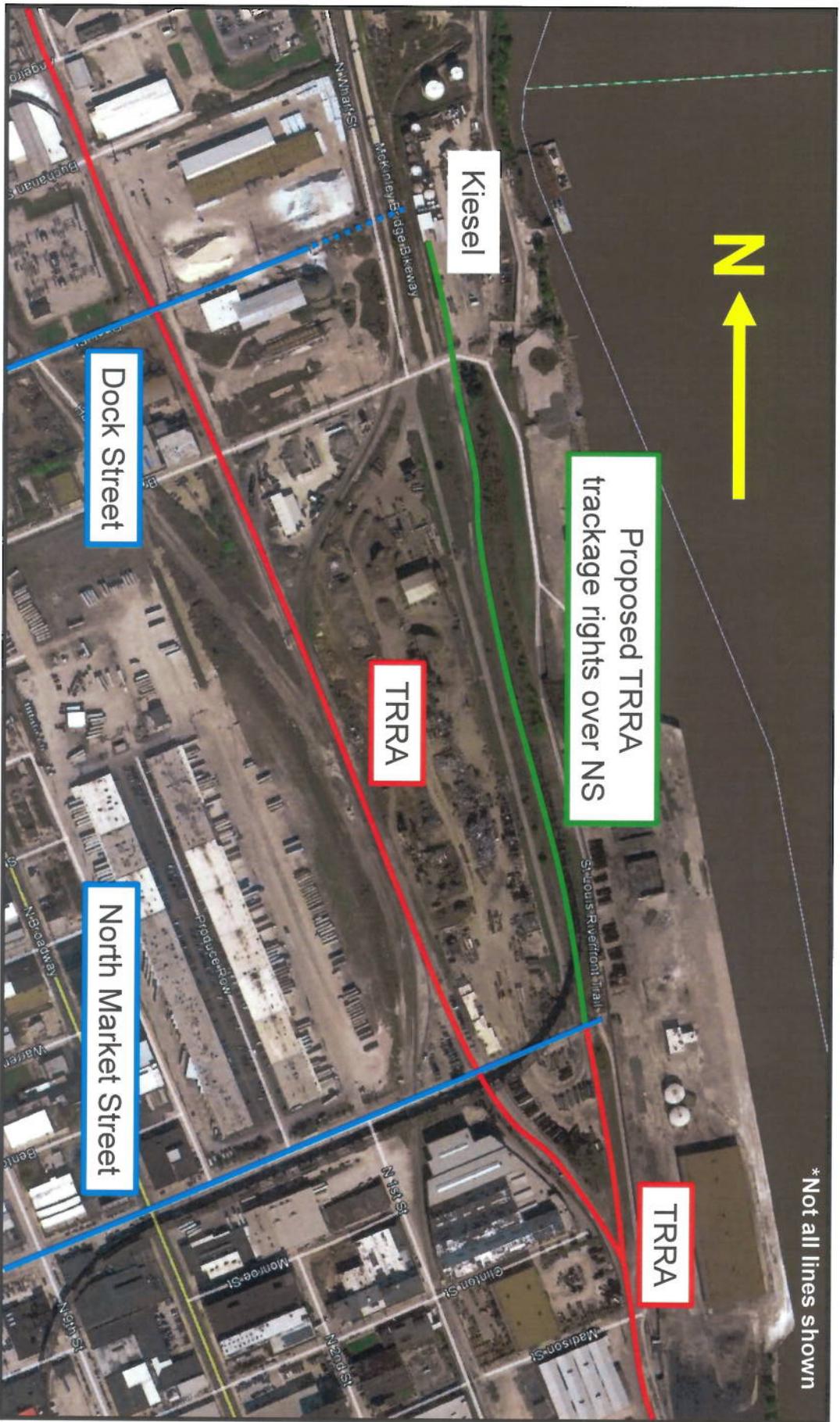
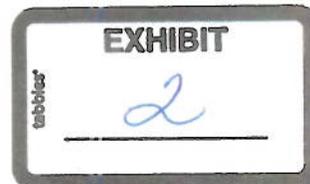


EXHIBIT 2



TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement"), is entered into as of this 31st day of July, 2015, by and between the Terminal Railroad Association of St. Louis, a Missouri corporation (hereinafter referred to as "TRRA"), and Norfolk Southern Railway Company, a Virginia corporation (hereinafter referred to as "NSR");

WITNESSETH:

WHEREAS, NSR currently serves The Kiesel Company located at 1 Branch Street, St. Louis, Missouri ("Kiesel"), located on NSR's line of railroad in St. Louis, Missouri approximately between Dock Street and North Market Street, formerly Illinois Terminal's Branch Street Yard Trackage; and

WHEREAS, NSR accesses that line via NSR's trackage rights over a line of railroad of TRRA between May Street and Tyler Street and between North Market Street and Clinton Street, in accordance with agreement between Norfolk and Western Railway Company and Terminal Railroad Association of St. Louis dated September 1, 1981; and

WHEREAS, NSR, for operating convenience, intends to discontinue a two-mile segment of trackage in St. Louis, Missouri between Milepost S-3 and Milepost S-5; and

WHEREAS, as a result of that discontinuance of service and for operating efficiencies, NSR desires to permit TRRA to serve Kiesel; and

WHEREAS, TRRA desires to acquire trackage rights over NSR on the aforementioned Illinois Terminal Branch Street Yard trackage between Dock Street and North Market Street (generally the "Subject Trackage," as more fully defined below) to serve Kiesel; and

WHEREAS, NSR has agreed to grant TRRA limited local trackage rights for the sole purpose of serving Kiesel. The parties hereto desire to enter into this Agreement providing for TRRA's use of the Subject Trackage strictly limited for the purposes described herein.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, NSR hereby grants to TRRA the right to operate its trains, locomotives, cars and equipment with its own crews or

those contractors retained by TRRA (hereinafter referred to as "Trackage Rights") over the following segment of NSR's railroad (hereinafter referred to as the "Subject Trackage"), as shown on the plan attached hereto as Exhibit A, which is hereby incorporated into this Agreement:

- (A) Between TRRA's connection with NSR at approximate North Market Street, and the Kiesel facility at approximate Dock Street, and as much head/tail room on NSR as needed to safely operate.

Section 2. USE OF TRACKAGE

TRRA's use of Subject Trackage shall be in common with NSR and any other user of the Subject Trackage, and NSR's right to use the Subject Trackage shall not be diminished by this Agreement. NSR retains the exclusive right to grant to other persons rights of any nature over the Subject Trackage so long as use of the Subject Trackage by such other persons does not unreasonably interfere with its use by TRRA.

- (A) As of the effective date of this Agreement, NSR is not actively serving any customer over the Subject Trackage. Should NSR resume active operations over the Subject Trackage, NSR shall provide TRRA sixty (60) days' prior written notice.
- (B) Except as may otherwise be provided by this Agreement, TRRA shall not use any part of the Subject Trackage for the purpose of switching storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of NSR, preclude the emergency use by TRRA of such auxiliary tracks as may be designated by NSR for such purposes.
- (C) TRRA shall have exclusive control of the management and operation of the Subject Trackage until such time that NSR resumes active operations over the Subject Trackage. Should NSR resume active operations over the Subject Trackage, NSR shall have exclusive control of the management and operation of the Subject Trackage. TRRA shall not have any claim against NSR for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by TRRA is interrupted or delayed at any time from any cause.
- (D) TRRA shall have the right to operate in either direction on the Subject Trackage.

Section 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of TRRA using the Subject Trackage as previously described to serve Kiesel as well as for limited poke moves and storage of equipment and rolling stock so long as such uses do not

interfere unreasonably with the use of the Subject Trackage by any other user. The foregoing notwithstanding, TRRA shall not use the Subject Trackage in overhead service, and TRRA shall not serve any shipper other than Kiesel via the Subject Trackage. TRRA may not grant rights of any nature on the Subject Trackage to other parties.

Section 4. MISCELLANEOUS SPECIAL PROVISIONS

When operating over the Subject Trackage, TRRA's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.

- (A) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of NSR's representative or that representative's designee.
- (B) Should NSR resume active operations over the Subject Trackage subsequent to the effective date of this agreement, TRRA, before entering upon the Subject Trackage with its trains, must verify with NSR that TRRA has the ability to make a complete and continuous, uninterrupted movement over the Subject Trackage to Kiesel or onto TRRA's own railroad.

Section 5. COMPENSATION

TRRA shall pay NSR _____ on the effective date of this Agreement.

Section 6. INTENTIONALLY OMITTED

Section 7. MAINTENANCE OF SUBJECT TRACK

- (A) So long as TRRA is providing service to Kiesel via the Subject Trackage and NSR is not actively operating over the Subject Trackage, TRRA shall maintain, repair and renew the Subject Trackage with TRRA's own supervision and labor and at TRRA's own expense. TRRA shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated.
- (B) If at any point NSR decides to resume active operations over the Subject Trackage, whether to serve a new customer or for any other reason, NSR shall provide TRRA sixty (60) days' prior written notice, at the expiration of which NSR shall resume maintenance, repair and renewal the Subject Trackage with its own supervision and labor and at its own expense and shall not seek retroactive contribution from TRRA for any maintenance

matters arising following the date NSR resumes active operations over the Subject Trackage. If and when NSR resumes maintenance of the Subject Trackage, NSR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but NSR does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. NSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

- (C) At all times, except as may be otherwise provided in Section 13, TRRA shall not by reason of failure or neglect on the part of NSR to maintain, repair or renew the Subject Trackage, have or make any claim or demand against NSR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by TRRA resulting from any such failure or neglect.
- (D) By its execution of this Agreement, NSR acknowledges and consents to TRRA's removal of the crossing diamond at May Street, indicated on the attached Exhibit B at TRRA's sole expense. Should NSR request reinstallation of such crossing diamond, it will be re-installed at NSR's sole expense.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (A) Existing connections or facilities, which are jointly used by the parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (B) If, in the opinion of TRRA, a new or upgraded connection is required at a point of permitted entry or exit other than the endpoints, or, if in the opinion of TRRA, other upgrading, including but not limited to switches, power switches, signals, communications, etc., is required for operational efficiency, then NSR will, subject to its own operational needs, cooperate and TRRA will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by TRRA and NSR. Such construction/ upgrading shall be progressed as follows:
 - (i) TRRA or others shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of ISR or others, which connect the respective lines of the parties hereto.

- (ii) NSR shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by NSR, which connect the respective lines of the parties hereto. Upon termination of this Agreement, NSR may at its option remove any portion of trackage and appurtenances located on right-of-way, constructed as a result of this Section, at the sole cost and expense of TRRA. The salvage material removed shall be released to TRRA or, as otherwise agreed upon, NSR will credit TRRA the current fair market value for said salvage.
- (iii) NSR will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by NSR that connect the respective lines of the parties hereto at the sole cost and expense of TRRA.

Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

NSR, from time to time and at its sole cost and expense, may make changes in, additions and betterment to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

Section 10. MANAGEMENT AND OPERATIONS

- (A) TRRA shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. TRRA shall indemnify, protect, defend, and save harmless NSR and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NSR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of TRRA to comply with its obligations in this regard.
- (B) TRRA in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of NSR, and the movement of TRRA's trains, locomotives, cars, and equipment over the

Subject Trackage shall at all times be subject to the orders of the transportation officers of NSR. TRRA's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations without the prior consent of NSR.

- (C) TRRA shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and TRRA shall pay to NSR, upon receipt of bills therefor, any cost incurred by NSR in connection with the qualification of such employees of TRRA, as well as the cost of pilots furnished by NSR, until such time as such employees are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated.
- (D) If any employee of TRRA shall neglect, refuse or fail to abide by NSR's rules, instructions and restrictions governing the operation on or along NSR's property, such employee shall, upon written request of NSR's, be prohibited by NSR from working on NSR's property. If any party shall deem it necessary to hold a formal investigation on the part of any employee of TRRA, then upon such notice presented in writing, TRRA shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between TRRA and its employees. If the result of such investigation warrants, such employee shall, upon written request by NSR, be withdrawn by TRRA from service on NSR's property, and TRRA shall release and indemnify NSR from and against any and all claims and expenses because of such withdrawal.
- (E) The trains, locomotives, cars and equipment of NSR, TRRA, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.
- (F) In the event that a train of TRRA shall be forced to stop on the Subject Trackage, due to mechanical failure of TRRA's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of TRRA fails to maintain the speed required by NSR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of TRRA's trains on the Subject

Trackage, NSR shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and TRRA shall reimburse NSR for the cost of rendering any such assistance.

- (G) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by NSR, and TRRA shall reimburse NSR for the cost thereof.
- (H) In the event TRRA and NSR agree that NSR should retain employees or provide additional employees for the sole benefit of TRRA, the parties hereto shall enter into a separate written agreement under which TRRA shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

Section 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in TRRA's trains on the Subject Trackage shall be assumed by TRRA and reported and paid by it directly.

Section 12. CLEARING OF WRECKS

Whenever TRRA's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, NSR shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by TRRA at the time of such wreck, shall be promptly delivered to it.

Section 13. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, punitive or

exemplary damages, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (A) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (B) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both NSR and TRRA, then: (i) each of NSR and TRRA is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) NSR and TRRA are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.

If any damage of the environment, including without limitation land, air, water wildlife, and vegetation, occurs with both NSR and TRRA's traffic being involved, then as between themselves, (i) NSR is solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such NSR's traffic and/or NSR's locomotive from which there is a release, (ii) TRRA is solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such TRRA's traffic and/or a TRRA's locomotive from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in equipment in the revenue waybill and car hire accounts or locomotives of both NSR and TRRA from which there was a release, is, to the extent not allocable under subparagraphs (i) and (ii) to the substance released, shared by the parties, with each party bearing the proportion of such liability equal to the proportion of number of cars in the revenue waybill and car hire account of that party and equipment and/or locomotives of that party from which there was such release, out of the total number of cars in the revenue waybill and car hire account of all parties and equipment and/or locomotives of all parties from which there was such release.

- (C) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both TRRA and any other third party user of the Subject Trackage not a party to this Agreement, then TRRA's responsibility for the Loss will be apportioned in the manner specified in Subsection (b) with the other third party user being considered NSR for the purpose of determining TRRA's share of that portion of the Loss which it must assume.

- (D) If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains and locomotives of either NSR or TRRA, then each of NSR and TRRA is solely responsible for any Loss to its own employees, even if caused partially or completely by the other party. It is expressly understood that TRRA employees providing services pursuant to Section 7(A) of this Agreement will be regarded for purposes of this Section 13 as employees of TRRA, and not of NSR.
- (E) For purposes of determining liability, unless otherwise specified any use of the Subject Trackage by a contractor of one of the parties to this Agreement will be considered use by that party, and any employees, trains, locomotives, equipment, or traffic of a contractor of one of the parties to this Agreement will be considered employees, trains, locomotives, equipment, or traffic of that party.
- (F) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (G) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party will not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (H) For purposes of determining liability, pilots furnished by NSR to TRRA pursuant to this Agreement are considered as the employees of TRRA while such employees are on board or getting on or off trains of TRRA.
- (I) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, the party sued shall notify said other party, and the party so notified will have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment

and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (J) In the event of a Loss as set out herein, the parties to this Agreement will be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (K) Notwithstanding the provisions of Section 21(F) of this Agreement, for the purposes of this Section 13 the word "equipment" means and is confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (L) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 8, all work performed by NSR will be deemed performed for the sole benefit of TRRA, and TRRA will be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of NSR. TRRA shall protect, indemnify, and save harmless NSR and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which TRRA is responsible.

Section 14. CLAIMS

- (A) Except as provided in Subsection 14(B) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- (B) Each party shall investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. §11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. §10709.

- (C) In the event a claim or suit is asserted against NSR or TRRA which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
- (D) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement will be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work will be borne by such party.
- (E) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. §11706 or 49 C.F.R. Part 1005 or similar regulation, neither party will settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds
- (F) Each party agrees to indemnify and hold harmless the other party and their respective stockholders and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, or those of its subsidiaries, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of the Agreement, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party will bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.
- (G) It is understood that nothing in this Section 14 modifies or waives the conditions, obligations, assumptions or apportionments, or supersedes the provisions of Section 13 hereof.

Section 15. TERM, DEFAULT AND TERMINATION

- (A) This Agreement shall become effective ("Commencement Date") as of the first date signed by both TRRA and NSR, and if required, following receipt of any regulatory approvals, and following the expiration of any time periods required by the issuance of labor notices by NSR, and shall remain in full force and effect for a period of thirty (30) years. TRRA shall have the option, subject to approval by NSR, of extending this Agreement

for an additional term by notice in writing given at least (6) months prior to the end of the current term.

- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of either NSR or TRRA (the "Breaching Party") to perform its obligations provided under the terms of this Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other party (the "Notice Party"), the Notice Party shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail to the Breaching Party, and notwithstanding any waiver by the Notice Party of any prior breach thereof, to terminate the Agreement. The exercise of such right by the Notice Party shall not impair its rights under this Agreement or any cause or causes of action it may have against the Breaching Party for the recovery of damages.
- (D) The rights, benefits, duties and obligations running from or to TRRA under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.
- (E) TRRA may, at any time, terminate this Agreement for any reason or no reason, upon the provision of one (1) year prior written notice.

Section 16. REGULATORY APPROVAL

- (A) Should implementation or termination of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), TRRA, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. NSR will assist and support efforts of TRRA to obtain any such required approval and authorization or exemption.
- (B) Upon termination or non-renewal of this Agreement, TRRA shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing discontinuance of the TRRA Trackage Rights herein granted. If TRRA fails to file within (60) days, TRRA hereby expressly authorizes NSR to file with the STB, or other regulatory body having jurisdiction, on behalf of TRRA to discontinue the TRRA Trackage Rights granted hereunder, and TRRA further agrees to reimburse NSR for all costs incurred.

Section 17. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Section 15 of this Agreement, NSR may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving TRRA not less than ninety (90) days' written notice of NSR's intent to abandon. In the event regulatory authority is required to effect such abandonment, TRRA will not interfere with NSR's actions to seek and to exercise such authority. In the event regulatory authority is required for TRRA to discontinue its own operations over the Subject Trackage, TRRA will seek and diligently pursue such regulatory authority at the same time that NSR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as TRRA may do so in accordance with applicable statutes and regulations, unless TRRA intends to acquire the Subject Trackage from NSR pursuant to 49 U.S.C. §10904 or other similar provision. TRRA hereby expressly reserves the right pursuant to 49 U.S.C. §10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless TRRA or another party acquires the Subject Trackage for continued rail use or subsidizes NSR's operations thereon, TRRA shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by NSR for abandonment of the Subject Trackage by its aforesaid notice to TRRA, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of TRRA's operations is not required, TRRA shall discontinue its operations hereunder on the date that NSR is authorized to abandon the Subject Trackage. Upon discontinuance of TRRA's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

Section 18. INSURANCE

- (A) TRRA shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 13 hereof. Such insurance shall provide minimum limits of _____ per occurrence but may be subject to an annual aggregate limit of _____. Norfolk Southern Railway Company shall be named as an additional insured.
- (B) If the insurance provided under this Section 18 takes the form of a Claims

Made Policy, TRRA agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least three (3) years following the termination of this Agreement. TRRA further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

- (C) Every policy of insurance obtained by TRRA pursuant to the requirements of this Section 18 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by TRRA to satisfy the requirements of this Section 18 will be subject to the approval of NSR.
- (D) Within thirty (30) days of execution of this Agreement, TRRA will furnish to the above referenced Director Risk Management, an accurate certificate of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve TRRA of any other obligation under this Agreement and will in no way limit or modify TRRA's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Director Risk Management as stipulated in Section 18(B) above.
- (E) On or before any anniversary date of this Agreement that occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section 18, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of _____ for each year that this Agreement has been in effect. To the extent possible, NSR shall give TRRA at least thirty (30) days' notice, in writing, of any increase in the amount of insurance required.

Section 19. SUCCESSORS AND ASSIGNS

TRRA may not assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, without the prior written consent of NSR, such consent not to be unreasonably conditioned, delayed or withheld. Any transfer, assignment, or delegation of this Agreement by

TRRA, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, is absolutely void, and at NSR's option this Agreement may be terminated. Subject to this Section, this Agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

Section 20. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to NSR: Vice President Transportation Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

If to TRRA:
Terminal Railroad Association of St. Louis
415 S. 18th Street, Suite 200
St. Louis, Missouri 63103
ATTN: Legal Department

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 21. GENERAL PROVISIONS

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (B) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (C) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (D) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.

- (E) All Section headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (F) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (G) This Agreement is the result of mutual negotiations of the parties hereto; none of whom shall be considered the drafter for purposes of contract construction.
- (H) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling.

Section 22. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

Section 23. GOVERNING LAWS

The terms of this Trackage Rights Agreement are governed by and construed in accordance with the laws of the State of Missouri.

Section 24. FORCE MAJEURE

Neither party to this Agreement shall be responsible to the other party hereto for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, intrusions from space, including, but not limited to, solar flares, asteroids, meteors, or magnetic disturbances, acts of public enemy, war, blockade, insurrection, vandalism or sabotage; fire, accident, wreck, derailment, washout or explosion; strike, lockout or labor disputes experienced by the parties hereto; embargoes or AAR service

orders; Federal Railroad Administration ("FRA") orders; or governmental laws, orders or regulations. The party declaring force majeure shall promptly notify the other parties when the force majeure begins, the nature of the force majeure, and when the condition is terminated.

Section 25. SEVERABILITY

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination will not affect the validity, legality, or enforceability of any other part of this Agreement and the remaining parts of this Agreement will be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

Section 26. EXECUTION OF COUNTERPARTS

This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

Remainder of Page Intentionally Blank – Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS

CFO
Title

By Kerry T. Paubel
Kerry T. Paubel

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

R. C. B.
Title MANAGER

By [Signature]
VICE PRESIDENT

EXHIBIT 3

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB Finance Docket No. 35962

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS –
TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company (“NS”) has agreed to grant limited local trackage rights to the Terminal Railroad Association of St. Louis (“TRRA”) over that portion of NS’s rail line between TRRA’s connection with NSR at approximately North Market Street, St. Louis, Missouri, and the Kiesel Facility at approximately Dock Street, St. Louis, Missouri, a distance of approximately 0.49 miles (the “Subject Trackage”). The trackage rights will be effective according to the terms of the agreement and will be consummated on or after November 9, 2015. TRRA will also assume maintenance responsibility over the Subject Trackage until such time as NS resumes active operations over the Subject Trackage.

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,

Cynthia T. Brown

Chief, Section of Administration