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ENTERED
Office of Proceedings
July 29, 2016
Part of
Public Record

William A. Mullins

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July 29, 2016



BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SWRR
Washington DC 20423-0001

Re: Southwestern Railroad, Inc. – Amended Lease and Operation Exemption – BNSF Railway Company, FD 34533 (Sub-No. 1)

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a Verified Notice of Exemption under 49 C.F.R. §1150.41, et seq. filed on behalf of Southwestern Railroad, Inc.

Please acknowledge receipt and filing of this notice of exemption by date stamping the enclosed eleventh copy and returning it to the courier to return to me. This submission also includes an electronic copy of the entire filing and a separate word version of a draft Federal Register notice.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(14)(ii), I have enclosed a filing fee check in the amount of \$1,900.00. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: wmullins@bakerandmilller.com.

Sincerely,

William A. Mullins
Attorney for Southwestern Railroad, Inc.

Enclosures
cc: Bruce Carswell
Courtney Estes

FEE RECEIVED
July 29, 2016
SURFACE
TRANSPORTATION BOARD

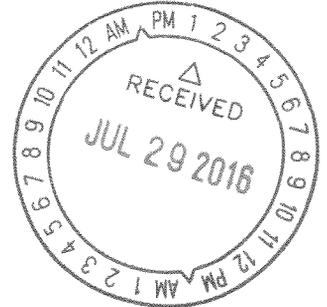
FILED
July 29, 2016
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**



**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

July 29, 2016

Attorneys for Southwestern Railroad, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

INTRODUCTION

Southwestern Railroad, Inc. ("SWRR"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit SWRR to continue to lease and operate approximately 227.6 miles of rail lines located in New Mexico (the "Line") from BNSF Railway Company ("BNSF").

REQUIRED INFORMATION

In support of this Notice of Exemption, SWRR submits the following information as required by 49 C.F.R. § 1150.43:

(a) Full name and address of applicant:

Southwestern Railroad, Inc.
3811 Airport Road
Ogden, Utah 84405

(b) Applicant's Representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

(c) Statement Concerning Agreement:

SWRR first entered into a lease agreement ("Original Agreement") with BNSF in 2004. See Southwestern Railroad Company, Inc. – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 34533 (STB served Oct. 22, 2004).¹ On June 13, 2016, SWRR and BNSF agreed to a Fifth Amendment ("5th Amendment") of the Original Agreement. The 5th Amendment modifies the agreement's termination date and allows for BNSF to renew operations immediately upon the lease's termination.

(d) Operator of the Property:

Until lease termination, SWRR will continue to be the exclusive operator of the Line.²

(e) Summary of the Transaction:

Through the Fifth Amendment, SWRR and BNSF are modifying the Original Agreement to: (1) change the termination date of the existing lease agreement to January 17, 2017; and (2)

¹ SWRR and BNSF have amended the Original Agreement four times since its inception. Notice of the most recent amendment requiring Board approval was published in Southwestern Railroad, Inc. – Lease and Operation Exemption – BNSF Railway Company, FD 35855 (STB served Oct. 1, 2014).

² Pursuant to the 5th Amendment, SWRR will remain the exclusive operator over the Line for the remainder of the lease term. However, should SWRR default at any time after the notice of exemption's effective date and prior to the lease's termination date, BNSF would be permitted to immediately begin operations over the Line to serve the Line's existing shippers.

confirm that upon termination, BNSF can immediately renew operations on the Line notwithstanding that SWRR will not as of that date obtained discontinuance authority.

- (1) Name and address of railroad transferring the subject property:

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

- (2) Proposed time schedule for consummation:

The transaction is expected to be consummated on or after August 28, 2016. This is 60 days or more after SWRR certified to the Board pursuant to 49 C.F.R. § 1150.42(e) that its employees were provided notice of the transaction.

- (3) Mileposts of the subject property:

The mileposts of the Line that will continue to be leased by SWRR, includes: (1) the Carlsbad Subdivision between milepost 0.5, at Clovis, New Mexico, and milepost 183.0, at Carlsbad, New Mexico; (2) the Carlsbad Yard;³ (3) the Carlsbad Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, near Carlsbad, New Mexico; and (4) the Loving Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, at Loving, New Mexico.

- (4) Total route miles being acquired:

The Line that SWRR will continue to lease is approximately 227.6 miles.

³ There are no mileposts associated with the approximately 5.1 miles of rail lines located in the Carlsbad Yard.

(f) Map:

A map of the Line is attached as Exhibit A.

(g) Certification of Revenues & Advance Notice Requirements:

SWRR hereby certifies that its projected annual revenues resulting from the transaction will not exceed those that would qualify it as a Class III carrier. However, SWRR anticipates that the projected annual revenue of the Line that SWRR seeks to continue to lease and operate will exceed \$5 million. Accordingly, SWRR certifies that on June 28, 2016, SWRR complied with the requirements of 49 C.F.R. § 1150.42(e) by posting a notice of its intent to undertake the proposed transaction at workplace of the employees on the affected Line. SWRR did not serve a copy of the Notice of Intent on any labor unions because the line does not have any unionized labor. See certification attached as Exhibit B.

(h) Interchange Commitments:

The transaction does not include any interchange commitment that prohibits SWRR from interchanging traffic with a third party or limits SWRR's ability to interchange with a third party.

ENVIRONMENTAL AND HISTORIC IMPACTS

Under 49 C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements because the proposed transaction will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5).

Also, under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval would be required for SWRR to discontinue or BNSF to

abandon service. There are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

CAPTION SUMMARY

A caption summary in appropriate form (49 C.F.R. § 1150.44) is attached as Exhibit C to this Notice.

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

July 29, 2016

Attorneys for Southwestern Railroad, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

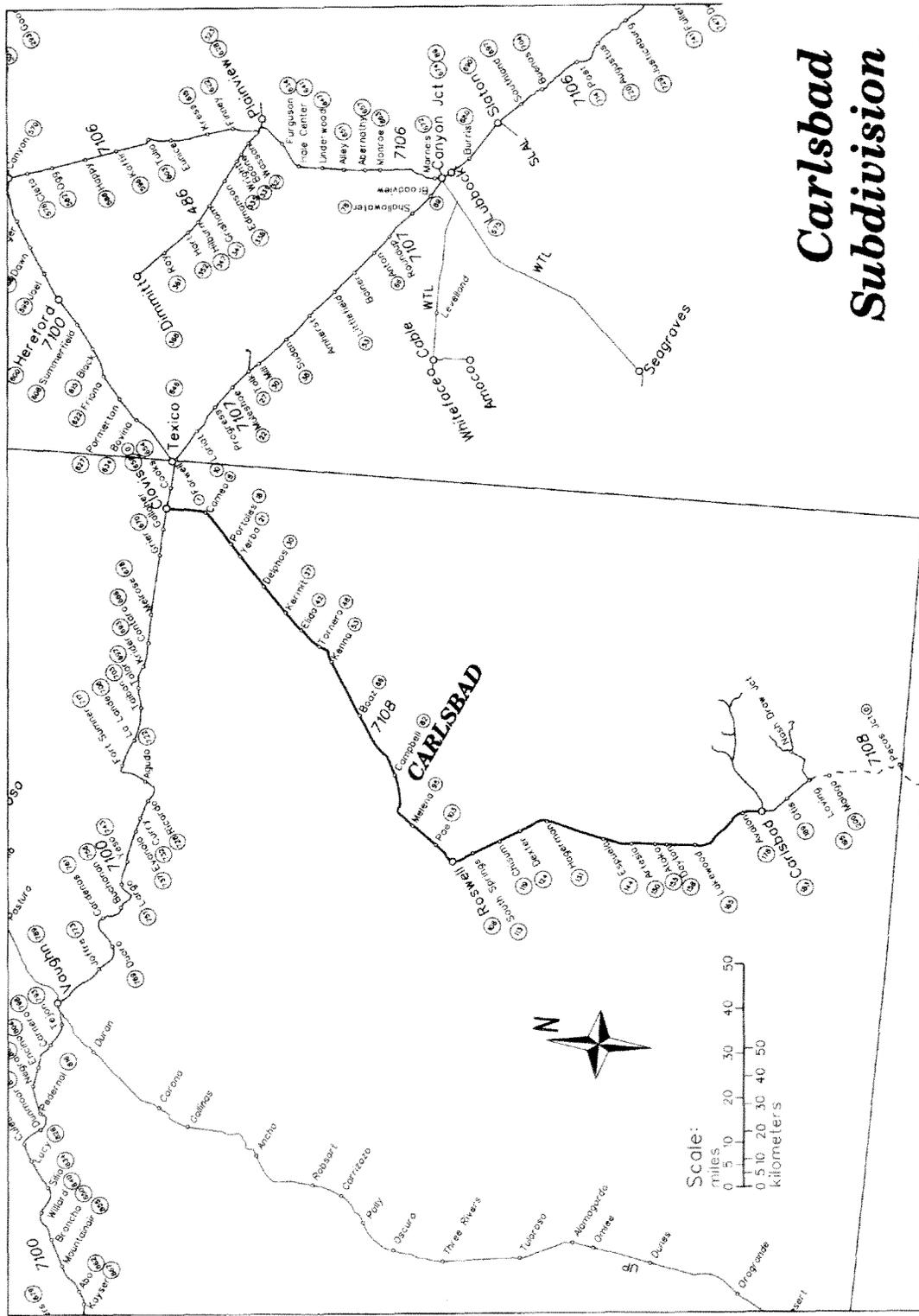
FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

EXHIBIT A

MAP



Profile created on Nov 16, 2

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Burlington Northern and Santa Fe Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

EXHIBIT B

CERTIFICATION OF REVENUES

CERTIFICATION

I, Bruce Carswell, Vice President for Operations, Southwestern Railroad, Inc. ("SWRR"), hereby certify that SWRR's projected annual revenues resulting from the transaction will not exceed those that would qualify it as a Class III carrier. However, SWRR does anticipate that the projected annual revenue of the Line that SWRR seeks to continue to lease and operate will exceed \$5 million. Accordingly, SWRR certifies that on or before June 28, 2016, SWRR complied with the requirements of 49 C.F.R. § 1150.42(e) by posting a notice of its intent to undertake the proposed transaction at the workplaces of the employees on the affected Line. None of the employees belong to a union, and therefore, SWRR did not serve a copy of the Notice of Intent on national offices of any of the labor unions.



Bruce Carswell
Vice President of Operations
Southwestern Railroad, Inc.

June 29, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

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EXHIBIT C

CAPTION SUMMARY

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 34533 (Sub-No. 1)

**SOUTHWESTERN RAILROAD, INC.
– AMENDED LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

Southwestern Railroad, Inc. (“SWRR”), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41, et seq. to continue to lease and operate BNSF Railway Company’s rail lines located: (1) on the Carlsbad Subdivision between milepost 0.5, at Clovis, New Mexico, and milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard;⁴ (3) on the Carlsbad Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, at Loving, New Mexico.

Comments must be filed with the Board and served on SWRR’s representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7823. This notice is filed under 49 C.F.R. 1150.41, et. seq.. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

⁴ There are no mileposts associated with the approximately 5.1 miles of rail lines located in the Carlsbad Yard.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
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FD 34533 (Sub-No. 1)

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VERIFICATION

VERIFICATION

I, Bruce Carswell, Vice President of Operations, Southwestern Railroad, Inc. ("SWRR"), hereby verify under penalty of perjury on behalf of SWRR that I have read the foregoing Verified Notice of Exemption and that its statements are true and correct to best of my knowledge, information, and belief. I further declare that I am qualified and authorized to make such verification on behalf of SWRR in connection with this proceeding before the Surface Transportation Board.

Executed this 29th day of June 2016

A handwritten signature in black ink, appearing to read "Bruce Carswell", written over a horizontal line.

Bruce Carswell
Vice President of Operations
Southwestern Railroad, Inc.