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241244

August 2, 2016

BY HAND DELIVERY

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

ENTERED  
Office of Proceedings  
August 4, 2016  
Part of  
Public Record



**Re: Docket No. AB 6 (Sub-No. 467), Discontinuance of Trackage Rights Exemption — In Big Stone, Swift, Chippewa, Yellow Medicine, and Renville Counties, MN**

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of BNSF Railway Company's Petition for Exemption under 49 U.S.C. 10502. Also enclosed is a check covering the \$6,700 filing fee.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

FEE RECEIVED  
August 4, 2016  
SURFACE  
TRANSPORTATION BOARD

FILED  
August 4, 2016  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-6 (SUB-NO. 467X)

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BNSF RAILWAY COMPANY  
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION  
IN BIG STONE, SWIFT, CHIPPEWA, YELLOW MEDICINE  
AND RENVILLE COUNTIES, MN

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PETITION FOR EXEMPTION

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Attorneys for:  
BNSF RAILWAY COMPANY

Dated: August 4, 2016

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-6 (SUB-NO. 467X)

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BNSF RAILWAY COMPANY  
-- DISCONTINUANCE OF TRackage RIGHTS EXEMPTION --  
IN BIG STONE, SWIFT, CHIPPEWA, YELLOW MEDICINE  
AND RENVILLE COUNTIES, MN

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PETITION FOR EXEMPTION

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BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 10903, BNSF's discontinuance of its trackage rights operations over approximately 106.7 miles of rail line owned by Twin Cities & Western Railroad Company ("TC&W") located in Big Stone, Swift, Chippewa, Yellow Medicine and Renville Counties, MN (the "Line").

**PROPOSED TRANSACTION**

BNSF proposes to discontinue its trackage rights operations over the TC&W rail line located between milepost 600.7, at Ortonville, MN and milepost 494.0 at Buffalo Lake, MN. The Line traverses U.S. Postal Service Zip Codes 57216, 56276, 56278, 56208, 56227, 56262, 56265, 56260, 56241, 56285, 56284, 56230, 56277, 56295, 55310, 55342, and 55314. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line does not contain any federally granted right-of-way. Any documentation in BNSF's possession will be made available to those requesting it. The stations on the Line are Ortonville, Odessa, Appleton, Milan, North Watson,

Montevideo, Wegdahl, Minnesota Falls, Sacred Heart, Renville, Ruebel, Danube, Granite Fall, Olivia, Bird Island, Hector and Buffalo Lake.

### **STATEMENT OF FACTS**

In Finance Docket No. 30191, *Burlington Northern Railroad Company – Trackage Rights Exemption – Between Ortonville and Buffalo Lake, MN* (not printed) served June 23, 1983, one of BNSF's predecessors was authorized to acquire the trackage rights from the then Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The trackage rights Agreement limited BNSF to handling only unit grain train shipments from a limited number of stations on the Line. The trackage rights Agreement expired in 2008 and BNSF has not performed any trackage rights operations over the Line since the Agreement expired.

### **EXEMPTION REQUESTED**

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for BNSF to discontinue its trackage rights operations over the Line.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction or service is of limited scope; or

(b) regulation is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a)

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the

administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96<sup>th</sup> Cong. 2d Sess. 105 (1980). See also Exemption From Regulation – Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 168-69 (1995).

**A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy.**

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”); STB Docket No. AB-6 (Sub-No.

409X), *The Burlington Northern and Santa Fe Ry. Co. – Abandonment Exemption – In Jefferson, Thayer and Nuckolls Counties, NE* (not printed), served July 23, 2004. BNSF has discontinued its trackage rights operations over the Line and TC&W has taken over those operations.

Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Also, the proposed discontinuance will promote a safe and efficient rail system. [49 U.S.C. § 10101(3)]. In addition, granting the requested exemption will provide for the expeditious handling and resolution of proceedings before the Board. [49 U.S.C. § 10101(15)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since the local shippers on the Line formerly served by BNSF will continue to receive rail service from TC&W as they have since 2008.

**B. This Transaction Is Of Limited Scope**

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is of limited scope. BNSF seeks to discontinue its trackage rights operations over approximately 106.7 miles of rail line. The discontinuance of the trackage rights is clearly of limited scope. *See* Finance Docket No. 31088 and Docket No. AB-43 (Sub-No. 148X), *Southern Ry. Co. and Norfolk Southern Corp. – Purchase – Illinois Central R. Co. Line between Fulton, KY and Haleyville, AL – And Trackage Rights – Illinois Central R. Co. Line between Fulton, KY and Centralia, IL* (not printed), served May 9, 1988 (discontinuance of overhead trackage rights limited in scope).

While BNSF seeks to discontinue its trackage rights operations over a total of approximately 106.7 miles of rail line, the length of the track involved in a proposed discontinuance is not dispositive of whether the transaction or service is limited in scope. Docket No. AB-6 (Sub-No. 347), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctow, Washington and Mobile Counties, AL* (not printed), served July 6, 1993 (“BN Discontinuance”) (length of line not necessarily dispositive). *See also* *Norfolk and Western Ry. Co. – Purchase – Illinois Terminal R. Co.*, 363 I.C.C. 882, 895 (1981) (abandonment of overhead trackage rights on line segments totaling more than 200 miles found of limited scope).

Of greater relevance to the “limited scope” issue is the number of shippers, if any, that would be adversely affected by the proposed discontinuance. *See, e.g., BN Discontinuance* (discontinuance limited in scope where traffic would be handled under a haulage arrangement); Docket No. AB-290 (Sub-No. 2X), *Southern Ry. Co. – Discontinuance of Trackage Rights Operations Between Greenwood and Piedmont, South Carolina* (not printed), served June 20, 1990 (transaction found to be limited in scope because shippers would be served by a new carrier).

Because TC&W has taken over BNSF's former operations over the Line, not one shipper will lose service or otherwise be adversely affected by BNSF's discontinuance of operations. Because the proposed discontinuance will not adversely affect rail service to any shipper, the proposed discontinuance should be found limited in scope.

**C. This Transaction Will Not Result In An Abuse of Market Power**

No shipper has lost rail service since 2008 when BNSF stopped operations over the Line. All of the local shippers have continued to receive rail service from TC&W. Consequently, the proposed discontinuance will not adversely affect any shipper. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576), *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*; STB Docket No. AB-566X, *Gateway Western R. Co. – Discontinuance of Service Exemption – In Jackson County, MO* (not printed), served July 21, 2000, slip op. at 2 (“Because service is being continued by the owner of the line, regulation is not necessary to protect shippers from the abuse of market power.”); STB Docket No. AB-554X, *Perry County Port Authority D/B/A Hoosier Southern RR – Discontinuance Exemption – In Spencer County, IN* (not printed), served October 19, 1998 (Discontinuance of lease and trackage rights operations exempted where owner cancelled lease and resumed complete operation, maintenance and control of line).

**ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS**

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. 1105.6(c)(2) and (6). Because TC&W has assumed all of the operations formerly provided by

BNSF, the proposed discontinuance will not result in significant changes in carrier operations. Because the Line will continue to be operated by TC&W, the discontinuance of the trackage rights is exempt from environmental reporting requirements.

Also, because TC&W has assumed all of the operations formerly provided by BNSF, further Board approval is required for TC&W to abandon or discontinue any service on the Line and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, the proposed discontinuance does not require an historic report under 49 C.F.R. 1105.8(b). As such, this transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### **FEDERAL REGISTER NOTICE**

A draft Federal Register notice is attached to this Petition as Exhibit B.

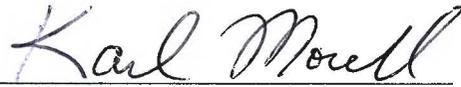
#### **LABOR PROTECTION**

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

## CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this discontinuance is of limited scope. Accordingly, BNSF respectfully urges the Board to grant the discontinuance.

Respectfully submitted,



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BNSF Railway Company  
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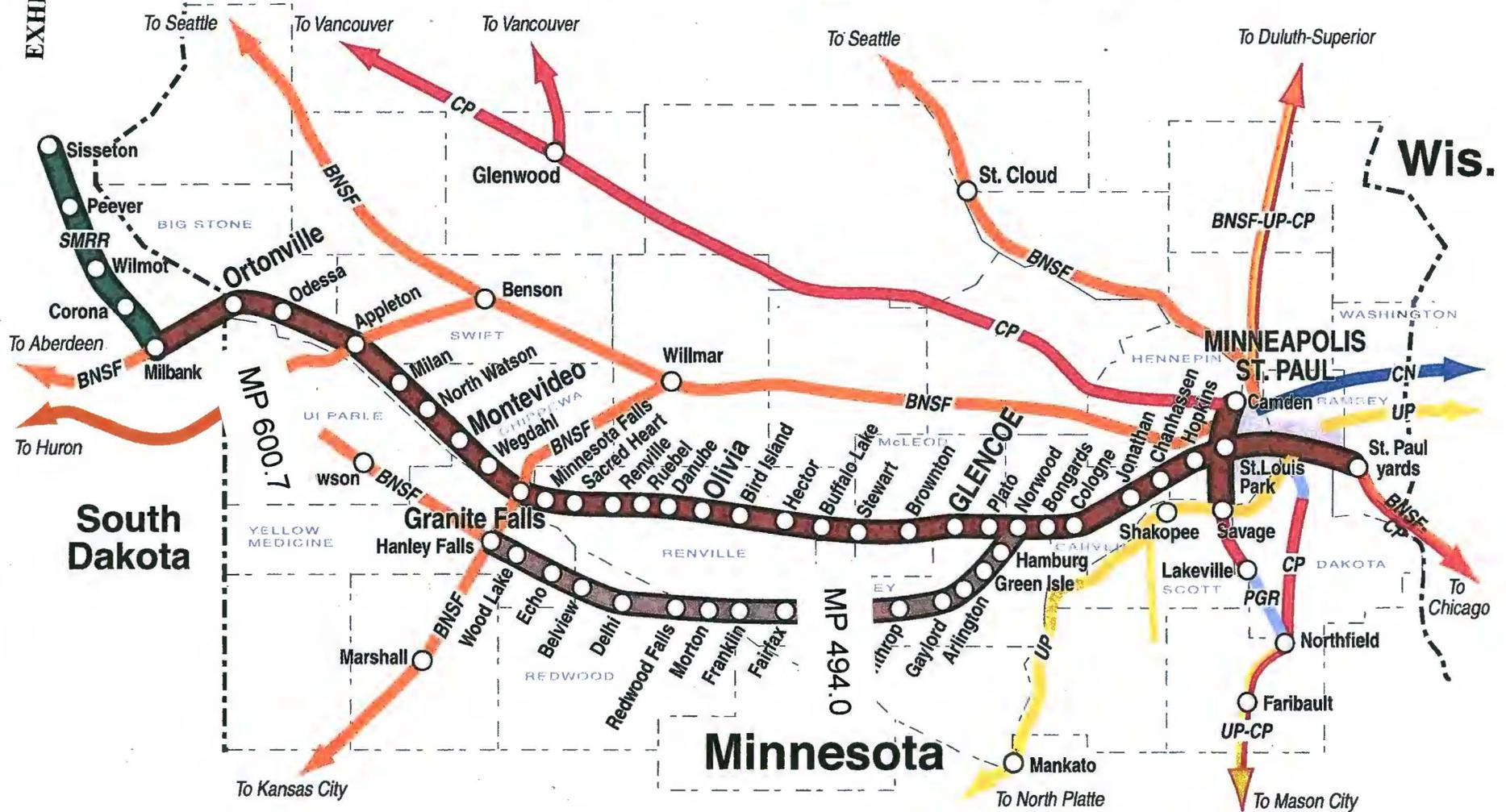
Dated: August 4, 2016

# Twin Cities & Western Railroad Company and Affiliates

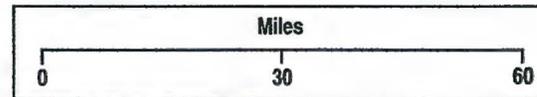
## T&W



EXHIBIT A



- Twin Cities & Western
- Minnesota Prairie Line
- Sisseton Milbank Railroad



**EXHIBIT B**

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 6 (Sub-No. 467X)

BNSF RAILWAY COMPANY  
--DISCONTINUANCE TRACKAGE RIGHTS EXEMPTION--  
IN BIG STONE, SWIFT, CHIPPEWA, YELLOW MEDICINE  
AND RENVILLE COUNTIES, MN

On August 4, 2016, BNSF Railway Company (BNSF) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to discontinue its trackage rights operations over the rail line owned by Twin Cities & Western Railroad Company and located between milepost 600.7, at Ortonville, MN and milepost 494.0, at Buffalo Lake, MN. The rail line over which BNSF seeks to discontinue operations traverses U.S. Postal Service Zip Codes 57216, 56276, 56208, 56227, 56262, 56265, 56241, 56285, 56284, 56230, 56277, 55310, 55342, and 55314 and is located in Big Stone, Swift, Chippewa, Yellow Medicine and Renville Counties, Minnesota. The stations on the line are Ortonville, Odessa, Appleton, Milan, North Watson, Montevideo, Wegdahl, Granite Falls, Minnesota Falls, Sacred Heart, Renville, Ruebel, Danube, Olivia, Bird Island, Hector and Buffalo Lake.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by October \_\_, 2016).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 6 (Sub-No. 467X) and must be sent to: (1) Chief, Section of Administration, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423, (2) Karl Morell, 655 15th Street, N.W., Suite 225, Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 565-1545 [TDD for the hearing impaired is available at (202) 565-1695.]

Decided: \_\_\_\_\_ 2016.

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

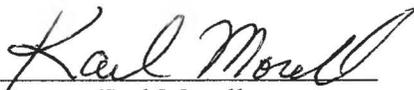
**EXHIBIT C**

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-6 (Sub-No. 467X) was mailed via first class mail on August 2, 2016, to the following parties:

<p><b>State Public Service Commission</b></p> <p>Minnesota Public Utilities Commission 121 7<sup>th</sup> Place East, Suite 350 Saint Paul, MN 55101-2147</p> <p><b>Military Traffic Management Command</b></p> <p>Military Surface Deployment and Distribution Command Transportation ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, Illinois 62225-5006</p> <p><b>National Park Service</b></p> <p>U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001</p> <p><b>National Park Service</b></p> <p>National Park Service 601 Riverfront Drive Omaha, NE 68102-4226</p>	<p><b>U.S. Department of Agriculture</b></p> <p>U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14th St., S.W. Washington, DC 20250</p>
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Dated: August 4, 2016

  
Karl Morell

## CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in Docket No. AB-6 (Sub No. 467X) was published on July 19, 2016, in The Ortonville Independent, a newspaper of general circulation in Big Stone County, Minnesota; on July 20, 2016, in the Swift County Monitor-News, a newspaper of general circulation in Swift County, Minnesota; on July 28, 2016, in the Montevideo American-News, a newspaper of general circulation in Chippewa County and Yellow Medicine County, Minnesota; and on July 28, 2016, in the Renville County Register, a newspaper of general circulation in Renville County, Minnesota, as required by 49 C.F.R. § 1105.12.

Dated: August 4, 2016



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Karl Morell