



FILED

Eric M. Hocky
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FEB 27 2013

**SURFACE
TRANSPORTATION BOARD**



ATTORNEYS AT LAW SINCE 1895

VIA OVERNIGHT DELIVERY

February 26, 2013

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

233860

233875

ENTERED
Office of Proceedings
February 27, 2013
Part of
Public Record

Re. Grumbelt Corporation
- Acquisition and Operation Exemption -
BNSF Railway Company
STB Finance Docket No. 35718
(Color Map Included)

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption under 49 CFR 1150.41 being filed on behalf of Grumbelt Corporation. Also enclosed is a check in the amount of \$1800 representing the filing fee.

Please time stamp the extra copy of the Notice of Exemption, and return it to me in the stamped, self-addressed envelope provided for your convenience.

Please let me know if there are any questions regarding this filing.

Respectfully,

Eric M. Hocky

FEE RECEIVED
FEB 27 2013
**SURFACE
TRANSPORTATION BOARD**

Pittsburgh

Philadelphia

Wheating

Wilmington

Princeton

EMH/c
Enclosures
cc: Courtney Estes, Esq. (w/encl., via e-mail)

ENTERED
Office of Proceedings

FEB 27 2013

Part of
Public Record

Thorpe Reed & Armstrong, LLP
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103-7041
215 640 8500
215 640 8501 Fax

FEE RECEIVED

FEB 27 2013

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO FD 35718

233860



**GRAINBELT CORPORATION
- ACQUISITION AND OPERATION EXEMPTION -
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)
(Expedited Consideration Requested)**

(Color Map Included)

**ENTERED
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**SURFACE
TRANSPORTATION BOARD**

**ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
chocky@thorpreed.com**

Dated: February 26, 2013

Attorneys for Grainbelt Corporation

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. FD 35718

GRAINBELT CORPORATION
– ACQUISITION AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)
(Expedited Consideration Requested)

This Verified Notice is filed pursuant to 49 C.F.R. §1150.41 by a Class III carrier, Grainbelt Corporation (“GNBC”), to exempt from regulation under 49 U.S.C. §10902 its acquisition from BNSF Railway Company (“BNSF”) of the property underlying the 178.7-mile line of railroad between Milepost 588.3 near Enid, Oklahoma, and Milepost 767.0 near Frederick, Oklahoma (the “Rail Line”), all as shown on the map attached as Exhibit A. GNBC currently owns and operates the facilities that comprise the Rail Line, and leases the underlying property from BNSF. *Grainbelt Corporation – Exemption Acquisition and Operation of Certain Lines of Burlington Northern Railroad Company*, ICC Finance Docket No. 31094 (served September 18, 1987).¹

¹ The portion of the original rail line acquired by GNBC between Milepost 767.0 near Frederick, and Milepost 774.7 at Davidson, Oklahoma, was abandoned in 1994. *Grainbelt Corporation – Abandonment Exemption – in Tillman County, OK*, ICC Docket No. AB-424 (Sub-No. 1X) (served October 14, 1994).

Notice

In accordance with 49 C.F.R. §1150.43, GNBC hereby states as follows

(a) The full name and address of Applicant are: Grainbelt Corporation, 1601 Gary Blvd., Clinton, OK 73601

(b) The name, address and telephone number of the representative of GNBC who should receive correspondence are Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, (215) 640-8500

(c) GNBC and BNSF are entering into an agreement under which GNBC is acquiring the property underlying the Rail Line and terminating the lease

(d) The current operator of the Rail Line is GNBC, and GNBC will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction

GNBC is an existing experienced Class III carrier that has been operating the Rail Line since 1987. GNBC acquired the facilities comprising the Rail Line, and has been leasing the underlying property from BNSF. BNSF and GNBC have agreed to change their commercial relationship, including the transfer of the underlying property to GNBC and the termination of the lease. GNBC will continue as the operator of the Rail Line.

(1) The name and address of the railroad transferring the Rail Line. BNSF Railway, 2650 Lou Menk Drive, Fort Worth, TX 76131-2830.

(2) GNBC expects the transfer of the property to be effective as of March 31, 2013 (more than thirty days after the filing of this Notice), subject to the waiver of the labor notice requirements referenced in item (i) below

(3) The mileposts of the Rail Line are between Milepost 588.3 near Enid, Garfield County, Oklahoma, and Milepost 767.0 near Frederick, Tillman County, Oklahoma. The Rail Line also passes through the Counties of Major, Blaine, Dewey, Custer, Washita and Kiowa.

(4) The total route miles to be acquired, leased and operated is approximately 178.7 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line.

(g) GNBC certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

(h) There are no interchange commitments that will be required as part of this transaction. (The previously existing interchange commitments in the lease will terminate together with the termination of the lease.)

(i) GNBC certifies that its total annual revenues after the transaction will exceed \$5,000,000. However, since GNBC will continue to be the operator of the Rail Line both before and after the transaction, GNBC is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(c). See discussion below.

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required because this proceeding involves authority for continued operations that will not exceed the thresholds established in 49 C.F.R. §1105.7(c)(4) or (5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because the transaction merely involves a sale of property for continued rail operations, and further Board

approval is required to discontinue or abandon any service. GNBC has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older

Labor Protection

GNBC is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions.

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

GNBC is a Class III carrier with annual revenues in excess of \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), GNBC would be required to give sixty days' notice to employees working on the line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA*, STB Finance Docket No. 33666 (served October 30, 1998) at 2. See also *Acquisition of Rail Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of Proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601

In this instance GNBC should not be required to comply with the requirements of Section 1150 42(e) because there will be no changes for any employees working on the Rail Line. GNBC already owns the rail facilities and has been the sole common carrier operator of the Rail Line since 1987. It is merely acquiring the land component of the Rail Line which it is currently leasing, and GNBC will continue to be the sole common carrier operator of the Rail Line. No employees of the transferring carrier, BNSF, have worked on the line since 1987, and there are no employees of BNSF who will be affected or have to make any career choices as a result of the sale. Posting notices on the Rail Line would not provide notice to any BNSF employees since none work on the Rail Line. Further, there will be no operational changes and no employees of GNBC will be affected.² Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting GNBC a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to acquire a rail line it was previously leasing and will remain as the common carrier operator on the line. *See Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company – Acquisition and Operation Exemption – Norfolk Southern Railway Company*, STB Finance Docket No. 35308 (served November 3, 2009); *Georgia Southwestern Railroad, Inc. – Acquisition Exemption – CSX Transportation, Inc.*, STB Finance Docket No. 35176 (served October 3, 2008); *Columbia Basin Railroad Company, Inc. – Acquisition and operation Exemption – BNSF Railway Company and BNSF Acquisition, Inc.* STB Finance Docket No. 35066 (served November 30, 2007).

² GNBC's employees are not unionized
(P0158279)

GNBC asks that the waiver of the labor notice requirements be granted expeditiously so that GNBC can close the transaction by March 31, 2013, after the notice of exemption would otherwise take effect

Conclusion

Accordingly, GNBC requests that the Board grant the waiver and permit the transaction to close at any time after 30 days from the filing of this notice of exemption.

Respectfully submitted,



ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@thorpreed.com

Dated February 26, 2013

Attorneys for Grainbelt Corporation

VERIFICATION

I, George C. Betke, Jr., Chief Executive Officer of Grainbelt Corporation, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 26, 2013.

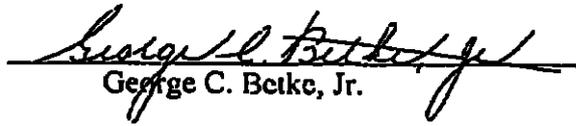

George C. Betke, Jr.

EXHIBIT A

MAP



EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO FD 35718

**GRAINBELT CORPORATION
- ACQUISITION AND OPERATION EXEMPTION -
BNSF RAILWAY COMPANY**

Grainbelt Corporation ("GNBC"), has filed a Notice of Exemption to acquire the real property underlying the 178.7-mile rail line between Milepost 588.3 near Enid, Garfield County, Oklahoma, and Milepost 767.0 near Frederick, Jackson County, Oklahoma (the "Rail Line"). The Rail Line also passes through the Counties of Major, Blaine, Dewey, Custer, Washita and Kiowa. GNBC acquired in 1987, and currently operates, the rail facilities comprising the Rail Line.

Comments must be filed with the Board and served on GNBC's representative, Eric M. Hocky, Esquire, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.