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December 9, 2004

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



40-4
441
402

Re: **Finance Docket No. 34630 (Sub-No. 1)
Dakota Southern Railway Company – Trackage Rights
Exemption – MRC Regional Railroad Authority**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated December 9, 2004. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Myles L. Tobin

FILED

DEC 10 2004

MLT: arw **SURFACE
TRANSPORTATION BOARD**

Enclosures

FEE RECEIVED

DEC 10 2004

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

DEC 14 2004

Part of
Public Record

212752

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34630 (SUB-NO. 1)

DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
MRC REGIONAL RAILROAD AUTHORITY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

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DEC 10 2004

SURFACE
TRANSPORTATION BOARD

George Alexander Huff, IV
President

Dakota Southern Railway Company
408 East Prospect Street
Chamberlain, South Dakota 57325
(605) 734-6595

**FOR DAKOTA SOUTHERN
RAILWAY COMPANY**

Dated: December 9, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34630 (SUB-NO. 1)

DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
MRC REGIONAL RAILROAD AUTHORITY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Dakota Southern Railway Company (“Dakota Southern”), a common carrier by rail, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of overhead and certain local trackage rights over a line of railroad owned by the State of South Dakota between Mitchell, South Dakota and Sioux City, Iowa (the “Mitchell-Sioux City Line”).

In accordance with the requirements of 49 C.F.R. § 1180.4(g), Dakota Southern submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

Dakota Southern is a Class III common carrier by rail which operates a rail line from Mitchell to Kadoka, South Dakota pursuant to a sublease with the MRC Regional Railroad Authority. MRC, in turn, leases the Mitchell-Kadoka Line from its owner, the State of South Dakota.

The State of South Dakota owns various rail lines in the state which are either leased to regional railroad authorities for operation by third-party rail carriers or, alternatively, are directly operated by third-party rail carriers on behalf of the State. The Mitchell-Sioux City

Line is operated on behalf of the State by The Burlington Northern and Santa Fe Railway Company ("BNSF"), pursuant to an Operating Agreement dated July 10, 1986. Under the Operating Agreement the State retains ownership of Mitchell-Sioux City Line and administrative and management responsibility for the line, and has the right to grant trackage rights on the line subject to certain BNSF consent.

Although the State has the right to grant trackage rights to MRC for operations by Dakota Southern, BNSF has not consented to the grant of those rights, and the failure to provide this consent is the subject litigation between the State and BNSF in The Burlington Northern and Santa Fe Railway Company v. State of South Dakota, Case No. 04-470 (S.D. 6th Circuit). Dakota Southern recognizes that BNSF consent may have to be obtained (either voluntarily or through litigation) before its third-party trackage rights operations can commence on the Mitchell-Sioux City Line. Nevertheless, inasmuch as the Board's authority for this Notice of Exemption is permissive in nature, the filing of this Notice is appropriate here as a prelude to obtaining any necessary consent.

Pursuant to an agreement entered into between the State of South Dakota and MRC, as detailed in the related filing in Finance Docket No. 34630, the State has granted MRC overhead trackage rights from milepost 654 near Mitchell, South Dakota to milepost 511.90 in Sioux City, Iowa, including such yard tracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable and necessary to (a) interchange railcars with BNSF and Dakota, Minnesota & Eastern Railroad Corporation at Mitchell, (b) access the State-owned line extending westerly from Napa Junction to Platte, South Dakota, and (c) interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The State of South Dakota has also granted MRC certain limited local trackage rights to move loaded

cars of corn, soybeans and wheat (and to move the empty cars via the reverse route) originating at points on the Mitchell-Kadoka Line leased by MRC, and terminating at the Mitchell Elevator in Mitchell, South Dakota and the Beardsley Elevator in Beardsley, South Dakota.

The State's agreement with MRC recognizes that MRC will utilize a third-party carrier to operate the trackage rights, in much the same fashion as a third-party carrier operates MRC's line between Mitchell and Kadoka. Pursuant to the Notice of Exemption herein, MRC will utilize Dakota Southern to operate the trackage rights on the Mitchell-Sioux City Line. Pursuant to a Trackage Rights Agreement entered into between MRC and Dakota Southern, Dakota Southern will operate on behalf of MRC in overhead trackage rights service from milepost 654 near Mitchell, South Dakota to milepost 511.90 in Sioux City, Iowa, including operations over such yardtracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable and necessary to (a) interchange railcars with BNSF and the Dakota, Minnesota & Eastern Railroad Corporation at Mitchell, (b) access the State-owned line extending westerly from Napa Junction to Platte, South Dakota, and (c) interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. Dakota Southern will also operate on behalf of MRC local trackage rights for the movement of loaded cars of corn, soybeans and wheat (and movements of empty cars via the reverse route) originating at points on the Mitchell-Kadoka Line and terminating at the Mitchell Elevator and the Beardsley Elevator.

The total distance of the Mitchell-Sioux City Line is 142.1 miles.

The full name and address of the applicant carrier herein is as follows:

Dakota Southern Railway Company
408 East Prospect Street
Chamberlain, South Dakota 57325

Any questions concerning this Notice should be sent to Dakota Southern's representative at the following address:

George Alexander Huff, IV
President
Dakota Southern Railway Company
408 East Prospect Street
Chamberlain, South Dakota 57325
(605) 734-6595

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Dakota Southern intends to consummate the proposed trackage rights transaction on or after December 17, 2004.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will allow MRC and Dakota Southern to effectively and efficiently move certain grain traffic from the Mitchell-Kadoka line to the Mitchell and Beardsley Elevators (traffic which is currently moving via truck), and will facilitate the interchange of traffic from the Mitchell-Kadoka Line to BNSF, Union Pacific, and Canadian National.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

Dakota Southern owns or operates over rail property in the State of South Dakota.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail lines over which Dakota Southern proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the fully executed Trackage Rights Agreement between MRC and Dakota Southern, dated December 2, 2004 and a fully executed copy of Amendment No. 1 thereto, dated December 6, 2004, is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions are applicable to this transaction.

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by Dakota Southern is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights by Dakota Southern also is exempt from historic preservation reporting requirements.

Respectfully submitted,

By: George Huff, IV

George Alexander Huff, IV
President

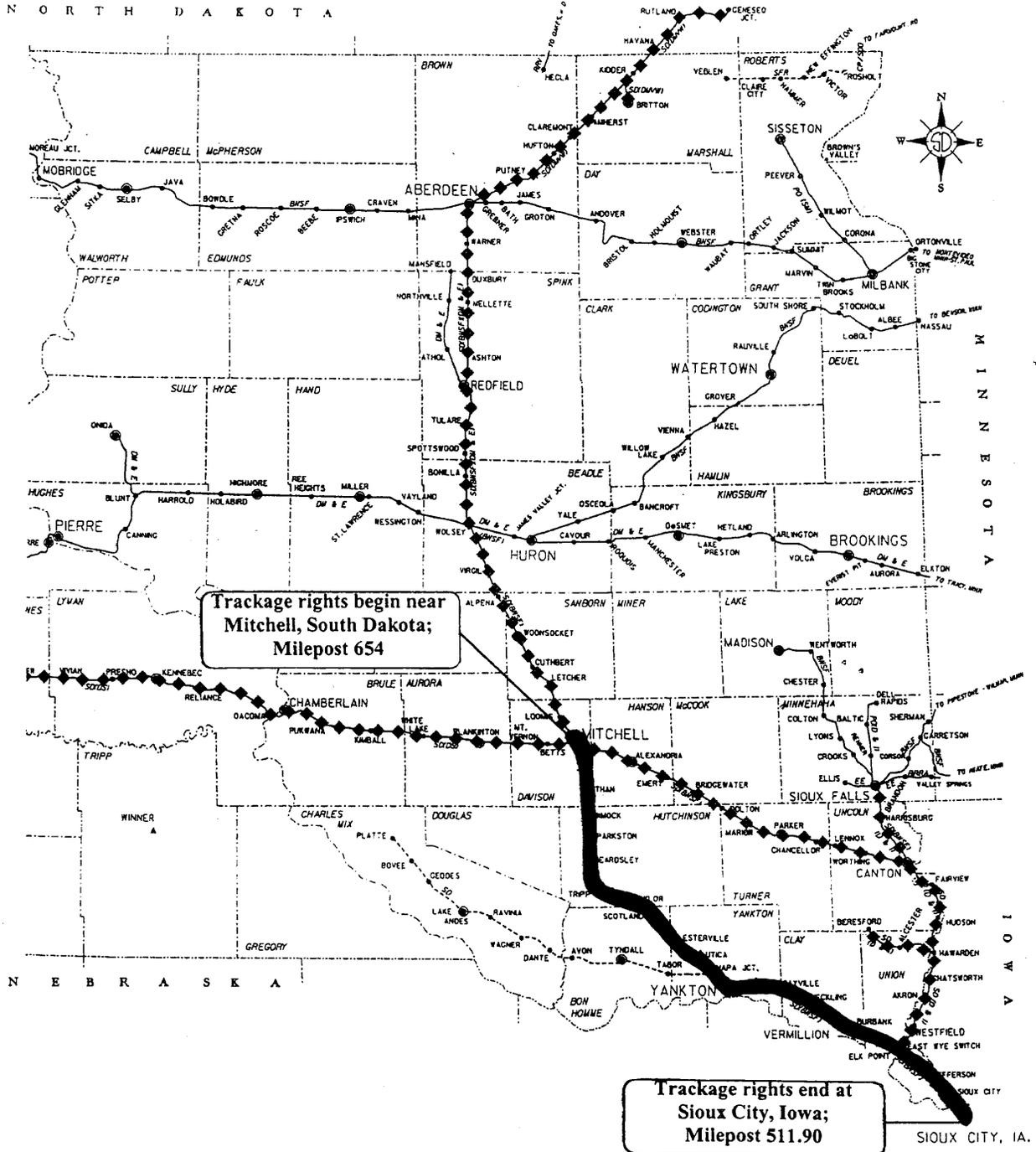
Dakota Southern Railway Company
408 East Prospect Street
Chamberlain, South Dakota 57325
(605) 734-6595

**FOR DAKOTA SOUTHERN
RAILWAY COMPANY**

Dated: December 9, 2004

EXHIBIT 1

N O R T H D A K O T A



**TRACKAGE RIGHTS AGREEMENT BETWEEN THE
MRC REGIONAL RAILROAD AUTHORITY
AND
DAKOTA SOUTHERN RAILWAY COMPANY**

THIS TRACKAGE RIGHTS AGREEMENT, made and entered into this 2nd day of December, 2004, by and between MRC Regional Railroad Authority, hereinafter referred to as "Authority", and Dakota Southern Railway Company, hereinafter referred to as "DS".

WITNESSETH:

WHEREAS, the Authority has leased from the State of South Dakota ("State") certain rail lines between Kadoka, South Dakota and Mitchell, South Dakota, and has been granted certain operating rights on State owned rail lines between Mitchell, South Dakota and Sioux City, Iowa; and

WHEREAS, the Authority and DS desire that DS have certain limited trackage rights on the Rail Facilities described in Paragraph 1 below, in common with the State's operator of said Rail Facilities, the Burlington Northern and Santa Fe Railway Company ("BNSF");

NOW, THEREFORE, Authority and DS do hereby mutually agree as follows:

1. Facility Description. The "Rail Facilities" for which the rights in this agreement are granted extend from milepost 654 near Mitchell, South Dakota to milepost 511.90 in Sioux City, Iowa, including such yardtracks, sidetracks, and connecting tracks as are reasonable and necessary to (a) interchange railcars with BNSF and the Dakota, Minnesota & Eastern Railroad at Mitchell, (b) access the State owned line extending westerly from Napa Junction to Platte, and (c) interchange railcars with BNSF, the Union Pacific Railroad Company, and the Canadian National/Illinois Central Railroad Company at Sioux City.

It is understood and agreed that the Rail Facilities are in an "as is" condition. the Authority shall have no responsibility to make any improvements, modification, rehabilitation, maintenance or other change to the Rail Facilities for the purpose of this Agreement.

2. Operating Rights. Subject to the terms and conditions, herein contained, the Authority grants to DS the non-exclusive right to operate, in overhead freight service only, its trains, locomotives, cars and equipment with its own crews over the Rail Facilities. The Authority also grants DS the right to move loaded cars of corn, soybeans and wheat (and to move the empty cars via the reverse route) originating at points on the Mitchell-Kadoka Line operated by DS on behalf of MRC and terminating at the Mitchell Elevator in Mitchell, South Dakota and the Beardsley Elevator in Beardsley, South Dakota. DS shall not perform any local freight service whatsoever on any point located on the Rail Facilities, except for the aforesaid movements to the Mitchell and Beardsley Elevators.

DS' use of the Rail Facilities shall be in common with BNSF and any other user of the Rail Facilities designated by the Authority and the State. DS shall not have any right to grant other persons rights of any nature in the Rail Facilities.

Except as may otherwise be provided by this Agreement, DS shall not use any part of the Rail Facilities for the purpose of storage or servicing of cars or equipment.

DS shall have the right to operate in either direction over the Rail Facilities.

DS shall not permit or admit any third-party to use of all or any portion of the Rail Facilities, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives or cars over or upon the rail facilities, or any portion thereof, the trains, locomotives or cars of any such third-party which in the normal course of business would not be considered as the trains, locomotives or cars of DS; provided, however, that the foregoing shall not prevent DS, pursuant to a run-through agreement with any railroad, from using the locomotives of another railroad as its own under this Agreement.

DS shall not construct tracks connecting to the Rail Facilities without the prior written consent of the Authority.

3. Government Approval. DS, at its sole expense, shall prepare and file such documents as may be required to secure operational approval from the Surface Transportation Boards ("STB") for operation of the Rail Facilities. DS shall permit the Authority to review prior to filing all documents proposed by DS to be filed with the STB or any court to secure legal approval for operating approval.
4. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State of South Dakota shall retain exclusive control of the management of the Rail Facilities, subject to that certain Operating Agreement, dated July 10, 1986, between the Authority and BNSF.
5. Payment. DS hereby agrees to make annual payments to the Authority based on a percentage of the gross freight revenues earned from traffic moved by DS over the Rail Facilities, in accordance with the following percentages:

<u>For That Portion of Gross Freight Revenue:</u>	<u>Percentage Payment to the Authority:</u>
a. \$36 million and under	2.5%
b. Between \$36 million and \$45 million	5%
c. Between \$45 and \$55 million	6%
d. In excess of \$55 million	7%

DS' Trackage Rights Payment to the Authority Shall be reduced by the lease payment (excluding railcar storage sums) paid to MRC by DS for cars which move over both the Rail Facilities and the MRC Mitchell-Kadoka trackage leased by DS.

A portion of the funds payable to the Authority by DS shall be allocated and paid to BNSF for maintenance of the Rail Facilities. DS shall pay to BNSF a sum equal to \$10 per loaded train mile for each DS train movement operating over the Rail Facilities or any part thereof, in either direction. A loaded train movement is defined as a train carrying loaded cars, in whole or in part. No payment shall be made for trains carrying only empty cars, nor shall any payment be made for trains interchanged with BNSF at Mitchell Yard. Multiple switch movements in setting out and picking up cars at the Mitchell or Beardsley Elevators shall not be counted as movements (for payment purposes) in addition to the line haul movement to those elevators.

70% of this BNSF maintenance allocation shall be subject to annual increase or decrease commencing on January 1, 2006, and January 1 of each year thereafter, based on the relationship of the Association of American Railroads (or successor organization) indexes of railroad material prices and wage rates for railroads of Class 1, Western District (material prices, wage rates and supplements combined, excluding fuel) hereinafter called "AAR Indexes" for each preceding year (2004 = 100). In the event the maintenance payment to BNSF equals or exceeds the amount that would be otherwise due and payable to the Authority in any year pursuant to this Agreement, no additional sums shall be payable to the Authority for that year.

Further, the Authority and DS agree that the Authority reserves the right to renegotiate the payments under this trackage rights agreement on or before the annual anniversary date of this Agreement of each year that this Agreement is in effect by giving DS notice, in writing, at least thirty (30) days prior to the annual anniversary date of any year that the Authority intends to renegotiate the fee.

6. Payment of Bills, Records Retention and Audit. DS shall pay the Authority and BNSF all trackage rights and maintenance fees due under this Agreement within thirty (30) days of the end of each Agreement anniversary date.

DS shall maintain records of operations and activities conducted pursuant to this Agreement (including but not limited to waybills, contracts and evidence of all freight revenues earned) for a period of at least four (4) years from the date of each applicable shipment.

Upon reasonable notice, DS shall allow the State of South Dakota and the Authority or their authorized representatives to inspect the operations and activities of DS pursuant to this Agreement, and to examine applicable records of DS at its principal place of business during normal business hours for the purpose

of verifying DS' compliance with the terms and conditions of this Agreement, the amount of traffic moved by DS over the Rail Facilities, and the gross freight revenues earned therefrom.

7. Liability of DS. DS shall indemnify, hold harmless, and protect the State of South Dakota and the Authority, their individual subdivisions and members, and their representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage or death received or sustained by any person, persons, or property, including State or Authority owned property, on account of any negligent act, omission, neglect or misconduct of the DS' representatives, officers, employees or agents.

8. Insurance. DS shall maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities in South Dakota, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability (or, if Worker's Compensation applies, Worker's Compensation coverage as required, or as optional, under applicable state law); which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, the Authority and BNSF, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as Authority may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$5 million per occurrence; and (ii) policy terms shall not exclude or limit coverage where activities or operations are on or near railroad tracks. The State, the Authority and BNSF shall be named as additional insureds on such liability insurance policy. Any coverage afforded to the State, the Authority and BNSF, as additional insureds, shall apply as primary insurance of the State, the Authority and BNSF, and shall not be deemed to be excess to any insurance issued in the name of the State, the Authority and BNSF. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

DS shall furnish to the Authority and BNSF, an Accord Certificate of Insurance satisfactory to the Authority and BNSF, certifying the issuance to DS of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the Authority and BNSF, shall be given not less than thirty (30) days' written notice by U.S. Certified Mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates.

DS shall provide the Authority and BNSF, with evidence of the liability insurance coverage required by this Agreement before DS operates along the Rail Facilities and DS shall supply the Authority and BNSF, with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. DS' failure to provide

such evidence, within seven (7) days of any request therefor, shall entitle the Authority to purchase such liability insurance, and invoice DS for the cost of this insurance. DS acknowledges that the purchase of insurance as required by this Paragraph shall not in any way limit the liability of DS or any lessee or other operator to the State, Authority and BNSF, as set forth herein.

9. Personal Liability of Public Officials. In carrying out any of the provisions of this Trackage Rights Agreement, or in exercising any power or authority granted to DS by or within the scope of this Trackage Rights Agreement, there shall be no liability upon any member of the Authority, or their authorized representatives, either personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
10. Laws to be Observed. DS shall keep fully informed of all Federal and Authority laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performances of this Trackage Rights Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. DS shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the Authority and the State and their representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
11. Assignment. DS shall not assign its rights or delegate its duties under this Trackage Rights Agreement or any part thereof, without prior written consent of the Authority and the South Dakota Railroad Board or its designee.
12. Amendment. No term or provision of this Trackage Rights Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this Agreement may be made orally by representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
13. Complaint Resolution Procedure. In the event the South Dakota Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described herein, the South Dakota Railroad Board ("Board") may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing shall be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Office of Air, Rail, and Transit, the Authority, and the DS, or any other railroad conducting operations on the facilities pursuant to a sublease agreement with the Authority.

Any hearing held pursuant to this provision shall be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties shall be allowed to present oral and written information to the Board. After considering all information presented, the Board shall issue a written decision, which shall be binding on all parties to this agreement as if incorporated as a provision therein. The decision of the South Dakota Railroad Board shall be final and no party hereto shall be entitled to any right of appeal from its decision.

14. Term. This Agreement shall continue in full force and effect for a period of ten (10) years from and after the date first written in the preamble above. This Agreement shall automatically renew for successive ten (10) year periods. Notwithstanding the foregoing, the Authority shall have the right to terminate this Agreement upon sixty (60) days written notice prior to the end of any ten (10) year period. In the event DS ceases to be the Authority's designated operator of the Mitchell-Kadoka Line, this trackage rights agreement shall automatically terminate as to DS and be transferred to Authority's new designated operator pursuant to Paragraph 20 hereof. Upon termination of this Agreement, the Rail Facilities shall be returned to the Authority in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement. In the event this Agreement is terminated for any reason whatsoever, DS agrees to formally relinquish its right to the trackage rights in a proceeding before the Surface Transportation Board.

15. Termination for Fault. Should either the Authority or DS substantially fail to perform its obligations under this Trackage Rights Agreement, and continue in such default for a period of ninety (90) days, the party not in default shall have the right, at its option, after first giving thirty (30) days written notice thereof by Certified Mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Trackage Rights Agreement.

It is further agreed that inadequate substandard performance by the DS which persists in excess of one hundred twenty (120) days after the DS has been made aware of the inadequate or substandard conduct, shall constitute a basis upon which the Authority may terminate this Trackage Rights Agreement under this paragraph.

16. BNSF Operations. DS understands that BNSF currently operates on the Rail Facilities. Accordingly, DS agrees that, as between itself and BNSF (or any successor operator appointed by the State), DS will abide by the provisions contained in Attachment No. 1 to this Agreement, and any other reasonable operating conditions required by BNSF.

17. Notice. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if

delivered in person or by Certified or Registered Mail, return receipt requested, first class, postage prepaid to the person specified herein as entitled to receive such notice, or to their duly authorized representatives unless notice of a change of address is given pursuant to the terms of this provision.

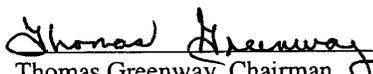
For the Authority: Tom Greenway, Chairman (or any successor Chairman)
MRC Regional Railroad Authority
25129401st Avenue
Pierre, South Dakota 57501-2586

For the DS: George Alexander Huff, IV (or his successor)
President, Dakota Southern Railway Company
P.O. Box 436
Chamberlain, South Dakota 57325

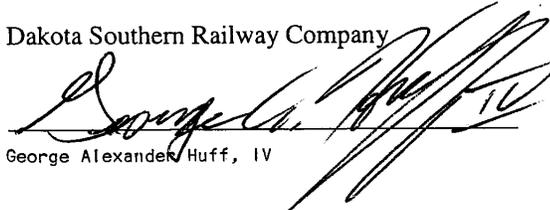
18. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Trackage Rights Agreement, which shall remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional or otherwise enforceable was not originally a part thereof.
19. Entire Agreement. This Trackage Rights Agreement and the Attachment No. 1 attached hereto represent the entire agreement between the parties, and all previous communications, understandings or agreements between the parties are hereby abrogated and withdrawn except as provided herein
20. Cessation of DS as Designated Operator. In the event DS ceases to be the Authority's designated operator of the Mitchell-Kadoka Line, this Agreement shall automatically be transferred to the new designated operator of that line, and DS shall cooperate in all respects in effectuating that transfer.

IN WITNESS WHEREOF, the parties hereto have caused this Trackage Rights Agreement to be executed and notarized by their duly authorized officers on the date and year first above written.

MRC Regional Railroad Authority


Thomas Greenway, Chairman

Dakota Southern Railway Company


George Alexander Huff, IV

ATTACHMENT 1

Section 1. CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS AND OPERATIONS, CONTROL OF THE JOINT TRACKAGE.

1.1 The construction, maintenance, repair and renewal of the Rail Facilities shall be under the exclusive direction and control of BNSF. BNSF shall make any Additions to the Rail Facilities which BNSF deems necessary or desirable for the safe, efficient, and economical use of the Rail Facilities by the parties, and these shall progressively during construction become part of the Rail Facilities.

1.2 The operation of the Rail Facilities shall be under the exclusive direction and control of BNSF. BNSF shall have the unrestricted power to change the management of operations on and over the Rail Facilities as in its judgment may be necessary, expedient or proper for the operations thereof herein intended; provided that any such change shall not materially interfere with DS's right to use the Rail Facilities. Prior to use for movements to or from Beardsley, Napa Junction, or Sioux City, DS shall secure the necessary approval from BNSF's dispatchers located at Minneapolis, Minnesota.

1.3 BNSF shall employ all persons necessary to operate, maintain, repair and renew the Rail Facilities. BNSF shall be bound to use only reasonable and customary care, skill, and diligence in the operation, maintenance, repair, renewal or management of the Rail Facilities and DS shall not, by reason of BNSF's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Rail Facilities, have or make against BNSF any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, except as otherwise provided in Section 2 hereof.

1.4 DS, at its expense, shall install and maintain upon its trains, locomotives and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of BNSF, for the safe and efficient operation of trains upon the Rail Facilities.

1.5 If the use of the Rail Facilities shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, BNSF shall, with reasonable diligence, restore the line for the passage of trains of the parties hereto. During the period of any such interruption or delay BNSF may, if in its sole judgment it deems it operationally feasible or convenient, provide DS with an alternate route and, in such event and during such period, the terms and conditions of this Agreement shall apply as though such alternate route was a part of the Rail Facilities. Neither party hereto shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

1.6 Each party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Rail Facilities.

1.7 The operation of DS on or along the Rail Facilities shall at all times be in accordance with the rules, instructions and restrictions of BNSF but such rules, instructions and restrictions shall be reasonable, just, and fair between all parties using the Rail Facilities and shall not unjustly discriminate against any of them.

1.8 DS shall be responsible for all mileage allowances and car hire charges accruing on cars in DS's account on the Rail Facilities and DS shall report and pay same directly to the owners of such cars.

1.9 With respect to operation of trains, locomotives and cars on and over the Rail Facilities, each party shall comply with all applicable laws, rules, regulations, and order promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge, and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge, and expense to the other party.

1.10 All employees of DS engaged in or connected with the operations of DS on or along the Rail Facilities shall be required to pass periodic examinations on the rules of BNSF, provided that with respect to such examinations, upon request of DS, BNSF shall qualify one or more of DS supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of DS engaged in or connected with DS operations on or along the Rail Facilities. Pending qualification of train and engine crews of DS, BNSF shall furnish pilot or pilots, at the expense of DS, as deemed necessary by BNSF to assist in operating trains of DS over the Rail Facilities.

1.11 If any employee of DS shall neglect, refuse or fail to abide by BNSF's rules, instructions or restrictions governing the operation on or along the Rail Facilities, BNSF shall, in writing, so notify DS. BNSF shall have the right to require DS to withhold any DS employee from service on the Rail Facilities pending the result of formal investigation, which in BNSF's sole opinion shall have neglected, refused or failed to abide by BNSF's rules, instructions or restrictions governing operation on or along the Rail Facilities. Upon such notice presented in writing, BNSF and DS shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigation to DS employees shall be given by DS's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between DS and its employees. If, in the judgment of BNSF, the result of such investigation warrants, such employee shall, upon written request by BNSF be restricted by DS from operating on the Rail Facilities, and DS shall release and indemnify BNSF from and against any and all claims and expenses because of such restriction.

1.12 If any cars, cabooses or locomotives of DS are bad ordered enroute on the Rail Facilities and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by DS. Unless otherwise agreed, BNSF

may upon request of DS and at DS's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. In the event BNSF shall perform any such repairs to freight cars in DS's account, billing therefore shall be at rates prescribed in the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs and BNSF shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and BNSF shall prepare and submit billing directly to and collect from DS for handling line responsibility items as described under said Interchange Rules. If BNSF shall perform repairs to DS's equipment other than freight cars, BNSF shall prepare and submit billing directly to and collect from DS as in this Agreement provided for.

Section 2. LIABILITY

2.1 For the purposes of this Section 2, the following definitions shall apply:

"Loss or Damage": Shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of the use of the Rail Facilities.

"Joint Employee": Shall mean any officer, agent, employee, or contractor while engaged in maintaining, repairing, renewing, removing, inspecting or operating Joint Property or in making Additions thereto, or in dispatching, giving orders for or directing the movement of trains, or performing other service, for the common benefit of the parties having the right to use the Rail Facilities.

"Joint Property": Shall mean the Rail Facilities and all trains, locomotives, cabooses, cars and equipment engaged in the maintenance, repair, renewal, removal, inspection or operation thereof for the common benefit of the parties having the right to use the Rail Facilities. Any equipment shall be deemed Joint Property while engaged in or incident to the performance of service, the cost of which is included in expense or Loss or Damage for which the parties having the right to use the Rail Facilities are jointly liable.

"Sole Employees" and "Sole Property": Shall mean employees, trains, locomotives, cabooses, cars and equipment while engaged or about to engage in switching or handling cars of one of the parties hereto, or in performing other services for the exclusive benefit of one of the parties hereto, shall, for the purpose of this section, be considered Sole Employees and Sole Property of such party. Pilots furnished by BNSF to assist in operating trains, locomotives, cabooses or cars of DS as well as any other BNSF employees performing services for the exclusive benefit of DS under the terms of this Agreement shall be considered Sole Employees of DS.

2.2 If equipment of DS shall become derailed or otherwise disabled upon the Rail Facilities, such that wrecking service is required to clear same, BNSF shall, unless otherwise agreed, arrange for such service. All employees of BNSF operating wrecker or work trains or assigned thereto or any wrecking service contractor, while clearing wrecks or derailments or

engaged in the repair and renewal of the Rail Facilities subsequent to any such DS wreck or derailment and any machinery, equipment, tools or other property of BNSF while engaged in such service, or while en route to such assignment or while returning to the home terminal, incident to the performance of such works shall be deemed the sole employees and equipment of the party whose employees, cars, locomotives, cabooses or trains were, in the first instance, solely involved in the accident; or, in the case of collision, or other accident involving the employees, equipment and lading of both parties hereto such employees and equipment shall be apportioned as provided in Section 2.3. Said employees and equipment shall not be deemed to be the employees and equipment of DS while en route from the Rail Facilities for the purpose of performing further services for BNSF or a third-party.

2.3 As between parties hereto only, each party shall bear all Loss or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party, except when the acts or omissions of such party do not contribute to the Loss or Damage and it is due to acts or omissions of Sole Employees of another party or parties or defect in the Sole Property of another party (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), in which event it shall be borne by the party or equally by the parties so responsible. Loss or Damage to third-parties or to Joint Property or Joint Employees shall, if caused by the acts or omissions of Sole Employees of fewer than all of the parties (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), be borne by the party whose Sole Employee caused said Loss or Damage and if more than one party's Sole Employee (but fewer than all) caused said Loss or Damage, then equally by the parties whose Sole Employees caused such Loss or Damage. Such Loss or Damage not caused by acts or omissions of a Sole Employee or Employees shall, if the trains, locomotives, cabooses or cars of fewer than all of the parties are involved, be born by the party whose trains, locomotives, cabooses or cars are involved and if more than one, then equally by the parties whose trains, locomotives, cabooses or cars are involved. Such Loss or Damage cause by acts or omissions of Sole Employees of all of the parties or involving the trains, locomotives, cabooses or cars of all the parties (but not caused by acts or omissions of a Sole employee or employees), or involving only Joint Employees or Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about, shall be apportioned among all the parties on a Train Mileage Proportion basis for the month in which the incident occurred except as otherwise provided for in this Section 2.3, as between the parties hereto.

2.4 It is understood and agreed that the number of vehicular crossings of the Rail Facilities presently exist, or may be constructed. DS agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against BNSF and will hold BNSF harmless from any claim, demand or cause of action arising out of any crossing incident on the Rail Facilities in which the engines, cars or trains of DS only are involved.

2.5 Detour of foreign line equipment of the Rail Facilities is at the sole discretion and permission of BNSF. All persons other than Joint Employees engaged in moving such equipment shall be considered the equipment and employees of the parties hereto under whose Standard Detour Agreement or other auspices such movement being made. Cars and engines of

such foreign line detours shall be counted against BNSF when determining the Train Mileage Proportion.

Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 2.

2.6 Each party hereto shall pay all Loss and Damage for which such party shall be liable under the provisions of this Section 2, and shall indemnify and save harmless the other party against such Loss and Damage, including any such damages awarded in any court action. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 2, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

In case a suit shall be commenced against either party hereto for or on account of Loss or Damage for which the other party hereto is solely or jointly liable under the provisions of this Section 2, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit.

No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

**AMENDMENT NO. 1
TO TRACKAGE RIGHTS AGREEMENT BETWEEN THE
MRC REGIONAL RAILROAD AUTHORITY
AND
DAKOTA SOUTHERN RAILWAY COMPANY**

This is Amendment No. 1, dated December 6, 2004, to that certain Trackage Rights Agreement by and between MRC Regional Railroad Authority, hereinafter referred to as "Authority", and Dakota Southern Railway Company, hereinafter referred to as "DS".

WHEREAS, the MRC and DS entered into a Trackage Rights Agreement, dated December 2, 2004, for operations between Mitchell, South Dakota and Sioux City, Iowa (hereinafter the "Agreement"); and

WHEREAS, the parties desire to amend the Agreement;

NOW, THEREFORE, Authority and DS hereby amend the Agreement as follows:

1. Notwithstanding anything to the contrary in the Agreement, DS shall have the right to construct, as necessary, switches and connecting tracks to the Rail Facilities at Sioux City, which are sufficient in configuration and length to facilitate the interchange of 110-car trains between DS and BNSF, the Union Pacific Railroad and the Canadian National/Illinois Central Railroad at Sioux City.
2. In the event that another rail carrier, in addition to BNSF, currently operates on the Rail Facilities, or commences operations on the Rail Facilities at some point during the term of the Agreement, DS will also abide by the liability provisions contained in Attachment 1, Section 2 with respect to such other rail carriers.
3. Section 14 of the Agreement is hereby deleted and the following new Section 14 is substituted in lieu thereof:

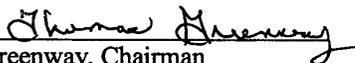
Term. This Agreement shall continue in full force and effect for a period of twenty-five (25) years from and after the date first written in the preamble above. This Agreement shall automatically renew for two additional successive twenty-five (25) year periods. In the event DS ceases to be the Authority's designated operator of the Mitchell-Kadoka Line, this trackage rights agreement shall automatically terminate as to DS and be transferred to Authority's new designated operator pursuant to Paragraph 20 hereof. Upon termination of this Agreement, the Rail Facilities shall be returned to the Authority in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement. In the event this Agreement is terminated for any reason whatsoever, DS agrees to formally

relinquish its right to the trackage rights in a proceeding before the Surface Transportation Board.

4. The Agreement, as amended hereby, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized representatives to sign and deliver this Amendment No. 1 to the Trackage Rights Agreement as of the date first written above.

MRC Regional Railroad Authority


Thomas Greenway, Chairman

Dakota Southern Railway Company


George Alexander Huff, IV, President

ACKNOWLEDGED

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF DAVISON)

On this 7th day of December, 2004, before me, a Notary Public within and for said County and State, personally appeared Thomas Greenway, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.



NOTARY PUBLIC
My Commission Expires: 8-1-2009

ACKNOWLEDGED

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF DAVISON)

On this 7th day of December, 2004, before me, a Notary Public within and for said County and State, personally appeared George Alexander Huff, IV, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.



NOTARY PUBLIC
My Commission Expires: 8-1-2009

EXHIBIT 3
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34630 (Sub-No. 1)

DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
MRC REGIONAL RAILROAD AUTHORITY

The State of South Dakota and the MRC Regional Railroad Authority have agreed to grant overhead and limited local trackage rights to Dakota Southern Railway Company over a line of railroad of the State of South Dakota between milepost 654 near Mitchell, South Dakota and milepost 511.9 in Sioux City, Iowa a distance of approximately 142.1 miles. The trackage rights will include such yard tracks, side tracks and connecting tracks as are reasonable and necessary to (a) interchange railcars with The Burlington Northern and Santa Fe Railway Company and Dakota, Minnesota & Eastern Railroad Corporation at Mitchell, (b) access the State-owned line extending westerly from Napa Junction to Platte, South Dakota and (c) interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The trackage rights also include the right to move loaded cars of corn, soybeans and wheat (and to move the empty cars via the reverse route) to the Mitchell Elevator in Mitchell, South Dakota and the Beardsley Elevator in Beardsley, South Dakota. The trackage rights will be effective on December 17, 2004.

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 automatically stay the transaction.

Dated: December __, 2004

By the Board

Vernon A. Williams

Secretary

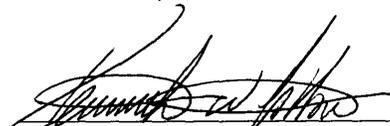
VERIFICATION

State of South Dakota)
) ss:
County of Davison)

George Alexander Huff, IV, being duly sworn, deposes and says that he is President of Dakota Southern Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.


George Alexander Huff, IV

SUBSCRIBED AND SWORN TO
before me this 7th day
of December, 2004.


Notary Public
My Commission expires: 8-1-2009