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February 25, 2005

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Docket No. 42060 (Sub-No. 1)
North America Freight Car Association v. BNSF Railway Company

Dear Secretary Williams:

In a Decision served on January 6, 2005, the Board established a procedural schedule for this proceeding. Pursuant to that schedule, North America Freight Car Association and those of its members individually named in the complaint (collectively "NAFCA") submitted a proposed protective order to the Board jointly with Defendant BNSF. On February 7, 2005, Complainant and BNSF exchanged written interrogatories and document requests, and on February 15, 2005 the parties exchanged Objections to pending discovery requests, pursuant to the Board's procedural schedule. Counsel for Complainant and counsel for BNSF have conferred by telephone and have met to try to narrow and resolve discovery disputes.

The Board's January 6 decision states that the parties should notify the Board in writing by February 25, 2005 if they are "at an impasse with respect to any discovery disputes." The decision further states that, "[a]t that point, if necessary, the Board will intervene and decide whether a discovery conference will be conducted to try to resolve those disputes."

Even though there remain unresolved discovery issues between NAFCA and BNSF, NAFCA and BNSF believe that their discussions regarding discovery matters are progressing in a positive manner, and hold promise of concluding without the necessity of intervention by the Board. Nevertheless, because the January 6 Decision establishes February 25th as the due date for notifying the Board of discovery "impasses," NAFCA

and BNSF hereby notify the Board that potential impasses do exist and that the Board's intervention may prove to be necessary. NAFCOA and BNSF respectfully suggest, however, that the Board not yet set a conference to address discovery disputes, and that it await further notification from the parties, on or before March 4, regarding the status of any remaining discovery impasses.

Counsel for BNSF has authorized us to state that BNSF concurs in this letter.

Sincerely,

Andrew P. Goldstein
John M. Cutler, Jr.
Attorneys for
North America Freight Car Association

cc: All Parties