

July 27, 2007

**Via Hand Delivery**

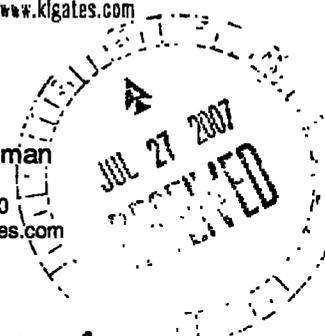
Honorable Vernon A. Williams  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

JUL 30 2007

Part of  
Public Record

Edward J. Fishman  
202.778.9456  
Fax: 202.778.9100  
ed.fishman@klgates.com



219869

Re: STB Finance Docket No. 35055  
Dakota Missouri Valley & Western Railroad, Inc. -  
Lease and Operation Exemption -  
Soo Line Railroad Company d/b/a Canadian Pacific Railway

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption** filed by Dakota, Missouri Valley & Western Railroad Company ("DMVW") under 49 C.F.R. § 1150.41 and a check in the amount of \$1,600 to cover the applicable filing fee.

Please contact me if you have any questions regarding this matter. Thank you.

Respectfully submitted,

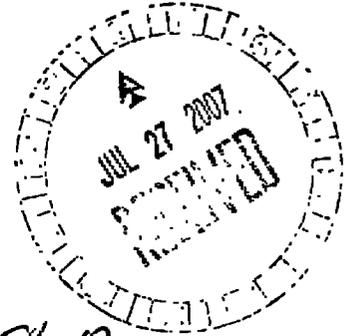
Edward J. Fishman  
Counsel for Dakota, Missouri  
Valley and Western Railroad, Inc.

FILED  
JUL 27 2007  
SURFACE  
TRANSPORTATION BOARD

Enclosure

**FILED**  
JUL 27 2007  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35055

219867

DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.  
-- LEASE AND OPERATION EXEMPTION --  
SOO LINE RAILROAD COMPANY d/b/a  
CANADIAN PACIFIC RAILWAY

VERIFIED NOTICE OF EXEMPTION  
OF  
DAKOTA, MISSOURI VALLEY & WESTERN RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1150.42

**FILED**

SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
JUL 30 2007  
Part of  
Public Record

RECEIVED  
SURFACE TRANSPORTATION BOARD

Edward J. Fishman  
Jenice K. Goffe  
Kirkpatrick & Lockhart Preston Gates Ellis LLP  
1601 K Street N.W.  
Washington, DC 20006-1600  
(202) 778-9000

**ATTORNEYS FOR DAKOTA, MISSOURI  
VALLEY & WESTERN RAILROAD, INC.**

Dated: July 27, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35055

DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.  
-- LEASE AND OPERATION EXEMPTION --  
SOO LINE RAILROAD COMPANY d/b/a  
CANADIAN PACIFIC RAILWAY

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**VERIFIED NOTICE OF EXEMPTION  
OF  
DAKOTA, MISSOURI VALLEY & WESTERN RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1150.42**

Pursuant to 49 C.F.R. § 1150.41 *et seq.*, Dakota, Missouri Valley & Western Railroad, Inc. ("DMVW"), a Class III rail carrier, hereby files this Verified Notice of Exemption to lease and operate certain lines of railroad that Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") plans to acquire from BNSF Railway Company ("BNSF") and then lease to DMVW as described herein. The lines of railroad that DMVW will lease and operate are located generally as follows: (1) the line of railroad that extends between Lignite Junction, North Dakota and Crosby, North Dakota, together with (i) connecting track between Rival, North Dakota and Lignite Junction, North Dakota, (ii) connecting track between Kincaid, North Dakota and Columbus, North Dakota, and (iii) connecting track between Crosby, North Dakota and the original CPR main line extending west to Whitetail, Montana (the "Crosby Lines"), and (2) the line of railroad that extends between a point east of Lignite, North Dakota and Lignite Junction, North Dakota (the "Lignite Line") (collectively, and as further described herein, the "Subject Lines").

Currently, CPR and BNSF each own an undivided one-half interest in the Crosby Lines and DMVW operates over the Crosby Lines pursuant to trackage rights that DMVW acquired from CPR in 1990. In addition, BSNF currently owns and operates the Lignite Line and DMVW does not operate over the Lignite Line. Pursuant to the transaction that is the subject of the Joint Petition for Exemption filed by BNSF and CPR on July 16, 2007 in Finance Docket No. 35068,<sup>1</sup> CPR will acquire BNSF's one-half interest in the Crosby Lines. In that same transaction, CPR also will acquire BNSF's ownership interest in the Lignite Line. Upon consummation of the foregoing acquisitions by CPR, DMVW will lease and operate the Subject Lines pursuant to a lease arrangement with CPR.

Based on projected revenues, DMVW expects to remain a Class III rail carrier after consummation of the lease transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.43, DMVW submits the following information:

**Advance Notice:** **49 C.F.R. § 1150.42(e)**

DMVW's projected annual revenues from leasing and operating the Subject Lines, together with DMVW's other projected annual revenues, will exceed \$5 million. Therefore, DMVW has provided notice to the employees on the affected rail lines (as described above) in accordance with the labor notice requirement set forth in 49 C.F.R. § 1150.42(e) and provided certification thereof to the Board on July 12, 2007.

**Name and Address of Applicant:** **49 C.F.R. § 1150.43(a)**

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

Dakota, Missouri Valley & Western Railroad, Inc.  
3501 East Rosser Avenue  
Bismarck, ND 58501

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<sup>1</sup> See Joint Petition for Exemption filed on July 16, 2007 in Finance Docket No. 35068, Soo Line Railroad Company d/b/a Canadian Pacific Railway – Acquisition and Operation Exemption – BNSF Railway Company (the "Joint Petition").

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

DMVW's representative to whom correspondence regarding this transaction should be addressed is as follows:

Edward J. Fishman  
Kirkpatrick & Lockhart Preston Gates Ellis LLP  
1601 K Street N.W.  
Washington, DC 20006-1600  
(202) 778-9000

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

DMVW has entered into an agreement with CPR providing for DMVW's lease and operation of the Subject Lines pursuant to an amendment to the existing Renewed Leased Lines Agreement between DMVW and CPR. DMVW currently operates over the Crosby Lines pursuant to trackage rights that DMVW acquired from CPR in 1990. DMVW currently does not operate over the Lignite Line. Upon CPR's acquisition of full ownership of the Subject lines from BNSF, the Renewed Leased Lines Agreement that was extended, renewed and supplemented by DMVW and CPR in 2006<sup>2</sup> (and which governs DMVW's lease and operation of other segments of rail line not covered by this Notice of Exemption) will be amended to include DMVW's lease and operation of the Crosby Lines and the Lignite Line.

**Operation of the Property: 49 C.F.R. § 1150.43(d)**

DMVW will operate the Subject Lines upon consummation of the lease transaction described herein.

**Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

Pursuant to the agreement entered into between DMVW and CPR, DMVW will lease and operate the Subject Lines upon CPR's acquisition of the full ownership interest in those lines from BNSF. DMVW will lease and operate the Crosby Lines and the Lignite Line through June 30, 2026 pursuant to an amendment to the existing Renewed Leased Lines Agreement between DMVW and CPR.

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<sup>2</sup> See Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company, Finance Docket No. 34904 (STB served July 28, 2006).

The Crosby Lines include the line of railroad jointly owned by CPR and BNSF between approximately CPR Mile Post 550.80 in Lignite Junction, North Dakota and approximately CPR Mile Post 582.35 in Crosby, North Dakota<sup>3</sup> together with (i) the approximately 1.16-mile connecting track between approximately CPR Mile Post 549.64 at Rival, North Dakota and approximately CPR Mile Post 550.8 at Lignite Junction, North Dakota, (ii) the approximately 1.07-mile connecting track between approximately BNSF Mile Post 64.5 at Kincaid, North Dakota and approximately CPR Mile Post 558.28 at Columbus, North Dakota,<sup>4</sup> and (iii) the approximately 0.49-mile short connection at Crosby, North Dakota to the original CPR main line extending west to Whitetail, Montana, all of which are situated between Flaxton, North Dakota and Whitetail, Montana. DMVW currently operates over the Crosby Lines pursuant to trackage rights that it acquired from CPR in 1990.<sup>5</sup> Upon consummation of the transaction that is the subject of this Notice of Exemption, DMVW's trackage rights over the Crosby Lines will be converted to a lease arrangement between DMVW and CPR.

The Lignite Line includes the line of railroad currently owned and operated by BNSF between approximately BNSF Mile Post 47.0 east of Lignite, North Dakota and approximately BNSF Mile Post 56.96 at Lignite Junction,<sup>6</sup> North Dakota. Upon consummation of the

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<sup>3</sup> The distance of the line of railroad between Lignite Junction and Crosby is approximately 32.54 miles, which can be determined by calculating the difference between the BNSF milepost designation for Lignite Junction (BNSF 56.96) and the BNSF milepost designation for Crosby (BNSF 89.5). See Joint Petition at 3. This distance cannot be determined merely by calculating the difference between the CPR milepost designations at these endpoints (CPR 550.80 at Lignite Junction and CPR 582.35 at Crosby) because, as shown on Exhibit A attached hereto, the CPR mileposts are based on the abandoned CPR line between Rival and Crosby which took a more direct route between these points than the jointly owned line to the south.

<sup>4</sup> CPR does not have its own milepost designation at Kincaid and BNSF does not have its own milepost designation at Columbus.

<sup>5</sup> See Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company, Finance Docket No. 31720 (ICC served Sept. 19, 1990).

<sup>6</sup> The approximate milepost designation for Lignite Junction is 56.96 on the BNSF system and 550.80 on the CPR system.

transaction that is the subject of this Notice of Exemption, DMVW will lease from CPR and operate the Lignite Line.

The total distance of the Subject Lines to be leased and operated by DMVW is approximately 45 miles. The parties intend to consummate this transaction on or soon after (i) the date this Notice of Exemption becomes effective, and (ii) the date that the Petition for Exemption in Finance Docket No. 35068 becomes effective and CPR acquires full ownership of the Subject Lines from BNSF.

The name and address of the owner of the Subject Lines to be leased to DMVW (after acquisition thereof from BNSF) is as follows:

Soo Line Railroad Company d/b/a Canadian Pacific Railway  
501 Marquette Avenue South  
Minneapolis, Minnesota 55402

**Map:** **49 C.F.R. § 1150.43(f)**

A map indicating the area served by the Subject Lines, including origins, termini, stations, cities and counties, is attached as Exhibit A to this Notice.

**Certification of Class III Status:** **49 C.F.R. § 1150.43(g)**

A certificate complying with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to the Notice. Based on projected revenues from the lease and operation of the Subject Lines, DMVW will remain a Class III rail carrier after consummation of the transaction proposed herein.

**Environmental/Historic Preservation Data:** **49 C.F.R. Part 1105**

Under 49 C.F.R. § 1105.6(c)(2)(i), the lease and operation of the Subject Lines by DMVW is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations (i.e. changes which exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5)).

Under 49 C.F.R. § 1105.8(b)(3), the lease and operation of the Subject Lines by DMVW is also exempt from historic preservation reporting requirements. DMVW will lease and operate

the Subject Lines for the purpose of continued rail operations. Further Surface Transportation Board approval is required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary:**

**49 C.F.R. § 1150.44**

A caption summary in the appropriate form is attached as Exhibit C to the Notice.

Respectfully submitted,



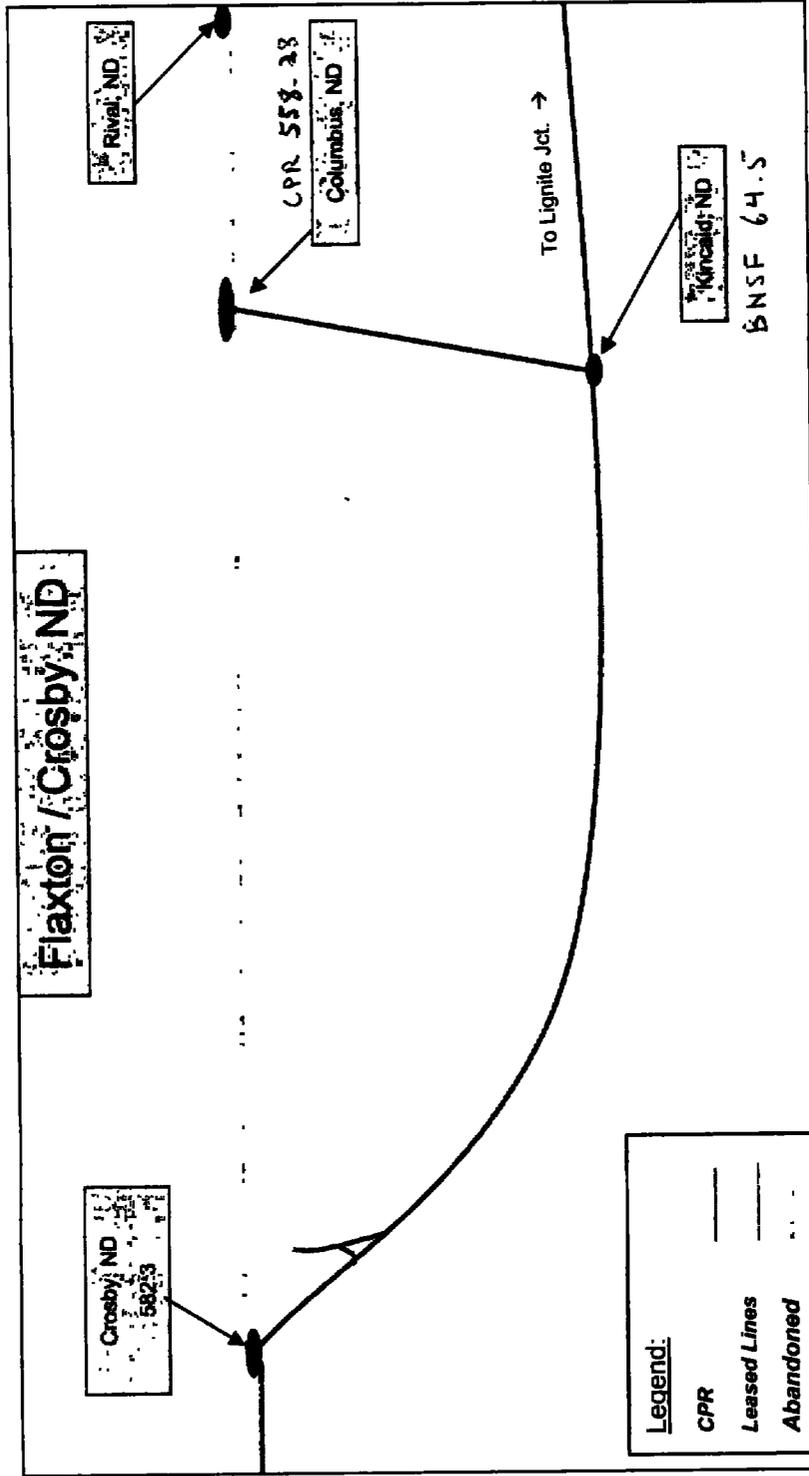
Edward J. Fishman

Jenice K. Goffe

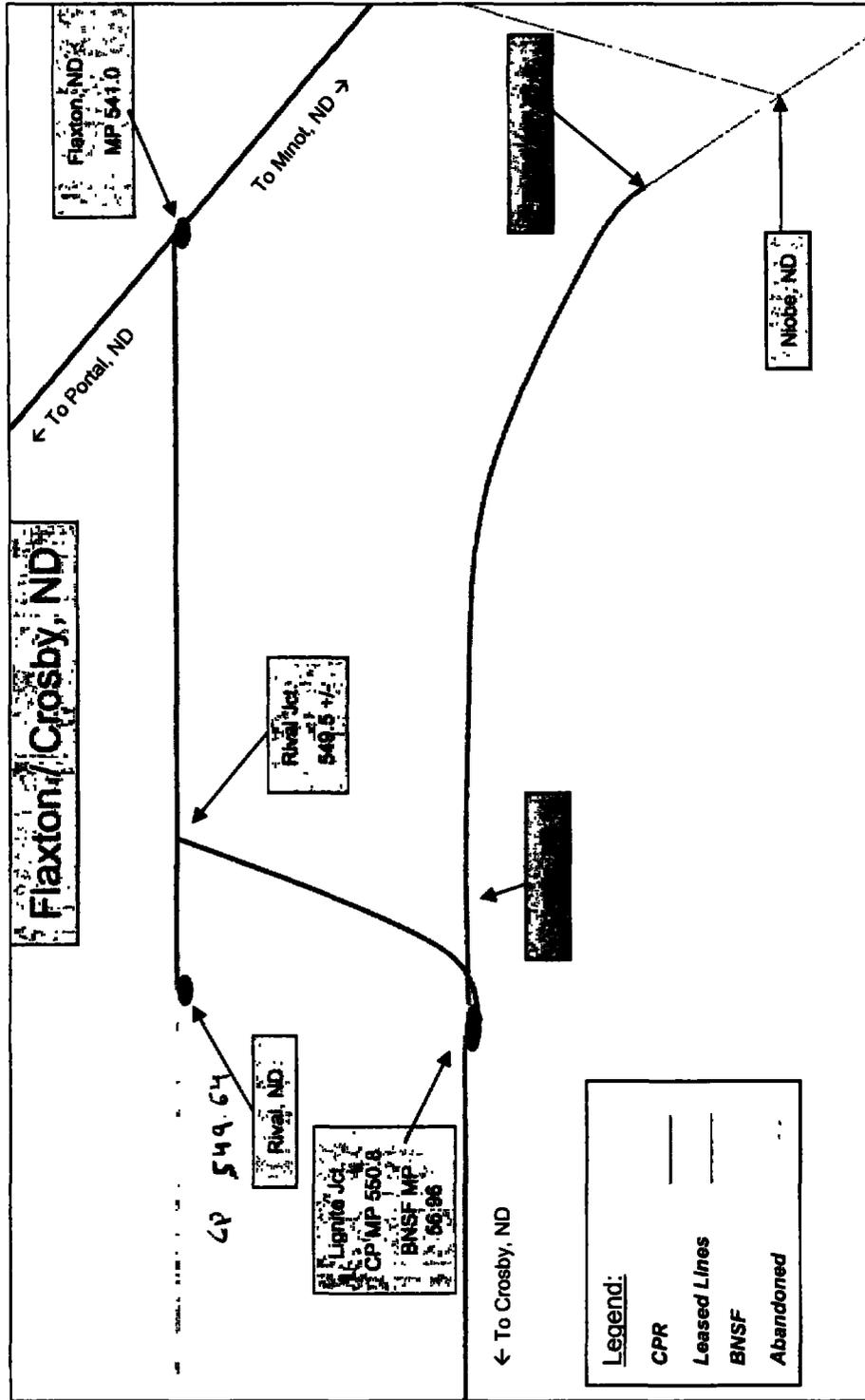
Kirkpatrick & Lockhart Preston Gates Ellis LLP  
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**ATTORNEYS FOR DAKOTA, MISSOURI  
VALLEY & WESTERN RAILROAD, INC.**

July 27, 2007



CANADIAN PACIFIC RAILWAY INCORPORATED

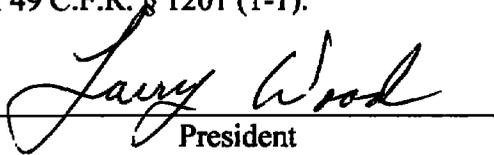


CANADIAN PACIFIC RAILWAY INCORPORATED

**EXHIBIT B**

**CERTIFICATION**

Larry Wood, being duly sworn, certifies that the projected revenues of Dakota, Missouri Valley & Western Railroad, Inc. upon consummation of the proposed transaction described in the foregoing Notice of Exemption will not result in the creation of a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



President

Dakota, Missouri Valley & Western Railroad, Inc.

SUBSCRIBED AND SWORN TO

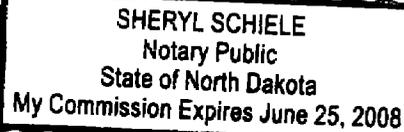
before me this 26 day

of July, 2007



Notary Public

My Commission expires:



**SURFACE TRANSPORTATION BOARD**

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**NOTICE OF EXEMPTION****FINANCE DOCKET NO. 35055****DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.  
-- LEASE AND OPERATION EXEMPTION --  
SOO LINE RAILROAD COMPANY D/B/A  
CANADIAN PACIFIC RAILWAY**

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Dakota, Missouri Valley and Western Railroad, Inc. ("DMVW"), a Class III rail carrier, has filed a Verified Notice of Exemption to lease and operate the following lines of railroad that Soo Line Railroad Company, d/b/a Canadian Pacific Railway ("CPR") plans to acquire from BNSF Railway Company ("BNSF"): (1) the line of railroad jointly owned by CPR and BNSF between approximately CPR Mile Post 550.80 in Lignite Junction, North Dakota and approximately CPR Mile Post 582.35 in Crosby, North Dakota together with (i) the approximately 1.16-mile connecting track between approximately CPR Mile Post 549.64 at Rival, North Dakota and approximately CPR Mile Post 550.8 at Lignite Junction, North Dakota, (ii) the approximately 1.07-mile connecting track between approximately BNSF Mile Post 64.5 at Kincaid, North Dakota and approximately CPR Mile Post 558.28 at Columbus, North Dakota, and (iii) the approximately 0.49-mile short connection at Crosby, North Dakota to the original CPR main line extending west to Whitetail, Montana, all of which are situated between Flaxton, North Dakota and Whitetail, Montana (the "Crosby Lines"); and (2) the line of railroad between approximately BNSF Mile Post 47.0 east of Lignite, North Dakota and approximately BNSF Mile Post 56.96 at Lignite Junction, North Dakota (the "Lignite Line" and, together with the

Crosby Lines, the "Subject Lines"). The total distance of the Subject Lines is approximately 45 miles.

DMVW currently operates over the Crosby Lines pursuant to trackage rights that DMVW obtained from CPR in 1990. Upon CPR's acquisition of full ownership of the Crosby Lines from BNSF, DMVW's trackage rights will be converted to a lease arrangement between DMVW and CPR. DMVW currently does not operate over the Lignite Line. Upon CPR's acquisition of the Lignite Line from BNSF, DMVW will operate the Lignite Line pursuant to a lease arrangement with CPR. In Finance Docket No. 35068, CPR and BNSF have jointly filed a petition for exemption to authorize CPR's acquisition of BNSF's interests in the Subject Lines.

Comments in the proceeding must be filed with the Board and served on Edward J. Fishman, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, N.W., Washington, DC 20006-1600; (202) 778 -9000.

This 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. § 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Date: \_\_\_\_\_, 2007

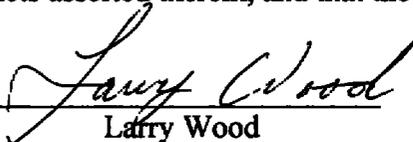
By the Board

Vernon A. Williams – Secretary

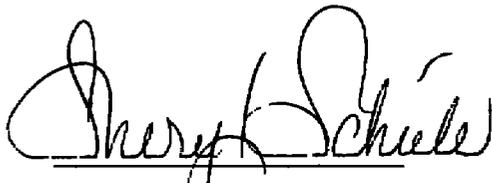
**VERIFICATION**

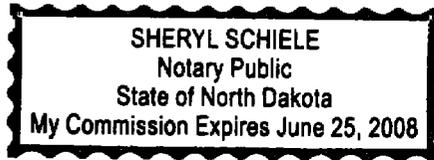
State of North Dakota )  
  ) ss:  
County of Burleigh    )

Larry Wood, being duly sworn, deposes and says that he is the President of the Dakota, Missouri Valley and Western Railroad, Inc. ("DMVW"), that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
Larry Wood  
President

SUBSCRIBED AND SWORN TO  
before me this 26 day  
of July, 2007

  
Notary Public



My Commission expires: