



Kristy D. Clark  
General Attorney

BNSF Railway Company  
P.O. Box 961039  
Fort-Worth, TX 76161  
2500 Lou Menk Drive, AOB-3  
Fort Worth, TX 76131-2828  
(817) 352-3394  
(817) 352-2397 fax

Kristy.Clark@BNSF.com

**VIA UPS OVERNIGHT MAIL**

January 28, 2011

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

**FEE RECEIVED**  
JAN 31 2011  
SURFACE  
**TRANSPORTATION BOARD**



228709

**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 472X); BNSF Railway Company - Abandonment Exemption – Stearns County, MN**

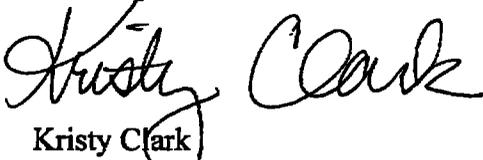
Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are the original and ten copies of BNSF Railway Company's Petition for Exemption, and a check for \$6,300.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

The environmental and historic reports have been forwarded to the responsible agencies and copies have been directed to the Office of Environmental Analysis. The Petition for Exemption includes a certificate of service upon various agencies and affected shippers.

Sincerely,

  
Kristy Clark  
General Attorney

**FILED**  
JAN 31 2011  
SURFACE  
**TRANSPORTATION BOARD**

KC/js

Enclosures

ENTERED  
Office of Proceedings

JAN 31 2011

Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

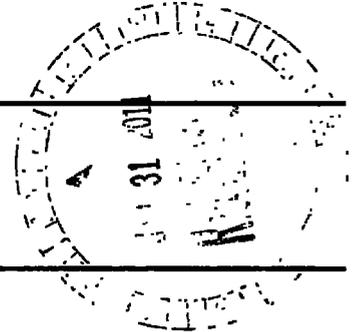
**BNSF RAILWAY COMPANY                    )**  
**ABANDONMENT EXEMPTION                )**  
**IN STEARNS COUNTY, MINNESOTA        )**

**DOCKET NO. AB-6  
(SUB-NO. 472X)**

---

**PETITION FOR EXEMPTION**

---



**BNSF RAILWAY COMPANY**  
2650 Lou Menk Drive  
P.O. Box 96157  
Fort Worth, TX 76161-0057

**Kristy D. Clark**  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

Dated: January 28, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

<b>BNSF RAILWAY COMPANY</b>	)	
<b>ABANDONMENT EXEMPTION</b>	)	<b>DOCKET NO. AB-6</b>
<b>IN STEARNS COUNTY, MINNESOTA</b>	)	<b>(SUB-NO. 472X)</b>

---

**PETITION FOR EXEMPTION**

---

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 abandonment of a 7.05-mile rail line located in Stearns County, Minnesota.

**PROPOSED TRANSACTION**

BNSF proposes to abandon its rail line located between Milepost 9.16, at Rockville and Milepost 16.21, at Cold Spring, in Stearns County, Minnesota (the "Line"). The Line traverses U.S. Postal Service Zip Codes 56369 and 56320. A map of the Line is attached as **Exhibit A**.

Based on information in BNSF's possession, the Line does not contain federally granted rights of way. Any documentation in BNSF's possession will be made available to those requesting it. Cold Spring is the only station on the Line.

## **STATEMENT OF FACTS**

BNSF owns a 7.05-mile rail line between the stations of Rockville and Cold Spring in Stearns County, Minnesota. The last customer on the Line, Wenner Gas Company, Inc. (“Wenner”), has relocated its facility to a new industrial park located in Rockville, MN and supports the abandonment of this Line. There has been no overhead traffic on the Line for many years prior.

The cities of Rockville, Cold Spring and Richmond have formed a trail association, ROCORI Trail, and wish to railbank and purchase the Line to develop a trail to connect with other trail networks in the area.

## **EXEMPTION REQUESTED**

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 7.05-mile rail line.

Under 49 U.S.C. § 10502, the STB 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 is of limited scope; or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB 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 STB’s predecessor to use liberally 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 abandonment 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*”). By abandoning the Line, BNSF will be able to avoid the significant opportunity costs associated with retaining this Line. 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-497 (Sub-No. 1X), Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; 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.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected as the only customer on the Line. Wenner, has relocated its facility to a new industrial park located in Rockville, MN. Wenner supports the abandonment. A letter of support is attached as **Exhibit B**.

**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-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993; 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.

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon a 7.05-mile line that traverses an area of high-end educational, commercial and residential development. The shortness of the Line and the limited geographic area involved demonstrate the limited scope of the proposed abandonment. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

**C. This Transaction Will Not Result in an Abuse of Market Power**

There are no shippers on the Line. The last remaining customer on the Line was Wenner and it has relocated its facility to a new industrial park located in Rockville, MN. Wenner

supports the abandonment. 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*.

### **ENVIRONMENTAL AND HISTORIC REPORTS**

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on January 6, 2011.

### **CERTIFICATES OF SERVICE**

The Certificate of Service of the Environmental and Historic Reports is attached to the Petition as **Exhibit C**. The Certificate of Service for this Petition for Exemption is attached as **Exhibit D**.

### **CERTIFICATE OF PUBLICATION**

The Certificate of Publication is attached as **Exhibit E**.

### **FEDERAL REGISTER NOTICE**

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

## 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 STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition.

Respectfully submitted,

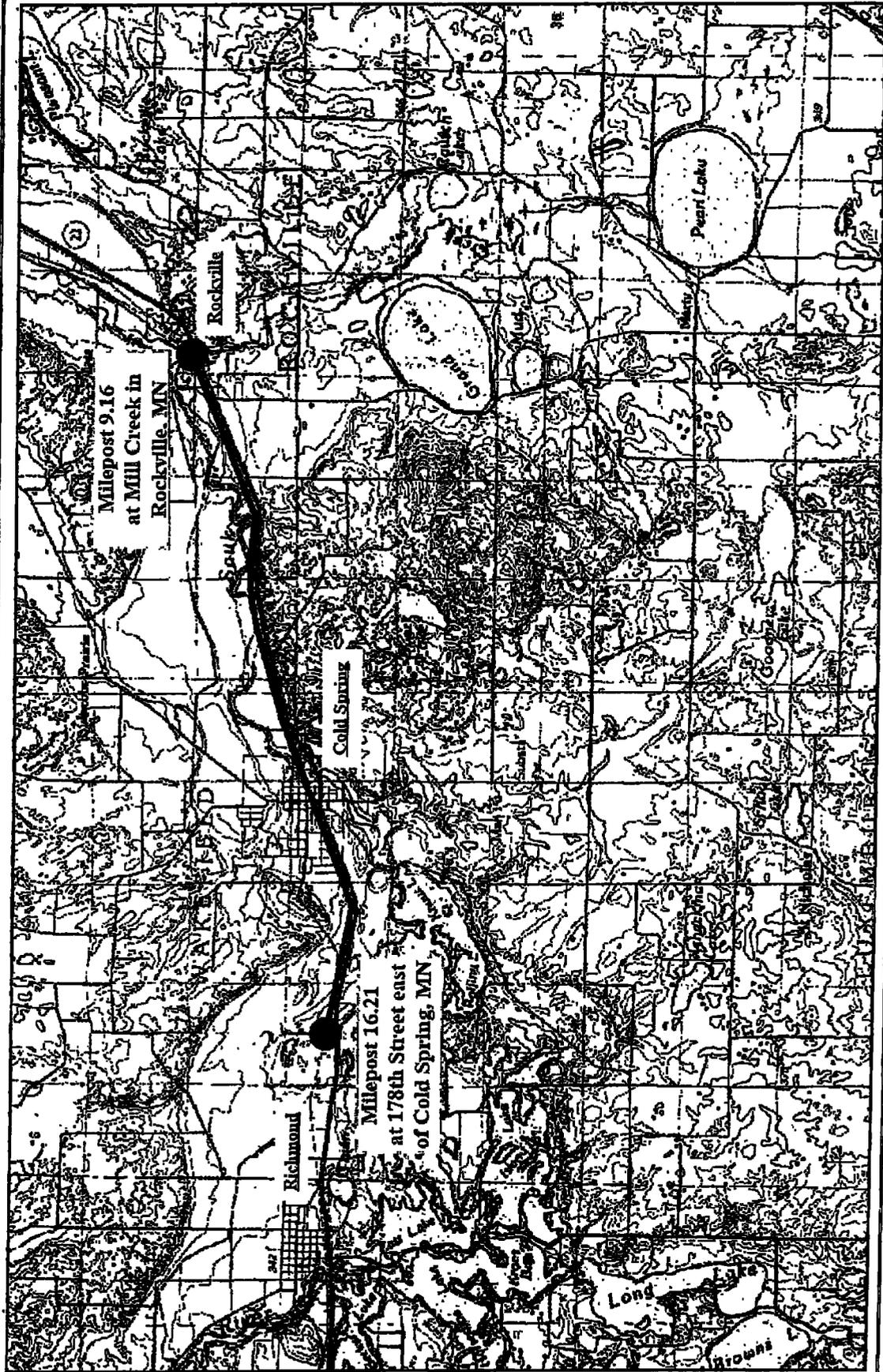


---

KRISTY CLARK  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

Dated: January 28, 2011

## **EXHIBIT A**



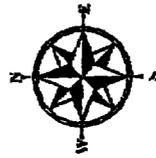
**STB Docket No.  
AB-6 (Sub-No. 472X)**

**Rockville to Cold Spring,  
Minnesota**

**BNSF Line Segment 203  
Milepost 9.16 to Milepost 16.21**

**Cold Spring Branch  
Stearns County**

**Base Map – United States Geological Survey  
Litchfield, Minnesota  
30 x 60 minute series  
45094-A1-TM-100  
1986**



## **EXHIBIT B**

**WENNER GAS COMPANY, INC.**

**319 Main Street  
Cold Spring, MN 56320**

November 25, 2009

Cynthia T. Brown  
Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20473-0001

Dear Ms. Brown:

Wenner Gas is a distributor of liquid petroleum gas ("LPG"). We are located in Cold Spring, MN, adjacent to a line of BNSF that is leased and operated by Northern Lines Railroad ("NLR"). We received an average of 30 loaded cars of LPG per year from April 2005 through December 31, 2008. As of October 31, 2009, we have received 47 loaded cars of LPG for the year 2009. Although Wenner does not have a track for receiving and transloading LPG, the railroads (BNSF, and now NLR), have accommodated Wenner by allowing use of a sidetrack (the "Track") for that purpose. We have agreed with NLR that our use of the Track will terminate, with no prospect of renewal, on October 1, 2010.

We have received advance notice that (i) BNSF plans to seek authority from the Surface Transportation Board ("STB") to abandon the rail line from mile post 9.16 in Rockville to mile post 16.21 near Cold Spring (the "Subject Line"), and (ii) NLR plans to seek authority from the STB to discontinue its operations on the Subject Line. The Subject Line is used for rail service to the Track. Our understanding is that BNSF and NLR will make their respective regulatory filings with the STB in the first quarter of 2010.

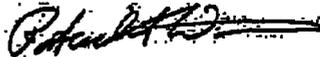
Chief Cynthia T. Brown

2

November 25, 2009

Wenner has agreed with BNSF and NLR that, no later than October 1, 2010, it will relinquish use of the Track. Please be advised that Wenner supports the abandonment and discontinuance of rail operations on the Subject Line, subject to the provisions of the Industry Track Sublease Agreement between NLR and Wenner, dated November 25, 2009. The abandonment and discontinuance will allow for increased economic development and quality of life for the residents of Cold Spring.

Very truly yours,



Pat Wenner, Vice President

cc: Dan Rickel (NLR)  
Chris Randall (BNSF)

## EXHIBIT C

### CERTIFICATE OF SERVICE ENVIRONMENTAL AND HISTORIC REPORTS

The undersigned hereby certifies that, in STB Docket No. AB-6 (Sub-No. 472X), the transmittal letter required by 49 C.F.R. § 1105.11, was mailed to all agencies listed in 49 C.F.R. § 1105.7(b), via first class mail on the 6<sup>th</sup> day of January, 2011.

The undersigned hereby certifies that a copy of the Environmental and/or Historic Reports in STB Docket No. AB-6 (Sub-No. 472X) for the Rockville to Cold Spring line in Stearns County, Minnesota was served by first class mail on the 6<sup>th</sup> day of January, 2011 on the following:

Ms. Victoria Rutson  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

---

Commission Chair Toni Honer  
**City of Rockville**  
Planning Commission  
PO Box 93  
Rockville, MN 56369

**City of Cold Spring**  
Planning Commission  
27 Red River Avenue South  
Cold Spring, MN 56320

**Stearns County**  
Planning Commission  
705 Courthouse Square  
St. Cloud, MN 56303

**NOAA**  
National Geodetic Survey  
VIA E-Mail: [NGS.InfoCenter@noaa.gov](mailto:NGS.InfoCenter@noaa.gov)

**U.S. Army Corps of Engineers**  
Mississippi Valley Division  
PO Box 80  
Vicksburg, MS 39181-0080

Milwaukee Field Office  
**Bureau of Land Management**  
626 E. Wisconsin Avenue, Suite 200  
Milwaukee, WI 53202-4617

**U.S. Environmental Protection Agency**  
Region 5  
Office of Strategic Environmental Analysis  
77 West Jackson Boulevard, Mailcode B-19J  
Chicago, IL 60604  
Jason Holm  
Assistant Regional Director of External Affairs

**U.S. Fish and Wildlife Service**  
One Federal Drive  
Fort Snelling, MN 55111-4056

Midwest Region  
**National Park Service**  
U.S. Department of Interior  
601 Riverfront Drive  
Omaha, NE 68102-4226

**Natural Resources Conservation Service - USDA**  
800 E Main Street  
Suite 400  
Marshall, MN 56258

**Minnesota Department of Natural Resources**  
Division of Waters  
1568 Highway 2  
Two Harbors, MN 55616

**Minnesota Department of Administration**  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

Mary Ann Heidemann, Manager  
Government Programs and Compliance  
**Minnesota Historical Society**  
345 Kellogg Boulevard West  
Saint Paul, Minnesota 55102

**U.S. Army Corps of Engineers**  
St. Paul District  
180 5<sup>th</sup> St. East  
Suite 700  
St. Paul, MN 55101-1678

Bill Gardner, Director  
**Minnesota Department of Transportation**  
Freight, Rail, & Waterways  
Office of Freight and Commercial Vehicle Operations  
Mail Stop 470  
395 John Ireland Boulevard  
St. Paul, MN 55155

Dated this 28<sup>th</sup> day of January, 2011

A handwritten signature in black ink that reads "Kristy Clark". The signature is written in a cursive style with a horizontal line underneath the name.

KRISTY CLARK  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

**EXHIBIT D**

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-6 (Sub-No. 472X) was mailed via first class mail on January 28, 2011, to the following parties:

**State Public Service Commission**

Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place E., Suite 350  
Saint Paul, MN 55101-2147

**Shipper**

Pat Wenner, Vice President  
Wenner Gas Company, Inc.  
319 Main Street  
Cold Spring, MN 56320

**Military Traffic Management Command**

MTMCTEA  
ATTN: SDTE-SA (Railroads for National Defense)  
709 Ward Drive, Building 1990  
Scott AFB, IL 62225-5357

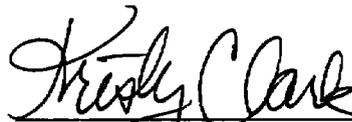
**National Park Service**

Midwest Region  
**National Park Service**  
U.S. Department of Interior  
601 Riverfront Drive  
Omaha, NE 68102-4226

**U.S. Department of Agriculture**

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Floor N.W., Yates Building  
201 14<sup>th</sup> Street, SW  
Washington, DC 20250

Dated: January 28, 2011



KRISTY CLARK  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

**EXHIBIT E**

**CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB-6 (Sub-No. 472X) was published on January 26, 2011, in the *Melrose Beacon*, a legal newspaper published weekly in Stearns County, Minnesota as required by 49 C.F.R. § 1105.12.

Dated: January 28, 2011

A handwritten signature in cursive script that reads "Kristy Clark". The signature is written in black ink and is positioned above a horizontal line.

KRISTY CLARK  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

## EXHIBIT F

### SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (Sub-No. 472X)

BNSF RAILWAY COMPANY  
--ABANDONMENT EXEMPTION--  
STEARNS COUNTY, MINNESOTA

On January 31, 2011, 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 abandon a line of railroad extending from railroad milepost 9.16, at Rockville, to railroad milepost 16.21, at Cold Spring, in Stearns County, Minnesota (the "Line"). The Line traverses U.S. Postal Service Zip Codes 56369 and 56320. Cold Spring is the only station on the Line.

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 April, 2011).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) 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 \$1,500. *See* 49 C.F.R. 1002.2(f)(25).

All interested person should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$250 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-6 (Sub-No. 472X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131-2828.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment 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) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS)), if necessary prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: \_\_\_\_\_ 2011.

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