DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34102]

Bad Water Railway LLC—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant local trackage rights[1] to Bad Water Railway LLC (BDW) over BNSF's rail line located between BNSF milepost 303.6 near Shoshoni, WY, and milepost 282.5 at Lysite, WY, a distance of approximately 21.1 miles.

The transaction was scheduled to be consummated on or after September 27, 2001, the effective date of the exemption (7 days after the notice was filed).[2]

The purpose of the trackage rights is to permit BDW to move trains, locomotives, cabooses and cars with its own officers, agents, employees and contractors, and equipment in its account, over the joint trackage between points on its existing line and interchange with BNSF near Shoshoni, WY, and to provide rail service to the Lost Cabin Gas Plant near Lysite.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).*

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34102, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Clifford Root, 642 South Federal Blvd., Riverton, WY 82501.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: October 1, 2001.

Vernon A. Williams,

Secretary.

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[1] The trackage rights agreement is a supplemental agreement to the original agreement dated February 7, 1997, between BNSF and BDW. *See Bad Water Line—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33636 (STB served July 31, 1998) (*BDW 1998 Decision*).

[2] Counsel for BDW was contacted by telephone and acknowledged that the transaction could not be consummated until September 27, 2001. In a letter dated September 26, 2001, BDW states that it anticipates that it will exercise the above-described trackage rights by August 2002.

* In its Verified Notice of Exemption, BDW states that, ''[p]ursuant to 49 U.S.C. § 11326(a), labor protection conditions are not applicable to the subject transaction.'' BDW, however, has misinterpreted our statute. Accordingly, labor protection conditions are imposed for this transaction as were similarly imposed for the prior related transaction in *BDW 1998 decision.*