

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
Of Counsel



September 23, 2004

2/2064

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

FILED

SEP 23 2004

**SURFACE
TRANSPORTATION BOARD**

**RE: Finance Docket No. 34533, Southwestern Railroad Company,
Inc. – Lease and Operation Exemption -- The Burlington
Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.41 and a check covering the \$1,400.00 filing fee. Also enclosed is a 3.5-inch diskette containing the Notice and Summary.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Enclosures

ENTERED
Office of Proceedings

SEP 23 2004

Part of
Public Record

FEE RECEIVED

SEP 23 2004

**SURFACE
TRANSPORTATION BOARD**

2/2064

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34533



SOUTHWESTERN RAILROAD COMPANY, INC.
--LEASE AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

FEE RECEIVED
SEP 23 2004
SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings
SEP 23 2004
Part of
Public Record

FILED
SEP 23 2004
SURFACE
TRANSPORTATION BOARD

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
SOUTHWESTERN RAILROAD
COMPANY, INC.

Dated: September 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34533

SOUTHWESTERN RAILROAD COMPANY, INC.
--LEASE AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

The Southwestern Railroad Company, Inc. ("SWRR"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit SWRR to lease from The Burlington Northern and Santa Fe Railway Company ("BNSF") approximately 227.6 miles of rail lines located in New Mexico.

In support of this Notice of Exemption, SWRR submits the following information as required by 49 C.F.R. § 1150.43:

- (a) Full name and address of applicant:

Southwestern Railroad Company, Inc.
3819 Airport Road
Building 714
Ogden, Utah 84405

(b) Applicant's Representative:

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(c) Statement of Agreement:

SWRR has entered into an agreement with BNSF for the lease of the rail lines.

(d) The operator of the property:

SWRR will become the operator of the rail lines being leased.

(e) Summary of proposed transaction:

(1) The name and address of the railroad transferring the subject property is:

The Burlington Northern and Santa Fe Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

(2) SWRR's lease of the rail lines is expected to be consummated on or shortly after October 3, 2004.

(3) The rail lines being leased by SWRR are located:

(1) on the Carlsbad Subdivision between Milepost 0.5, at Clovis, New Mexico, and Milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard;¹ (3) on the Carlsbad Industrial Spur between Milepost 0.0,

¹ There are no mileposts associated with the approximately 5.1 miles of rail lines located in the Carlsbad Yard.

at Carlsbad, New Mexico, and Milepost 20.0, near Carlsbad, New Mexico;
and (4) on the Loving Industrial Spur between Milepost 0.0, at Carlsbad,
New Mexico, and Milepost 20.0, at Loving, New Mexico.

(4) The length of the lines being leased is approximately 227.6 miles.

(f) A map of the rail lines being leased is attached as Exhibit A.

(g) SWRR hereby certifies that SWRR's projected revenues as a result of this transaction will not result in SWRR becoming a Class II or Class I rail carrier.

SWRR further certifies that its projected annual revenues from operation of the leased lines, when combined with SWRR's projected annual revenue from current operations, will exceed \$5 million. Consequently, SWRR has complied with the notice requirements of 49 C.F.R. § 1150.42(e), and certified its compliance to the Board on August 4, 2004. A copy of SWRR's letter is attached as Exhibit B.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

ENVIRONMENTAL AND HISTORIC IMPACTS

SWRR is leasing the rail lines from BNSF for continued rail operations. Further Board approval is required for SWRR to abandon or discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

SWRR's lease will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. SWRR's lease of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



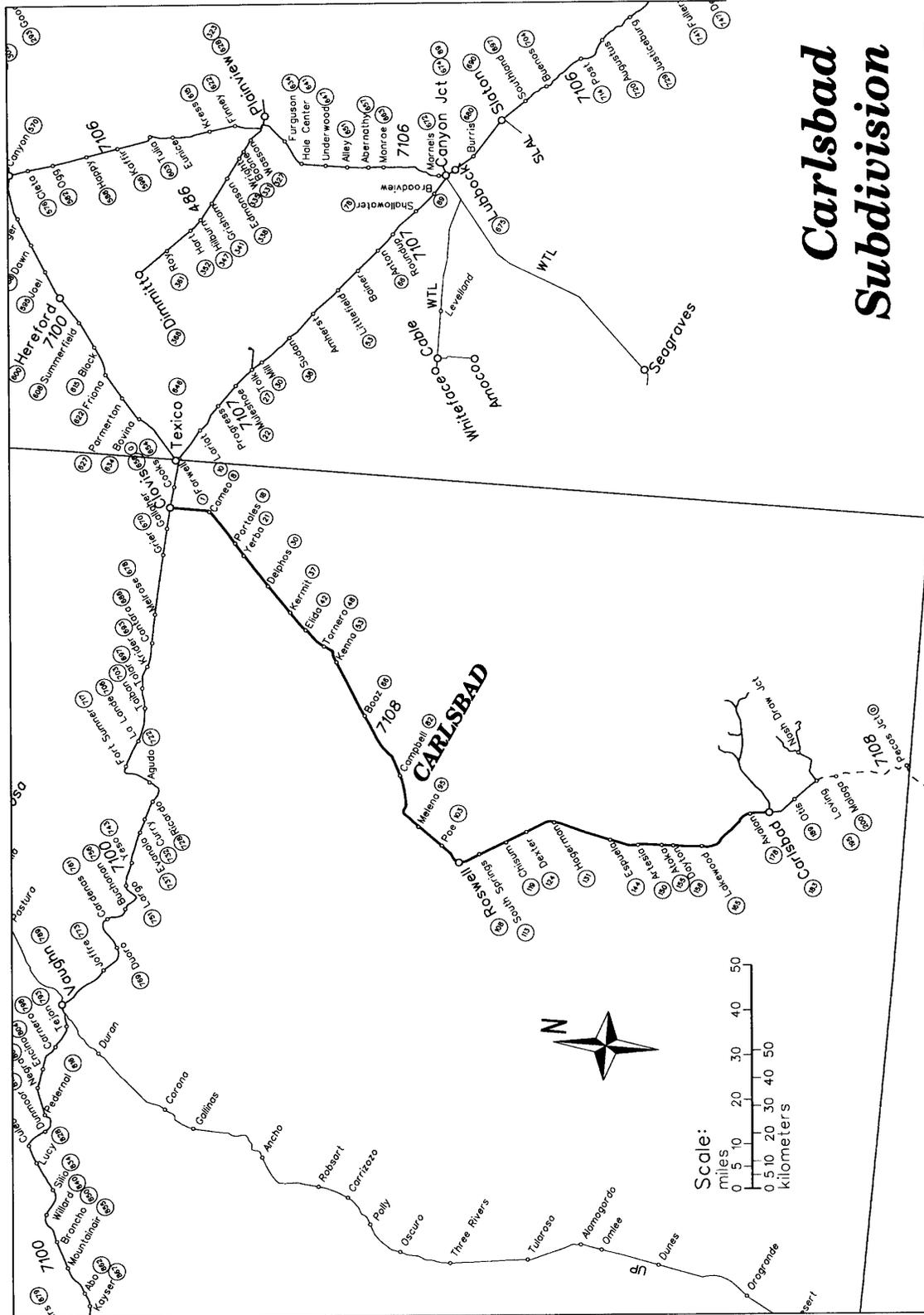
KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

Attorney for:
SOUTHWESTERN RAILROAD
COMPANY, INC.

Dated: September 23, 2004

EXHIBIT A

Carlsbad Subdivision



Profile created on Nov 16, 2

...\\vem-Carlsbad.dgn

Burlington Northern and Santa Fe Railway Company

EXHIBIT B

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL

August 4, 2004



kmorell@bjllp.com

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

Re: Finance Docket No. 34533, Southwestern Railroad Company, Inc. – Lease
Exemption – The Burlington Northern And Santa Fe Railway Company

Dear Secretary Williams:

Southwestern Railroad Company, Inc. ("SWRR"), hereby certifies that on July 29, 2004, SWRR had posted the attached Notice at the workplace of the employees on the rail lines that are the subject of this transaction and on August 4, 2004, SWRR served a copy of the Notice on the national offices of all labor unions with employees on the affected lines.

Please time and date stamp the extra copy of this letter and return it with our messenger.

If you have any questions regarding this matter, please contact me.

Sincerely,

Karl Morell

Enclosure

NOTICE

Southwestern Railroad Company, Inc. ("SWRR"), a Utah Corporation, will be leasing from The Burlington Northern And Santa Fe Railway Company ("BNSF") the rail lines located: (1) on the Carlsbad Subdivision between Milepost 0.5, at Clovis, New Mexico, and Milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad yard; (3) on the Carlsbad Industrial Spur between Milepost 0.0, at Carlsbad, New Mexico, and Milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between Milepost 0.0, at Carlsbad, New Mexico, and Milepost 20.0, near Carlsbad, New Mexico.

As a result of the lease of the BNSF lines, SWRR expects to have the following employment opportunities:

There will be a total of approximately **22 positions**.

Transportation:

Approximately **6 positions** requiring the following minimum skills and/or qualifications:

Must have minimum one-year experience as a trainman or equivalent training from an accredited railway training course. Must possess a valid driver's license with a clean record. Must be able to pass color vision screening, have qualifications on the General Code of Operating Rules (GCOR), and have passed a written test in the past 18 months. Must be able to demonstrate, by written test, an understanding of railroad safety, operating rules, air brake and hazardous materials handling rules. Individual must also be able to effectively use a radio as per GCOR regulations and ensure all applicable track warrant and bulletin information is in place as per GCOR rules and regulations.

Approximately **6 positions** requiring the following minimum skills and/or qualifications:

Must have at least one year experience as a locomotive engineer. Must possess a valid engineer's certificate issued by a program in compliance with 49 CFR Part 240. Must be able to meet all hearing and vision requirements of 49 CFR Part 240. Must have an understanding of air brake and mechanical systems of a train and locomotives, and pass a written test to verify competency.

Approximately **10 positions** requiring the following minimum skills and/or qualifications:

Requiring various skills and experience including mechanical, signal and track maintenance, clerical, and administrative.

The most qualified candidates will be selected from the available pool of applicants without regard to race, creed, color, religion, national origin, sex, age, marital status,

disability, or veteran status. The selection criteria will be job-related skills and attributes as outlined. Successful candidates must have a stable work record and exhibit safe work practices. The ability to work in a team environment with a focus on customer service is critical. Applicants must be able to read and comprehend regulations and instructions in English, as well as possess good oral communication skills. Successful applicants will be required to pass a pre-employment drug and alcohol screen and complete a medical questionnaire. Every employee is an at-will employee. All employees are expected to know and abide by the standard code of employee conduct.

Southwestern Railroad Company, Inc.

P. O. Box 1876
Ogden, UT 84402
(801) 621-5311

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34533

SOUTHWESTERN RAILROAD COMPANY, INC.
--LEASE AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Southwestern Railroad Company, Inc. (SWRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease approximately 227.6 miles of rail lines owned by The Burlington Northern and Santa Re Railway Company (BNSF). The rail lines being leased are located: (1) on the Carlsbad Subdivision between Milepost 0.5, at Clovis, New Mexico, and Milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard; (3) on the Carlsbad Industrial Spur between Milepost 0.0, at Carlsbad, New Mexico, and Milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between Milepost 00.0, at Carlsbad, New Mexico, and Milepost 20.0, at Loving, New Mexico.

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

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. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION

STATE OF UTAH)
)
COUNTY OF WEBBER) ss.

I, Gregory L. Kissel, being duly sworn depose and state that I am Executive Vice President of Southwestern Railroad Company, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate to the best of my knowledge, information, and belief.

Gregory L. Kissel
Gregory L. Kissel

SUBSCRIBED AND SWORN TO before me this 16 day of September, 2004, in the County of Webber, State of Utah.

My Commission Expires: 11/15/05



Marni Durbano
Notary Public