

BNSF Railway

Oklahoma Tax Commission

**65th Annual Educational Conference For
Assessing Officers**

August 6, 2009

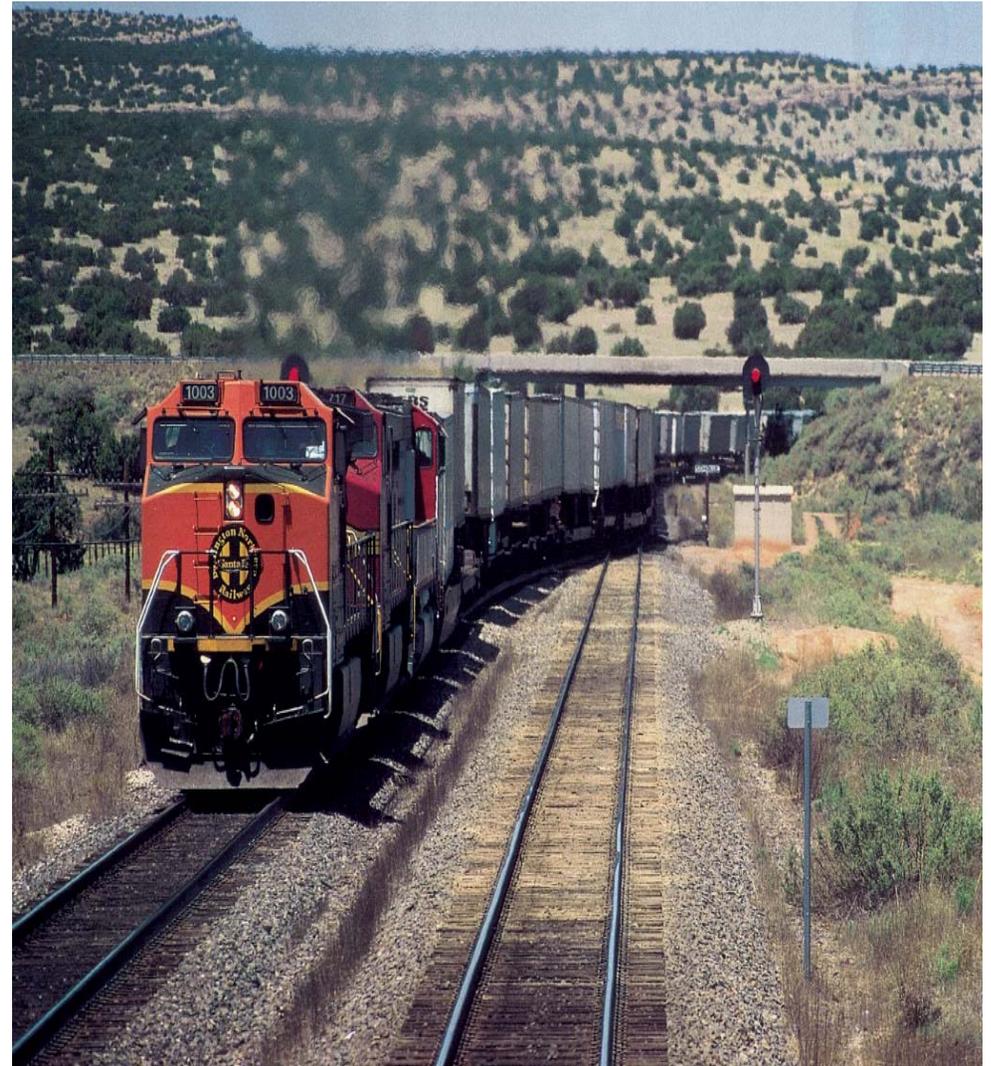




Judy Cummings
Director of Taxes
BNSF Railway Company

BNSF by the numbers

- **Route Miles:** 32,000
- **Ties:** 127 Million
- **Employees:** 40,000
- **Locos:** 6,700
- **Average # of Freight Cars on System:** 220,000



BNSF – Supporting the Armed Services



- For the 4th consecutive year BNSF has made the top 50 list
- #2 in 2008
- Since 2005 BNSF has hired 3,000 former armed services members
- BNSF offers enhanced and extended benefits for employees called to active duty

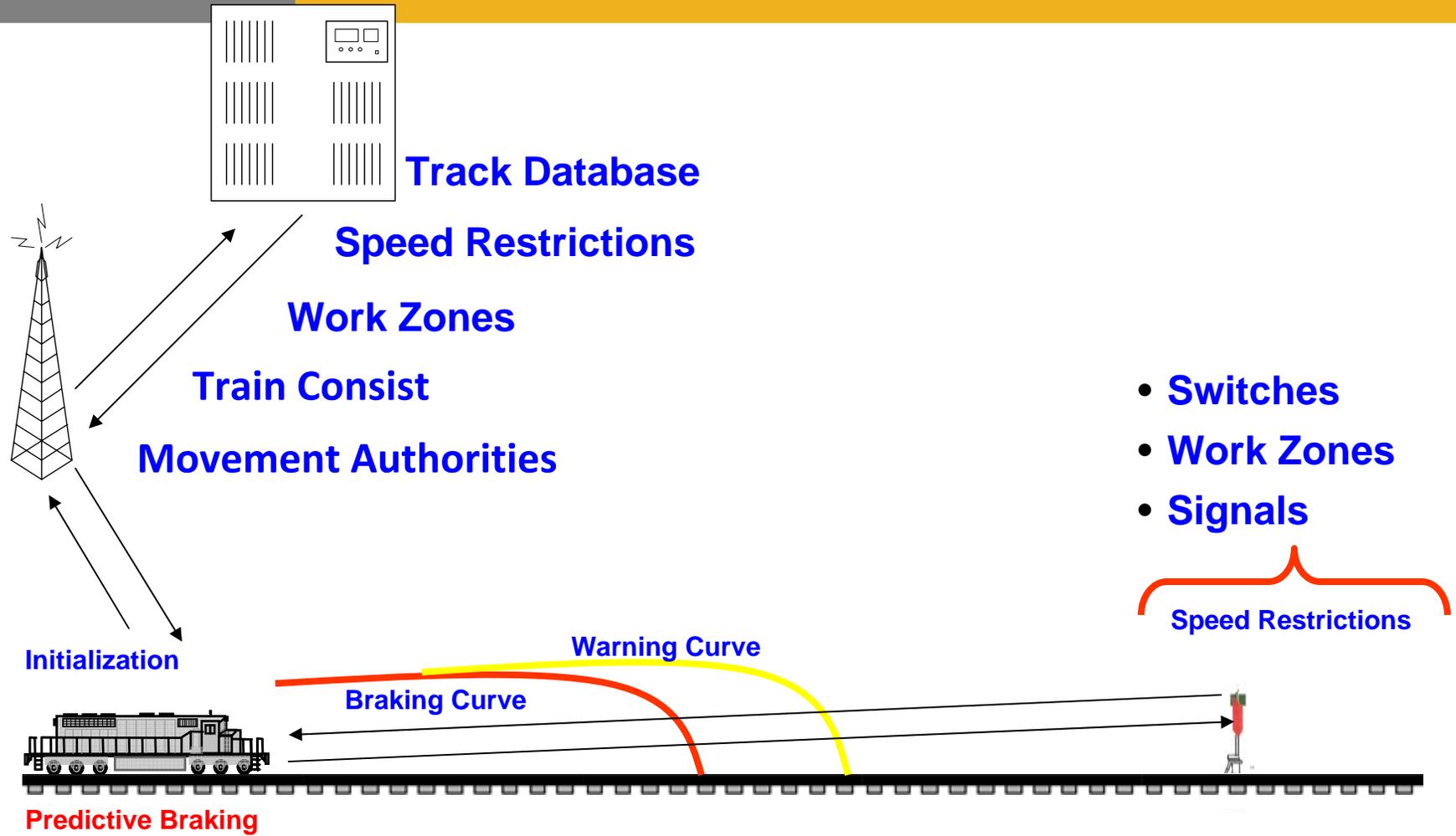
BNSF – A cleaner road ahead

- ❑ **Railroad transportation is the most fuel efficient mode**
 - **One ton of freight - 456 miles - one gallon of diesel**
- ❑ **One train takes 280 trucks off the highway**
- ❑ **RRs move 40% of freight and make up only 2.8% of the greenhouse emissions**
- ❑ **If 10% of truck traffic moved to rail, the US would save one billion gallons of fuel**
- ❑ **Hydrogen Fuel Cell Loco in development**
- ❑ **Solar Power/ Wind Power**

Positive Train Control

- ❑ **New legislation requires implementation of PTC system by December 31, 2015, by each Class I railroad**
- ❑ **PTC defined as a system designed to prevent**
 - **Train to train collisions**
 - **Over speed derailments**
 - **Incursions into established work zone limits**
 - **Movement of a train through a switch left in the wrong position**

PTC System Functional Overview

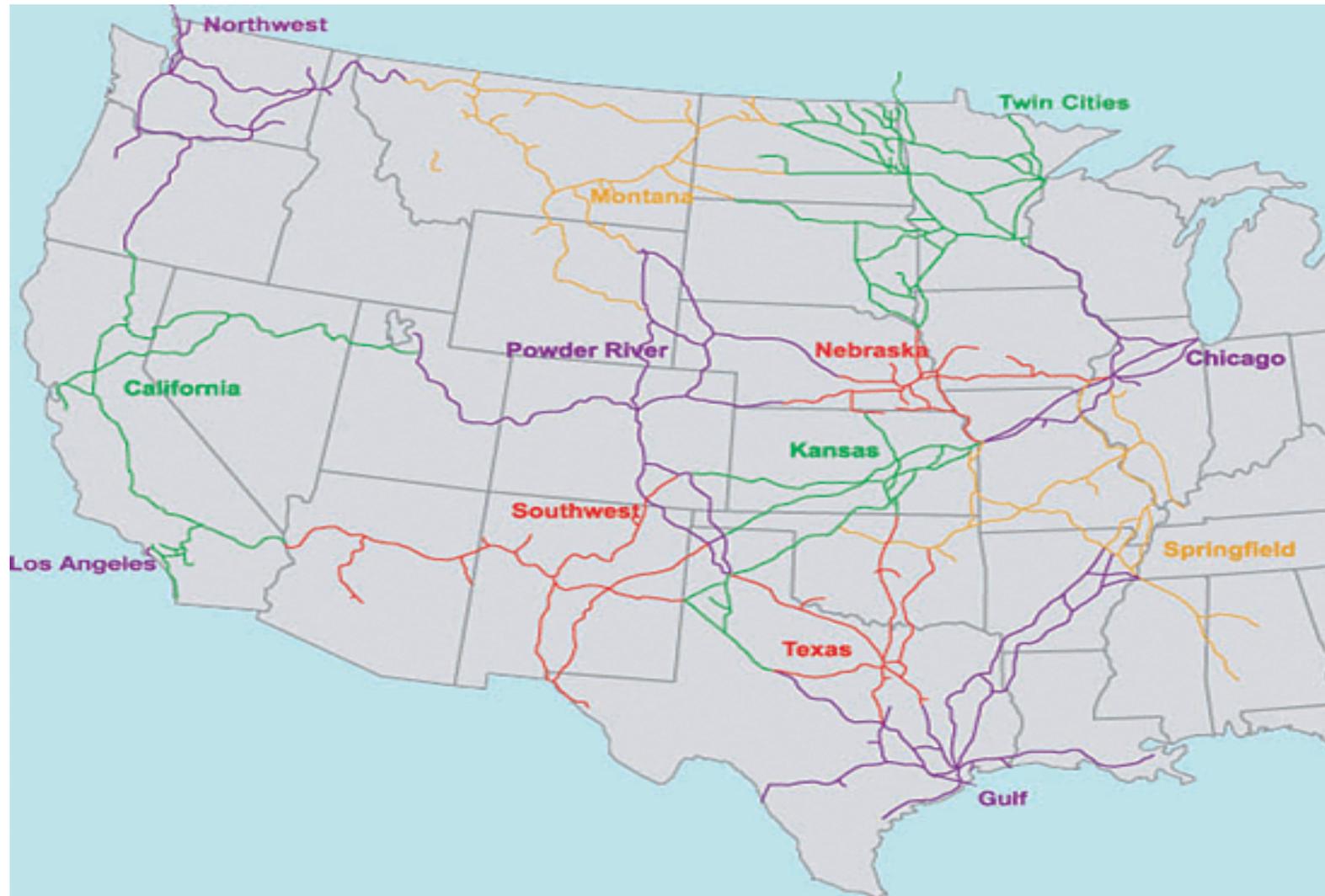


BNSF – Economic Impact



- **Oklahoma:**
 - **Employees:**
1,385
 - **Payroll:**
\$74,836,695
 - **Total Taxes:**
\$15,680,597

BNSF Railway System



History of BNSF



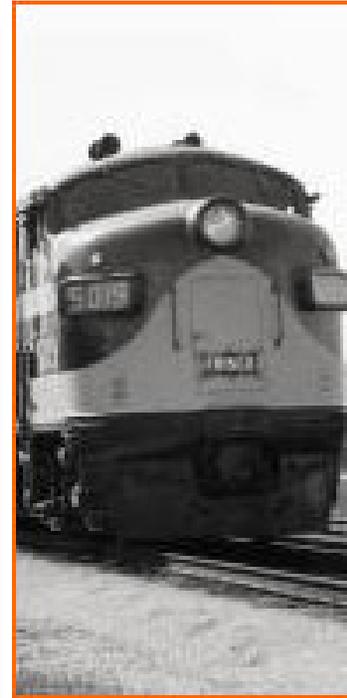
Northern Pacific Railway



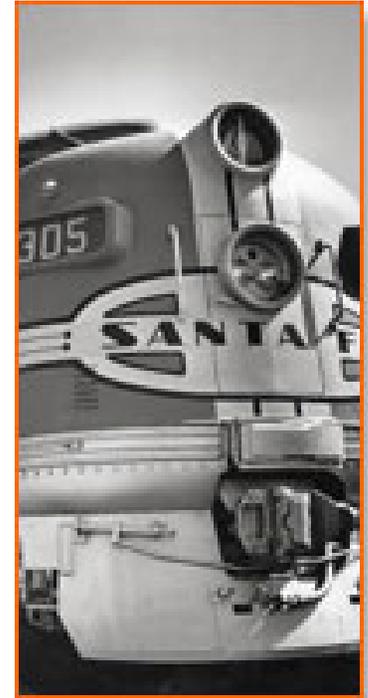
Great Northern Railway



Burlington Route



St. Louis
San Francisco Railway



Santa Fe Railway

History of BNSF in Oklahoma

- ❑ Frisco merged with Burlington Northern in 1980
- ❑ Santa Fe (ATSF) merged with Burlington Northern in 1995



Rail Industry History

- ❑ **Bankruptcies of major rail carriers started in the Northeast in 1961**
- ❑ **Bankruptcy of Penn Central in 1970**
- ❑ **Industry was stagnating**
- ❑ **Interstate Highway system was expanding**
- ❑ **Congress agreed that a market driven rail system was best and passed the Staggers Act in 1980**
- ❑ **Expanded the authority of the ICC (STB)**

BNSF

What kind of freight do we haul?



BNSF
RAILWAY

BNSF - Coal

- ❑ BNSF hauls enough coal to produce 10% of the electricity generated in the US
- ❑ 90% of this coal comes from the Powder River Basin
- ❑ PRB coal is 60% lower in sulfur than most other US sources



BNSF - Coal



BNSF – Ag Products

- ❑ **BNSF serves more grain producing regions than any other road**
- ❑ **Transports 1 million carloads of ag commodities**
- ❑ **BNSF hauls enough grain to supply 900 million people with a year's supply of bread**
- ❑ **50% of Ag movements are transported to export points**
- ❑ **BNSF hauls enough fertilizer in one year to fertilize a field the size of the entire state of Kansas**



BNSF – Ag Products



BNSF – Consumer Products

- ❑ One intermodal train moves the equivalent of 280 trucks
- ❑ During peak season BNSF ships more than 50 million packages for UPS – on time
- ❑ Intermodal trains move 760 miles per day – 200 miles more than single-driver truck service
- ❑ BNSF is the largest transporter of beer and wine by rail in the US



BNSF – Consumer Products



BNSF – Industrial Products

- ❑ **Forest Products**
- ❑ **Chemicals**
- ❑ **Metals**
- ❑ **Minerals**

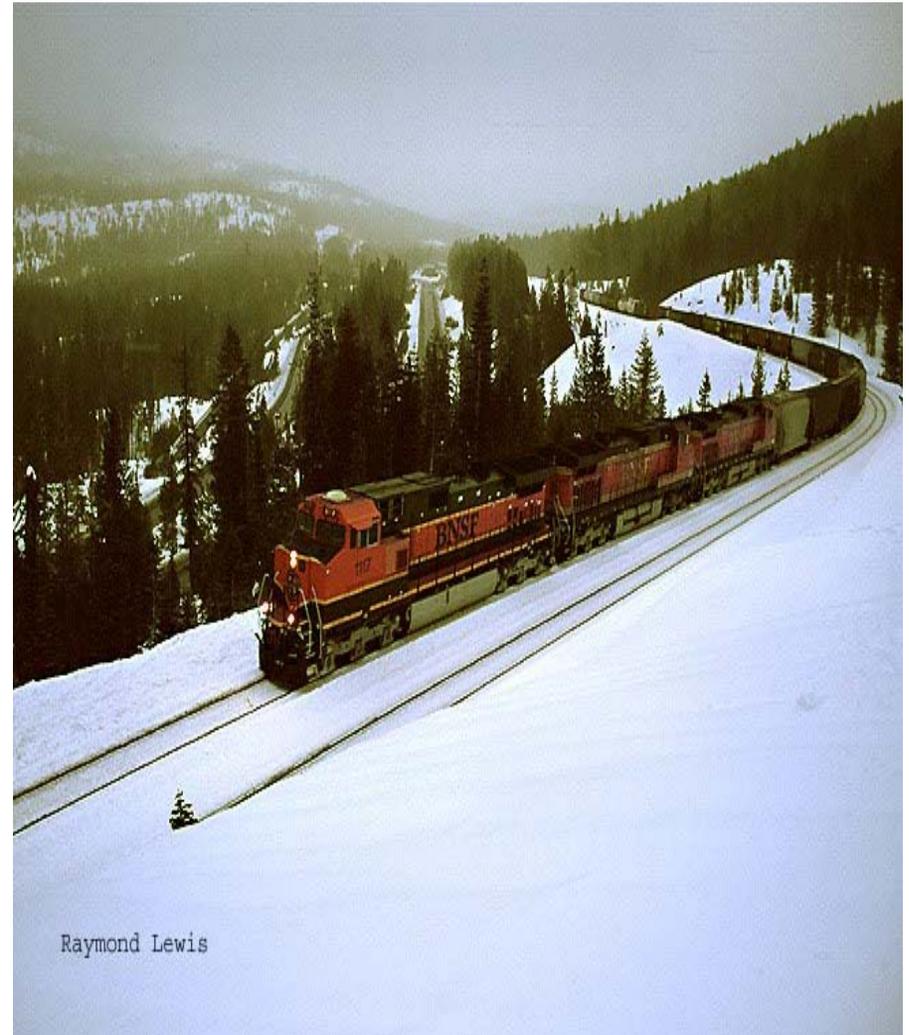


BNSF – Industrial Products



BNSF Property Taxes

- ❑ **BNSF operating property is state assessed by the Oklahoma Tax Commission**
- ❑ **BNSF's value is allocated to the various tax jurisdictions within the state of Oklahoma**



Raymond Lewis

Disclaimer

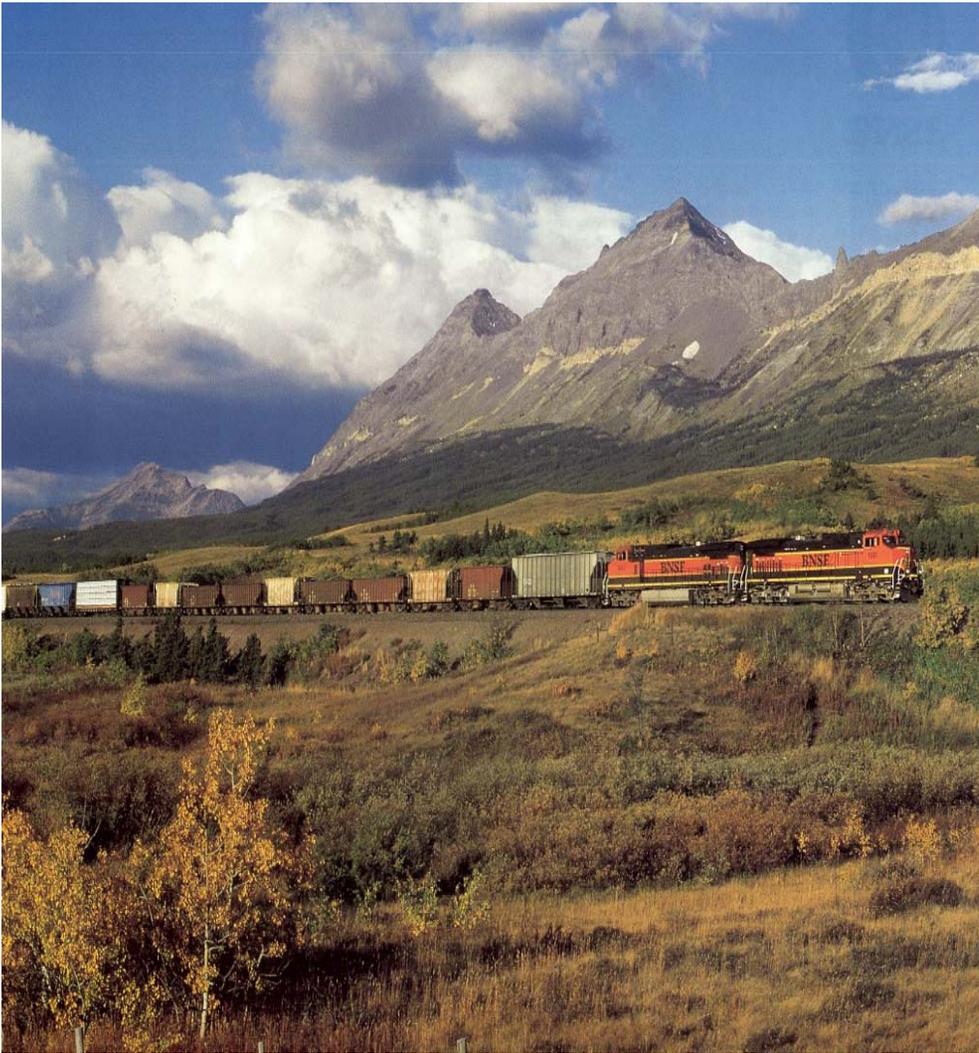
- ❑ **Every piece of Railroad property is unique**



BNSF Railroad Right of Way

- ❑ **Fee Simple** – Railroad has full rights to control, use or transfer the property at will
- ❑ **Easement** – Railroad has only a right to use another entity's property. Easements have limitations and conditions attached to them regarding use and what happens to the property when it is no longer used for rail freight purposes

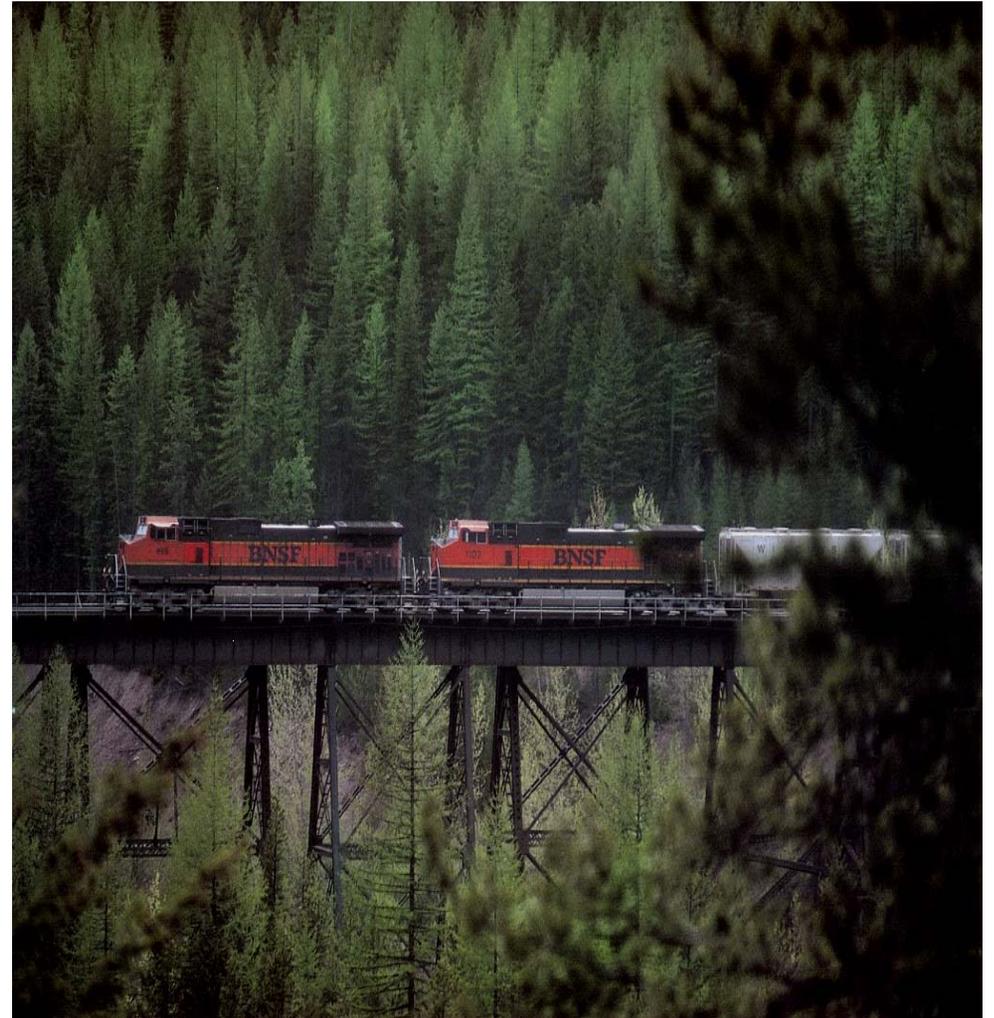
Fee Simple



- ❑ **Warranty Deeds**
- ❑ **Quit Claim Deeds**
- ❑ **Bargain and Sale Deeds**
- ❑ **Grant Deeds**

Easements

- ❑ **Ordinance**
- ❑ **Condemnation**
- ❑ **Act of Congress (charter)**
- ❑ **Other land grants (usually state)**
- ❑ **Adverse Possession**
- ❑ **Right of Way deed**
- ❑ **Easement**
- ❑ **Tacit Permission**





Abandonment of Railroad Rights of Way

Susan Odom

Overview

❑ Federal vs State Law

- Reversion is determined by state or common law
- **HOWEVER, State law prevails only after subject property passes out of Federal jurisdiction**

❑ Surface Transportation Board

- Jurisdiction over all track
- Only exercises jurisdiction of main line and branch line track



Definition/Classification of Track

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Definition/Classification of Track

■ Main Line and Branch Line

- **Once main line, always main line – until removed from STB’s purview through abandonment process**
- **Serves multiple customers/stations**
- **Enters new territory**
- **Railroad makes application with STB to operate**
- **Scheduled train service**
- **Stations established**



Definition/Classification of Track

- ❑ Industrial Track
- ❑ Spur Track
- ❑ Switching Track
- ❑ Ladder Track



- Terminology varies even between railroad departments
- Removed track does not automatically invoke reversion
- Be very careful!

History - Then

Interstate Commerce Commission (ICC)

- ❑ **Established in 1887**
- ❑ **Transportation Act of 1920 expanded the ICC's powers**
- ❑ **Staggers Act of 1980 amended railroad regulatory system in order to allow railroads to return to economic profitability**
- ❑ **1983 amendments to National Trails Systems Act of 1968 allowed trail use over rail lines that might otherwise be abandoned until such time the line is needed again for freight rail service**

Surface Transportation Board (STB)

- **ICC Termination Act of 1995 abolished the ICC, effective January 1, 1996**
 - **STB now oversees railroad leases, sales, mergers, abandonments and rail banking**
 - **STB must determine whether the "present or future public convenience and necessity require or permit" an abandonment**
 - **Is continued regulation necessary to carry out the national rail transportation policy?**
 - **Is the transaction or service of limited scope?**
 - **Is regulation necessary to protect shippers from an abuse of market power?**

Types of Abandonments

1. Regulated Abandonments

- File full abandonment application
- Used for active lines
- Economic burden of continued rail operation is balanced against the public's need for service using STB-designed formulas
- Requires extensive financial justification for seeking permission to abandon

Types of Abandonments - Exemptions

2. Individual Exemption

- File *Petition for Exemption* (from abandonment process)
- Rail-served customers are located on the line
- Transaction is of limited scope
- Regulation is not required to protect shippers from an abuse of market power

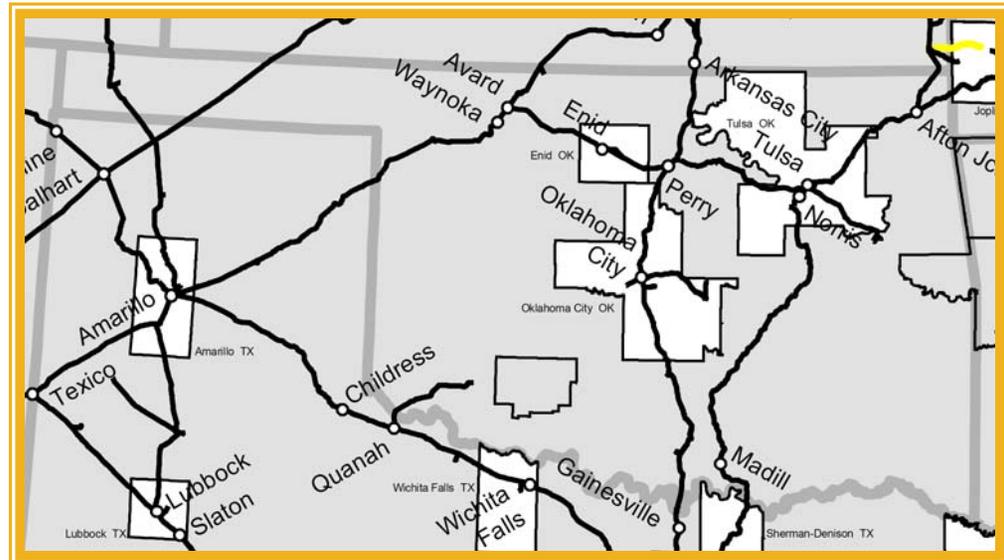
Types of Abandonments - Exemptions

3. Class Exemption

- File *Notice of Exemption* (from abandonment process)
- No local traffic has moved over the line for at least two years
- Any overhead traffic can be rerouted over other lines
- No formal complaint for lack of service is pending before the board

System Diagram Maps

- ❑ Required only for full abandonment applications
- ❑ Most railroads currently use exemption process



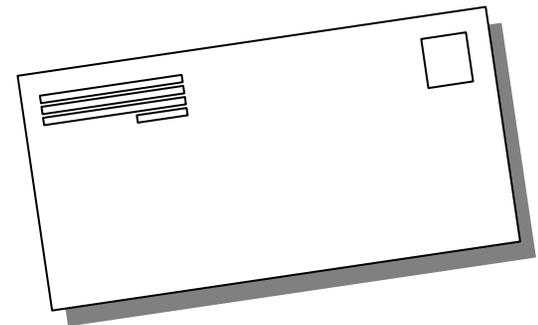
Category 1 – Abandonment planned within three years

Category 2 – Potentially subject to abandonment

Abandonment Process

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

- **Send consultation letters to requisite agencies**
 - **Department of Natural Resources**
 - **Natural Resources Conservation Service**
 - **U.S. Army Corps of Engineers**
 - **U.S. Fish and Wildlife Service**
 - **Bureau of Land Management**
 - **U.S. National Park Service**
 - **U.S. Environmental Protection Agency**
 - **State Historic Preservation Officer**
 - **National Geodetic Service**



Abandonment Process – continued

- ▶ **Use responses received from agencies to prepare**
 - **Environmental Report *pursuant to Section 7(a)(2) of 1973 Endangered Species Act, 16 U.S.C. 1531 et seq.***
 - **Historic Report *pursuant to Section 106 of 1963 National Historic Preservation Act, as amended***
- ▶ **File environmental and historic reports with STB**
- ▶ **Publish notices of intent to abandon in local newspapers and mailed to:**
 - **Oklahoma Corporation Commission**
 - **Department of Defense**
 - **National Park Service**
 - **USDA Chief of Forest Service**

Abandonment Process – continued

- ▶ **File exemption notice with the STB**
- ▶ **Publish notice in Federal Register**
- ▶ **Waiting period to allow public to file –**
 - **Notice of Interim Trail Use (for rail banking)**
 - **Offer of Financial Assistance (for another railroad to acquire line for operation as a freight railroad)**
 - **Public Use Condition (for municipality to acquire line for other public use such as light rail)**

Abandonment Process – continued

- ▶ **Decision issued by STB's Section of Environmental Analysis includes the imposition of environmental or historic conditions, if applicable**
- ▶ **STB issues decision giving authority to abandon**
- ▶ **Decision becomes effective 30 days after issued**
- ▶ **Resolve any environmental or historical conditions imposed and salvage the track within one year of effective date**
- ▶ **Send letter of consummation to STB**

Post Abandonment

- ❑ **What next?**
 - **Cancel railroad tariffs**
 - **Update accounting records**
 - **Retire reversionary property**
 - **Move non-reversionary property to a non-operating account**
 - **Release mortgages, if applicable**

Property Reversion

MISINFORMATION ABOUNDS!



All railroad property is easement and therefore reversionary in nature



All reversionary interests are to centerline of track

Property Reversion

- ❑ **Multiple forms of conveyance documents exist**
- ❑ **Common instruments**
 - **Easements, federally granted (charter) right of way, other land grants are reversionary**
 - **Fee simple deeds are non-reversionary**
 - **Warranty and grant deeds have been used for both reversionary and non-reversionary purposes**
- ❑ **Specific documents determine**
 - **Value of title**
 - **Interest holder**





Rail Banking

Susan Odom

Overview



- ❑ **Railroad’s real estate assets are deposited into a rail “bank” to be used for recreational or other public use until such time the line is needed again for freight rail service**
 - **Notice of Interim Trail Use (NITU)**
 - **Public Use Condition (PUC)**
- ❑ **Rail banking is voluntary**
- ❑ **Keeps right of way intact – prohibits reversionary interests from laying claim to any portion of right of way**
- ❑ **Nine rail lines have been filed for reactivation, to date**

Railbanking Process



- ❑ Request for NITU or PUC must be filed timely
- ❑ Request must include a statement of financial responsibility and willingness to assume managerial role in corridor
- ❑ Legislation allows 180 days to negotiate an agreement between railroad and rail banking entity (extensions often allowed)
- ❑ Private agreement
- ❑ Rail bank in lieu of abandonment
- ❑ Railroad submits letter to STB to inform an agreement has been reached



Leases

Susan Odom

Types of Railroad Leases

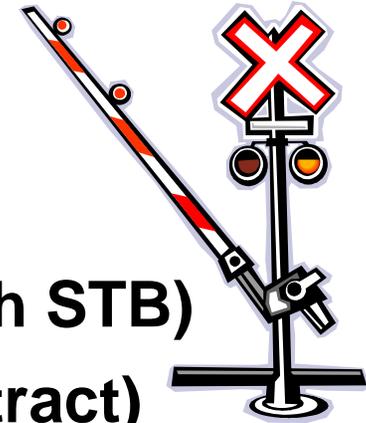
- **Leasing to another railroad**

- **Track**

- **Main line (application made through STB)**
 - **Spur or industry track (private contract)**

- **Land**

- **May or may not be included in track lease**



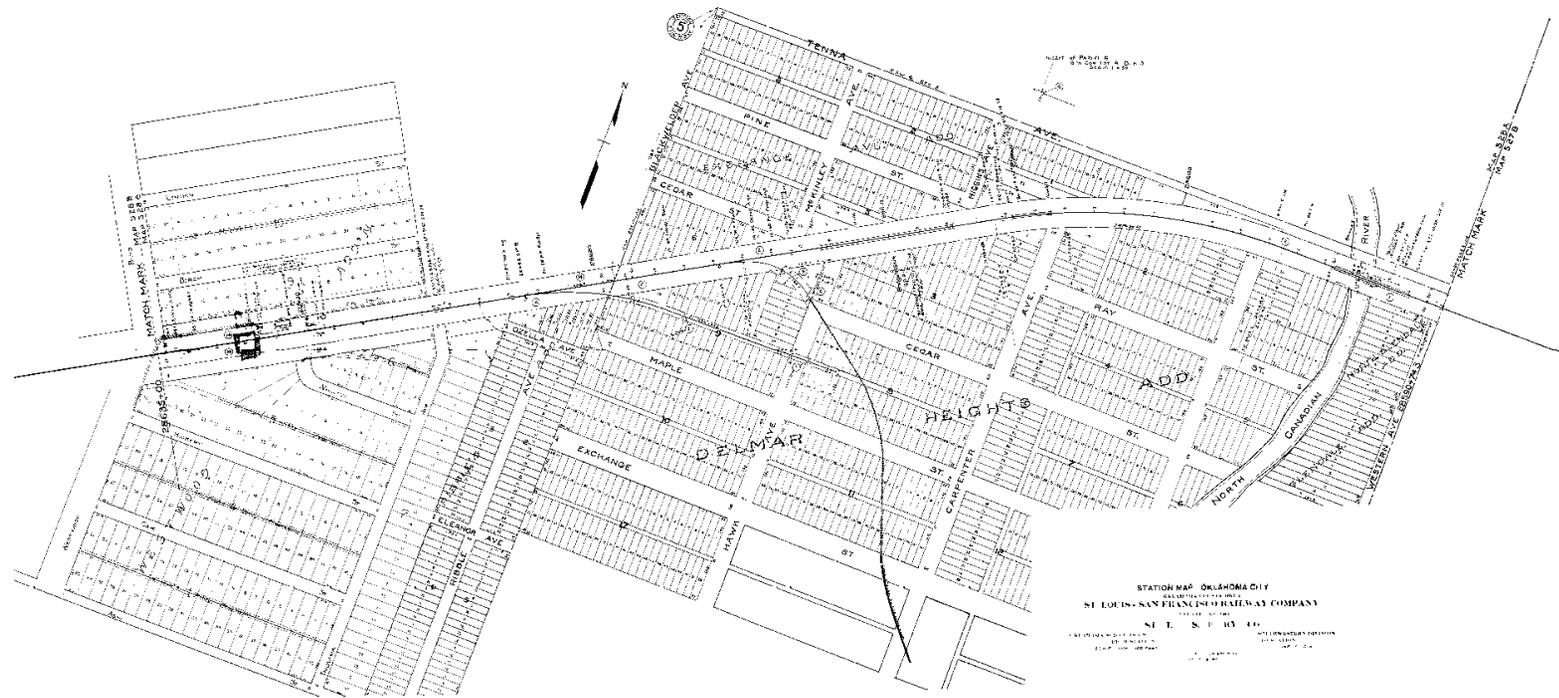
Types of Railroad Leases

Leasing to a non-railroad

- Industrial track
- Land
- Lessee holds tax liability
- Private contract
- No public filing

Final Thought

- Valuation maps



Thank You!

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Questions



