

AUSEY H. ROBNETT, ISB #3218  
 PAINE HAMBLEN LLP  
 701 Front Avenue, Suite 101  
 Coeur d'Alene, ID 83816-0328  
 Telephone: (208) 664-8115  
 Facsimile: (208) 664-6338

ROBERT M. JENKINS, III *Pro Hac Vice Pending*  
 MAYER BROWN LLP  
 1999 K Street, N.W.  
 Washington DC 20006-1101  
 Telephone: (202)-263-3261  
 Facsimile: (202)-263-5261

Attorneys for Defendant  
 BNSF Railway Company

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF IDAHO

BNSF RAILWAY COMPANY, a  
 Delaware corporation,

Plaintiff,

vs.

KOOTENAI COUNTY acting by and  
 through its BOARD OF COUNTY  
 COMMISSIONERS,

Defendant.

Case No. CV-

**COMPLAINT FOR  
 DECLARATORY  
 AND INJUNCTIVE RELIEF**

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Plaintiff BNSF Railway Company ("BNSF") complains and alleges as follows:

## INTRODUCTION

1. This suit seeks to have this Court declare invalid and enjoin conditional use permit modification proceedings that Kootenai County, Idaho—acting through the Kootenai County Board of Commissioners, in their official capacities—has initiated against BNSF with respect to BNSF’s Hauser Fueling Facility (“Hauser Facility”). The imposition of mandatory local permitting conditions on the operation of the Hauser Facility is preempted on its face by the federal ICC Termination Act, 49 U.S.C. § 10101, et seq. (“ICCTA”).

2. BNSF’s rail operations serving the Pacific Northwest are fed by a large network of lines running from the Midwest, the Plains States, and the Gulf States to the port cities of Washington and Oregon. Historically, BNSF’s locomotives in the region were fueled and serviced at multiple locations—many of which were congested and not centrally located. In the late 1990s, BNSF began the process of establishing a central locomotive fueling facility for the region that could efficiently consolidate many of its disparate operations. BNSF determined that the best place for such a facility was its Hauser Yard in Kootenai County, Idaho. Hauser Yard is ideal because it sits adjacent to the rail corridor between Spokane, Washington, and Sandpoint, Idaho, where all of BNSF’s lines coming from the East and all of its lines fanning through Washington and Oregon converge.

3. From the beginning, BNSF worked closely with local authorities, including the Kootenai County Board of Commissioners, to take public concerns into account in designing the Hauser Facility. Because the Facility is integrally related to BNSF's interstate rail operations, BNSF had no legal obligation to seek state or local permits to construct or operate it. Nevertheless, BNSF has long had a policy of working with local communities to resolve concerns about railway construction projects. This often includes voluntary participation in state and local permitting processes.

4. On April 19, 2000, the Kootenai County Board of Commissioners approved BNSF's application for a conditional use permit ("CUP") to construct and operate the Hauser Facility. BNSF voluntarily agreed to comply with 33 conditions that were set in the CUP. These conditions included meeting all of the environmental and safety measures incorporated into the plans for the Facility (CUP § 7.05) and development of a groundwater monitoring plan, including monitoring wells, to be reviewed and approved by the Idaho Department of Environmental Quality ("DEQ") (CUP § 7.29). BNSF agreed that if contaminants were discovered in the Rathdrum Prairie Aquifer as a result of the operations of the Facility, operations at the Facility would cease until the source of the contamination was determined and, if necessary, remediation by BNSF had begun (CUP § 7.10). BNSF also agreed to participate in a review hearing 60 months after

the Facility was in operation—explicitly focused on whether the CUP conditions had been met, and whether new or different conditions were necessary and warranted (CUP § 7.04). And BNSF agreed, among other things, to fund an additional staff position for DEQ’s aquifer protection program for 10 years (CUP § 7.20).

5. BNSF began operations at the Facility on September 1, 2004. In 2005, a dispute arose between BNSF and DEQ arising out of the discovery of a crushed wastewater line at the Facility. BNSF and DEQ settled that dispute by agreeing to an enhanced ground water protection and monitoring program at the Facility. In October 2009, in accordance with CUP § 7.04, the Kootenai County Board noticed a review hearing to determine whether BNSF had met, and was meeting, all of the CUP conditions and whether new or different conditions were necessary. A lengthy hearing was held on November 12, 2009.

6. Prior to the hearing, BNSF representatives met with Kootenai County Building and Planning Department staff to discuss the operations of the Facility and provide the Department with manuals containing documentation of BNSF’s compliance with each of the 33 conditions to which BNSF had agreed. During the hearing, all of the state and local agencies with knowledge of the Facility and that participated in the review process either in person or in writing testified (1) that BNSF had complied with the CUP conditions and (2) that no new or different

conditions were necessary. The Department staff reviewed all of BNSF's documentation and the agency and public comments received and also concluded, both orally and in a written staff analysis, that BNSF had complied with all of the CUP conditions and that no evidence had been presented that would support new or revised CUP conditions.

7. In its final Order of Decision, issued December 17, 2009, the Board agreed that BNSF had complied with all of the original CUP conditions. However, a majority of the Board (2-to-1) expressed "concerns" about continued protection of the Rathrum Prairie Aquifer and determined that another public hearing should be held to consider three possible condition modifications suggested by the Board members, as well as any other proposed new conditions or condition modifications that might be raised by agencies or the public during the new hearing process.

8. The County staff proceeded to draft additional conditions without input or participation by BNSF. In May of 2010, BNSF was given the opportunity to review the proposed condition modifications with the County staff and counsel. BNSF explained to them that BNSF could not agree to those modifications, because they were not warranted to improve the facility or its operations for the protection of the environment, because mandatory local regulation of the facility was preempted by federal law, and because the proposed conditions would interfere with interstate commerce. BNSF also noted that it had agreed in the

original CUP to only one five-year review hearing restricted to whether BNSF had complied with the original CUP conditions and to whether any new or additional conditions were necessary. Since all agreed that BNSF had complied with all of the original CUP conditions, and no evidence was adduced at the review hearing that new or additional conditions were necessary, the Board had no discretion under the terms of the CUP to conduct another hearing to consider imposing new or additional conditions. BNSF offered to conduct a workshop for the Commissioners at the Hauser Facility to review the operations there and discuss any concerns they had.

9. BNSF heard nothing more from the Board or its staff until it received the August 10, 2010 notice initiating a hearing to consider the condition amendments proposed by the Board, along with any other new or different amendments the public might suggest at the hearing. On September 7, 2010, BNSF's counsel sent a letter to the Board reiterating the points that BNSF had made in the May 2010 meeting with County staff and counsel. In that letter, BNSF specifically set forth the legal basis for its position that the Board had no authority to impose new or revised permitting conditions on the operation of the Hauser Facility. BNSF asked the Board to withdraw its August 10 notice and take up BNSF's offer to conduct an on-site workshop at the Facility with County Commissioners and staff to review the operations at the Facility and discuss any

concerns they may have. BNSF advised the Board that absent withdrawal of the August 10 notice, BNSF would have no choice but to take appropriate legal action.

10. BNSF received no response to its September 7 letter. Counsel for BNSF made a telephone inquiry in late September, and was told by a County staff member that the County's application for amendments to the Hauser Facility CUP had been calendared for a hearing in front of the hearing examiner on December 2, 2010. No direct communication or official notice of that scheduled hearing was delivered or received until October 21, 2010.

### **JURISDICTION AND VENUE**

11. This Court has both federal question jurisdiction over this action, pursuant to 28 U.S.C. § 1331, and diversity jurisdiction, pursuant to 28 U.S.C. § 1332.

12. The claims asserted here arise under the ICC Termination Act, 49 U.S.C. § 10101, et seq., and Article VI of the United States Constitution. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.

13. There is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff BNSF is a Delaware corporation with its principal place of business in Fort Worth, Texas, and is therefore a citizen of both Delaware and Texas. Kootenai County is a political subdivision of the State of Idaho, but is not

“an arm of the State of Idaho,” and is therefore a citizen of the State of Idaho. (*See Morrison-Knudsen Co. v. Massachusetts Bay Transp. Auth.*, 573 F.Supp. 698 (D. Idaho 1983).) The amount in controversy is in excess of \$75,000, because the cost of compliance with the new CUP conditions proposed by Kootenai County exceeds \$75,000. (The cost of indefinitely funding a staff position for the Idaho DEQ alone far exceeds \$75,000.) Accordingly, pursuant to 28 U.S.C. § 1332, this Court has diversity jurisdiction over the federal law claims in this case.

14. The Court may issue declaratory judgment and appropriate relief in this matter pursuant to 28 U.S.C. §§ 2201-2202.

15. Venue in this district is appropriate pursuant to 29 U.S.C. § 1391(b), as Kootenai County is located in the District of Idaho, the hearing on the proposed CUP amendments would take place in the District of Idaho, and the proposed CUP amendments would apply to a BNSF facility in the District of Idaho.

### **THE PARTIES**

16. Plaintiff BNSF operates in 28 states in the midwestern and western United States and Canada. It is the product of hundreds of predecessor companies that were merged or acquired over the past 150 years to form a unified interstate rail system. It is the second largest railroad in North America, and most of its rail traffic between the Pacific Northwest and the Midwest, the Plains States, and the Gulf States runs through Kootenai County.



17. Defendant Kootenai County is a body politic and corporate, with the powers specified in Idaho Code Title 31, *inter alia*. The powers of Kootenai County are exercised by its Board of County Commissioners, or by agents and officers acting under their authority or authority of law.

### COUNT I

#### **(Declaratory/Injunctive Relief—Preemption by ICCTA)**

18. Plaintiff realleges and incorporates herein by reference the allegations of all foregoing paragraphs.

19. The ICC Termination Act of 1995, 49 U.S.C. § 10101, et seq. (“ICCTA”), which became effective on January 1, 1996, amended certain sections of Title 49 of the United States Code, among other things, to completely preempt state and local regulation of railroads on matters which were vested exclusively with a Surface Transportation Board (“STB”) created by the statute.

20. Pursuant to the ICCTA, the STB is given jurisdiction over both interstate and intrastate rail transportation. 49 U.S.C. § 10501(a)(2)(A).

21. In particular, the ICCTA gives the STB “exclusive” jurisdiction over all railroad operations and facilities:

(b) The jurisdiction of the [STB] over—

(1) transportation by rail carriers, and the remedies provided [by Part A—Rail of the ICCTA] with respect to rates, classifications, rules (including car services, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side track, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or state law.

49 U.S.C. § 10501(b)(1) & (2).

22. The ICCTA defines “railroad” to include “a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” 49 U.S.C. § 10102(6)(C).

23. The ICCTA defines “transportation” to include, among other things, “a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use” and “the services related to that movement.” 49 U.S.C. § 10102(9)(A) & (B).

24. Under the ICCTA, it is the policy of the United States Government to promote a sound national rail transportation system “to meet the needs of the public and the national defense.” 49 U.S.C. § 10101.

25. Under the ICCTA, Kootenai County does not have the authority to regulate freight railroad facilities or operations that are part of the interstate rail transportation system, whether in or out of Kootenai County.

26. Under the ICCTA, Kootenai County does not have the authority to impose involuntary permitting requirements or conditions on freight railroad facilities or operations that are part of the interstate rail transportation system, whether in or out of Kootenai County.

27. Under the ICCTA, Kootenai County's conduct of a hearing to determine whether to impose new or modified mandatory permitting conditions on BNSF's continued operation of the Hauser Facility is preempted.

28. Under the ICCTA, Kootenai County's conduct of a hearing to determine whether to amend CUP Section 7.10 to impose additional mandatory requirements, including requirements for facility shutdown, in case of a release of petroleum product or other contaminant, is preempted.

29. Under the ICCTA, Kootenai County's conduct of a hearing to determine whether to amend CUP Section 7.29 to impose new mandatory requirements concerning the maintenance and annual testing of the slant wells currently located on the facility site is preempted.

30. Under the ICCTA, Kootenai County's conduct of a hearing to determine whether to amend CUP Section 7.20 to require BNSF to provide funding for a staff position for DEQ's aquifer protection program every year for as long as the Hauser Facility is in operation is preempted. CUP Section 7.20, by its terms, does not permit review of the continued need for, and funding of, an additional

staff position for DEQ's aquifer protection program until the end of the current 10-year program. Thus, the Board's proposed extension of the program is both preempted and premature.

31. Under the ICCTA, Kootenai County's conduct of a hearing to determine whether to impose unspecified new mandatory permitting conditions or condition modifications that may be raised by agencies or the public during the hearing process is preempted.

32. The imposition of the proposed mandatory CUP conditions on BNSF's operation of the Hauser Facility would interfere with BNSF's interstate rail operations, in violation of the ICCTA.

33. Insofar as BNSF committed voluntarily to certain conditions in the 2000 CUP, BNSF has complied with all of those conditions.

34. In particular, BNSF complied with the condition in CUP Section 7.04 to participate in a review hearing 60 months after the Hauser Facility became operational.

35. No evidence was adduced at the review hearing that BNSF had failed to comply with any condition in the CUP.

36. No evidence was adduced at the review hearing that any new or different conditions were necessary.

37. In the absence of any competent evidence or testimony at the review hearing that new or different conditions were necessary and warranted, CUP Section 7.04 did not give the Board discretion to consider whatever CUP amendments that the public, another agency, or a Commissioner might propose.

38. BNSF has no obligation to participate in another hearing to consider CUP amendments that were not supported by the record at the review hearing.

39. BNSF's voluntary agreement to participate in a single review hearing 60 months after the Hauser Facility became operational did not constitute an agreement to participate in any other regulatory proceedings.

## **COUNT II**

### **(Declaratory Relief)**

40. Plaintiff realleges and incorporates herein by reference the allegations of all foregoing paragraphs.

41. This case presents a justiciable issue in that the regulatory hearing noticed by Kootenai County is scheduled for December 2, 2010, and the subject of that hearing is permitting conditions for BNSF's Hauser Fueling Facility that are preempted on their face by the ICCTA and that interfere with interstate commerce.

42. A declaratory judgment in this matter would terminate and afford relief from the uncertainty, cost, disruption, conflict, and controversy giving rise to this proceeding and prevent a similar situation from arising in the future.

43. This matter is most properly resolved through a declaratory judgment issued by this Court. The matter involves important federal and state law questions, and a ruling in this case will have significant import for the national system of rail transportation. It is, therefore, important to the rail industry and the public at large.

### **COUNT III**

#### **(Preliminary and Permanent Injunctive Relief)**

44. Plaintiff realleges and incorporates herein by reference the allegations of all foregoing paragraphs.

45. BNSF will suffer irreparable harm if Kootenai County's planned hearing on modifications to the CUP for the Hauser Facility is not enjoined. A violation of BNSF's constitutional rights presumptively causes irreparable harm. Further, Kootenai County has no authority to impose CUP conditions on BNSF to which BNSF has not consented. BNSF has not consented to any of the CUP conditions proposed by Kootenai County. If Kootenai County's planned hearing is allowed to proceed, BNSF will be forced to participate in the very local regulatory process that the ICCTA is designed to avoid. Even if the monetary value of the injury to BNSF could be ascertained, there is no action at law available to BNSF to recover such loss from Defendant. Only this Court's exercise of its equitable powers can protect BNSF from sustaining irreparable harm.

46. Although injunctive relief would prevent irreparable harm to BNSF, on balance, the injury to Kootenai County would not be significant, because the Hauser Facility has operated for many years without any CUP amendments, all of the evidence adduced at the five-year review hearing confirmed that no CUP amendments were necessary, and the existing CUP conditions to which BNSF has agreed with Kootenai County and Idaho DEQ provide ample environmental protection.

47. The public interest would also be served by injunctive relief, because the economy, safety, and efficiency of interstate rail service would be protected.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff BNSF prays:

A. For a declaration that Kootenai County's proposal to impose additional mandatory permitting conditions on BNSF's operation of the Hauser Facility is preempted by the ICCTA;

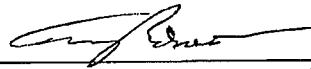
B. For a preliminary and permanent injunction requiring Defendant to conform its conduct to such judicial declaration and barring it from conducting any further regulatory hearings to consider or adopt additional mandatory permitting conditions for the Hauser Facility;

C. For such costs and attorneys' fees to which Plaintiffs may be entitled by law; and

D. For such other, further or different relief as this Court may deem just and proper.

DATED this 28th day of October, 2010.

PAINE HAMBLLEN LLP

By:   
Ausey H. Robnett III, ISB# 3218  
Paine Hamblen LLP  
701 Front Avenue, Suite 101  
P. O. Box E  
Coeur, d'Alene, Idaho 83816-0328  
Telephone: (208) 664-8115  
Fax: (208) 664-6338  
[ausey.robnett@painehamblen.com](mailto:ausey.robnett@painehamblen.com)

Attorney for Defendant  
BNSF RAILWAY CO.

and

ROBERT M. JENKINS, III *Pro Hac Vice*  
*Pending*  
MAYER BROWN LLP  
1999 K Street, N.W.  
Washington DC 20006-1101

Attorney for Defendant  
BNSF RAILWAY CO.



### CERTIFICATE OF SERVICE

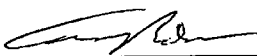
I HEREBY CERTIFY that on the 28th day of October, 2010, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Ausey H. Robnett III      [ausey.robnett@paineambly.com](mailto:ausey.robnett@paineambly.com)  
[stephanie.klein@paineambly.com](mailto:stephanie.klein@paineambly.com)  
[carolyn.ohs@paineambly.com](mailto:carolyn.ohs@paineambly.com)

Robert M. Jenkins      [rmjenkins@mayerbrown.com](mailto:rmjenkins@mayerbrown.com)

AND I FURTHER CERTIFY that such date I served the foregoing on the following non-CM/ECF Registered Participants in the matter indicated:

*No manual.*

By:   
Ausey H. Robnett III, ISB# 3218  
Attorneys for Defendant  
BNSF Railway Co.  
701 Front Avenue, Suite 101  
P. O. Box E  
Coeur, d'Alene, Idaho 83816-0328  
Telephone: (208) 664-8115  
Fax: (208) 664-6338  
[ausey.robnett@paineambly.com](mailto:ausey.robnett@paineambly.com)

ROBERT M. JENKINS, III *Pro Hac*  
*Vice Pending*  
MAYER BROWN LLP  
1999 K Street, N.W.  
Washington DC 20006-1101

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
BNSF RAILWAY COMPANY, a Delaware corporation,
(b) County of Residence of First Listed Plaintiff Tarrant County, TX
(c) Attorney's (Firm Name, Address, and Telephone Number)
Ausey H. Robnett, III, Paine Hamblen LLP, P. O. Box E, Coeur d'Alene, ID 83816

DEFENDANTS
KOOTENAI COUNTY acting by and through the BOARD OF COUNTY COMMISSIONERS,
County of Residence of First Listed Defendant Kootenai County, ID
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
See Exhibit
Brief description of cause:
See Exhibit

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: 10/28/2010
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**EXHIBIT A**

(Attachment to "Civil Cover Sheet")

**VI. CAUSE OF ACTION:**

**Cite the U.S. Civil Statute under which you are filing:**

28 U.S. C. § 2201, 2202; 49 U.S.C. 10101

**Brief description of cause:**

Action for declaratory and injunctive relief to prohibit Defendant from engaging in activities preempted by 49 U.S.C. § 10101 and Article VI of the U.S. Constitution.

AO 440 (Rev. 12/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**  
for the

District of Idaho

BNSF RAILWAY COMPANY, a Delaware  
Corporation,

*Plaintiff*

v.

KOOTENAI COUNTY acting by and through its  
BOARD OF COUNTY COMMISSIONERS,

*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* KOOTENAI COUNTY  
451 Government Way  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

AUSEY H. ROBNETT, III  
Paine Hamblen LLP  
701 Front Avenue, Ste. 101  
Coeur d'Alene, ID 83816

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AUSEY H. ROBNETT, ISB #3218  
PAINE HAMBLLEN LLP  
701 Front Avenue, Suite 101  
Coeur d'Alene, ID 83816-0328  
Telephone: (208) 664-8115  
Facsimile: (208) 664-6338

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MAYER BROWN LLP  
1999 K Street, N.W.  
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Telephone: (202)-263-3261  
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Attorneys for Plaintiff  
BNSF Railway Company

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

BNSF RAILWAY COMPANY, a  
Delaware corporation,

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KOOTENAI COUNTY acting by and  
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COMMISSIONERS,

Defendant.

)  
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)  
) **COMPLAINT FOR**  
) **DECLARATORY**  
) **AND INJUNCTIVE RELIEF**

---


Plaintiff BNSF Railway Company ("BNSF") complains and alleges as  
follows:

D. For such other, further or different relief as this Court may deem just and proper.

DATED this 28th day of October, 2010.

**PAINE HAMBLLEN LLP**

By:

  
Ausey H. Robnett III, ISB# 3218  
Paine Hamblen LLP  
701 Front Avenue, Suite 101  
P. O. Box E  
Coeur, d'Alene, Idaho 83816-0328  
Telephone: (208) 664-8115  
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[ausey.robnett@painehamblen.com](mailto:ausey.robnett@painehamblen.com)

Attorney for Plaintiff  
BNSF RAILWAY CO.

and

ROBERT M. JENKINS, III *Pro Hac Vice*  
*Pending*  
MAYER BROWN LLP  
1999 K Street, N.W.  
Washington DC 20006-1101

Attorney for Plaintiff :  
BNSF RAILWAY CO.