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Railroad Restricted Material

RECEIVED
FEB 17 2015
Dept. of Environment &
Natural Resources
GROUND WATER QUALITY

February 13, 2015

Ms. Trish Kindt
DENR-SERC
523 East Capitol Avenue
Pierre, SD 57501

Re: U.S. Department of Transportation Emergency Order Docket Number DOT-OST-2014-0067 (Issued May 7, 2014)

Dear Ms. Kindt:

Pursuant to the above referenced Emergency Order, we are required to "update notifications when there is a material change in the volume (+/- 25%) of those trains." The attached report provides an updated traffic flow summary and is presented in a new format which includes a map of the routes that have been utilized for transportation of Bakken-originated crude oil.

It is important to note that this information is subject to several restrictions on its release and exemptions from both state and federal applicable Freedom of Information laws and should only be provided to persons meeting with the appropriate need-to-know as discussed below. BNSF considers this information railroad restricted material, commercial confidential and business confidential information and pursuant to Federal law, thus the documents have been marked accordingly.

The D.O.T.'s guidance states that "This data is intended for those persons with a need-to-know; that is, first responders at the State and local level, as well other appropriate emergency response planners. DOT expects the SERCs to treat this data as confidential, providing it only to those with a need-to-know, and with the understanding that recipients of the data will continue to treat it as confidential. Accordingly, railroads may require reasonable confidentiality agreements prior to providing this information". BNSF trusts that each agency will maintain the confidentiality of this information in accordance with D.O.T.'s stated expectation.

The information is being provided to government personnel with emergency response, planning and/or security-related responsibilities. Please distribute this information only to those people who have a direct "need to know" as defined by regulation with a copy of this letter. The key purpose of the emergency order is to ensure local responders understand if crude oil is being routed through their counties and potential volumes for the purpose of developing emergency response plans.

BE FURTHER ADVISED, numerous federal and state regulatory restrictions prohibit BNSF or those receiving this information from publicizing data on train volumes and routing. These include, but are not limited to the following:

1. Federal regulation prohibits Railroad Restricted Material information relating to transportation shipments from being released. The link below provides access to the STB protective order as further example of treatment and restriction on disclosure of Railroad Restricted Materials): http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/369FD392053798F985257975005464D3/$file/42116.pdf

2. BNSF considers this information to be proprietary and confidential trade secret and business information and is providing it to your agency with the expectation and understanding that you will not share it with anyone who does not have a "need to know" such information for emergency response, planning and/or security-related responsibilities.
    - Pursuant to Federal Statute, information relating to the route, kind, quantity routing of a shipper's property is competitively sensitive information that shall not be disclosed by a railroad. 49 USC § 11904.

BNSF recognizes the important role community emergency planning and responding personnel play in protecting our communities and is committed to providing information to support these efforts within the limits defined by law. Although security regulations allow for limited disclosure of this information, we must all be cognizant that there is a real potential for the criminal misuse of this data in a way that could cause harm to your community or other communities along the rail route. BNSF is providing this information to you with the understanding that your agency can and will protect such information from public disclosure. Each agency that receives this information is responsible for compliance with these restrictions.

In the event that you are asked to disclose or provide this information via an open records or other request to which your or another agency believes this information is responsive, BNSF requires that you immediately notify me at 817-740-7358 or by email at Patrick.Brady@bnsf.com so that BNSF can determine whether legal or other action to prevent disclosure is appropriate.

Sincerely,

Patrick Brady

Director Hazardous Materials
Special Operations
BNSF Railway

Enclosure

Bakken Crude Oil Transport in South Dakota by County

BNSF transports crude oil in the following counties the previous week. The estimated weekly average numbers listed below represent those trains that are transporting 1,000,000 gallons or more of Bakken crude

County	Route	Estimated Number of Trains*
Minnehaha		2 – 7

Warning: This record contains confidential security, proprietary business, and railroad restricted information of the BNSF Railway. In accordance with the U.S. Department of Transportation guidelines, use and disclosure of this record is restricted to only state and local emergency management agencies or emergency response officials that have a legitimate "need to know" the information for purposes of emergency response planning. (*see DOT Frequently Asked Questions on DOT's May 7, 2014 Emergency Order Regarding Notification to Communities of Bakken Crude Oil Shipments published on FRA's website on May 23, 2014*). Public disclosure of this record is strictly prohibited without the express prior written permission of the BNSF Railway.

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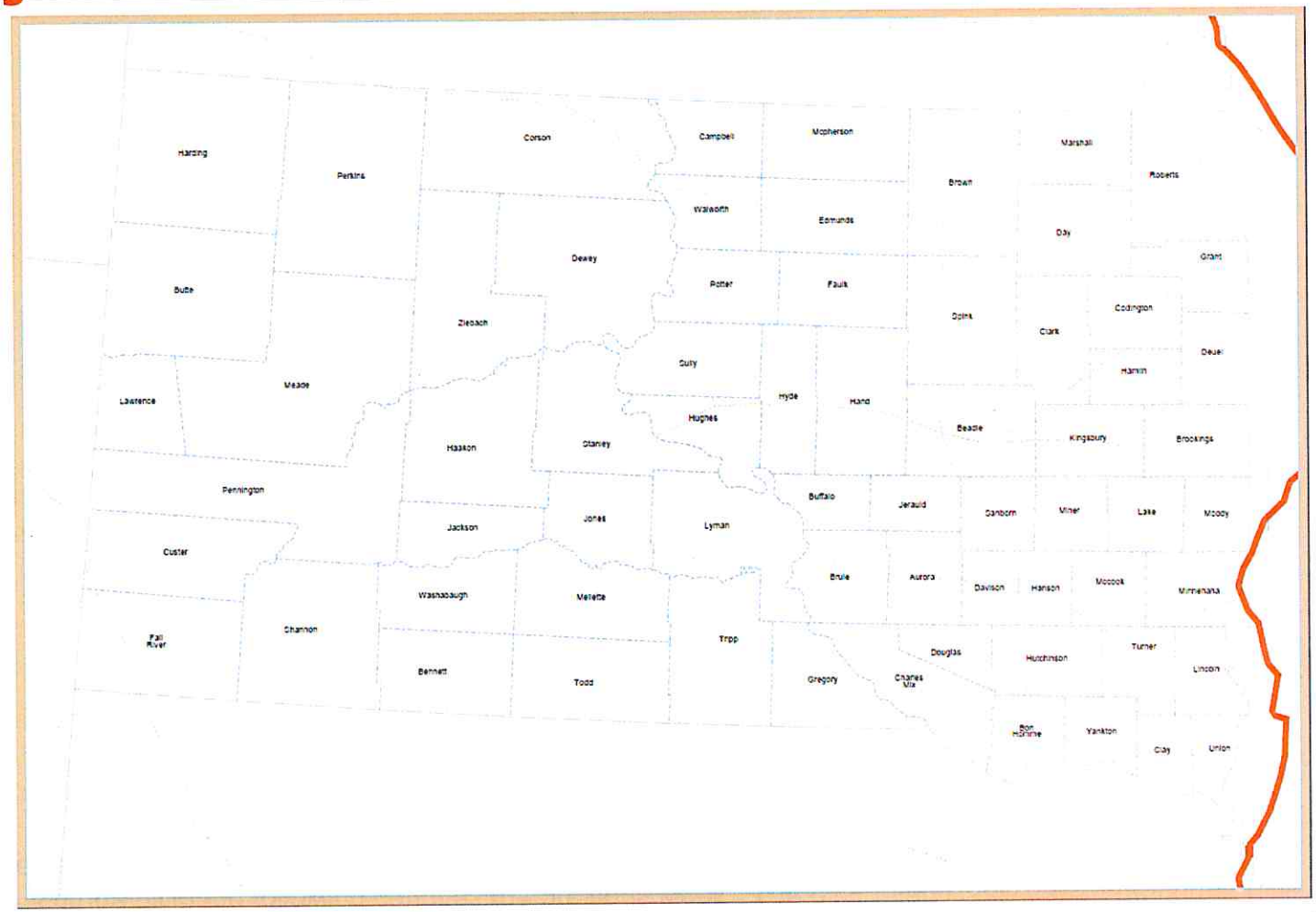
* Forecasted range is based on historical weekly average ±1 σ, all values are weekly averages unless otherwise stated

Bakken Crude Oil Transport in South Dakota by County



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