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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 35791

**UNION PACIFIC RAILROAD COMPANY
--ACQUISITION AND OPERATION EXEMPTION--
BROWNSVILLE AND MATAMOROS BRIDGE COMPANY**

**PETITION FOR EXEMPTION
UNDER 49 U.S.C. §§ 11323-25**

FILED
December 16, 2013
Surface Transportation Board

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Dated and filed: December 16, 2013

EXPEDITE HANDLING REQUESTED

Union Pacific Railroad Company (“UP”) hereby petitions the Surface Transportation Board (“Board”) for an exemption from prior review and approval under 49 U.S.C. §§ 11323-25 of UP’s acquisition of the railroad operating authority for the 0.8 mile rail line owned by Brownsville and Matamoros Bridge Company (“B&MB”) beginning at the connection to UP’s Brownsville Subdivision at UP Milepost 0.59 (B&MB Milepost 0.80) to the international border with the country of Mexico located near the center point (B&MB Milepost 0.00) of B&M’s railroad bridge (B&MB Bridge”) that crosses the Rio Grande River in the City of Brownsville, Cameron County, Texas (the “Line”).

SUMMARY OF TRANSACTION

UP through a series of mergers and acquisitions currently owns 50% of the B&MB. The other 50% ownership of B&MB is by the government of the country of Mexico. B&MB currently owns and has authority to operate as a common carrier by railroad the 0.8 mile Line beginning at the international border with the country of Mexico at B&MB M.P. 0.00 and running north to B&MB M.P. 0.80 in Brownsville, Cameron County, Texas. While B&MB has authority to operate the Line as a common carrier by railroad, B&MB has not so operated over the Line since the merger of UP with the Southern Pacific Transportation Company. The Line is currently operated solely by UP for the overhead movement of railway traffic by UP to and from Mexico under bridge operating agreements between B&MB and (i) the Missouri Pacific Railroad Company (“MP”) dated November 13, 1986 (the “MP Bridge Operating Agreement”) and (ii) Southern Pacific Transportation Company (“SP”) also dated November 13, 1986 (the “SP Bridge Operating Agreement”).¹ UP is the successor in interest by merger to both the MP and the SP.

¹ Copies of both the MP Bridge Operating Agreement and the SP Bridge Operating Agreement are attached, hereto as Exhibits 5 and 6 respectively. In a decision served September 11, 1985, in Finance Docket No. 30137, Southern Pacific Transportation Co. v. Missouri Pacific Railroad Co. and Brownsville and Matamoros Bridge Co., an ICC

Both MP and SP and now UP have the right to operate on the Line in common with any other tenants and licensees who may be designated by B&MB. In accordance with the terms of both bridge operating agreements, both SP and UP are to act as the agents of B&MB for movement of traffic over the Line which includes the B&MB bridge. B&MB still retains common carrier authority to operate as a railroad over the Line which includes the B&MB Bridge. An entirely new line of railroad on the UP's Brownsville Subdivision running from Olmito Junction at UP milepost 7.60 to the international border with Mexico on the UP's Brownsville Subdivision at the center of the Rio Grande River under UP's new international rail bridge (the "New Bridge") at UP milepost 1.7 a distance of approximately 6 miles (the "New Line" or "Relocated Line"). This New Line is currently under construction. The construction of the New Line and New Bridge was authorized by Presidential Permit 04-1 issued on October 1, 2004. A copy of Presidential Permit 04-1 is attached hereto as Exhibit 3 and is hereby made a part hereof. Only UP will have common carrier authority to operate on the New Line and the New Bridge. In order to establish a relocation of the current railroad operation on the Line to the New Line UP must establish exclusive operating authority over the Line and the New Line. In order to accomplish this objective, UP entered into a Letter Agreement with B&MB on November 5, 2013 under which UP acquired and B&MB has transferred all of B&MB's common carrier authority by railroad under 49 U.S.C. 11323 with regard to the Line and the B&MB Bridge to UP. A copy of the Letter Agreement is attached hereto as Exhibit 2 and is hereby made a part hereof. A map of the Line (depicted in Black), the existing UP line to be eliminated from Olmito Junction to the Line (depicted in Blue), and the New Line (depicted in Purple), is attached hereto as Exhibit 1 and is hereby made a part hereof.

administrative law judge granted SP operating rights from (then) SP's Brownsville Yard over MP's track and over B&MB Bridge into Matamoros, Mexico.

BACKGROUND

The Line was originally constructed in 1904 by the St. Louis, Brownsville and Mexico Railway Company (“StLBMRC”). The StLBMRC was originally chartered on June 6, 1903 to run from Cinton, Texas to the Rio Grande River at Brownsville, Texas with a branch extending westerly to the southeast corner of Starr County, a distance of 200 miles. It was originally intended that the StLBMRC would form one of the sections of a continuous rail line from Chicago, St. Louis, and Memphis to Baton Rouge, Houston, Brownsville, Tampico, and Mexico City, Mexico. By the early 1930’s the StLBMRC owned a 25% interest in the Houston Belt and Terminal Railway Company and a 50% in the B&MB. The StLBMRC was acquired by the Missouri Pacific Line on January 1925 but continued to operate as a separate company until it was merged into the MP on March 1, 1956. The MP was eventually merged into UP on January 1, 1997. Construction of the original Line including the B&M Bridge was completed in 1909. B&M Bridge was designed to handle both rail and vehicular traffic. In order to undertake the relocation of the Line and existing UP line from Olmito Junction to the Line, all common carrier authority by railroad vested in B&MB has been acquired by and otherwise transferred to and assumed by UP but such transfer requires authorization by the Surface Transportation Board (the “Board”) as sought by UP under this petition for an exemption from the prior review and approval law under 49 U.S.C. §§ 11323-25.

The B&MB’s line of railroad in the United States of America, referred to herein as the Line, is a 0.8 mile line which includes that portion of the B&M Bridge located in the United States of America. The Line runs from the connection to UP’s Brownsville Subdivision (UP Milepost 0.59 and B&MB Milepost 0.80) to the international border with the country of Mexico at the center of the Rio Grande River under the B&MB’s Bridge at Brownsville, Cameron

County, Texas (B&MB Milepost 0.00). The Line connects with that portion of UP's Brownsville Subdivision from UP Milepost 7.60 at Olmito Junction to Milepost 0.59 at Brownsville, Cameron County, Texas (a total distance of 7.01 miles and referred to herein as the UP's Brownsville Subdivision. Under the proposed relocation, UP will cease service on the Line, a distance of 0.8 miles and cease service on the UP's Brownsville Subdivision, a distance of 7.01 miles for a total distance of 7.81 miles in Brownsville, Cameron County, Texas. The proposed relocation is tied to and made possible by the current construction of an entirely new line of railroad running from Olmito Junction at UP Milepost 7.60 to the center of the Rio Grande River under the new international rail bridge with Mexico at Milepost 1.7, located approximately 6 track miles on the New Line from Olmito Junction and 15 river miles west and north on the Rio Grande River from the B&M Bridge. The construction of the New Line and New Bridge was authorized by Presidential Permit No. 04-1 issued October 1, 2004 authorizing the County of Cameron, Texas to construct, operate and maintain an international railroad bridge, its approaches and facilities at the international boundary between the United States of America and Mexico (the "West Rail Project"). The Environmental Assessment ("Environmental Assessment") for the West Rail Project, with its finding of no significant impact, was published by the Department of State in the Federal Register on June 25, 2004. A copy of said Environmental Assessment is attached hereto as Exhibit 4 and is hereby made a part hereof.

Completion of the West Rail Project to the point where trains can operate over the Relocated Line including the New Bridge is currently projected for January of 2014. Upon completion, UP's train operations will be relocated from the Line and the B&MB Bridge to the

New Line and the New Bridge.² The proposed relocation of railroad operations from the Line to the New Line will permit the City of Brownsville, Texas and Cameron County, Texas to fully realize the benefits of the West Rail Project. The environmental assessment statement in the Federal Register dated June 25, 2004 at page 35,700, provides that, the West Rail Project is to enable, (1) removal of the existing rail system from residential and downtown areas of Brownsville and Matamoros, thereby improving safety and reducing congestion and noise, (2) elimination of at grade road crossings, reducing air pollution from vehicles idling while awaiting passage of trains, and (3) reduction in the communities immediate exposure to potential derailment-related hazmat accidents and rail car explosions. (See Exhibit 4)

UP has rail operations in the states of Arizona, Arkansas, Iowa, California, Colorado, Idaho, Illinois, Indiana, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. B&MB is a common carrier by railroad but does not perform railroad operations itself. B&MB is owned by UP and the Country of Mexico on a 50/50 basis with UP currently performing all of the B&MB's common carrier operations in the United States of America. No local traffic is generated on the Line or the UP's Brownsville Subdivision. All railroad traffic on the Line and the UP's Brownsville Subdivision consists of overhead traffic to and from the Country of Mexico. The proposed relocation will have a no adverse effect on any rail served customers, there will be no increase in rail traffic, rail yard activity or truck traffic as a result of the proposed action. There will be no effect on regional or local transportation systems and patterns and no diversion of traffic to other transportation systems or modes. After the proposed

² BNSF Railway currently has unexercised overhead trackage rights on the Line and will have identical overhead rights on the New Line. The unexercised overhead trackage rights were granted to the predecessor of BNSF Railway in STB Finance Docket No. 32760 dated August 12, 1996 with an effective date of June 1, 1996. Under current operations UP handles all overhead traffic on the Line. UP will handle all operations on the New Line including the overhead BNSF Railway movements under haulage agreements with BNSF Railway.

relocation, the northern and eastern portions of the Brownsville, Texas areas, including the port of Brownsville, will continue to receive rail service from UP, BNSF Railway and the Brownsville and Rio Grande International Railroad.

ARGUMENT

I. THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to contract to operate property of another rail carrier.

Pursuant to 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope, or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 shows a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. 1. No. 96448, 94 Stat. 1895, Congress encouraged the Board's predecessor, the Interstate Commerce Commission to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the

Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Congo 2d Sess. 105 (1980). *See also Exemption From Regulation-Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision that would apply in the absence of the exemption. *Blackstone Capital Partners - Control Exemption- CNW Corp.*, 5 I.C.C.2d 1015, 1019 (1989) ("*Blackstone*"); *Vill. of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991).

The proposed transaction does not involve the merger or control of at least two Class I rail carriers. Therefore, absent an exemption, the proposed transaction would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board "shall approve" the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g., Finance Docket No. 32579, Canadian*

Pac. Ltd., and Soo Line R.R. Co. - Control- Davenport, Rock Island & N. W. Ry. (served February 10, 1995), slip op. at 5; *Wilmington Terminal R.R., Inc. - Purchase & Lease – CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom., Ry. Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991). The public interest factors are considered only where significant anticompetitive effects are found. *Id.*

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both "likely" and "substantial." *Wisc. Cent. Transp. Corp. - Continuance in Control- Fox Valley & w: Ltd*, 91.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2), "would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two." *Blackstone*, at 1019 (footnote omitted). Even if such showings were made, the proposed transaction may not be disapproved unless the anticompetitive effects of the proposed transaction outweigh the public interest factors. *See* Finance Docket No. 31991, *CSX Corp., CSX Transp., Inc. and Carrollton R.R. – Control - Transkentucky Transp. R.R.* (not printed), served April 15, 1991, slip op. at 2.

A contract to operate property by one rail carrier of another rail carrier does not result in harm to competition unless the transaction creates or enhances the ability of the acquiring rail carrier to exercise market power. The Board and its predecessor have defined market power as the ability of a rail carrier profitably to increase rates above competitive levels or to reduce the quality of service for a significant period of time without losing traffic to competing carriers or other sources. *See, e.g., CSX Corp. - Control-Am. Commercial Lines*. 2I.C.C.2d 490,515 (1984), *pet. for review denied sub nom., Crouse Corp. v. ICC*, 781 F.2d 1176 (6th Cir.), *cert. denied*, 479 U.S. 890 (1986). In addition, only competitive harm that is directly and causally related to a

proposed transaction -- and not pre-existing conditions -- are considered by the Board in determining whether a transaction will lessen competition. *Burlington N. R.R. Co. - Control and Merger - The Atchison, Topeka and Santa Fe Ry. Co.*, 10 I.C.C. 2d 661, 728 (1995).

As is demonstrated in this Petition, there are no anticompetitive effects that flow from the proposed transaction. The proposed transaction will not lead to higher rates or worsened service. To the contrary, the overall relocation of operations and the capital improvements for the New Line including the New Bridge will improve rail service for all of the shippers that utilize the existing Line, the B&MB Bridge and the UP's Brownsville Subdivision.

A. Regulation Of The Proposed Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

Detailed scrutiny of the proposed transaction under 49 U.S.C. §§ 11323-25 is not necessary to carry out federal Rail Transportation Policy as administered by the Board (the "Board's RTP"). By minimizing the administrative expense of considering the proposed transaction, the requested exemption will expedite regulatory decisions and reduce barriers to entry and exit [49 U.S.C. §§ 10101(2) and (7)]. All operations on the New Line and New Bridge will originate or terminate as they do today on the UP's Brownsville Subdivision and the Line. The relocation will allow all traffic to make fast and efficient connections to and from Mexico. UP also plans to raise train speeds on the New Line. Thus, the proposed transaction will create greater efficiency in the operations of UP and improve service for the customers being relocated over the New Line.

Consequently, the proposed transaction will help promote a safe and efficient rail transportation system [49 U.S.C. § 10101(3)], ensure the continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation and ensure effective competition [49 U.S.C. §

10101(5)], encourage honest and efficient management [49 U.S.C. § 10101(9)], and promote energy conservation [49 U.S.C. § 10101(14)]. Other aspects of the Board's RTP will not be adversely affected.

B. The Proposed Transaction Is Of Limited Scope

UP has contractually acquired B&MB's common carrier operating authority over the Line including the B&MB Bridge in order to maintain continuity of rail service when UP relocates the current railroad operations to the New Line and New Bridge. The Board and its predecessor have found the acquisition and operation of similar lengths of rail line to be limited in scope. *See, e.g., Ind. R.R. Co. – Acquisition & Operation – Ill. Cent. R.R. Co.*, 6 I.C.C.2d 1004, 1011 (1990)(acquisition of 90.3 miles of rail line found limited in scope); Finance Docket No. 31842, *Mid Michigan R.R. Co. – Purchase Exemption – The St. Joseph & Grand Island R.R. Co. Line Between St. Joseph, MO and Upland, KS* (not printed), served August 7, 1989 (acquisition of 107.3 miles of rail line found limited in scope); Finance Docket No. 32149, *Genesee & Wy. Indust., Inc. – Continuance in Control Exemption – Allegheny & E. R.R., Inc.* (not printed), service October 23, 1992 (acquisition of control of carrier operating 147.1 miles of rail line and serving 8 customers found limited in scope). The Line and the UP's Brownsville Subdivision consists of 7.69 rail miles of line. The New Line and New Bridge consists of 9.00 rail miles of equivalent line.

Moreover, the change in operating authority over the Line and the B&MB Bridge will not adversely affect traffic volumes on the Line or the routings available to the shippers other than relocating the operation to the more efficient New Line and New Bridge. All routings and services currently available to B&MB shippers on the Line and B&MB Bridge will continue to be available to B&MB shippers under UP operating authority for the New Line and the New

Bridge. All trains will continue to operate as they do under B&MB, with additional opportunity available for the future. The proposed transaction will not have any measurable impact on the national, regional or local rail industry. Consequently, the proposed transaction is of limited scope.

C. Regulation Of The Proposed Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Even if the proposed transaction were not limited in scope, the transaction should nevertheless be exempted because the transaction will not result in any abuse of market power by UP. The proposed transaction represents merely a change in operating authority on the Line and the B&MB Bridge to permit a seamless relocation to the New Line and New Bridge. UP and its predecessor's have managed the operations on the Line and the B&MB Bridge since the beginning of rail operations on the Line. Once this transaction is consummated, UP will relocate the rail operations on the Line and the B&MB Bridge to the New Line and the New Bridge. More importantly, there are no customers served today by B&MB that are not directly served by UP under the current operation of the Line and the B&MB Bridge. This service will continue when such operations are relocated to the New Line and the New Bridge. Consequently, there will be no loss of rail competition. Other than relocation, UP does not anticipate material changes in operations as a result of UP's acquisition of B&MB's operating authority over the Line and the B&MB Bridge. All trains and common carrier by railroad operations will continue to run as they do today, although in a more efficient, safe and secure manner.

Consequently, the proposed transaction will not result in an abuse of market power. Rather, the proposed transaction, overall, will enhance competition. *See* STB Finance Docket No. 33609, *Norfolk S. Ry. - Purchase Exemption - Union Pac. R.R. Co.* (not printed), served October 29, 1998, slip op. at 3 (finding no anticompetitive effect where 'transaction represents

only a change in owners"); Finance Docket No. 31469, *S.C. Cent. R.R. -Purchase – CSX Transp., Inc. Line Between E. Greenville and Laurens*. SC (not printed), served July 30, 1990, slip op. at 3 (finding no anticompetitive effect where the number of competitive alternatives available to shippers remains unchanged). As a practical matter, the proposed transaction will result in a change of operating authority and improved service to the customers that currently use the Line. There will be no adverse change in competition. Accordingly, regulation is not necessary to protect shippers from an abuse of market power.

II. LABOR PROTECTION.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Therefore, as a condition to granting the exemption, UP has no objection to the Board imposing the employee protective conditions set forth in *N.Y. York Dock Ry. – Control – Brooklyn E. Dist. Terminal*, 360 I.C.C. 60 (1979).

III. ENVIRONMENTAL AND HISTORIC IMPACTS.

UP is acquiring operations on the Line and the B&MB Bridge for continuity of continued rail operations on the New Line and the New Bridge upon relocation of such operations. Further Board approval is required for UP to abandon any relocated service on the New Line and New Bridge and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Petition for Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1). After relocation of railroad operations, the B&MB Bridge will no longer be an instrumentality of railroad service, but will remain the property of B&MB and will be used for continued vehicular and pedestrian use.

UP's acquisition 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. UP's acquisition of operating authority over the Line 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.

Notwithstanding the foregoing, the Environmental Assessment for the West Rail Project, see Exhibit 3, finds that the project has no significant environmental impact.

EXPEDITED CONSIDERATION RESPECTFULLY REQUESTED

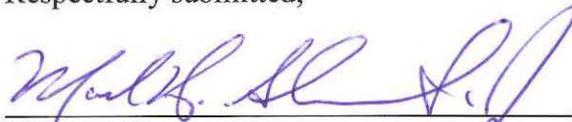
As noted in this Petition for Exemption the Relocated Line is expected to be ready for operation at the end of January, 2014. The Relocated Line was authorized by Presidential Permit 04-1 (See Exhibit 3). UP and B&MB filed a Combined Joint Petition for Exemption for UP to discontinue its operations on the Line and abandon a portion of the Brownsville Subdivision and for B&MB to abandon the Line almost one year ago on December 20, 2012. The Board reviewed the project and determined that the change in operation was more closely related to a relocation of a line. UP was requested to obtain B&MB's common carrier authority on the Line to make the relocation of operations to the New Line consistent with common carrier authority

applicable to the Line. The relocation process required UP and B&MB to enter into an agreement (the "Agreement") covering the acquisition of B&MB's common carrier authority by UP. The Agreement was finally executed on November 5, 2013. With the change in administration in the County of Mexico it took several months for the Mexican Government to fill the Board position on B&MB. Authorization for B&MB to enter into the Agreement could not be obtained until the B&MB Board position was filled and unanimous board resolution in favor of the Agreement obtained. For these reasons and others dealing with international border security, UP respectfully requests that the Board give expedited consideration to this petition for exemption.

CONCLUSION

Regulation of the proposed transaction is not necessary to carry out the Board's RTP. Also, the proposed transaction is limited in scope. Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Consequently, UP respectfully requests that the Board exempt from the prior approval requirements the proposed acquisition by UP of B&MB's railroad operating authority on the Line including the B&MB Bridge.

Respectfully submitted,



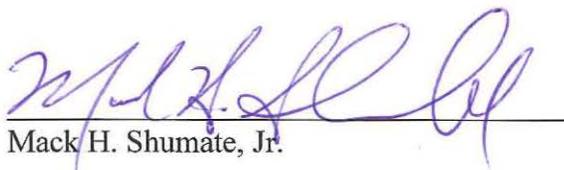
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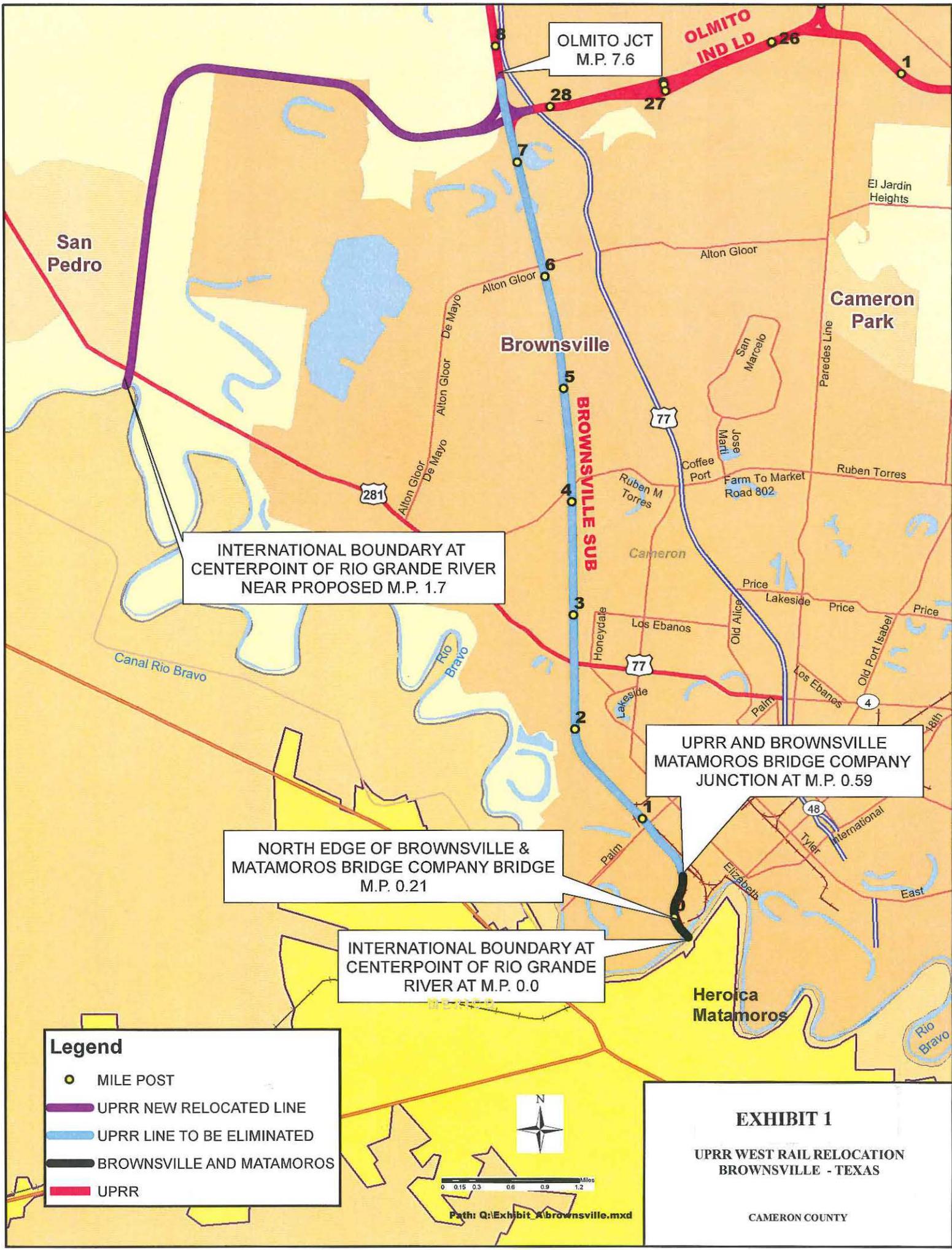
Date: December 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Exemption has been served on the following entities by first class mail this 16th day of December, 2013.

| | |
|-----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| John Hopkins, President Brownsville & Matamoros Bridge Company 1300 Mexico Blvd. Brownsville, TX 78522 | Denise S. Francis Director, State Grants Team Governor's Office of Budget and Planning P.O. Box 12428 Austin, TX 78711 |
| Pete Sepulveda, Jr. 110 E. Monroe Street – Dancy Building Second Floor Brownsville, TX 78520 | |


Mack H. Shumate, Jr.



INTERNATIONAL BOUNDARY AT CENTERPOINT OF RIO GRANDE RIVER NEAR PROPOSED M.P. 1.7

UPRR AND BROWNSVILLE MATAMOROS BRIDGE COMPANY JUNCTION AT M.P. 0.59

NORTH EDGE OF BROWNSVILLE & MATAMOROS BRIDGE COMPANY BRIDGE M.P. 0.21

INTERNATIONAL BOUNDARY AT CENTERPOINT OF RIO GRANDE RIVER AT M.P. 0.0

OLMITO JCT M.P. 7.6

Legend

- MILE POST
- UPRR NEW RELOCATED LINE
- UPRR LINE TO BE ELIMINATED
- BROWNSVILLE AND MATAMOROS
- UPRR



Path: Q:\Exhibit 1\brownsville.mxd

EXHIBIT 1

UPRR WEST RAIL RELOCATION BROWNSVILLE - TEXAS

CAMERON COUNTY

UNION PACIFIC RAILROAD
1400 Douglas Street, Mail Stop 1120
Omaha, NE 6817911580

P 402.544.5505
F 402.501.0227
cameronascott@up.com

Cameron A. Scott
VP, Network Planning & Operations

COPY

October 30, 2013

EXHIBIT 2

Mr. John D. Hopkins
President and Chief Operating Officer
Brownsville and Matamoros Bridge Company
1300 Mexico
Brownsville, TX 78522

LETTER AGREEMENT

RE: Acquisition by Union Pacific Railroad Company, Successor to Missouri Pacific Railroad Company by Merger ("Union Pacific") of all Common Carrier by Railroad Authority, Rights and Obligations under 49 U.S.C. 11323 of the Brownsville and Matamoros Bridge Company ("B & MB"), an Arizona Corporation as an exempt transaction under 49 C.F.R. §1180.2 and Termination of Bridge Operating Agreement - Brownsville, Texas between Union Pacific as Successor in Interest by merger to Southern Pacific Transportation Company and B & MB dated November 13, 1986, as amended to date (the "Operating Agreement")

Dear Mr. Hopkins:

This is to confirm the agreement between Union Pacific Railroad Company, a Delaware Corporation ("Union Pacific") as successor in interest by merger, to Missouri Pacific Railroad Company and Brownsville and Matamoros Bridge Company, an Arizona Corporation ("B & MB"), covering the acquisition by Union Pacific of B & MB's common carrier authority by railroad under 49 U.S.C. 11323. Both Union Pacific and B & MB concur that the acquisition of the common carrier authority by railroad vested in B & MB by Union Pacific qualifies as an exempt transaction under one or more of the following federal regulations, 49 C.F.R. §1180.2(d)(I), (3) and/or (5).

Union Pacific currently operates a line of railroad from Milepost 7.4 at Olmito Junction to Milepost 0.22 at Brownsville, Texas (the "Brownsville Subdivision"). Union Pacific also operates over B & MB's 0.8 mile B & MB Bridge Line (the "B & MB Bridge Line") from Union Pacific's connection near Union Pacific Milepost 0.41, to the international border with the country of Mexico, located at the center point of the Rio Grande River. The Brownsville Subdivision and the B & MB Bridge Line are both located in Cameron, County, Texas.

An entirely new line of railroad and bridge crossing the Rio Grande River has been constructed approximately 15 river miles west of the current location of the B & MB Bridge ("the B & MB Bridge") which is located on the B & MB Bridge Line. This entirely new line of

Mr. John D. Hopkins
President and Chief Operating Officer
Brownsville and Matamoros Bridge Company
October 30, 2013
Page 2

railroad with the new international railroad bridge over the Rio Grande River runs from Olmito junction to the new international railroad bridge with Mexico, located approximately 15 river miles west of the B & MB Bridge (collectively, the "West Rail Project"). Construction of the new line of railroad with the new international railroad bridge with Mexico was authorized via presidential permit 04-1 issued October 1, 2004, authorizing the county of Cameron, Texas to construct, operate, and maintain an international bridge, its approaches and facilities, at the international boundary between the United States and Mexico. The Environmental Assessment for the West Rail Project, with the finding of No Initial Significant Impact, was published by the Department of State in the Federal Register on June 25, 2004.

In order to accomplish relocation of railroad operations from Union Pacific's Brownsville Subdivision and B & MB's Bridge Line, Union Pacific and B & MB filed a Combined Joint Petition for Exemption with the Surface Transportation Board ("STB") seeking for Union Pacific authority to discontinue Union Pacific's operations of the B & MB Bridge Line and to abandon and discontinue service on the portion of UP's Brownsville Subdivision from Milepost 7.4 near Olmito Junction, Texas, to Milepost 0.22 at Brownsville, Texas (the "Brownsville Subdivision") and for B & MB to abandon B & MB's 0.5 mile of rail line, north of the international border with Mexico, at Brownsville, Texas ("B & M Bridge Line") under Union Pacific's docket AB-33 (Sub-No. 306X) and B & MB docket AB-1091X.

After preliminary review by the STB's Office of Proceedings, it was determined by the STB, rather than seeking a Combined Joint Petition for Exemption for authority to abandon Union Pacific's Brownsville Subdivision and the B & MB Bridge Line, a Relocation (the "Relocation") of said railroad operations is the preferred process.

In order to undertake the Relocation, all Common Carrier Authority by Railroad vested in B & MB will be acquired by and otherwise transferred to and assumed by Union Pacific as an exempt transaction under 49 C.F.R. part 1180.2 Railroad Acquisition, Control, Merger, Consolidation, Project, Trackage Rights, and Lease Procedures. The proposed acquisition by Union Pacific and transfer by B & MB of B & MB's Common Carrier Authority Railroad with regard to the B & MB Bridge Line, including operations over the B & MB Bridge qualifies as an exempt transaction under one or more of the following regulations 49 C.F.R. §1180.2(d)(1), (3), and/or (5). Specifically:

1. Under 49 C.F.R. §1180.2(d)(1), the acquisition is for a line of railroad which would not constitute a major market extension where the Board (STB) has found that the public convenience and necessity permit abandonment;
2. Under 49 C.F.R. §1180.2(d)(3), the transactions contemplated are within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family; and

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3. Under 49 C.F.R. §1180.2(d)(5), the transaction is a joint project involving the relocation of a line of railroad which does not disrupt service to shippers.

After Relocation of all current railroad operations on the Union Pacific's Brownsville Subdivision and B & MB's, B & MB Bridge Line, including operations over the B & MB Bridge to the new line of railroad and new international railroad bridge covered under the West Rail Project, there will be no further railroad operations on the Brownsville Subdivision nor the B & MB Bridge Line and the B & MB Bridge. This will permit B & MB to fully utilize the B & MB Bridge for international cross border vehicular and pedestrian traffic without the encumbrance or maintenance responsibility for railroad operations. This will also permit Union Pacific to relocate its international railroad operations with the country of Mexico by relocating said operations to the West Rail Project. B & MB concurs with the acquisition by Union Pacific of the common carrier authority by railroad vested in B & MB.

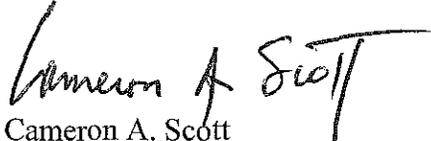
All future responsibility for maintenance and operations of the new international railroad bridge included in the West Rail Project will be the obligation of Union Pacific and not B & MB. The Operating Agreement between Union Pacific and Union Pacific's predecessors in interest with B & MB and its predecessors in interest, is hereby cancelled and otherwise terminated effective on the date Union Pacific receives all necessary authority from the STB to commence common carrier by railroad operations on the West Rail Project and exercises such authority. Both Union Pacific and B, & MB release each other with regard to any further obligations with regard to said Operating Agreement, except with regard to liabilities, responsibilities and obligations incurred prior to the date of the relocation of operations from the B & MB Bridge Line and the B & MB Bridge to the West Rail Project.

Both Union Pacific and B & MB represent to each other that they have the corporate authorization necessary to enter into this Letter Agreement.

Please indicate B & MB's agreement to the terms and conditions of this Letter Agreement by signing, dating and returning the duplicate original to me.

Very truly yours,

UNION PACIFIC RAILROAD COMPANY

By: 
Cameron A. Scott
VP, Network Planning & Operations

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President and Chief Operating Officer
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Brownsville and Matamoros Bridge Company accepted and agreed to this 5th day of
November, 2013.

By: 

Name: John D. Hopkins

Title: President & C.O.O.

 AUTHORIZING THE COUNTY OF CAMERON, TEXAS,
 TO CONSTRUCT, OPERATE AND MAINTAIN AN
 INTERNATIONAL BRIDGE, ITS APPROACHES AND FACILITIES, AT THE
 INTERNATIONAL BOUNDARY BETWEEN
 THE UNITED STATES AND MEXICO

By virtue of the authority vested in me as Under Secretary of State for Economic, Business, and Agricultural Affairs under Executive Order 11423, 33 Fed. Reg. 11741 (1968); as amended by Executive Order 12847 of May 17, 1993, 58 Fed. Reg. 29511 (1993), Executive Order 13284 of January 23, 2003, 68 Fed. Reg. 4075 (2003) and Executive Order 13337 of April 30, 2004, 69 Fed. Reg. 25299 (2004); the International Bridge Act of 1972 (86 Stat. 731; 33 U.S.C. § 535 *et seq.*); and Department of State Delegation of Authority number 118-1 of April 11, 1973; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. § 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action in accordance with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. § 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the County of Cameron, Texas (hereinafter referred to as "permittee"), to construct, operate and maintain a new international railroad bridge (the proposed "Brownsville West Rail Bypass International Bridge"), at about mile 70.2 on the Rio Grande, west of Brownsville, Texas and approximately 15 miles from the existing B&M international rail bridge in downtown Brownsville.

* * * * *

The term "facilities" as used in this permit means the bridge, its approaches and any land, structure or installations appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

This permit is subject to the following conditions:

Article 1. The United States facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefore. The permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

Article 2. (1) The standards for, and the manner of, the construction, operation and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of appropriate federal or state agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

(2) Approval of the United States Coast Guard in conformity with Section 5 of the International Bridge Act of 1972 (33 U.S.C. § 535c), by virtue of authority delegated from the Secretary of the Department of Homeland Security (DHS) to the Commandant, U.S. Coast Guard in DHS Delegation Number 0170.1, shall be obtained prior to initiation of construction.

Article 3. The permittee shall comply with all applicable federal and state laws and regulations regarding the construction, operation and maintenance of the United States facilities, and with all applicable industrial codes. The permittee shall obtain the requisite permits from the relevant Mexican authorities as well as from the relevant state and local government entities and relevant federal agencies.

Article 4. Upon the termination, revocation or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 5. If, in the future, it should appear to the United States Coast Guard or the Secretary of Homeland Security (or the Secretary's delegate) that any facilities or operations permitted hereunder cause unreasonable obstructions to the free navigation of any of the navigable waters of the United States, the permittee may be required, upon notice from the United States Coast Guard or the Secretary of Homeland Security (or the Secretary's delegate), to remove or alter such facilities as are owned by it so as to render navigation through such waters free and unobstructed.

Article 6. This permit and the operation of the United States facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the United States Government, including but not limited to the United States Coast Guard, the Department of Homeland Security, the General Services Administration, and the United States Section of the International Boundary and Water Commission (USIBWC). This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified in writing to the United States Department of State for approval, including identification of the transferee. In the event of such transfer of ownership or control, the permit shall remain in force and the United States facilities shall be subject to all the conditions, permissions, and requirements of this permit and any amendments thereof.

Article 9. (1) The permittee shall acquire such right-of-way grants or easements, permits and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of the construction, operation or maintenance of the facilities.

(3) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

Article 10. The permittee shall fund the removal of the Rail-Vehicle and Cargo Inspection Systems (VACIS) Gamma Ray machine at the existing B&M international rail bridge and its relocation and installation at the new international rail bridge crossing at a site mutually agreed upon by the permittee, the General Services Administration, and U.S. Customs and Border Protection (CBP) of the DHS. The permittee shall provide to CBP, at no cost to the federal government, facilities for the VACIS, to include office space for CBP personnel, restrooms, parking area, utilities, and an access road.

Article 11. (1) The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation and maintenance of the United States facilities, including those mitigation measures set forth in the Final Environmental Assessment and in the Department's Finding of No Significant Impact (FONSI) dated June 18, 2004.

(2) Before beginning construction the permittee shall: conclude satisfactory arrangements with appropriate federal and state agencies that will provide the assurance to the USIBWC that the facilities will not in any way present an obstruction or deflection to the normal flows or flood flows designated by the USIBWC in the reach of the international part of the Rio Grande; acquire the appropriate permits and licenses from the USIBWC for crossing the levee; and, obtain the concurrence of the U.S. Commissioner of the USIBWC that the project is consistent with the terms of boundary and water treaties between the United States and Mexico and other international agreements in force.

Article 12. The permittee shall comply with the conditions of the Programmatic Agreement executed on 19 August 2004 between the Department of State, the Texas State Historic Preservation Officer, the Advisory Council on

Historic Preservation, and the Permittee. In addition, the permittee shall notify the Department of State and the Texas Historical Commission in the event historic or archaeological resources are discovered during the course of construction activity, and the permittee shall cease such construction activity in the immediate vicinity of those resources while preparing documentation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f and Section 303 [formerly 4(f)] of the Department of Transportation Act, 49 U.S.C. 303, to address particular sites directly impacted by the project that are identified as requiring in situ preservation.

Article 13. The permittee shall comply with all agreed actions and obligations undertaken to be performed in the Application for a Presidential Permit, dated June 2003, in the Final Environmental Assessment, and in the FONSI, dated June 18, 2004. The Final Environmental Assessment includes the "Draft Environmental Assessment Document for the Proposed Brownsville-Matamoros West Rail Bypass Plan" dated June 2003, all comments submitted by agencies on that document, the responses to those comments, and all correspondence between agencies and the permittee addressing agencies' concerns.

Article 14. The permittee shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the United States Government or its agencies.

Article 15. The permittee shall not begin construction until it has obtained authorization for such construction from the Government of the United States and from the Government of Mexico through the exchange of diplomatic notes. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted or discontinued.

Article 16. The new international rail bridge shall not be opened to rail traffic until the existing B&M international rail bridge in downtown Brownsville has been permanently closed to rail traffic and the VACIS relocated to the new international rail bridge crossing.

IN WITNESS WHEREOF, I, Alan Larson, Under Secretary of State for Economic, Business and Agricultural Affairs of the United States, have hereunto set my hand this 1st day of October, 2004 in the City of Washington, District of Columbia.

Alan Larson



B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASD-2004-091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASD-2004-091 and should be submitted on or before July 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-14450 Filed 6-24-04; 8:45 am]
BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3586]

State of Ohio (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 18, 2004, the above numbered declaration is hereby amended to include Hocking, Mahoning, and Portage Counties as disaster areas due to damages caused by severe storms, and flooding occurring on May 18, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pickaway, Ross, and Trumbull in the State of Ohio; and Mercer County in the Commonwealth of Pennsylvania may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 04-14536 Filed 6-24-04; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3594]

State of Wisconsin

As a result of the President's major disaster declaration on June 19, 2004, I find that Columbia, Dodge, Fond du Lac, Jefferson, Kenosha, Ozaukee and Winnebago Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding occurring on May 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of

⁷ 17 CFR 200.30-3(a)(12).

business on August 18, 2004 and for economic injury until the close of business on March 21, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Calumet, Dane, Green Lake, Juneau, Marquette, Milwaukee, Outagamie, Racine, Rock, Sauk, Sheboygan, Walworth, Washington, Waukesha, Waupaca and Waushara in the State of Wisconsin; and Lake and McHenry counties in the State of Illinois.

The interest rates are:

| | Percent |
|----------------------------------------------------------------------------------------|---------|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 5.750 |
| Homeowners without credit available elsewhere | 2.875 |
| Businesses with credit available elsewhere | 5.500 |
| Businesses and non-profit organizations without credit available elsewhere | 2.750 |
| Others (including non-profit organizations) with credit available elsewhere | 4.875 |
| For Economic Injury | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 359406. For economic injury the number is 9ZJ800 for Wisconsin; and 9ZJ900 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 04-14535 Filed 6-24-04; 8:45 am]
BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 4750]

Finding of No Significant Impact and Summary Environmental Assessment; Brownsville/Matamoros West Rail Relocation Project—Cameron County, TX

The proposed action is to issue a Presidential Permit to Cameron County, Texas (the "Sponsor"), for the Brownsville/Matamoros West Rail

Relocation Project ("West Rail Project"), which will include the construction, operation and maintenance of an international rail bridge across the Rio Grande River from Brownsville, Texas to Matamoros, Mexico.

I. Background

The Department of State is charged with the issuance of Presidential Permits for the construction of international bridges between the United States and Mexico under the International Bridge Act of 1972, 33 U.S.C. 535 *et seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004).

A draft environmental assessment of the proposed West Rail Project was prepared by Raba-Kistner Consultants, Inc. and HNTB, Inc. on behalf of the Presidential Permit applicant, Cameron County, Texas, under the guidance and supervision of the U.S. Department of State (the "Department"). The Department placed a notice in the Federal Register (68 FR 141 (July 23, 2003)) regarding the availability for inspection of Cameron County's permit application and related documents. No comments were received in response to this notice.

Consistent with its regulations for the implementation of the National Environmental Policy Act ("NEPA") and in the context of its responsibilities with respect to Presidential permits, the Department has conducted its own, independent review of the draft environmental assessment. Numerous Federal and non-Federal agencies have also independently reviewed the draft environmental assessment, offered comments and/or qualifications, and approved or accepted the draft environmental assessment. These "cooperating agencies" are: the Department of Commerce, the Department of Defense (U.S. Army Corps of Engineers), the Department of Homeland Security (Bureau of Customs and Border Protection, the Federal Emergency Management Agency, and the United States Coast Guard), the Department of Health and Human Services (Food and Drug Administration), the Department of the Interior (Fish and Wildlife Service), the Department of Justice, the Department of Transportation (the Surface Transportation Board, Federal Highway Administration, Federal Railway Administration), the Department of State, the Environmental Protection Agency, the Council of Environmental

Quality, the General Services Administration, the International Boundary and Water Commission, the State of Texas, Texas Parks and Wildlife Department, the Texas Historical Commission, and the Texas Commission on Environmental Quality. All comments received by these cooperating agencies were responded to directly by the Sponsor or Raba-Kistner Consultants, Inc., including by expanding the analysis contained in the draft environmental assessment and/or through the development of appropriate mitigation measures.

The Sponsor has worked closely with the Federal and state agencies that have participated in the environmental assessment to address their concerns about the possible environmental impacts of this project. The results of Cameron County's meetings and other contacts with agencies were recorded in correspondence and described in the draft environmental assessment and addenda. After examining six alternatives rail routes, Cameron County ultimately proposed the preferred alignment that sought to minimize direct and indirect impacts to the human environment and that represented lower design and construction costs. The draft environmental assessment, as amended and supplemented, together with the comments submitted by Federal and state agencies, responses to these comments, and all correspondence between the agencies and the Sponsor addressing the agencies' concerns, constitute the final environmental assessment.

Based on the final environmental assessment, including mitigation measures that Cameron County has or is prepared to undertake, information developed during the review of Cameron County's application and comments received from Federal and state agencies, and the Department's independent review of that assessment, the Department has concluded that issuance of the Presidential Permit authorizing construction, operation and maintenance of the West Rail Bypass and international railway bridge would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council of Environmental Quality Regulations, 40 CFR 1501.4 and 1503.13, and with Department of State Regulations, 22 CFR 161.8(c).

II. Summary Environmental Assessment

A. The Proposed Project

Cameron County, Texas has applied to the Department for a Presidential permit authorizing the relocation of the Union Pacific Railroad (UPRR) line approximately 6 miles west of the City of Brownsville, Texas and the construction of a new international rail bridge approximately 15 river miles upstream of an existing rail bridge, which together constitute the West Rail Relocation Project. A single rail line will be constructed from the existing rail junction adjacent to U.S. Highway 77/83 and run to the Rio Grande River. It will claim a minimum right of way of 100 feet. Union Pacific Railroad (UPRR) will assume control of the new rail line once construction has been completed. UPRR will maintain operating rights to the new rail line in the United States. It is anticipated that, upon completion of the project, the Sponsor will request the Department of State to transfer the permit to the B&M Bridge Company, which will take over ownership of the U.S. portion of the international rail bridge.

The West Rail project involves the construction of a new international rail bridge that will pass over International Boundary and Water Commission (IBWC) levees and the Rio Grande River and into Matamoros, Tamaulipas, Mexico. The single-track bridge will span the Rio Grande River's floodway located between the flood control levees of the U.S. and Mexican sections of land managed by the IBWC. The proposed bridge will be located approximately at Rio Grande River Mile 71.7 and have a total span of 2,940 linear feet. The length of the U.S. portion of the bridge is approximately 840 feet. The bridge design will include a vertical clearance above the levees in accordance with IBWC requirements.

The rail bridge design, structure, and construction will adhere to UPRR engineering standards. An approach embankment will terminate at the north right of way of U.S. Highway 281 and tie into the abutment of the international rail bridge. The bridge will cross U.S. Highway 281 at a minimum elevation of 16.5 feet and continue over the IBWC levee and the Rio Grande River. Provisions for future widening of U.S. Highway 281 will be included in the design. A geotechnical study will determine the necessary bridge foundations and spacing of the columns for each pier. Schematics reflect the design flood elevation based on a flood flow of 20,000 cubic feet per second for this reach of the river. In addition, an 8

feet 3 inch, curved, chain-linked fence will be constructed at the edges of the bridge's superstructure to prevent pedestrian falls and illegal immigration. There will be no illumination under the bridge. Gate controls across the bridge will also be included. Land areas below the bridge will be replanted according to United States Fish and Wildlife Service (USFWS) specifications.

The engineering design phase will include hydraulic studies of the Rio Grande River that will be completed upon the issuance of a Presidential Permit. The hydraulic studies will assess the hydraulic impact of the bridge on the river flow and the impact of a potential relocation of the levee in Mexico to a location nearer to the river and will be presented to the U.S. and Mexican sections of the IBWC for review.

As the project involves the construction of an international rail bridge, the Department of Homeland Security has been consulted regarding border control and inspection needs. The Department of Homeland Security and the General Services Administration have outlined guidelines for the construction of all facilities related to the West Rail project, and Cameron County has agreed to adhere to the criteria in these guidelines.

The West Rail Project offers several advantages to communities of Brownsville and throughout Cameron County, which include improvements to the general human environment:

- Removal of the existing rail system from residential and downtown areas of Brownsville and Matamoros, thereby improving safety and reducing congestion and noise.
- Elimination of at-grade road crossings, reducing air pollution from vehicles idling while awaiting passage of trains.
- Creation of improved transportation corridors to handle traffic volumes more efficiently and allow for the redevelopment of the city's downtown area.
- Greater competitiveness, given the reduction in rail freight travel time between Brownsville and Monterrey, Mexico by approximately 2½ hours and the elimination of heavy traffic conditions at peak travel times.
- Facilitation of expected economic growth in the Brownsville area.
- Reduction in the community's immediate exposure to potential derailment-related Hazmat accidents and railcar explosions.

B. Alternatives Considered

In its review, the Department considered 6 alternatives described in detail in the draft environmental assessment and in a summary fashion below:

1. (The Project) Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, just north of the Resaca de la Palma wildlife refuge, turns south, passing 2,000 feet west of the World Birding Center, and crosses U.S. Highway 281 and the Rio Grande River.

2. Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, circumnavigating the Resaca de la Palma wildlife refuge further to the north than Alternative 1. The route then turns south, passing 2,000 feet west of the World Birding Center and crosses U.S. Highway 281 and the Rio Grande River.

3. Originates at the rail intersection adjacent to U.S. Highway 77/83 and continues west, north of the Resaca de la Palma wildlife refuge, proceeds an additional 3 miles, then turns south, crossing U.S. Highway 281 and the Rio Grande River.

4. (a), (b). Both Alternatives 4a and 4b originate at the rail intersection adjacent to U.S. Highway 77/83 and proceed south between the Resaca de la Palma refuge and the Cameron County Irrigation District Main Reservoir. At this point, Alternative 4a continues over U.S. Highway 281 and the Rio Grande River. Alternative 4b turns and proceeds west, south of the World Birding Center, along the same alignment as Alternative 1, crossing U.S. Highway 281 and the Rio Grande River.

5. Originates at the rail intersection adjacent to U.S. Highway 77 and proceeds north to the town of Rancho Viejo using existing rail lines. North of Rancho Viejo, the route turns southwest, then due south, and proceeds across U.S. Highway 281 and the Rio Grande River. This route abuts the western boundary of the World Birding Center.

6. The "No Build" Alternative: The international rail bridge is a common design element to all of the considered alternatives, other than the "No Build" alternative.

Alternative 2 was viewed as not preferred because it required approximately 51 additional acres of prime farmland. It would further require two grade separations for the future Merryman Road, a major street on the Brownsville thoroughfare plan.

Alternative 3 was viewed as not preferred because it would require the acquisition of additional acreage of prime farmlands (approximate 96 acres), a grade separation at the future FM

1421, a skewed overpass crossing at U.S. Highway 281, increased international bridge length (total of 0.19 miles), the displacement of 4-5 residential structures, the bisection of a residential community, and the location of 132 residences within 1,000 feet of the proposed rail line.

Both Alternatives 4a and 4b were viewed as not preferred for the reasons stated below. Alternative 4a, with a railroad embankment on the west side of the Cameron County Irrigation District main reservoir, would require, at minimum, sheet piling along the west side of the reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately \$3.15 million to the project in addition to the costs of installing the embankment, ballast, and rail tracks. The alignment would continue south across U.S. Highway 281 and bisect the Riverbend Subdivision and the Villa Nueva Community. The U.S. Highway 281 overpass would add approximately \$5 million, according to the Texas Department of Transportation. From U.S. Highway 281 the rail line would proceed with a vertical rise of 15 feet over the IBWC levee and remain elevated across the floodway leading to the Rio Grande River. This segment across the floodway would add approximately \$12 million. Construction of this alternative would encroach on the eastern boundary of the World Birding Center. The Texas Parks and Wildlife Department (TPWD) has opposed this route.

Alternative 4b would require, at minimum, sheet pilings along the west side of the Cameron County Irrigation District main reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately \$3.15 million to the project in addition to the cost of installing the embankment, ballast, and rail tracks. Rail bridges over U.S. Highway 281 and New Carmen Road would include approximately 2,750 feet of additional railroad bridge compared to Alternative 1 at an additional cost of \$5.5 million. The international rail bridge between the IBWC levee and the river would be the same as that constructed under Alternative 1. An additional bridge may be required for the Resaca crossing south of the Las Palmas Wildlife Management Area.

Construction of this alternative would also encroach on the eastern boundary of the World Birding Center. The TPWD has opposed Alternative 4b. Cameron County identifies another major difficulty with this alternative is the diagonal crossing of privately owned land parcels between U.S. Highway 281 and the wildlife management area.

Alternative 5 was not viewed as a preferred alternative because it would involve increased travel time of trains from one switching yard to another, required construction of two more overpasses, and would bring the rail line with 1,000 feet of a significant number of homes.

Alternative 6, the "No Build" alternative, would leave the existing rail system in place and achieve none of the described project objectives. Potential industrial and commercial growth associated with the West Rail Project would be curbed as the area would lack a safer, more direct route to the major transportation corridor. At-grade rail/roadway safety crossing issues would remain, as would traffic delays and idling times for traffic and their associated emissions. Such emissions are currently contributing to the degradation of air quality. Train noise in the downtown Brownsville area would persist.

None of the above alternatives provided avoidance or mitigation of any of the unavoidable impacts attributable to the selected project, and in addition, created higher costs in terms of land usage and overall costs. For this reason, the Department concluded that these options were not preferred alternatives.

III. Summary of the Assessment of the Potential Environment Impacts Resulting From the Proposed Action

The final environmental assessment provides detailed information on the environmental effects of the construction and use of the alternatives described above, including the proposed project. The proposed project was determined to be the preferred alternative, in view of the lower construction costs and the low extent of community and environmental impact as compared to the other alternatives.

On the basis of the final environmental assessment, the Department reached the following conclusions on the impact of construction of the railway bypass and bridge at the proposed location:

Farmlands: The proposed project requires the acquisition of approximately 46 acres of farmland that may be considered prime farmland under the Farmland Protection Policy Act, 7 U.S.C. 4201, *et seq.* The amount

of farmland acquired does not include acreage to be negotiated with the USFWS for the construction of a buffer zone north of the World Birding Center, the dimensions of which have been determined through consultation with the U.S. Fish and Wildlife Service. The proposed project requires one at-grade crossing at New Carmen Road. Right-of-way at this crossing will be secured by Cameron County, should an overpass at this site be desired in the future.

Wetlands: Given appropriate mitigation measures agreed to by the Sponsor and coordination with appropriate Federal and state agencies, the Department expects the proposed project's impact on wetland areas to be negligible. Specific wetland impacts will be influenced by the final bridge design selected for the several areas where the relocation project will traverse waterways, such as the Resaca del Rancho Viejo, Resaca de la Palma, and the Rio Grande. All wetland issues will be coordinated with the appropriate federal and state agencies, as outlined below. The construction plans will include a storm water runoff protection plan to eliminate the introduction of exotic weedy species. Much of the proposed route, according to the National Wetlands Inventory (NWI), falls within upland agricultural areas. The final environmental assessment estimates a total of 0.33 acres of wetlands will be impacted by this project.

The project crosses two resacas (Resaca del Rancho Viejo and Resaca de la Palma). Both are normally filled with water and may fall under the jurisdiction of the U.S. Army Corps of Engineers (USACE). The project will also cross various drainage and irrigation ditches. As described in the final environmental assessment, wetland delineation will be conducted as necessary in support of a Section 404 permit issued pursuant to the Clean Water Act, 33 U.S.C. 1251, *et seq.*, in accordance with USACE and Department of the Army specifications.

As the project enters the engineering design phase, mitigation measures regarding the impact on vegetative and aquatic habitats falling within the project area—such as affected areas of the Resaca Rancho Viejo and Resaca de la Palma—will be developed. This step will involve coordination with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department to not only protect defined jurisdictional wetlands but also to secure necessary permits for crossing these areas.

Floodplains, Floods, and the River Channel: While the rail line and

international bridge will cross portions of an identified 100-year shallow floodplain, negative impacts to the floodplain are not expected.

The design for the international rail bridge requires a 15 feet elevation above the floodplain of the Rio Grande River with bents located in the floodplain itself. The bents are not expected to impede the free flow of floodwater within the river or its levees. Flood levels should remain unchanged.

The railway approach to the international bridge will be at grade level. The design is anticipated to include free flow box culverts and/or bridges at resacas and irrigation crossings. These features should not impede the free flow of floodwaters. The design will include proper slope drainage and free flow of waters off the railway surface to be directed toward natural drainage gradients.

The project is not expected to require dredging, tunneling, or trenching. Should the design call for the installation of bridge bents in the river's channel, a temporary cofferdam may be used. Once the bent installation is finished, all non-native materials in the channel will be promptly removed.

Air Quality: While project-related activities, which may include, but are not limited to, construction, demolition, repair, or rehabilitation, are expected to create higher levels of dust and airborne particles and involve additional exhaust emitted from machinery and trucks, these impacts are expected to only be short-term and should pose no significant impact upon general air quality. Moreover, the project will include best management practices (BMP) to mitigate fugitive dust emissions throughout the construction process. For dust control, timely application of water will be used as necessary, or as excessive emissions are produced.

The West Rail Project lies within the Brownsville-Laredo Intrastate Air Quality Control Region (AQCR 213), which is in attainment of National Air Quality Standard air pollutants. Therefore, the Texas Commission on Environment Quality (TCEQ) in a letter dated March 21, 2003 contained in Appendix D of the Environmental Assessment indicated that no special measures need to be taken in regards to this project other than standard dust mitigation techniques by the construction contractors.

Listed, Threatened, and Endangered Species: Several listed and endangered species could potentially be impacted by the project. To mitigate these impacts, the Department expects the Sponsor to comply with a series of

recommendations from the USFWS and the TPWD.

Two species of federally protected cats, the ocelot and the jaguarundi, are found in the general project region along with one bird species, the Northern aplomado falcon, and two plant species, the Texas Ayenia and the South Texas Ambrosia. Surveys of the project site, however, found that vegetation there is less dense than in areas typically occupied by those species. Therefore, their regular presence within the immediate project area is considered unlikely. In addition to federally listed species, 15 state-listed, threatened, or endangered species may use portions of the project route because of the presence of potentially suitable habitat.

In letters contained in Appendix C of the environmental assessment and in subsequent correspondence, the USFWS and TPWD made a number of recommendations with which Cameron County has agreed to comply. These include replanting with native species disturbed areas of vegetation and trees, fulfillment of the World Birding Center Revegetation Mitigation Plan (Appendix L of the draft Environmental Assessment), a monitoring program with annual reports to USFWS on fulfillment of Revegetation Mitigation Plan, use of specific train operating procedures to minimize train noise, and ownership by Cameron County in perpetuity of the buffer zones and Right of Ways for the rail line and placement in the deeds for these areas restricted conditions regarding future clearing, construction and development. Additionally a qualified biologist, as provided for in the draft environmental assessment, will survey the project area prior to construction to determine if state and federally-listed, threatened, or endangered species are present. If encountered, these species will be relocated to avoid any direct impact. Record of exotic species removed from the area will be documented, as requested by the Texas Parks and Wildlife Department. In light of the Migratory Bird Treaty Act and population decline of many migratory bird species, the Department expects that precautions will be taken throughout the construction process to avoid or minimize the loss of critical vegetation during migratory bird's general nesting season from March through September. In conformance with the Act, a survey will be conducted prior to construction near the Resaca de la Palma refuge, thus avoiding inadvertent destruction of nests, eggs, etc.

Habitat and Vegetation: The construction phase will cause some loss of habitat and clearing of vegetation. Approximately 18 acres of wooded and scrub vegetation will be cleared, particularly along the Resaca de la Palma wildlife refuge where mature mesquite, huisache, and spiny hackberry trees will be removed throughout the 100 foot right of way. The use of defoliating agents and/or herbicides is not anticipated.

Cameron County, throughout the project, has coordinated closely with USFWS and TPWD on the re-vegetation of disturbed areas. As a consequence, mitigation efforts will include the revegetation of areas along the project route and the creation of a buffer zone between the railway and the Resaca de la Palma refuge. North of the refuge, the County will implement the "World Birding Center Revegetation Mitigation Plan, Appendix L of the draft environmental assessment, to minimize noise and visual impacts and create further bio-diversity in regards to the future World Birding Center. This plan calls for the creation of a 13-acre mitigation area sited 30 ft north of Lower Rio Grande National Wildlife Refuge (LRGV-NWR). This mitigation area will include approximately a 6.5-acre vegetative area and an approximately 6.5 acre clear zone. The Mitigation Plan seeks to increase diversity in the current cultivated land by the addition of woody deciduous tree and shrub diversity, and improve the visual aesthetics of the project and reduce its noise impact. The area encompassed by the mitigation plan and the railway right-of-way will remain under the ownership of Cameron County, and that deed restriction as far as clearing, construction and future development will be filed with the County Clerk to remain in perpetuity.

Potential Land Use Conflicts: The Department examined long- and short-term concerns relating to land use and determined that the project will be consistent with defined land usage. The proposed project requires the least acreage and minimizes impact to the land, compared to other alternatives, and largely avoids community and residential areas. The draft environmental assessment notes that roughly 75% of the land falling within the project area has already been altered by human activities. Development and construction phases of the project are expected to alter land forms and will temporarily modify the natural drainage pattern throughout the project area.

Land types to be used in this project include levee areas of the Rio Grande River, scrubland, and farmland. The

project should not cause significant impact to the levee area or agricultural lands. Access to agricultural land will remain open.

Projected acquisitions include private land. No relocations or displacement of homes or businesses will be necessary. The acquisition of private lands will be limited to the requirements of the project, such as the 100 to 300 feet right of way for the railway, the international rail bridge, and any roadway overpasses. Upon completion of the project, lands acquired through the project will be transferred to Union Pacific Railroad (UPRR).

Alteration of land and the removal of vegetation are not expected to affect erosion within the general project area greater than any similar construction project. Measures will be adopted as fully as possible throughout the construction period to minimize erosion, including undertaking construction in dry seasons and completion of Storm Water Pollution Prevention Plan, compliance with requirements imposed by the U.S. Army Corps of Engineers and other agencies, returning disturbed lands to their previous contours, and revegetation efforts. The TPWD has issued recommendations to moderate erosion, including the use of weed free hay bales and silt screens to prevent siltation into wetlands, which the Sponsor has committed to undertake.

Historical and Archeological Resources: A survey conducted by Anthony and Brown Consulting and approved by the Texas Historical Commission indicates that no archeological or historical sites will be impacted by the proposed project. One archeological site, 41CF185, was found, but it is completely destroyed and is neither eligible for the National Register of Historic Places nor for designation as a State Archeological Landmark. No evidence of buried prehistoric sites was found.

Cameron County made a "reasonable and good faith" effort to identify Native American groups that may have historical ties to the area and to invite these groups to participate in the consultation process, in accordance with the Native American Graves Protection and Repatriation Act, Executive Order 12875, and the Advisory Council for Historic Preservation. Using the Native American Consultation Database, maintained by the Department of the Interior, no federally recognized Native American groups were identified.

Water Quality: Significant impacts to current water supply and use are not anticipated, nor are adverse effects to

the interbasin transfer of ground water. Impacts to the quality of storm water run off, surface water, and ground water will be minimal.

Noise: The Department identified two broad categories of noise resulting from the proposed project: short-term construction-related noise and longer-term noise associated with passing trains and horn blasts. The proposed project is located within a sparsely populated area of Cameron County (the draft environmental assessment notes only two residential structures within 1,000 feet of the construction). However, portions of the Resaca de la Palma wildlife refuge and World Birding Center may be affected by noise related to rail traffic, but those impacts are not expected to be significant and will be minimized by implementation of the World Birding Center Revegetation Mitigation Plan.

While levels of construction noise will vary according to the nature of the construction work in progress, such noise is expected to be short term and will not exceed noise limits imposed by federal, state, and local laws and ordinances.

Noise resulting from rail traffic is not expected to have a significant impact on the surrounding environment, including the Resaca de la Palma wildlife refuge and the World Birding Center. A horn noise analysis conducted for the New Carmen Road at-grade crossing indicates that horn noise will not have any impact on the surrounding environment, as defined by the FTA (Federal Transit Administration).

Similarly, interim criteria for the threshold of disturbance for birds established by the FTA will not be exceeded either by regular train traffic or by train horns.

While a USFWS standard for peak hour noise will be slightly exceeded, the impact is not expected to be significant since the noise level will not exceed the USFWS limit 200 feet from the tracks and highway noise in the area frequently is recorded well above the USFWS peak hour noise level. Noise impacts will also be minimized by a ban against trains idling on the tracks, and maintenance of minimum speed of trains passing through the area of approximately 40 mph.

It should be noted that the proposed project will reduce noise levels along the existing corridor significantly, an important benefit for the higher numbers of homes located on the existing corridor.

Environmental Justice/Socio-Economic Concerns: In accordance with Executive Order 12898 of February 11, 1994, the project is not expected to have

a disproportionate impact on the minority or low-income communities in the immediate vicinity of the project, in view of the location of the project and the sparsely-populated nature of the land.

Energy Requirements and Conservation Potentials: The construction of the proposed project should be considered as a short-term use of the environment during which energy and labor will be expended. This energy cost will, in the long-term, be offset by reduced vehicle congestion in downtown Brownsville and the more efficient movement of commerce and cargo between the United States and Mexico.

Any Irreversible and Irrecoverable Commitment of Resources: The project has not involved irreversible and irretrievable commitment of resources.

Health and Safety: The project should contribute to the health and safety of the Brownsville community through lessening vehicle emissions, reducing the potential for vehicle-train collisions at existing at-grade crossings, and minimizing the potential for the railroad accidents in densely-populated areas involving hazardous materials.

Cumulative Impacts: The Department also considered cumulative environmental impacts resulting from the project.

As stated above, the proposed project will improve the quality of life for city and area residents by (a) the relocation of rail lines outside the Brownsville; (b) the reduction of vehicle waiting times and improvement of air quality in the downtown sections of the city; (c) the reduced impact of train noise to city residents; (d) the diversion of the transport of hazardous cargo from downtown Brownsville to less populated areas outside the city; and, (e) the elimination of numerous at-grade crossings.

Environmental disruption throughout the construction process and in the operation of the rail line will be minimized through appropriate mitigation measures, discussed above, and coordination between Cameron County with Federal and state agencies such as the IBWC, USACE, USFWS, and TPWD in the development and implementation of those mitigation measures.

IV. Conclusion: Analysis of the Final Environmental Assessment

On the basis of the final environmental assessment, information developed during the review of the Cameron County's application and environmental assessment, and comments received, a Finding of No

Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment prepared by the Department addressing this action is on file and may be reviewed by interested parties at the Department of State, 2201 G Street NW, Room 4258, Washington, DC (Attn: Mr. Dennis Linskey, Tel 202-647-8529).

Dated: June 18, 2004.

Dennis Linskey,
Coordinator, U.S.—Mexico Border Affairs,
Office of Mexican Affairs, Department of State.

[FR Doc. 04-14488 Filed 8-24-04; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST-2004-18488]

Notice of Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by August 24, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST-2004-18488 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information

BRIDGE OPERATING AGREEMENT -- BROWNSVILLE, TEXAS

THIS AGREEMENT, made and entered into this 13th
 day of November, 1986, by and between MISSOURI
 PACIFIC RAILROAD COMPANY (hereinafter referred to as "MP"),
 a Delaware corporation and common carrier railroad serving
 the south central region of the United States, including
 Texas and BROWNSVILLE AND MATAMOROS BRIDGE COMPANY
 (hereinafter referred to as "B&MB"), an Arizona corporation
 jointly owned by MP and the National Railways of Mexico
 (hereinafter referred to as "NdM"), with MP and B&MB
 sometimes referred to herein collectively as "Parties",
 WITNESSETH:

WHEREAS, B&MB owns a bridge spanning the Rio
 Grande River from Brownsville, Texas, to Matamoros, Mexico,
 that handles rail, automobile and pedestrian traffic; and

WHEREAS, MP requires access to and use of the
 bridge in order to interchange rail traffic with NdM at
 Matamoros, Mexico; and

WHEREAS, B&MB obtains a substantial amount of its
 revenue from pedestrian and motor vehicle traffic moving
 over the Bridge and requires that this traffic not be unduly
 interrupted;

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NOW THEREFORE, for and in consideration of the mutual promises herein contained, the Parties hereby covenant and agree as follows:

Section 1. DEFINITION OF PROPERTY INVOLVED.

The term "Bridge", as used in this Agreement, shall mean and include the trackage and Bridge between points A and B depicted on attached Exhibit "A" dated August 25, 1986 along with the requisite roadbed and right of way therefor, and the appurtenances thereto, including, but not limited to, embankment protection, signals, and other facilities used in the operation of the Bridge in and incident to the movement of trains, engines and cars thereon and thereover.

Section 2. GRANT OF OPERATING RIGHTS.

In consideration of the faithful performance by MP of the covenants and agreements hereinafter contained, B&MB hereby grants to MP, for the period of time and subject to the terms, conditions and limitations expressed in this Agreement, the right to operate in common with other tenants and licensees who may be designated by B&MB from time to time, MP's trains, locomotives and cars (including high rail cars) over and across the Bridge, solely in the movement of MP's rail traffic thereover and thereacross.

Section 3. MP's OPERATIONS OVER BRIDGE.

MP shall, with its own employees and at its sole cost and expense, operate its trains, locomotives and cars over and across the Bridge. MP's operations over the Bridge shall be conducted in a safe, responsible and prudent manner consistent with safe railroad practices and subject to such reasonable rules, regulations and orders as B&MB may issue from time to time. No employee of MP shall engage in or be connected with the operation of trains, locomotives or cars over the Bridge until he has become conversant with all B&MB rules, regulations and orders.

Section 4. MP TO ACT AS AGENT.

MP agrees to cooperate and to act as agent for B&MB in collecting any charges (including tariff charges) due B&MB from shippers relating to the movement of MP's traffic across the Bridge. MP's collection of charges on B&MB's behalf shall be at no cost to B&MB. Failure by MP to cooperate in acting as agent for B&MB in collecting charges as stated herein shall result in denial of MP's access to the Bridge.

Section 5. ESTABLISHMENT OF ADDITIONAL CHARGES.

A. Notwithstanding any other provision of this Agreement, B&MB reserves the right unilaterally to establish future charges in any reasonable amount to cover MP's

movement across the Bridge, or Bridge additions and betterments, or Bridge maintenance or for any other necessary purpose. B&MB shall not impose or increase charges whose main purpose is to maintain or increase non-rail traffic. Such charges may be imposed on 30 days' notice to MP. Any such charges shall be applied without discrimination to all carriers operating across the Bridge.

B. The expense of any addition or betterment to the Bridge made at MP's request and which benefits solely MP shall be borne exclusively by MP.

Section 6. LIABILITY.

A. MP will assume, bear, settle and pay all loss, costs, damages, including damages for injury or death which said Bridge, its property or property in its custody or which its employees may suffer while MP is running its engines, cars or trains upon or over the bridge, no matter how such loss, damage, injury or death may occur.

B. MP agrees to defend, indemnify and hold harmless B&MB from all loss of or damage to any and all property and all injuries to or death of any and all persons, including third parties, and all cost and expenses incident thereto when suffered or occasioned in or incident to the use or attempted use by MP of the Bridge for movement of any MP trains, locomotives or cars in or incident to such

MP use or attempted use of the Bridge. MP agrees that its use of the Bridge shall be at its own risk.

C. If for any reason the Bridge becomes inoperative due to repairs, failures, closure by governmental agencies, acts of God, strikes, or for any other reason, MP shall make no claim against B&MB for any loss whatsoever.

Section 7. PRIORITY OF BRIDGE USE.

Bridge operations and priority of use of the Bridge shall be subject to the sole discretion of B&MB without discrimination among rail carriers as to use of the Bridge.

Section 8. REMOVAL OF EMPLOYEE.

B&MB shall at all times have the right to request the removal from service on or across the Bridge of any employee of MP, not including officers, by making written request and showing reasonable cause therefor, and MP hereby covenants that it will exercise the best efforts to effect such removal with all reasonable dispatch. Anything herein to the contrary notwithstanding, MP shall not be required to remove any person from service if prevented from doing so by any law or regulation of a public authority having jurisdiction.

Nothing herein shall prohibit B&MB from barring from the Bridge any employee or employees of MP, not including officers, determined by B&MB to be in violation of B&MB's rules, regulations, orders or instructions.

Section 9. WRECKS, DERAILMENTS.

If any MP locomotive, car or any other equipment handled by MP shall be wrecked or derailed while on any portion of the Bridge, the same shall be picked up or rerailed and removed by MP or its agent and the cost thereof shall be assumed and borne by MP.

Section 10. REVENUES ACCRUE SOLELY TO B&MB.

Any and all payments, rentals, or other revenues due or accruing from the use, lease, or other occupancy by others not parties to this Agreement, of any of B&MB's properties covered by this Agreement shall inure to the use and benefits solely of B&MB, and MP shall have no claim thereto or interest therein.

Section 11. NOTICES.

Notices given under this Agreement or demands shall be in writing and shall be addressed as follows, unless notice of change of address has previously been given in writing:

To B&MB: General Manager
Brownsville & Matamoros Bridge Co. Here
P. O. Box 191
Brownsville, Texas 78520

To MP: Vice President-Operations
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Any such notice may be served upon the appropriate party by registered or certified United States Mail at the appropriate address shown above.

Section 12. ASSIGNMENT.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors, lessees and assigns; PROVIDED, HOWEVER, MP shall have no right or power to assign or transfer any interest under this Agreement, separate and apart from a sale, assignment, transfer or lease of all or substantially all of its lines of railroad.

Section 13. TERM.

This Agreement shall take effect on the date first stated herein, and, unless sooner terminated as provided, shall continue in full force and effect until August 24, 2009. It is, however, understood and agreed that notwithstanding the foregoing, in the event either B&MB ceases to operate the Bridge or MP ceases operations over the Bridge, either Party may terminate this Agreement after

the expiration of six months following written notice being served by the Party of its intent to terminate.

Section 14. JOINT AGREEMENT.

The terms of this Agreement have been reached through joint negotiations by the Parties and the fact that one Party or another may have drafted it shall not give rise to any presumption that the Agreement be construed against either Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the day and year first written above.

Witness:

BROWNSVILLE AND MATAMOROS BRIDGE COMPANY,

Sharon Holmes

By A. J. Danice
Title: President

Witness:

MISSOURI PACIFIC RAILROAD COMPANY

Clarence Martin

By W. F. Lomenell
Title: _____

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LEGEND

BROWNSVILLE AND MATAMOROS
BRIDGE CO. TRACKS USED
BY SOU PAC TRANS. CO. - - - - -

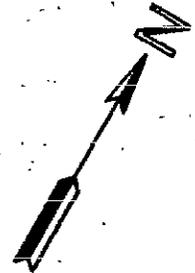
MO PAC TRACKS _____

N d M TRACKS - - - - -

BEGIN
JOINT USAGE "A"
ECS 31+32 = 0+00
(M.P. 0.59)

TO HOUSTON

BROWNSVILLE YARD



INTERNATIONAL BRIDGE CO.

UNITED STATES

MEXICO

STATES

GRANDE RIVER

"B"

NdM YARD

MATAMOROS

88570

EXHIBIT "A"

BROWNSVILLE & MATAMOROS BRIDGE CO.
DIAGRAM SHOWING

BROWNSVILLE & MATAMOROS BRIDGE CO.
TRACKS JOINTLY USED BY
SOUTHERN PACIFIC TRANSPORTATION CO.
FROM
BROWNSVILLE, TX. TO MATAMOROS, MEX.

OFFICE OF CHIEF ENGINEER OMAHA, NE.
NO SCALE AUGUST 25, 1986
FILE NO. DR0107

EXHIBIT 6

BRIDGE OPERATING AGREEMENT -- BROWNSVILLE, TEXAS

THIS AGREEMENT, made and entered into this 18th
day of November, 1986, by and between BROWNSVILLE
AND MATAMOROS BRIDGE COMPANY (hereinafter referred to as
"B&MB"), an Arizona corporation jointly owned by Missouri
Pacific Railroad Company (hereinafter referred to as "MP")
and the National Railways of Mexico (hereinafter referred to
as "NDM"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY
(hereinafter referred to as "SP"), a common carrier railroad
serving the southwestern United States, including Texas,
with SP and B&MB sometimes referred to herein collectively
as "Parties", WITNESSETH:

WHEREAS, B&MB owns a bridge spanning the Rio
Grande River from Brownsville, Texas, to Matamoros, Mexico,
that handles rail, automobile and pedestrian traffic; and

WHEREAS, SP has petitioned the Interstate Commerce
Commission ("ICC") for rail operating rights from SP's
Brownsville Yard, over track and through a rail yard of
Missouri Pacific Railroad Company ("MP"), thence over B&MB's
bridge into Matamoros for interchange with NDM; and

WHEREAS, in a decision served September 11, 1985,
in Finance Docket No. 30137, Southern Pacific Transportation

Co. v. Missouri Pacific Railroad Co. and Brownsville and Matamoros Bridge Co., an ICC administrative law judge granted SP operating rights from SP's Brownsville Yard over MP's track and over the B&MB Bridge into Matamoros, Mexico; and

WHEREAS, B&MB obtains a substantial amount of its revenue from pedestrian and motor vehicle traffic moving over the Bridge and requires that this traffic not be unduly interrupted;

NOW THEREFORE, for and in consideration of the mutual promises herein contained, the Parties hereby covenant and agree as follows:

Section 1. DEFINITION OF PROPERTY INVOLVED.

The term "Bridge", as used in this Agreement, shall mean and include the trackage and Bridge between points A and B depicted on attached Exhibit "A" dated August 25, 1986 along with the requisite roadbed and right of way therefor, and the appurtenances thereto, including, but not limited to, embankment protection, signals, and other facilities used in the operation of the Bridge in and incident to the movement of trains, engines and cars thereon and thereover.

Section 2. GRANT OF OPERATING RIGHTS.

In consideration of the faithful performance by SP of the covenants and agreements hereinafter contained, B&MB hereby grants to SP, for the period of time and subject to the terms, conditions and limitations expressed in this Agreement, the right to operate in common with other tenants and licensees who may be designated by B&MB from time to time, SP's trains, locomotives and cars (including high rail cars) over and across the Bridge, solely in the movement of SP's rail traffic thereover and thereacross.

Section 3. SP's OPERATIONS OVER BRIDGE.

A. SP shall, with its own employees and at its sole cost and expense, operate its trains, locomotives and cars over and across the Bridge. SP's operations over the Bridge shall be conducted in a safe, responsible and prudent manner consistent with safe railroad practices and subject to such reasonable rules, regulations and orders as B&MB may issue from time to time. No employee of SP shall engage in or be connected with the operation of trains, locomotives or cars over the Bridge until he has become conversant with all B&MB rules, regulations and orders.

B. For trains which are shoved across the Bridge, SP shall provide a crew member in the lead car to maintain a proper lookout. This crew member shall have the ability to stop the train in the event of an emergency and shall also

have radio communication with the locomotive for all shoving moves.

Section 4. SP TO ACT AS AGENT.

SP agrees to cooperate and to act as agent for B&MB in collecting any charges (including tariff charges) due B&MB from shippers relating to the movement of SP's traffic across the Bridge. SP's collection of charges on B&MB's behalf shall be at no cost to B&MB. Failure by SP to cooperate in acting as agent for B&MB in collecting charges as stated herein shall result in denial of SP's access to the Bridge.

Section 5. ESTABLISHMENT OF ADDITIONAL CHARGES.

A. Notwithstanding any other provision of this Agreement, B&MB reserves the right unilaterally to establish future charges in any reasonable amount to cover SP's movement across the Bridge, or Bridge additions and betterments, or Bridge maintenance or for any other necessary purpose. B&MB shall not impose or increase charges whose main purpose is to maintain or increase non-rail traffic. Such charges may be imposed on 30 days' notice to SP. Any such charges shall be applied without discrimination to all carriers operating across the Bridge.

B. The expense of any addition or betterment to the Bridge made at SP's request and which benefits solely SP shall be borne exclusively by SP.

Section 6. INSTALLATION OF LIGHTS.

SP agrees to pay for installation of lights at the Bridge to accommodate its night operations. B&MB estimates costs for installation of lights to be approximately \$7,000.00.

Section 7. LIABILITY.

A. SP will assume, bear, settle and pay all loss, costs, damages, including damages for injury or death which said Bridge, its property or property in its custody or which its employees may suffer while SP is running its engines, cars or trains upon or over the bridge, no matter how such loss, damage, injury or death may occur.

B. SP agrees to defend, indemnify and hold harmless B&MB from all loss of or damage to any and all property and all injuries to or death of any and all persons, including third parties, and all cost and expenses incident thereto when suffered or occasioned in or incident to the use or attempted use by SP of the Bridge for movement of any SP trains, locomotives or cars in or incident to such

SP use or attempted use of the Bridge. SP agrees that its use of the Bridge shall be at its own risk.

C. If for any reason the Bridge becomes inoperative due to repairs, failures, closure by governmental agencies, acts of God, strikes, or for any other reason, SP shall make no claim against B&MB for any loss whatsoever.

Section 8. LIMITATION OF BRIDGE USE.

A. In order to minimize Bridge congestion and conflicts with pedestrian and vehicle traffic, SP shall limit its operations over the Bridge to the time period from 9:00 p.m. through 9:00 a.m. each day. SP agrees to use its best efforts to confine its operations generally from midnight to 6:00 a.m. each day.

B. Bridge operations and priority of use of the Bridge shall be subject to the sole discretion of B&MB without discrimination among rail carriers as to use of the Bridge.

Section 9. REMOVAL OF EMPLOYEE.

B&MB shall at all times have the right to request the removal from service on or across the Bridge of any employee of SP, not including officers, by making written request and showing reasonable cause therefor, and SP hereby covenants that it will exercise the best efforts to effect

such removal with all reasonable dispatch. Anything herein to the contrary notwithstanding, SP shall not be required to remove any person from service if prevented from doing so by any law or regulation of a public authority having jurisdiction.

Nothing herein shall prohibit B&MB from barring from the Bridge any employee or employees of SP, not including officers, determined by B&MB to be in violation of B&MB's rules, regulations, orders or instructions.

Section 10. WRECKS, DERAILMENTS.

If any SP locomotive, car or any other equipment handled by SP shall be wrecked or derailed while on any portion of the Bridge, the same shall be picked up or rerailed and removed by SP or its agent and the cost thereof shall be assumed and borne by SP.

Section 11. REVENUES ACCRUE SOLELY TO B&MB.

Any and all payments, rentals, or other revenues due or accruing from the use, lease, or other occupancy by others not parties to this Agreement, of any of B&MB's properties covered by this Agreement shall inure to the use and benefits solely of B&MB, and SP shall have no claim thereto or interest therein.

Section 12. NOTICES.

Notices given under this Agreement or demands shall be in writing and shall be addressed as follows, unless notice of change of address has previously been given in writing:

To BSMB: General Manager
Brownsville & Matamoros Bridge Co. Here
P. O. Box 191
Brownsville, Texas 78520

To SP: Vice President-Operations
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, California 94105

Any such notice may be served upon the appropriate party by registered or certified United States Mail at the appropriate address shown above.

Section 13. ASSIGNMENT.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors, lessees and assigns; PROVIDED, HOWEVER, SP shall have no right or power to assign or transfer any interest under this Agreement, separate and apart from a sale, assignment, transfer or lease of all or substantially all of its lines of railroad.

Section 14. TERM.

This Agreement shall take effect on the date first stated herein, and, unless sooner terminated as provided,

shall continue in full force and effect until August 24, 2009. It is, however, understood and agreed that notwithstanding the foregoing, in the event either B&MB ceases to operate the Bridge or SP ceases operations over the Bridge, either Party may terminate this Agreement after the expiration of six months following written notice being served by the Party of its intent to terminate.

Section 15. JOINT AGREEMENT.

The terms of this Agreement have been reached through joint negotiations by the Parties and the fact that one Party or another may have drafted it shall not give rise to any presumption that the Agreement be construed against either Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the day and year first written above.

Witness:

BROWNSVILLE AND MATAMOROS BRIDGE COMPANY,

[Handwritten Signature]

BY

[Handwritten Signature]
Title: President

Witness:

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

[Handwritten Signature]

BY

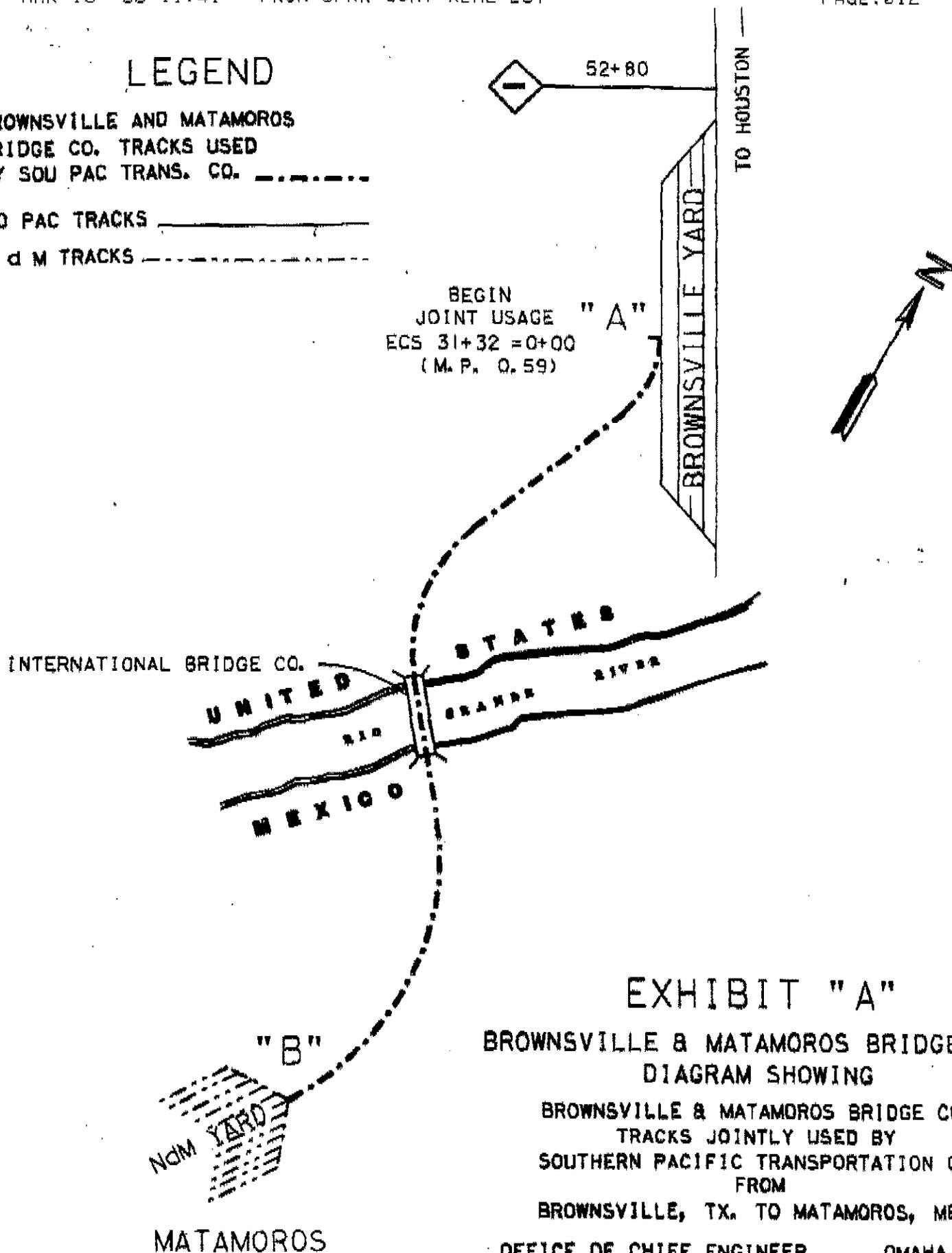
[Handwritten Signature]
Title: [Handwritten Title]

LEGEND

BROWNSVILLE AND MATAMOROS
BRIDGE CO. TRACKS USED
BY SOU PAC TRANS. CO. -----

MO PAC TRACKS _____

N d M TRACKS -----



BEGIN
JOINT USAGE "A"
ECS 31+32 = 0+00
(M. P. 0.59)

EXHIBIT "A"

BROWNSVILLE & MATAMOROS BRIDGE DIAGRAM SHOWING

BROWNSVILLE & MATAMOROS BRIDGE CO
TRACKS JOINTLY USED BY
SOUTHERN PACIFIC TRANSPORTATION C
FROM

BROWNSVILLE, TX. TO MATAMOROS, ME

OFFICE OF CHIEF ENGINEER OMAHA,

NO SCALE

AUGUST 25, 1986

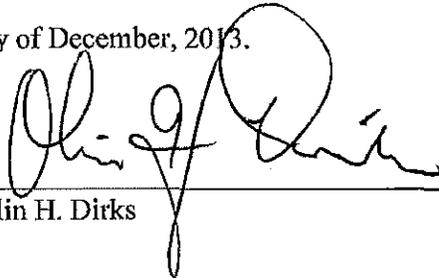
FILE NO. DR0107

VERIFICATION

STATE OF NEBRASKA)
)SS:
COUNTY OF DOUGLAS)

I, OLIN H. DIRKS, Senior Manager rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the law of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company.

Dated at Omaha, Nebraska, this 16th day of December, 2013.

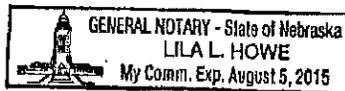


Olin H. Dirks

SUBSCRIBED AND SWORN TO
before me this 16th day of
December, 2013.



Notary Public



My Commission expires: Aug. 5, 2015