

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34079

SAN JACINTO RAIL LIMITED CONSTRUCTION EXEMPTION AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
OPERATION EXEMPTION—BUILD-OUT TO THE BAYPORT LOOP NEAR
HOUSTON, HARRIS COUNTY, TX

Decided: May 16, 2003

By decision served May 9, 2003, the Board granted final approval for an exemption for San Jacinto Rail Limited to construct and The Burlington Northern and Santa Fe Railway Company to operate a 12.8-mile line of railroad serving the Bayport Industrial District (Bayport Loop) in southeast Houston, Harris County, TX, near Galveston Bay, subject to 80 environmental mitigation measures. Also in the May 9 decision, in accordance with the regulations of the President's Council on Environmental Quality implementing the National Environmental Policy Act (at 40 CFR 1506.10(b)), the Board set the deadline for filing administrative appeals in this case as 30 days from the date on which the United States Environmental Protection Agency (EPA) published in the Federal Register a notice of the Final Environmental Impact Statement (Final EIS). Finally, the Board also stated that the decision would not be effective until that date.

On May 2, 2003, the Board's Section of Environmental Analysis (SEA) issued the Final EIS in this proceeding and filed it with EPA. The Board anticipated that EPA would, in accordance with its own regulations, publish a notice in the Federal Register announcing the availability of the Final EIS on May 9, 2003. Accordingly, in its final decision, the Board set the deadline for filing administrative appeals in this case as June 9, 2003.

On May 9, 2003, however, SEA discovered that, while EPA had, in fact, published a notice in the Federal Register announcing the availability of all EISs filed in the prior week (68 FR 25023), the EPA notice for this proceeding was factually incorrect. The EPA notice indicated that, in this proceeding, the Board filed a Draft Environmental Impact Statement (Draft EIS), rather than a Final EIS, and the EPA notice indicated a due date for comments on the Draft EIS. The EPA notice should have stated that a Final EIS had been filed and was now available with a "wait period" ending

June 9, 2003. EPA published a corrected notice in the Federal Register on May 16, 2003 (68 FR 26607).

To ensure that all interested parties have the full 30-day wait period to pursue administrative review of all aspects of the Board's final decision, including the Final EIS, the period for filing administrative appeals in this proceeding will be extended for one week, to and including June 16, 2003. In addition, the Board's final decision will not be effective until that date.

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

It is ordered:

1. The deadline for filing administrative appeals in this proceeding is extended one week to June 16, 2003, and the effective date of the Board's decision served on May 9, 2003, is extended to June 16, 2003.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary